

EXPLANATORY MEMORANDUM TO
THE VACCINE DAMAGE PAYMENTS (SPECIFIED DISEASE) ORDER 2015

2015 No. 47

1. This explanatory memorandum has been prepared by the Department for Health and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The Vaccine Damage Payments Act 1979 provides for payments to be made to people who are severely disabled as a result of vaccination against diseases specified in the Act. This Order adds rotavirus and influenza, other than influenza caused by a pandemic influenza virus, to the list of specified diseases to which the Vaccine Damage Payments Act 1979 applies.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Background**
 - 4.1 The Vaccine Damage Payments Act 1979 requires the Secretary of State to make a payment (subject to conditions in the Act which include making a claim after a vaccinated person's second birthday but before their twenty first birthday, or within six years of the date on which the vaccination was given) if he is satisfied that a person is, or was immediately before his death, severely disabled as a result of vaccination against any of the diseases to which the Act applies. The Act is primarily intended to cover those diseases that are or have been vaccinated against through the routine childhood immunisation programme. A list of specified diseases to which the Act currently applies and has applied can be found in paragraph 7.2 of this Explanatory Memorandum.
 - 4.2 The Vaccine Damage Payments Act enables the Secretary of State to add diseases to the list of specified diseases in the Act by order made by statutory instrument. This Order adds rotavirus and influenza, other than influenza caused by a pandemic influenza virus to the list of specified diseases to which the Act applies. The term "influenza, other than influenza caused by a pandemic influenza virus" has been used in this Order for the reasons described further below (under "Policy background").
 - 4.3 Vaccinations against these two diseases have been introduced into the childhood immunisation programme on different dates in different territories of the UK. Vaccination against rotavirus was introduced into the childhood immunisation programme on 1 July 2013 in England, Wales, Scotland and Northern Ireland, and on 1 January 2014 in the Isle of Man. Vaccination against seasonal influenza was introduced into the childhood immunisation programme on 1 September 2013 in England and Wales, and on 1 October

2013 in Scotland and Northern Ireland, but has not yet been introduced in the Isle of Man. In order to achieve consistency across the different territories of the UK, and to follow the approach of the Act itself, which includes a single start date (5th July 1948) for vaccinations against the diseases listed within it regardless of the territory within the UK where they were carried out, a single start date has been adopted for both rotavirus (1st July 2013) and influenza other than influenza caused by a pandemic influenza virus (1st September 2013). This reflects the dates when these diseases were first introduced into the childhood immunisation programme anywhere in the UK.

5. Territorial Extent and Application

- 5.1 This instrument applies to all of the United Kingdom and to the Isle of Man.
- 5.2 Officials on behalf of the legislature of the Isle of Man have been consulted and have consented to the making of this instrument.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 The Vaccine Damage Payments Act 1979 provides for a lump sum payment to be made to those who have been severely disabled by vaccinations against specified diseases, in order to ease the present and future burdens associated with such disability.
- 7.2 The Act is focused on diseases preventable through vaccinations offered as part of the routine childhood immunisation programmes that are administered by the United Kingdom Government and the Devolved Administrations. The specified diseases to which the Act applies or has applied are:
- Diphtheria
 - Tetanus
 - Pertussis (Whooping Cough)
 - Poliomyelitis
 - Measles
 - Mumps
 - Rubella (German measles)
 - Tuberculosis (TB)
 - Smallpox (up to August 1971)
 - Haemophilus influenza type b infection (HIB)
 - Meningococcal Group C (Meningitis C)
 - Pneumococcal infection
 - Human papillomavirus (HPV)

- Pandemic influenza A (H1N1) 2009 (swine flu) – up to 31 August 2010

(pandemic influenza A (H1N1), HPV, Mumps, Haemophilus influenza type b infection, Meningococcal Group C and pneumococcal infection have previously been added to the list of diseases in the Vaccine Damage Payments Act 1979, by separate Orders though pandemic influenza A (H1N1) was subsequently removed from the list by a revocation order, subject to savings provisions).

- 7.3 Following recommendations by the Joint Committee on Vaccination and Immunisation (JCVI), and in line with the Secretary of State's duty under the Health Protection (Vaccination) Regulations 2009 (S.I. 2009/38), changes to the routine childhood immunisation programme were introduced in 2013-14.
- 7.4 From 1 July 2013, a vaccine to protect babies against rotavirus was introduced into the childhood immunisation schedule in England, Wales, Northern Ireland and Scotland, and on the 1 January 2014 on the Isle of Man. Rotavirus is therefore to be added to the list of specified diseases to which the Vaccine Damage Payments Act applies.
- 7.5 From 1 September 2013, the existing seasonal influenza immunisation programme was extended in England and Wales to include all children aged two and three years, and it is expected to be further extended over a number of years to include further cohorts of children, as recommended by JCVI. The seasonal influenza immunisation programme was similarly extended in Scotland and Northern Ireland from 1 October 2013. Whilst children vaccinated against seasonal influenza are to be brought within the scope of the Vaccine Damage Payments Act, it is not intended that the Act should cover persons vaccinated against strains of pandemic influenza. For this reason, the wording "influenza, other than influenza caused by a pandemic influenza virus" has been used. This is however, without prejudice to any entitlement which arises in relation to pandemic influenza A (H1N1) which arises as a result of the savings provisions referred to in paragraph 7.2 above. If in future vaccination against a pandemic strain is to be brought within the scope of the Act, this would be more appropriately provided for through a subsequent order at the time of any such pandemic.

8. Consultation Outcome

- 8.1 A consultation exercise was not undertaken for this instrument. This is because no substantive changes have been made to the Vaccine Damage Payments scheme. This instrument simply adds two more diseases to those already listed in the Act or subsequently specified, which are primarily those diseases vaccinated against under the routine childhood immunisation programme.

9. Guidance

9.1 This instrument does not introduce any obligation but simply adds two additional diseases to those already in the Act. The Department for Health and the Department for Work and Pensions will communicate this change through their primary communication channels.

10. Impact

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

10.2 It is not expected that the addition of rotavirus and influenza, other than influenza caused by a pandemic influenza virus, as specified above, will result in a significant increase in people making claims for Vaccine Damage Payments. There is therefore negligible impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & Review

12.1 This change to the Act is being introduced to bring within scope vaccinations against rotavirus and influenza, other than influenza caused by a pandemic influenza virus, for children. Vaccinations against these diseases were introduced into the childhood immunisation programme in 2013. The Department of Health will ensure the regulations will be subject to timely review.

13. Contact

13.1 **Michelle Parkinson** at the Department of Health, Tel: 0207 210 5654 or e-mail: michelle.parkinson@dh.gsi.gov.uk to answer any queries regarding the instrument.