

EXPLANATORY MEMORANDUM TO

THE TRANSFER OF FUNCTIONS (SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES) ORDER 2021

2021 No. 1265

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Order makes provision in connection with the establishment of the new Department for Levelling Up, Housing and Communities. The Order provides for the incorporation of the Secretary of State for Levelling Up, Housing and Communities as a corporation sole. It makes provision for functions of the Secretary of State for Housing, Communities and Local Government and for elections related functions of the Minister for the Cabinet Office to be transferred to the Secretary of State for Levelling Up, Housing and Communities. It also makes provision for elections related functions which are currently exercisable by the Secretary of State concurrently with the Minister for the Cabinet Office to cease to be so exercisable and instead to be exercisable solely by the Secretary of State.

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 The Secretary of State for Levelling Up, Housing and Communities has made the following statement regarding Human Rights:

“In my view the provisions of the Transfer of Functions (Secretary of State for Levelling Up, Housing and Communities) Order 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The Order puts into effect the machinery of government change which establishes the Department for Levelling Up, Housing and Communities. It makes provision for the transfer of all functions from the Secretary of State for Housing, Communities and Local Government to the Secretary of State for Levelling Up, Housing and Communities.

- 6.2 Article 7 of the Order transfers a number of functions which are currently exercisable solely by the Minister for the Cabinet Office. This includes the Minister for the Cabinet Office's functions related to the membership of the Speaker's Committee under section 2(2)(b) of the Political Parties, Elections and Referendums Act 2000. These functions were previously transferred to the Minister for the Cabinet Office by the Transfer of Functions (Elections, Referendums, Third Sector and Information) Order 2016 (S.I. 2016/997), and the Transfer of Functions (Speaker's Committee) Order 2021 (S.I. 2021/310) provided that those functions were exercisable concurrently with any Minister of the Crown in the Cabinet Office with responsibilities in relation to the constitution. Article 7(1) transfers the Minister for the Cabinet Office's functions to the Secretary of State for Levelling Up, Housing and Communities and also makes provision that those functions cease to be exercisable concurrently with any Minister of the Crown in the Cabinet Office and are instead exercisable concurrently with any Minister of the Crown in the Department for Levelling Up, Housing and Communities with responsibilities in relation to the constitution. Article 7(2) and (3) transfer functions related to electoral registration.
- 6.3 To reflect new ministerial responsibilities, article 9 of, and Schedule 1 to, the Order make provision so that a number of functions which are currently exercisable by the Secretary of State and are concurrently exercisable by the Minister for the Cabinet Office cease to be so concurrently exercisable. The functions relate to the conduct of elections and referendums, electoral registration and parliamentary constituency boundaries. The majority of those functions became concurrently exercisable by the Minister for the Cabinet Office by virtue of the Transfer of Functions (Elections, Referendums, Third Sector and Information) Order 2016. Functions under the Parliamentary Constituencies Act 1986 became concurrently exercisable by the Minister for the Cabinet Office by virtue of the Transfer of Functions (Parliamentary Constituencies Act 1986) Order 2018 (S.I. 2018/780) and further concurrent functions were added by the Parliamentary Constituencies Act 2020.

7. Policy background

What is being done and why?

- 7.1 On 20 September 2021, the Privy Council confirmed the Prime Minister's appointment of a Secretary of State for Levelling Up, Housing and Communities to carry out the functions of the former Secretary of State for Housing, Communities and Local Government.
- 7.2 On 23 September 2021, the Prime Minister confirmed through a Written Ministerial Statement (HCWS309) that responsibility for driving forward the Government's levelling up agenda and elections and UK governance and devolution policy is being moved to the new Department for Levelling Up, Housing and Communities. This Order makes a number of provisions to give effect to these changes in ministerial responsibilities.
- 7.3 The Order incorporates the Secretary of State for Levelling Up, Housing and Communities as a corporation sole and transfers the functions of the Secretary of State for Housing, Communities and Local Government to the Secretary of State for Levelling Up, Housing and Communities.
- 7.4 With regard to elections, currently, electoral legislation provides that most election related functions may be exercised by the Minister for the Cabinet Office or the

Secretary of State. This reflects the fact that prior to the recent machinery of government change the Cabinet Office had overall responsibility for electoral policy matters within government. The approach also provides flexibility so that, for example, functions which may more appropriately be exercised separately in relation to different parts of the United Kingdom may be exercised by the relevant Secretary of State.

- 7.5 To reflect the reallocation of responsibility in relation to elections, the Order makes provision for the existing functions of the Minister for the Cabinet Office under the enactments relating to electoral and related matters to instead be exercisable solely by the Secretary of State. It maintains the existing flexibility so that the functions may be exercised by a Secretary of State other than the Secretary of State for Levelling Up, Housing and Communities, where necessary.
- 7.6 The functions include a range of statutory functions in relation to registration of electors and the conduct of elections and referendums, expenditure by political parties and campaigners, and parliamentary constituency boundaries. There are certain functions with regards to electoral registration, and membership of the Speaker's Committee on the Electoral Commission, that are currently exercised by the Minister for the Cabinet Office and these will also be transferred to the Secretary of State under the Order.

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 While this Order amends a number of enactments in consequence of the transfer of functions, it does not in itself create a need for consolidation.

10. Consultation outcome

- 10.1 There is no requirement to consult on this Order, which gives effect to a machinery of Government change already announced by the Prime Minister, and there has not been any formal consultation on the Order itself.

11. Guidance

- 11.1 No guidance is being produced in connection with this Order as guidance is not required.

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 on business is foreseen.

13. Regulating small business

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

14. Monitoring & review

14.1 No formal monitoring or review of this legislation is considered necessary.

15. Contact

15.1 Peter Richardson at the Department for Levelling Up, Housing and Communities Telephone: 020 7271 6433 or email: peter.richardson@cabinetoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Becca Crosier, Deputy Director for the Elections Division, at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Secretary of State for Levelling Up, Housing and Communities at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.