

**EXPLANATORY MEMORANDUM TO**  
**THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT**  
**ORDER 2006**

**2006 No. 1926**

1. This explanatory memorandum has been prepared by the Department of Communities and Local Government and is laid before Parliament by command of Her Majesty. It contains information for the Joint Committee on Statutory Instruments.
2. **Description**
  - 2.1 This Order makes provision as respects the Secretary of State for Communities and Local Government and her functions in consequence of the Cabinet and departmental changes announced by the Prime Minister on 5<sup>th</sup> May 2006.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 The functions transferred by article 4 of the Order were transferred from the Secretary of State for Transport, Local Government and the Regions to the First Secretary of State by article 14 of the Transfer of Functions (Transport, Local Government and the Regions) Order 2002 (S.I.2002/2626). Relevant statutory amendments were made by paragraphs 2 and 15(2) to (4) of Schedule 2 to that Order.<sup>1</sup>
4. **Legislative Background**
  - 4.1 The Order is being made to incorporate the Secretary of State for Communities and Local Government as a corporation sole and to transfer functions of the First Secretary of State to her or, in one case, to the Secretary of State at large.
  - 4.2 The functions of the First Secretary of State mentioned in article 4(1) of the Order are mainly functions in the fields of planning and compulsory purchase. Article 4(2) is concerned with the functions of “the Minister” under the Highways Act 1980 in relation to a part of the M48 in Wales. It appears that the functions were inadvertently transferred to the First Secretary of State following governmental changes in 2002<sup>2</sup>. This Order transfers the functions to the Secretary of State at large and they will be entrusted to the Secretary of State for Transport. It is for this reason that property rights and liabilities connected with these functions are transferred to that Secretary of State by article 6 of the Order.
  - 4.3 The Department for Communities and Local Government is made subject to investigation by the Parliamentary Ombudsman by the amendment made by paragraph 2 of the Schedule to the Order. The amendments in paragraph 3(5), 4, 5 and 6 are related to this. They provide that, where a person appointed to determine appeals under the enactments mentioned in the provisions is an officer of that Department, the

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<sup>1</sup> This paragraph is included in respect of paragraph 5.4.10 (b)(iv) of Statutory Instrument Practice.

<sup>2</sup> By article 14 of the Transfer of Functions (Transport, Local Government and the Regions Order) 2002 (S.I. 2002/2626)

person's functions of determining the appeals are to be treated as functions of the Department for the purposes of the Parliamentary Ombudsman's jurisdiction.

## **5. Extent**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

The Rt. Hon. Ruth Kelly MP, Secretary of State for Communities and Local Government, has made the following statement:

In my view the provisions of the Secretary of State for Communities and Local Government Order 2006 are compatible with the Convention rights.

## **7. Policy background**

7.1 On 5<sup>th</sup> May 2006, as part of his Cabinet changes, the Prime Minister announced the appointment of a Secretary of State for Communities and Local Government in charge of a department of the same name. She has been given functions (previously exercised by the First Secretary of State) in the policy areas of local government, housing, planning, neighbourhood renewal, building regulations and fire. In addition she has functions in relation to women, race equality, sex equality and the new Commission for Equality and Human Rights<sup>3</sup> which were previously those of the Secretary of State for Trade and Industry. She also has functions in respect of faith and community cohesion which were formerly functions of the Home Secretary. These functions of the Secretary of State at large have been entrusted to her administratively by the Prime Minister.

7.2 A few functions in the fields of planning and compulsory purchase have been conferred specifically on the First Secretary of State and so article 4(1) of the Order is included to transfer these functions to the Secretary of State for Communities and Local Government so that she has all the functions relevant to her role as Secretary of State with general responsibility in planning matters in England.

7.3 The Secretary of State for Communities and Local Government is incorporated as a corporation sole by article 3 of the Order to enable her to own property and have a corporate seal (which gives evidential value to instruments purporting to be made by her).

7.4 Property rights and liabilities are transferred to the Secretary of State for Communities and Local Government where they are connected with functions transferred or entrusted to her. Specific provision is made in article 5(1)(a) to transfer immoveable property held by the First Secretary of State such as Government buildings.

7.5 It is important that the governmental changes do not raise questions about the legal validity of things done by or to a Secretary of State who ceases to exercise functions and that things in process of being done in connection with functions

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<sup>3</sup> The Commission is established by section 1 of the Equality Act 2006. That section is not yet in force and so the power to bring it into force is now entrusted to the Secretary of State for Communities and Local Government.

affected by the changes may be continued. Accordingly article 8 makes supplementary provision to enable continuity.

7.6 Discussions between the departments affected by these machinery of government changes preceded the making of the Order.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies

8.2 The impact on the public sector is expected to be negligible. No additional functions are created as a consequence of the Order. Although the names and organisation of departments have changed, staffing and resources remain largely unchanged.

## **9. Contact**

Tom Surrey at the Department for Communities and Local Government Tel: 020 7944 8926 or e-mail: [tom.surrey@communities.gsi.gov.uk](mailto:tom.surrey@communities.gsi.gov.uk) can answer any queries regarding the instrument.