

**EXPLANATORY MEMORANDUM TO**  
**THE MESOTHELIOMA LUMP SUM PAYMENTS (CLAIMS AND**  
**RECONSIDERATIONS) (AMENDMENT) REGULATIONS 2008**

**2008 No. 2706**

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 This instrument amends the Mesothelioma Lump Sum Payments (Claims and Reconsiderations) Regulations 2008 (the ‘primary regulations’). It provides for the manner in which an appeal notice may be submitted where an appeal is made against a determination made by the Secretary of State on a claim made to the Mesothelioma Scheme 2008 or a reconsideration under section 49 of the Child Maintenance and Other Payments Act 2008 of a determination made on a claim.

2.2 This instrument also makes amendments to the Regulations consequential on the implementation of the Tribunals, Courts and Enforcement Act 2007 (‘the TCE Act’) as the functions of the appeal tribunal to which these appeals can be made are transferring to the First-tier Tribunal on 3<sup>rd</sup> November 2008.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 This instrument has been laid within 21 days of its commencement date. It is linked to a larger package of instruments, including several subject to affirmative resolution, needed to implement the first stage of tribunals reform. The new provisions cannot operate without all the statutory instruments in place. Ministers judged that there was a serious risk of Parliament not approving the affirmative statutory instruments if the all the concerns of some key interest groups had not been met. They also judged that laying the negative instruments before the discussions with stakeholders had reached fruition could jeopardise the parliamentary process and lead to a considerable waste of parliamentary resources if such a large number of instruments had to be withdrawn.

3.2 The Minister and Department regret and apologise for the breach of the 21 day rule. However, this instrument has to take effect on 3 November 2008 as the draft Transfer of Tribunals Functions Order 2008 (laid in Parliament on 4 June 2008) and the Tribunal Procedure (First-tier Tribunal)(Social Entitlement Chamber) Rules 2008 provide that they are to commence on that date. As the Transfer of Tribunals Order, the Rules and this instrument are interactive and interdependent it would be necessary to withdraw the Transfer of Tribunals Order and lay a new

order in Parliament if the commencement dates could not be 3 November. This would create significant confusion for tribunal users and the Tribunal Service and delay implementation of the tribunal reform programme by at least three months.

#### **4. Legislative Background**

- 4.1 Section 50(1) of the Child Maintenance and Other Payments Act 2008 (CMOP Act) provides that a person who has made a claim for a mesothelioma lump sum payment under section 46 of the Act, may appeal against a determination made by the Secretary of State on either the claim or on reconsideration of a determination made on the claim.
- 4.2 Under subsection 50(4) of the Act the Secretary of State may make regulations providing for (a) the manner in which, and the time within which, an appeal may be made (b) the procedure to be followed if an appeal is made and (c) enabling an appeal under subsection (1)(a) to be treated as an application for reconsideration under section 49 of the determination made on the claim. Paragraph 50(4)(b) will be repealed by the Transfer of Tribunal Functions Order 2008 (a draft of which was laid in Parliament on 4 June 2008) when the Order commences on 3 November 2008, because this function will be carried out under Tribunal Procedure Rules made under the Tribunals, Courts and Enforcement Act 2007.

#### **5. Extent**

- 5.1 This instrument applies to Great Britain.

#### **6. European Convention on Human Rights**

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

#### **7. Policy background**

##### The Mesothelioma Scheme 2008

- 7.1 The intention of the Pneumoconiosis etc. (Workers' Compensation) Act 1979 ("the 1979 Act") was to provide a reasonable level of compensation to sufferers of certain dust related diseases, or their dependants, who are unable to pursue a civil claim because their former employers have ceased to carry on business. Mesothelioma is one of the diseases covered by the 1979 Act, and only people who receive Industrial Injuries Disablement Benefit are eligible to receive a payment under the 1979 Act.
- 7.2 The CMOP Act enables a lump sum payment to be provided for those not eligible under the 1979 Act including those who have been exposed to asbestos from a relative (for example, from their overalls); have been exposed to asbestos

environmentally (for example, have lived near a factory using asbestos); are self-employed; or can not trace their specific exposure to asbestos but there is nothing to suggest that they were exposed elsewhere other than in the UK.

- 7.3 The CMOP Act also introduces the ability to recover payments made under the 1979 Act and the new scheme, where a person then goes on to receive compensation in a civil claim.

#### Manner and making of an appeal

- 7.4 Mesothelioma lump sum payments are not “relevant benefits” within the meaning of the Social Security Act 1998. Consequently, these payments are not within the scope of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (‘the 1999 Regulations’) which provide for procedure to be followed if an appeal is made against a determination of social security benefits.
- 7.5 The practice and procedure to be followed by the First-tier Tribunal is governed by the Tribunal Procedure Rules made by the Tribunal Procedure Committee pursuant to the TCE Act. This instrument provides for ‘pre-tribunal’ procedure on mesothelioma lump sum payments appeals that sit alongside the Tribunal Procedure Rules.
- 7.6 Regulation 4 inserts a new regulation into the primary Regulations applying regulation 33 of the 1999 Regulations to an appeal made against the determination of a claim for a mesothelioma lump sum payment. Regulation 33 of the 1999 Regulations sets out procedure in relation to submitting a notice of appeal for an appeal made under section 12 of the Social Security Act 1998.
- 7.7 Amendments consequential to expected transfer of tribunal functions on 3 November 2008 were made to regulation 33 of the 1999 Regulations by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order 2008. The amended Regulation 33 provides:
- that a notice of appeal is to be made in accordance with Tribunal Procedure Rules and on an approved form or in such other format as may be accepted and sent to the appropriate office identified in the Regulation,
  - that if the notice of appeal does not contain the information required under Tribunal Procedure Rules it may be returned to the sender for completion in accordance with the Tribunal Procedures Rules,
  - that the Secretary of State has a discretion to treat a notice of appeal as meeting the requirements of the Tribunal Procedure Rules if it contains sufficient information for the appeal to proceed, and
  - where the Secretary of State is not satisfied that the notice of appeal does not meet the requirements of the Tribunal Procedure Rules and that there is sufficient information for the appeal to proceed he or she shall forward the notice to the

First-tier Tribunal to determine whether the notice satisfies the requirements of the Tribunal Procedure Rules.

- 7.8 The amendments to regulation 5 of the primary Regulations is consequential on the functions of the appeal tribunal transferring to the First-tier Tribunal on 3 November.

#### Consultation

- 7.9 A consultation on the mesothelioma compensation scheme ran from 4 September to 26 November 2006 and a number of meetings with interested stakeholders were arranged in London, Leeds and Glasgow. A summary of responses was published on 1 March 2007 see <http://www.dwp.gov.uk/publications/dwp/2007/iidb/mesothelioma-cases-consultation-report.pdf>. A mesothelioma event was held in London on 13 March 2007 at which a wide range of stakeholders discussed the proposed change.
- 7.10 No specific consultation was conducted on the primary regulations or the amendments made by this instrument as they are machinery in nature and deal with administrative or procedural matters.

### **8. Impact**

- 8.1 As with the primary regulations a full impact assessment has not been published for this instrument as it does not impact on the costs of business, charities and the voluntary sector.

### **9. Contact**

- 9.1 Brooke O'Rourke at the Ministry of Justice Tel: 020 3334 6906 or e-mail [Brooke.Orourke@justice.gsi.gov.uk](mailto:Brooke.Orourke@justice.gsi.gov.uk).