

EXPLANATORY MEMORANDUM TO
THE TRANSFER OF FUNCTIONS (ELECTIONS, REFERENDUMS, THIRD
SECTOR AND INFORMATION) ORDER 2016

2016 No. 997

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Cabinet Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order transfers statutory functions of the Office for Civil Society including youth policy and charity law from the Minister for the Cabinet Office to the Secretary of State. It transfers functions under a number of enactments in relation to elections and related matters, including those functions exercisable concurrently with the Secretary of State, from the Chancellor of the Duchy of Lancaster (“Chancellor of the Duchy”) to the Minister for the Cabinet Office or the Leader of the House of Commons. It also transfers functions under the Freedom of Information Act 2000 (“FOIA”) from the Chancellor of the Duchy to the Minister for the Cabinet Office, including those functions exercisable concurrently with the Secretary of State. Further, the Order makes a function of the Secretary of State relating to recall petitions (brought under the Recall of MPs Act 2015) exercisable concurrently with the Minister for the Cabinet Office. The Order makes supplementary provision, and consequential amendments, in connection with those transfers.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The Order puts into effect the machinery of government change which transfers the Office for Civil Society to the Department for Culture, Media and Sport. It transfers the Minister for the Cabinet Office’s functions relating to the Office for Civil Society to the Secretary of State. The functions transferred include functions relating to the Big Society Trust, Big Society Capital and the Dormant Assets Commission; policy sponsorship of the Big Lottery Fund; charity law, dormant asset legislation and the local authority statutory duty for youth services; and Ministerial appointments to the Charity Commission. The functions transferred also relate to the Reclaim Fund, which receives assets from dormant accounts and distributes them to good causes.
- 4.2 The Order transfers charity law functions from the Minister for the Cabinet Office to the Secretary of State. These are contained in the Charities Act 1992, the Charities

Act 2006, the Charities Act 2011, and the Charities (Protection and Social Investment) Act 2016. The Order also transfers functions relating to public charitable collections, contained in the Police, Factories &c. (Miscellaneous Provisions etc.) Act 1916 and the House to House Collections Act 1939.

- 4.3 In addition, to reflect changes to ministerial responsibilities, the Order also transfers some functions in relation to elections, electoral registration, parliamentary boundaries and freedom of information which are currently exercisable by the Chancellor of the Duchy, either solely or concurrently with the Secretary of State, to the Minister for the Cabinet Office. Other functions in relation to parliamentary boundaries exercisable by the Chancellor of the Duchy concurrently with the Secretary of State, and not transferred as described above, are transferred so as to be exercisable by the Leader of the House of Commons concurrently with the Secretary of State.
- 4.4 The elections and boundaries functions transferred from the Chancellor of the Duchy to the Minister for the Cabinet Office or the Leader of the House of Commons include those functions that were transferred to the Chancellor of the Duchy by the Chancellor of the Duchy of Lancaster Order 2015 (S.I. 2015/1376) and the Transfer of Functions (Police and Crime Commissioner Elections) Order 2015 (S.I. 2015/1526).
- 4.5 The functions under the FOIA transferred from the Chancellor of the Duchy to the Minister for the Cabinet Office include all functions under that Act previously transferred to the Chancellor of the Duchy by the Transfer of Functions (Information and Public Records) Order 2015 (S.I. 2015/1897).

5. Extent and Territorial Application

- 5.1 This instrument extends to all of the United Kingdom.
- 5.2 The territorial application of this instrument is all of the United Kingdom.

6. European Convention on Human Rights

- 6.1 The Minister for Cabinet Office has made the following statement regarding Human Rights:

“In my view the provisions of the Transfer of Functions (Elections, Referendums, Third Sector and Information) Order 2016 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 On 21st July 2016 the Parliamentary Secretary for the Cabinet Office announced, through a Written Ministerial Statement (HCWS124), the Prime Minister’s confirmation that responsibility for the Office for Civil Society had transferred from the Cabinet Office to the Department for Culture, Media and Sport with effect from 21st July 2016. To reflect the reallocation of responsibility this Order transfers from the Minister for the Cabinet Office to the Secretary of State those functions of the Minister for the Cabinet Office which are related to the work of the Office for Civil Society. The policy intention for this transfer is to bring together in one place the Office for Civil Society’s work to build a stronger civil society with the Department for Culture, Media and Sport’s work to enrich lives. In particular, the transfer will

enable stronger links between the National Citizen Service and social action opportunities in the arts, heritage and sport.

