

EXPLANATORY MEMORANDUM TO

THE SECRETARIES OF STATE FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY, FOR INTERNATIONAL TRADE AND FOR EXITING THE EUROPEAN UNION AND THE TRANSFER OF FUNCTIONS (EDUCATION AND SKILLS) ORDER 2016

2016 No. 992

1. Introduction

1.1 This explanatory memorandum has been prepared jointly by the Department for Business, Energy and Industrial Strategy (BEIS), the Department for International Trade (DIT); the Department for Exiting the European Union (DExEU) and the Department for Education (DfE) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The offices of Secretary of State for Business, Energy and Industrial Strategy; Secretary of State for International Trade and Secretary of State for Exiting the European Union were created on 13 and 14 July 2016, with the creation of BEIS; DIT and DExEU announced by the Prime Minister on those dates. The creation of BEIS followed the merger of the Department of Energy and Climate Change (DECC) with certain functions of the Department for Business, Innovation and Skills (BIS), with the transfer of other functions of BIS to DIT and DfE.

2.2 This Order has three primary purposes:

- The first is to incorporate the Secretaries of State for Business, Energy and Industrial Strategy; for International Trade and for Exiting the EU as “corporations sole”. This will facilitate the execution of contracts and the holding of property by BEIS; DIT and DExEU.
- The second is to complete the process of transferring relevant functions from DECC to BEIS and from BIS to BEIS, DIT and DfE. Prison education functions, which administratively transferred from DfE to the Ministry of Justice on 1 October, having previously transferred from BIS to DfE, are explicitly excluded from the provisions of the Order. The oil and gas licensing functions that transferred to the Oil and Gas Authority on 1 October 2016 are also excluded.
- The third is to make supplementary and consequential provision, in relation to, amongst other things, the transfer of property, rights and liabilities to the new Secretaries of State, and the updating of legislation and documents which refer to DECC, BIS or their Secretaries of State.

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 Where functions are vested in the Secretary of State at large, they can be transferred by administrative means. However, in some cases functions are assigned by legislation to a named Minister, in which case they must be transferred by legislation: in the present case, using the powers in section 1 and 2 of the Ministers of the Crown Act 1975. 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”. Thus the Order completes the process relating to the establishment of the Departments for Business, Energy and Industrial Strategy, for International Trade and for Exiting the EU which were created on 13 and 14 July 2016.

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.

6. European Convention on Human Rights

- 6.1 The Secretary of State for Business, Energy and Industrial Strategy has made the following statement regarding Human Rights:

In my view the provisions of the Secretaries of State for Business, Energy and Industrial Strategy, for International Trade and for Exiting the European Union and the Transfer of Functions (Education and Skills) Order 2016 are compatible with the Convention rights.

7. Policy background

What is being done and why

- 7.1 The Prime Minister’s written statement of 18 July 2016 explained the machinery of government changes which created the offices of the Secretaries of State for Business, Energy and Industrial Strategy, for International Trade, and for Exiting the EU and their respective Departments.
- 7.2 As part of the machinery of government changes, the functions of the former Department for Business, Innovation and Skills in respect of higher and further education policy, apprenticeships and skills have been transferred to the Department for Education. These changes are set out in detail in the Cabinet Office paper “Moving higher and further education, apprenticeships and skills policy from the former Department for Business, Innovation and Skills to the Department for Education” available at www.parliament.uk.
- 7.3 The new Department for International Trade will take on the responsibilities of UK Trade and Investment, the relevant trade functions of the former BIS; and take on responsibility for UK Export Finance. Full details of the policy responsibilities of

DIT are set out in the Cabinet Office paper “Creation of a new Department for International Trade” available at www.parliament.uk.

- 7.4 The new department for Department for Business, Energy and Industrial Strategy brings together the energy and climate change policy functions of the Department for Energy and Climate Change and the business, industrial strategy and science base policy functions of the Department for Business, Innovation and Skills. Full details of the policy responsibilities of BEIS are set out in the Cabinet Office paper “Merging the Department of Energy and Climate Change with the Department for Business, Innovation and Skills to create the Department for Business, Energy and Industrial Strategy” available at www.parliament.uk.
- 7.5 The new Department for Exiting the European Union will have responsibility for overseeing preparations for the withdrawal of the UK from the EU and conducting those withdrawal negotiations in support of the Prime Minister. It will also lead work to establish the future relationship between the UK and EU. Full details of the policy responsibilities of DExEU are set out in the Cabinet Office paper “Creation of a new Department for Exiting the European Union” available at www.parliament.uk.

Consolidation

- 7.6 The issue of consolidation does not directly arise. Although the Order makes a number of minor and consequential amendments to other instruments, those instruments are made under other powers and are in part the responsibility of other Government Departments.

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. Interested Government Departments have been consulted.

9. Guidance

- 9.1 The creation of DExEU through the Machinery of Government changes were publicised on 13 July 2016 and BEIS and DIT on 14 July 2016. Stakeholders were informed of the changes and their implications at the time.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is neutral as resources are being transferred with Central Government as a result of these Machinery of Government changes.
- 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 Not applicable.

13. Contact

- 13.1 Claire Rannard. Telephone: 0207 215 5229 or email: claire.rannard@beis.gov.uk can answer any queries regarding the instrument.