EXPLANATORY MEMORANDUM TO

THE VICTIMS' PAYMENTS (AMENDMENT) REGULATIONS 2023

2023 No. 742

1. Introduction

1.1 This explanatory memorandum has been prepared by Northern Ireland Office and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The Victims' Payments Regulations 2020 provide for a scheme to make payments to those permanently injured in Troubles related incidents. The purpose of this amending instrument is to make one relatively minor - but important - change to the Regulations relating to lump sum payments, as well as making a number of minor drafting fixes, which have been brought to our attention by either by the Joint Committee on Statutory Instruments or the Victims' Payments Board.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The provision regarding extent in the Regulations enabling power is perhaps slightly unusual. The extent of section 10 of the Northern Ireland (Executive Formation etc.) Act 2019 ("the EF Act") extends to the whole of the UK. However, section 10 (1) provides that the scheme is to be established under the law of Northern Ireland, effectively limiting the extent of regulations for the purpose of establishing that Scheme. However, regulations under section 10 may, courtesy of section 10(9) and 11(2), be used to amend provisions made by an Act of Parliament, an Act or Measure of the National Assembly for Wales or an Act of the Scottish Parliament.

3.2 This instrument makes minor syntax corrections in response to comments from the Joint Committee on Statutory Instruments in July 2021.

4. Extent and Territorial Application

4.1 In each case, the extent of the amendments made reflect the extent of the provisions being amended. Accordingly, regulation 2(2) extends to England and Wales, Scotland and Northern Ireland and the remainder of the instrument extends to Northern Ireland only.

4.2 The territorial application of this instrument is Northern Ireland.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 This instrument makes amendments to the Victims' Payments Regulations 2020 which were drafted and made under Section 10 of the Northern Ireland (Executive Formation) Act 2019, following an amendment to that Act.

6.2 The UK Government launched a five week public consultation in November 2019 and made the Regulations for the scheme in January 2020. The Regulations stipulated that this scheme was to be delivered by a Department in the Northern Ireland Executive, reflecting the UK Government's longstanding position that this scheme is a devolved matter, and was legislated for in the UK Parliament in the absence of the Northern Ireland Executive.

6.3 The scheme is now known as the Troubles Permanent Disablement Scheme (TPDS) and is delivered by the Victims Payments Board. .The Victims Payment Board (VPB) oversees the delivery of the scheme and a High Court Judge presides over its operation.

6.4 It opened for applications in August 2021.

7. Policy background

What is being done and why?

7.1 Since the Regulations were made in January 2020 the Victims Payments Board (VPB) has requested a number of minor and technical changes to the Regulations, most recently in January 2023. The Joint Committee on Statutory Instruments (JCSI) also wrote to the NIO in July 2021 flagging some minor syntax errors that should be corrected. The amendments in this instrument include those requested by the VPB and those flagged by the JCSI.

7.2 We agreed with the VPB not to lay an amending SI until the VPB were content that they had captured all the changes that they wished to make, to ensure the best use of Parliamentary time. We have now agreed all the required changes to the Regulations as outlined below with the VPB, the policy owners in the Executive Office and the sponsor Department of Justice.

7.3 Regulation 24 relates to lump sum payments. The policy intent in the 2020 Regulations was that anyone aged 60 or over at the date of application (or terminally ill) could receive 10 years' worth of payments in a lump sum. Payments are otherwise ordinarily made on a monthly basis.

7.4 The President of the scheme interpreted the wording in regulation 24(4)(a) as meaning a 65 year old person would only get 5 years' worth of payments, because the period of 10 years for which the amount of victims' payments would be payable in a lump sum began on that person's 60th birthday rather than the date of application. The President's view is the drafting does not articulate the policy intent clearly, and could result in people over 60 who opt for the lump sum receiving less than we envisaged when we developed the Regulations.

7.5 This instrument amends the drafting to clarify that lump sum payments (being the amount of victims' payments that would be payable in a period of 10 years to a person over the age of 60) will apply from the point of application, rather than the applicant's 60th birthday.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union, or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 These Regulations do not consolidate any existing legislation.

10. Consultation outcome

10.1 These amendments to the Victims' Payments Regulations 2020 are made at the request of the President of the Victims' Payments Board and his officials with whom we consulted throughout. As the Northern Ireland Assembly is currently not sitting, it was not possible to consult with Ministers in the Northern Ireland Executive. However, we have been engaging with relevant officials on a regular basis, and they have not suggested that Ministers in the Executive – if in post – would raise concerns with these relatively minor changes.

11. Guidance

11.1 No guidance is required for this instrument.

12. Impact

12.1 There is no, or no significant impact on business, charities or voluntary bodies.

12.2 There is no, or no significant impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because no impact is foreseen. The amendments made by these Regulations are minor and technical.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 A statutory review clause is included in the Victims' Payments Regulations 2020 and is unaffected by these minor and technical changes.

15. Contact

15.1 Martina McCann at the Northern Ireland Office. Telephone: 07814361748 or email martina.mccann@nio.gov.uk can be contacted with any queries regarding the instrument

15.2 Ruth Sloan, Deputy Director for Legacy Group, at the Northern Ireland Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Steve Baker, Minister of State at the Northern Ireland Office can confirm that this Explanatory Memorandum meets the required standard.