- 7.2 The transferred functions include those functions relating to the Big Lottery Fund (including distribution of dormant accounts money by the Fund), as well as social impact creditor accreditation and the power to give guidance to local authorities in respect of their duty to provide leisure-time activities to young persons.
- 7.3 The transfer will also clarify accountabilities and sponsorship relationships for the lottery providers, by removing the division between policy and governance stewardship for the Big Lottery Fund (which had been the responsibility of the Cabinet Office) and Accounting Officer responsibility (which is in the Department for Culture, Media and Sport).
- 7.4 The Order transfers to the Secretary of State a large number of statutory charity law functions. These include, the appointment of Charity Commission's board members, various powers to make secondary legislation including, for example the legal requirements for the content of charities' annual accounts and annual reports, and reserve powers to regulate charity fundraising.
- 7.5 All of the functions in the Charities Act 2006 are transferred with the exception of the function under sections 70 (Power of relevant Minister to give financial assistance to charitable, benevolent or philanthropic institutions) and 75(4) (Power of relevant Minister to make related statutory provision) which remain concurrently exercisable by the Secretary of State and the Minister for the Cabinet Office. This reflects the current position and ensures that the Minister for the Cabinet Office will still be able to rely on these powers to provide financial assistance to civil society organisations in connection with his other functions. All of the Ministerial functions in the Charities Act 2011 (the main Act of Parliament relating to charities) and Charities (Protection and Social Investment) Act 2016 are transferred.
- 7.6 The Order also transfers to the Secretary of State functions in relation to public charitable collections. In relation to charitable house to house collections, the functions being transferred include Ministerial decisions on the grant of National Exemption Orders and appeals against local licensing authority decisions. In relation to street collections, the function of the Secretary of State to approve local licensing authority street collection regulations before they can come into force, is currently held concurrently by the Secretary of State and the Minister for the Cabinet Office. It will cease to be exercisable by the Minister for the Cabinet Office.
- 7.7 In respect of elections, electoral registration and UK Parliamentary Boundaries, following The Queen's approval of the ministerial appointments announced following the Prime Minister taking up office on 13 July 2016, the Minister for the Cabinet Office is in overall charge of the Cabinet Office and has responsibilities which include advising the Prime Minister on how to implement government policy and constitutional reform. Constitutional reform was previously the responsibility of the Chancellor of the Duchy of Lancaster.
- 7.8 With these responsibilities for constitutional reform comes the responsibility for the underlying administrative and policy areas.
- 7.9 It is to give effect to this transfer that the Order makes provision for the existing functions of the Chancellor of the Duchy under the enactments relating to electoral and related matters to instead be exercisable by the Minister for the Cabinet Office.

- 7.10 Those electoral and related functions that were made exercisable concurrently by the Secretary of State and the Chancellor of the Duchy by the Chancellor of the Duchy of Lancaster Order 2015, and the Transfer of Functions (Police and Crime Commissioner Elections) Order 2015, will be made, under this Order, exercisable concurrently by the Secretary of State and the Minister for the Cabinet Office. This is to retain flexibility so that, for example, functions which may more appropriately be performed separately in relation to different parts of the United Kingdom may be performed by the relevant Secretary of State. Certain functions have been excepted from the general approach, as they were in the Chancellor of the Duchy of Lancaster Order 2015, and remain exercisable by the Secretary of State alone because they are particularly specific to Northern Ireland and are most appropriately performed by the Secretary of State for Northern Ireland.
- 7.11 In addition, there are some functions in relation to electoral registration currently exercised by the Chancellor of the Duchy alone (such as the provision of the Individual Electoral Registration Digital Service) which have been made, under this Order, exercisable by the Minister for the Cabinet Office alone. Further, the Order makes a function of the Secretary of State relating to recall petitions (brought under the Recall of MPs Act 2015) exercisable concurrently with the Minister for the Cabinet Office to reflect the Minister's responsibilities, and ensure a consistent approach, in respect of elections (and related) functions.
- 7.12 This Order transfers certain functions in relation to UK Parliamentary boundaries under the Parliamentary Constituencies Act 1986 so as to be exercisable concurrently by the Secretary of State and the Leader of the House of Commons. This is to reflect that functions in relation to receiving the final reports of the Boundary Commissions, the laying before Parliament of the reports and the Order that will give effect to the Commissions' recommendations are to be exercised by the Leader of the House of Commons. Remaining functions in relation to UK Parliamentary boundaries and the Boundary Commissions will be exercisable concurrently by the Secretary of State with the Minister for the Cabinet Office.
- 7.13 In respect of Freedom of Information, as a result of the ministerial appointments made following the Prime Minister taking up office on 13 July 2016, and the Minister for the Cabinet Office taking overall charge of the Cabinet Office as part of these changes, functions under the FOIA which were previously the responsibility of the Chancellor of the Duchy become those of the Minister for the Cabinet Office. These changes replicate those made in respect of the FOIA in 2015, through the Transfer of Functions (Information and Public Records) Order 2015 (S.I. 2015/1897), which transferred a number of functions under that Act to the Chancellor of the Duchy (some concurrently with the Secretary of State). This followed the transfer of policy responsibility for the FOIA from the Ministry of Justice to the Cabinet Office on 17 July 2015.
- 7.14 Whilst most of the Chancellor of the Duchy's functions under the FOIA to be transferred to the Minister for the Cabinet Office are exercisable by that Minister alone, functions exercisable concurrently with the Secretary of State will continue to be exercisable concurrently, but by the Secretary of State and the Minister for the Cabinet Office. These are functions in relation to which it is desirable that Ministers in departments other than the Cabinet Office are able to exercise themselves. For example, it is preferable that Ministers in departments other than the Cabinet Office should be able to exercise the order making power under section 5(1) of the FOIA to

designate a body as a public authority subject to the FOIA, where the body in question falls within that department's remit, without relying on the Minister for the Cabinet Office to make the Order.

Consolidation

- 7.15 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.

8. Consultation outcome

- 8.1 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.

9. Guidance

- 9.1 No guidance is being produced in connection with this Order.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector beyond the transfers of functions provided for in the Order.
- 10.3 An Impact Assessment has not been prepared for this instrument because no impact on business is foreseen.

11. Regulating small business

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

12. Monitoring & review

- 12.1 There are no plans to monitor or review this Order.

13. Contact

- 13.1 Lee Vasey at the Cabinet Office Telephone: 0207 271 8383 or email: lee.vasey@cabinetoffice.gov.uk can answer any queries regarding the instrument.