EXPLANATORY MEMORANDUM TO

THE HEALTH AND SOCIAL CARE ACT 2008 (COMMENCEMENT NO.9, CONSEQUENTIAL AMENDMENTS AND TRANSITORY, TRANSITIONAL AND SAVING PROVISIONS) AMENDMENT ORDER 2009

2009 No. 580 C. 40

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

2. Purpose of the instrument

2.1 This instrument amends the Health and Social Care Act 2008 (Commencement No.9, Consequential Amendments and Transitory, Transitional and Saving Provisions) Order 2009 ("the Principal Order") to correct errors relating to the application and wording of one of its provisions. The Principal Order commences a number of provisions in the Health and Social Care Act 2008 ("the 2008 Act") and makes amendments to secondary legislation consequential on those commencements.

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

3.1 This instrument corrects two errors in the Principal Order. Copies of this instrument will be supplied free of charge to all known purchasers of the Principal Order.

4. Legislative Context

4.1 This instrument amends the Principal Order which, amongst other things, commences provisions of the 2008 Act to remove local authorities' power to seek liable relatives payments under the National Assistance Act 1948 ("the 1948 Act"). The Principal Order also (in Schedule 5) makes consequential changes to secondary legislation including the National Assistance (Assessment of Resources) Regulations 1992 ("the 1992 Regulations").

4.2 This instrument amends article 1 of and paragraph 2(b) of Schedule 5 to the Principal Order to correct errors as regards the application of minor and consequential amendments made to the 1992 Regulations by paragraph 2 of Schedule 5 to the Principal Order and as regards the wording of the amendment to those Regulations, to ensure that the underlying policy is reflected in the Principal Order.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales only. The amendment to the 1992 Regulations applies only in relation to England.

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

7.1 The Explanatory Memorandum accompanying the Principal Order provides information on the background to the provisions of the 2008 Act commenced by the Principal Order and the consequential, transitional, transitory and savings provisions made by that Order.

7.2 Unfortunately, despite the operation of the Department's checking process, it was only noticed after the Principal Order had been made that there were two errors affecting the amendment to the 1992 Regulations contained in paragraph 2 of Schedule 5 to the Principal Order.

7.3 These were that:

(a) by virtue of article 1(4) the amendment was wrongly stated to have the same extent and application as the 1992 Regulations – i.e. England and Wales and Scotland. The amendment is intended to apply only in relation to England.

(b) the text of the amendment had wrongly removed the words "is incapacitated" from paragraph 2(2) of Schedule 4 to the 1992 Regulations.

7.4 This Order, which is issued free of charge, corrects those two errors. The Department can only apologise for not having spotted these errors prior to the making of the Principal Order.

8. Consultation outcome

8.1 Not applicable.

9. Guidance

9.1 Not applicable.

10. Impact

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

10.2 There is no impact on the public sector from this Order.

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

11. Regulating small businesses

11.1 The legislation does not apply to small businesses.

12. Monitoring and review

12.1 As this Order was made to correct drafting errors in the Principal Order, no separate monitoring or review is considered necessary.

13. Contact

Alan Probett at the Department of Health, Tel: 020 7972 4033 or email: alan.probett@dh.gsi.gov.uk can answer any queries regarding the instrument.