EXPLANATORY MEMORANDUM TO

THE TRANSFER OF FUNCTIONS (VACCINE DAMAGE PAYMENTS) ORDER 2021

2021 No. 1469

1. Introduction

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

2. Purpose of the instrument

2.1 The Vaccine Damage Payment Act 1979 ("the Act") provides payments to be made to individuals who are severely disabled as a result of vaccination against diseases specified in the Act. The Act delegates functions to the Secretary of State at large.

2.2 This Order in Council makes provision in consequence of the transfer of certain functions in relation to the Vaccine Damage Payments Scheme ("VDPS") from the Secretary of State for Work and Pensions to the Secretary of State for Health and Social Care**.** It follows the transfer of responsibility for operating the VDPS from the Department for Work & Pensions (DWP) to the Department of Health & Social Care (DHSC), that took place on 1st November 2021.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is all of the United Kingdom.

4.2 The territorial application of this instrument is all of the United Kingdom.

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 The Vaccine Damage Payments Act 1979 requires the Secretary of State to make a payment 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. This is 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, whichever is later.

6.2 Functions under the Act are delegated to the Secretary of State at large therefore it is machinery of government that determines to which Secretary of State duties under the Act fall. Administration of the VDPS has been entrusted to the Secretary of State for Work and Pensions. From 1st November 2021, administration of the VDPS is

entrusted to the Secretary of State for Health and Social Care. This transfer was marked by the exchange of Accounting Officer letters dated 20th September 2021 and by the Prime Minister's written ministerial statement dated 21st September 2021 announcing the machinery of government change.

6.3 This Order in Council, made under section 2 of the Ministers of the Crown Act 1975, makes provision in consequence of the transfer of certain functions in relation to the Vaccine Damage Payments Scheme from the Secretary of State for Work and Pensions to the Secretary of State for Health and Social Care. It accompanies the transfer of responsibility for operating the Vaccine Damage Payment Scheme from the Department for Work & Pensions to the Department of Health & Social Care that took place on 1st November 2021.

7. Policy background

What is being done and why?

7.1 The Vaccine Damage Payment Scheme ("the Scheme") was established in 1979 with the aim of easing the financial burden on those individuals where, on very rare occasions, vaccination against diseases listed under the Act has caused severe disablement.

7.2 Successful applicants receive a one-off tax-free lump sum which is currently £120,000.

7.3 Until 1st November 2021, the Department for Work & Pensions (DWP) were responsible for the operation of the Scheme, with the Department of Health & Social Care (DHSC) responsible for the policy, following a 2014 Memorandum of Understanding agreed between the departments.

7.4 As announced by the Prime Minister in a Written Ministerial Statement on 21st September 2021, from 1st November 2021, responsibility for the operation of the Scheme transferred from DWP to DHSC. The Secretary of State for Health and Social care has directed the National Health Service Business Services Authority (NHSBSA) to operate the Scheme on behalf of DHSC. DHSC remain responsible for the policy and legislation that governs the Scheme. Any existing ongoing claims were automatically transferred over to the NHSBSA.

7.5 This Order in Council makes provision for the transfer of all property, rights and liabilities connected to the Scheme from the Secretary of State for Work and Pensions to the Secretary of State for Health and Social Care. It also provides for references to the Secretary of State for Work and Pensions on instruments, documents or forms to be treated, where appropriate, as references to the Secretary of State for Health and Social Care. The Order does not affect the validity of anything done or being done prior to the coming into force of the Order.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union

9. Consolidation

9.1 Consolidation is not needed in this case

10. Consultation outcome

10.1 A public consultation was not conducted in this instance, as no substantive change is being made to the policy or operation of the VDPS. The process of applying to the Scheme, a claimant's eligibility for an award, or the value of that award, will not change as a result of the transfer.

11. Guidance

11.1 The Government has published guidance in relation to making a Vaccine Damage Payment claim at https://www.gov.uk/vaccine-damage-payment. This guidance was updated on 1st November 2021 to replace DWP's contact details with those of NHSBSA. No other changes have been made, as the process of making a claim was not affected by the transfer.

11.2 Any existing ongoing claims were automatically transferred over to the NHSBSA from the DWP on 1st November 2021, so no action is required from claimants.

11.3 DWP have written to claimants to provide information about the transition of the scheme.

11.4 NHSBSA will contact existing claimants directly with more information about their claim and who to contact if they have any questions or concerns.

11.5 NHSBSA and DWP have written to organisations due to provide supporting evidence on behalf of claimants to inform them of the updated address to which the evidence should be sent. This should reduce the need for DWP to forward information onto NHSBSA.

12. Impact

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

12.2 There is no significant impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because it does not impact on the policy or operation of the Scheme.

12.4 Financial projections have been produced to inform a Business Case and Spending Review bid, in order to provide sufficient funding for NHSBSA to receive the Scheme and operate it, until the end of the 2024/25 financial year.

13. Regulating small business

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

14. Monitoring & review

14.1 This legislation will not be subject to monitoring or review, as it does not relate to any changes to policy or operation of any service, nor does it involve any regulatory changes.

14.2 Post transfer, DHSC will maintain regular contact with NHSBSA to ensure the transfer has gone smoothly, and to agree and monitor key performance indicators for the VDPS.

14.3 The instrument does not include a statutory review clause

15. Contact

15.1 Henry Penrose at the Department of Health & Social Care (telephone: +44 113 254 6122, or email: henry.penrose@dhsc.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Will Jones, Deputy Director for Health Protection, at the Department of Health & Social Care can confirm that this Explanatory Memorandum meets the required standard.

15.3 Maria Caulfield, the Parliamentary Under-Secretary of State for Primary Care and Patient Safety, at the Department of Health & Social Care can confirm that this Explanatory Memorandum meets the required standard.