

EXPLANATORY MEMORANDUM TO
THE BUYING AGENCY TRADING FUND (AMENDMENT) ORDER 2010

2010 No. 2930

1. This explanatory memorandum has been prepared by the Cabinet Office and is laid before the House of Commons by Command of Her Majesty.

2. **Purpose of the instrument**

This instrument amends the Buying Agency Trading Fund Order 1991 (SI 1991/875) (“the Principal Order”) to designate the Minister for the Cabinet Office, instead of the Treasury, as the authorised lender to the Buying Solutions Trading Fund. This is consequential upon the transfer of the Buying Solutions Agency from the Treasury to the Cabinet Office.

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

There is one aspect of the powers under which this instrument is made which may be of special interest to the Joint Committee on Statutory Instruments. This is most conveniently explained in paragraphs 4.3 and 4.4 below, after setting out the relevant legislative context.

4. **Legislative Context**

4.1 The enabling act is the Government Trading Funds Act 1973 (“the 1973 Act”), as amended by the Government Trading Act 1990 (“the 1990 Act”, Schedule 1 to which sets out the text of the 1973 Act as so amended). The Principal Order (made under section 1 of the 1973 Act) established the Buying Agency Trading Fund. The Fund is now known as the Buying Solutions Trading Fund by virtue of the Buying Agency Trading Fund (Amendment) Order 2009 (SI 2009/647), which amended article 3 of the Principal Order to that effect.

4.2 Section 1(4) of the 1973 Act requires an order establishing a trading fund to designate either the National Loans Fund or the responsible Minister as the authorised lender to the fund. “Responsible minister” is defined by section 1(7) of the 1973 Act, in relation to any operations of a department of the government, as meaning “the Minister of the Crown responsible for that department”.

4.3 Section 6(1) of the 1973 Act provides that the power to make an order under section 1 includes power to vary an order, but also provides that “no such order may alter the authorised lender in relation to any fund” (the latter restriction was introduced by the 1990 Act, section 2(3)). This is interpreted to mean that, once the policy choice has been made as to whether the authorised lender should be the National Loans Fund or the responsible Minister, and effect has been given to this choice by the original order establishing the fund, no further order may change the

authorised lender to the ‘other’ concept. Therefore, it would not be possible for an amending order to designate the National Loans Fund, instead of the Treasury as the authorised lender to the Buying Solutions Trading Fund.

4.4 Where the order establishing a trading fund designates a particular Minister as the authorised lender, on the basis that that Minister is at that time the responsible Minister, but a different Minister subsequently becomes the responsible Minister (as defined by the 1973 Act), as a result of a machinery of Government change, section 6(1) has not been interpreted as preventing the use of these powers to amend the Order to reflect that change of Ministerial responsibility. On the contrary, in such circumstances, amending the Order to designate the Minister who has become the responsible Minister (as defined by the 1973 Act), keeps the identity of the authorised lender in line with the intention of the Act that, if not the National Loans Fund, the authorised lender should be the responsible Minister. Thus, the Secretary of State was originally designated in article 4 of the Principal Order, but this was amended in 1996 (by SI 1996/1080) to refer to the Chancellor of the Duchy of Lancaster and in 2000 (by SI 2000/648) to refer to the Treasury, to reflect machinery of Government changes. On each occasion the amending Order was made under sections 1(1) and 6(1) of the Act. The present instrument is, therefore, within the powers conferred, as the Minister for the Cabinet Office is now the responsible Minister – see paragraphs 7.1 and 7.2 below.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 On 15 June 2010 the Prime Minister announced a machinery of Government change affecting HM Treasury and the Cabinet Office (Hansard vol 511, part 15, col 48WS). That included the transfer of responsibility for the Office of Government Commerce, and its executive agency, Buying Solutions, to the Minister for the Cabinet Office, and that they would become part of the Cabinet Office’s Efficiency and Reform Group

7.2 The Buying Solutions Trading Fund relates to operations of the Buying Solutions executive agency. Those operations are now operations of the Cabinet Office, by virtue of the transfer of the agency into the Cabinet Office, and the Minister for the Cabinet Office is therefore now the responsible Minister for the purposes of the 1973 Act. It is appropriate therefore to make this order to designate that Minister as the authorised lender to the Trading Fund (see further paragraph 4 above).

- ***Consolidation***

7.3 There are no plans to consolidate the principal Order. The Order addresses matters of internal Government funding arrangements, and there is no substantive impact on business or the general public.

8. Consultation outcome

There has been no consultation outside Government, given the nature of the change.

9. Guidance

There are no plans to issue guidance, given the nature of the change.

10. Impact

No impact on the private or voluntary sectors is foreseen. Therefore, an impact assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not affect small business.

12. Monitoring & review

There are no plans to subject the change to monitoring or review, as the legislation only allows the 'responsible Minister' to be designated. The need for a further change will only arise, therefore, if the responsible Minister changes again, in which case appropriate further action will be taken.

13. Contact

David Murray at Buying Solutions Tel: 0151 672 2366 or email: david.murray@buyingsolutions.gsi.gov.uk can answer any queries regarding the instrument.