

**EXPLANATORY MEMORANDUM TO
THE SECRETARY OF STATE FOR JUSTICE ORDER 2007**

2007 No. 2128

1. This explanatory memorandum has been prepared by the Home Department and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Order makes provision in connection with the establishment of the Ministry of Justice, as announced by the Prime Minister on 29th March 2007. Further to this announcement, functions in relation to the National Offender Management Service (including the prison and probation services) and the overall framework of criminal law and sentencing policy, subject to certain exceptions, have passed by administrative means from the Home Secretary to the Secretary of State for Justice. In addition, all the functions of the Secretary of State for Constitutional Affairs have passed by administrative means to the Secretary of State for Justice.

2.2 This Order provides for certain functions to be transferred to or from the Lord Chancellor and to or from named Secretaries of State. In those particular cases functions cannot be transferred administratively, as they can be where functions are vested in the Secretary of State at large. The Order also makes supplementary provision in connection with both the functions transferred under the Order and functions that have already transferred by administrative means. Finally the order provides for the incorporation of the Secretary of State for Justice as a corporation sole.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 This Order is made in pursuance of sections 1 and 2 of the Ministers of the Crown Act 1975. It provides consequential provisions in connection with the Machinery of Government changes announced by the Prime Minister on 29th March 2007. Subject to the exceptions referred to in paragraph 2.2, statutory functions in the areas of policy that have transferred to the Secretary of State for Justice do not need to be transferred by this Order since they are vested in the Secretary of State at large.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Secretary of State for the Home Department has made the following statement regarding Human Rights:

“In my view the provisions of the Secretary of State for Justice Order 2007 are compatible with the Convention rights”

7. Policy background

7.1 In his written Ministerial statement of 29th March 2007, the Prime Minister set out the rationale for the decision to create a new Ministry of Justice and to transfer to this Department responsibility for a number of policy areas that were currently the responsibility of the Home Office. The Prime Minister wrote that re-organising responsibility for aspects of the criminal justice system to create a Ministry of Justice will provide a sustainable platform for achieving the Government’s policy objectives in respect of security, public protection and the criminal justice system issues over the next decade. These changes build on the Security, Crime and Justice strand of the Government’s policy review which sets the broad direction for policy in these areas.

7.2 The National Offender Management Service, including the Prison and Probation Services moved from the Home Office to the Department for Constitutional Affairs on 9th May, creating a Ministry of Justice. Bringing together management of the criminal justice system will mean that once a suspect has been charged, their journey through the courts, and if necessary prison and probation can be managed seamlessly. The Ministry of Justice now has responsibility for policy on the overall criminal, civil, family and administrative justice system, including the overall framework of criminal law and sentencing policy, as well as the courts, tribunals and legal aid.

7.3 The Home Office retained its other existing responsibilities, including policing, anti-social behaviour, drugs, crime reduction, immigration, asylum and identity, in addition to security and counter-terrorism. In order to maintain the Government’s clear focus on public protection and crime reduction, the Home Secretary will continue to have a core role in decision making in criminal law, sentencing and offender management reflecting her responsibilities for crime reduction.

7.4 The existing trilateral arrangements have been successful in delivering improvements to the criminal justice system and will continue under the new structure. To facilitate this joined-up working there will continue to be a shared National Criminal Justice Board and an Office for Criminal Justice Reform, working trilaterally between the Home Office, the Ministry of Justice and the Attorney General’s Office. This will ensure that the police and prosecutors continue to work closely and effectively with the courts, prisons and probation to bring offenders to justice.

7.5 The transfer of functions to the Ministry of Justice also includes responsibility for the funding and oversight of the following executive Non-Departmental Public Bodies:

- The Criminal Injuries Compensation Authority
- Parole Board
- Youth Justice Board for England and Wales

- The Criminal Cases Review Commission

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 neutral as resources are being transferred from the Home Department into the Ministry of Justice as a result of these Machinery of Government changes.

9. Contact

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Tyson.Hepple@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.