

EXPLANATORY MEMORANDUM TO

The Departments (Transfer of Functions) Order (Northern Ireland) 2021

SR 2021 No. 114

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Executive Office to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Article 8 of the Departments (Northern Ireland) Order 1999 and is subject to the affirmative resolution procedure.

2. Purpose

- 2.1. The Order provides for the transfer of certain functions between the Executive Office and the Department for Communities; the Department of Agriculture, Environment and Rural Affairs (DAERA) and the Department for Infrastructure; and the Department of Education and the Department of Justice. These functions are:
 - (i) Functions under Section 19 of the Employment Act (Northern Ireland) 2016 are to be transferred from the Executive Office to the Department for Communities. This section provides that employers must, in accordance with regulations made by the Executive Office, publish information showing whether gender pay disparities exist between employees. It also provides for the publication of a Strategy and an Action Plan for eliminating gender pay differences.
 - (ii) Responsibility for the statutory functions exercisable under the Reservoirs Act (Northern Ireland) 2015 are to be transferred from DAERA to the Department for Infrastructure.
 - (iii) The power contained in Article 23 of the Special Educational Needs and Disability (Northern Ireland) Order 2005 to make changes to the procedural regulations that govern the practice of the Special Educational Needs and Disability Tribunal (SENDIST) are to be transferred from the Department of Education to the Department of Justice.

3. Background

- 3.1 In 2016, a reduction from 11 to 9 in the number of departments in the Northern Ireland Executive was effected and a range of transfers of functions between departments took place by means of the Departments (Transfer of Functions) Order (Northern Ireland) 2016. A late amendment to the Employment Bill (Northern Ireland) 2016, conferred a function on the Executive Office (formerly the Office of the First Minister and deputy First Minister) for the reporting of information on gender pay disparity. As the 2016 Transfer of Functions Order had already been made, it was not possible to transfer this function to the Department of Communities in line with the transfer of responsibility for equal pay and sex discrimination legislation under the Equal Pay (NI) Act 1970 and the Sex

Discrimination (NI) Order 1976. The transfer of functions under the Reservoirs Act (Northern Ireland) 2015 from DAERA to the Department for Infrastructure was inadvertently omitted from the Transfer of Functions Order in line with the transfer of all functions of the Rivers Agency. Similarly, the functions in Article 23 of the Special Education Needs and Disability (Northern Ireland) Order 2005 in relation to the procedure of the Special Educational Needs and Disability Tribunal (SENDIST) was omitted when responsibility for SENDIST was transferred from the Department of Education to the Department of Justice in 2012.

4. Consultation

- 4.1. As the exercise of the functions listed in the Order is not being altered other than by transfer, or discontinued, no consultation was considered necessary.

5. Equality Impact

- 5.1. This Order concerns the transfer of functions between departments. The functions will be unchanged and will continue to be exercised by the receiving department. No detrimental impact on section 75 groups has been identified as arising from the transfer. .

6. Regulatory Impact

- 6.1. These proposals for transfer do not alter the exercise of the functions or their effect and no Regulatory Impact Assessment was therefore considered necessary.

7. Financial Implications

- 7.1. No financial implications arise from these regulations.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. These Regulations do not meet any of the criteria for incompatibility set out in Section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. There are no EU implications.

10. Parity or Replicatory Measure

- 10.1. This is not a parity or replicatory measure.

11. Additional Information

- 11.1 Not applicable.