

EXPLANATORY MEMORANDUM TO

THE SECRETARIES OF STATE FOR HEALTH AND SOCIAL CARE AND FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT AND TRANSFER OF FUNCTIONS (COMMONHOLD LAND) ORDER 2018

2018 No. 378

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care (DHSC), the Ministry for Housing, Communities and Local Government (MHCLG) and the Ministry of Justice (MOJ) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument has five main purposes:
- The first is to incorporate the Secretaries of State for Health and Social Care, and for Housing, Communities and Local Government, as “corporations sole”. This will facilitate the execution of contracts and the holding of property by DHSC and MHCLG.
 - The second is to transfer the functions of the Secretary of State for Health to the Secretary of State for Health and Social Care, and those of the Secretary of State for Communities and Local Government to the Secretary of State for Housing, Communities and Local Government.
 - The third is to make supplementary provision in connection with those transfers. In particular, the instrument provides that anything done by the Secretary of State for Health (and his predecessors) continues to have effect notwithstanding the transfer of functions to the Secretary of State for Health and Social Care, and anything done by the Secretary of State for Communities and Local Government (and his predecessors) continues to have effect notwithstanding the transfer of functions to the Secretary of State for Housing, Communities and Local Government.
 - The fourth is to transfer the functions of the Lord Chancellor in relation to commonhold land (under Part 1 of the Commonhold and Leasehold Reform Act 2002) to the Secretary of State for Housing, Communities and Local Government.
 - The fifth is to make consequential amendments to primary and secondary legislation referring to the previous names of the Secretaries of State or Departments referred to above.

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 the negative 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 Section 1 of the Ministers of the Crown Act 1975 provides for the transfer of functions between Ministers. This is particularly relevant where it is intended that functions which are assigned by legislation to a named Minister be transferred to another Minister. Sections 1 and 2 allow for supplementary and consequential provision (including the amendment of legislation) in connection with such a transfer or a change in the functions of a Secretary of State. Those powers also enable appropriate supplementary and consequential provision to be made, and allow the incorporation of a Secretary of State as a distinct legal person or “corporation sole”.

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 the United Kingdom. However, nothing in this Order alters the functions of the Welsh Ministers, the Scottish Ministers or the devolved authorities in Northern Ireland.

6. European Convention on Human Rights

- 6.1 The Secretary of State for Housing, Communities and Local Government has made the following statement regarding Human Rights:
- 6.2 “In my view the provisions of The Secretaries of State for Health and Social Care and for Housing, Communities and Local Government and Transfer of Functions (Commonhold Land) Order 2018 are compatible with the Convention rights.”
- 6.3 The Secretary of State for Health and Social Care also made the statement in paragraph 6.2.

7. Policy background

What is being done and why

- 7.1 On 8 January 2018, the Prime Minister appointed a Secretary of State for Health and Social Care to carry out the functions of the former Secretary of State for Health, and a Secretary of State for Housing, Communities and Local Government to carry out the functions of the former Secretary of State for Communities and Local Government. This was done to reflect the government’s renewed focus on social care and on delivering more homes and building strong communities across England.
- 7.2 This Order transfers the functions of the Secretary of State for Health to the Secretary of State for Health and Social Care, and the functions of the Secretary of State for Communities and Local Government to the Secretary of State for Housing, Communities and Local Government. It also ensures that the execution of contracts and other instruments effected by the Secretaries of State for Health and for Communities and Local Government (and their predecessors) continue to have legal effect; moreover, this Order, incorporates the Secretaries of State for Health and Social Care, and for Housing, Communities and Local Government, as corporations

sole. Finally, this Order makes supplementary changes to named pieces of legislation to reflect the transfer of functions.

- 7.3 The Order also transfers to the Secretary of State for Housing, Communities and Local Government the functions of the Lord Chancellor in relation to commonhold land under Part 1 of the Commonhold and Leasehold Reform Act 2002. The Ministerial functions under Part 2 of the 2002 Act in relation to leasehold reform were performed by the Secretary of State for Communities and Local Government and are transferred by this Order to the Secretary of State for Housing, Communities and Local Government, so that the functions in relation to commonhold and leasehold reform are combined in a single Minister.

Consolidation

- 7.4 The Departments do not intend to consolidate the legislation which is amended by this Order.

8. Consultation outcome

- 8.1 No impact on business or the voluntary sector is foreseen as a result of this Order, therefore there has not been a public consultation on the Order.

9. Guidance

- 9.1 No guidance has been prepared.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
10.2 There is no 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 activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 Considering the nature of this Order, there are no success criteria or any intention to review the outcome.

13. Contact

- 13.1 Paul Phipps-Williams at the Ministry of Housing, Communities and Local Government, Telephone: 030 344 42019 or email: paul.phipps-williams@communities.gsi.gov.uk can answer any queries regarding the instrument.
13.2 Elizabeth Burt at the Department of Health and Social Care, Telephone: 020 7210 5286 or email: elizabeth.burt@dh.gsi.gov.uk can answer any queries regarding the instrument.