

EXPLANATORY MEMORANDUM TO

THE SECRETARIES OF STATE FOR ENERGY SECURITY AND NET ZERO, FOR SCIENCE, INNOVATION AND TECHNOLOGY, FOR BUSINESS AND TRADE, AND FOR CULTURE, MEDIA AND SPORT AND THE TRANSFER OF FUNCTIONS (NATIONAL SECURITY AND INVESTMENT ACT 2021 ETC) ORDER 2023

2023 No. 424

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Energy Security and Net Zero and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 This Order makes provision in connection with the establishment of the offices of the Secretary of State for Energy Security and Net Zero, the Secretary of State for Science, Innovation and Technology, the Secretary of State for Business and Trade, and the Secretary of State for Culture, Media and Sport. The Order provides for the incorporation of the new Secretaries of State as corporations sole, aside from the Secretary of State for Culture, Media and Sport as that office has previously been incorporated (the Secretary of State for National Heritage was incorporated by SI 1992/1311 and then that Secretary of State was renamed the Secretary of State for Culture, Media and Sport by SI 1997/1744). The Order makes further provision related to the transfer of the following functions:

- The Secretary of State for Digital, Culture, Media and Sport: functions relating to telecommunications and data, including sponsorship of OFCOM and the ICO, which transfer to the Secretary of State for Science, Innovation and Technology;
- The Secretary of State for Digital, Culture, Media and Sport: all functions other than those transferring to the Secretary of State for Science, Innovation and Technology (as mentioned above), which transfer to the Secretary of State for Culture, Media and Sport;
- The Secretary of State for Business, Energy and Industrial Strategy: functions related to the energy portfolio, including sponsorship of OFGEM, the Nuclear Decommissioning Authority and the Committee on Climate Change, which transfer to the Secretary of State for Energy Security and Net Zero;
- The Secretary of State for Business, Energy and Industrial Strategy: functions related to science, research and intellectual property including sponsorship of the Met Office, Ordnance Survey, ARIA and the IPO, which transfer to the Secretary of State for Science, Innovation and Technology;
- The Minister for the Cabinet Office: functions related to the Geospatial Commission, which transfer to the Secretary of State for Science, Innovation and Technology;
- The Chancellor for the Duchy of Lancaster: functions related to the Office for Science and Technology Strategy, which transfer to the Secretary of State for Science, Innovation and Technology;

- The Secretary of State for Business, Energy and Industrial Strategy: functions under the National Security and Investment Act 2021 (and equivalent residual functions under the Enterprise Act 2002) which transfer to the Chancellor of the Duchy of Lancaster (to be exercisable concurrently with the Secretary of State);
- The remaining Secretary of State for Business, Energy and Industrial Strategy functions (including those relating to business and the labour market) which transfer to the Secretary of State for Business and Trade;
- The Secretary of State for International Trade: functions relating to international trade which transfer to the Secretary of State for Business and Trade.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is all of the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is all of the United Kingdom.

5. European Convention on Human Rights

5.1 The Secretary of State for Energy Security and Net Zero has made the following statement regarding Human Rights:

“In my view the provisions of The Secretaries of State for Energy Security and Net Zero, for Science, Innovation and Technology, for Business and Trade, and for Culture, Media and Sport and the Transfer of Functions (National Security and Investment Act 2021 etc) Order 2023 are compatible with the Convention rights.”

6. Legislative Context

6.1 This Order puts into effect machinery of government changes which created four new government departments: the Department for Energy Security and Net Zero; the Department for Business and Trade; the Department for Culture Media and Sport; and the Department for Science, Innovation and Technology. Responsibility for the National Security and Investment Act 2021 was transferred to Cabinet Office, while responsibility for the Geospatial Commission and the Office for Science and Technology Strategy moved from Cabinet Office to the Department for Science, Innovation and Technology.

6.2 The Order makes provision for specific statutory functions of the Secretary of State for Business, Energy and Industrial Strategy and the Secretary of State for Digital, Culture, Media and Sport to transfer to the new Secretaries of State, and for functions relating to the National Security and Investment Act 2021 currently exercisable by the Secretary of State to be exercisable concurrently with the Chancellor for the Duchy of Lancaster. These are functions which require legislation to be amended in order to transfer. Other functions have already transferred by entrustment.

- 6.3 Articles 3, 4 and 5 incorporate the offices of the Secretary of State for Energy Security and Net Zero, for Science, Innovation and Technology, and for Business and Trade respectively. The Secretary of State for Culture, Digital and Media does not need to be incorporated by this Order (see paragraph 2.1 above for more detail on this point).
- 6.4 Article 7 of the Order transfers a number of statutory functions to the Secretary of State for Energy Security and Net Zero which, under current legislation, must be exercised by the Secretary of State for Business, Energy and Industrial Strategy.
- 6.5 Article 9 of the Order transfers a number of statutory functions to the Secretary of State for Science, Innovation and Technology which, under current legislation, must be exercised by the Secretary of State for Business, Energy and Industrial Strategy or the Secretary of State for Digital, Culture, Media and Sport.
- 6.6 Article 11 of the Order transfers a number of statutory functions to the Secretary of State for Business and Trade which, under current legislation, must be exercised by the Secretary of State for Business, Energy and Industrial Strategy.
- 6.7 Article 13 of the Order transfers a number of statutory functions to the Secretary of State for Culture, Media and Sport which, under current legislation, must be exercised by the Secretary of State for Digital, Culture, Media and Sport.
- 6.8 Article 15 of the Order provides that the functions currently exercisable by the Secretary of State under the National Security and Investment Act 2021 and under specified provisions of the Enterprise Act 2002 (which are the predecessor provisions for the National Security and Investment Act 2021) are exercisable concurrently with the Chancellor of the Duchy of Lancaster.
- 6.9 Articles 8, 10, 12, 14 and 16 deal with the transfer of assets and liabilities, and references in a wide range of instruments, consequential on the machinery of government changes described at paragraph 2.1 above.

7. Policy background

What is being done and why?

- 7.1 On 7th February 2023, the Prime Minister confirmed through a Written Ministerial Statement (HCWS547) that there would be changes to existing departmental structures. These were:
- a new Department for Energy Security and Net Zero to focus on giving the UK cheaper, cleaner, more secure sources of energy;
 - a new Department for Science, Innovation and Technology to focus on scientific research and development, and promoting innovation;
 - a single Department for Business and Trade to focus on business inside government, economic growth with better regulation and securing new international trade deals;
 - a re-focused Department for Culture, Media and Sport to focus on those sectors in the UK;
 - responsibility for National Security and Investment policy, and the associated teams, to move from what was the Department for Business, Energy and Industrial Strategy to sit under the Chancellor of the Duchy of Lancaster in the Cabinet Office.

- 7.2 This Order makes provision to give legal effect to these changes in ministerial responsibilities.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.3 Currently, the Secretary of State for Business, Energy and Industrial Strategy and the Secretary of State for Digital, Culture, Media and Sport are named in various pieces of legislation as holding specific functions (see paragraph 6.4 to 6.7 above). The National Security and Investment Act 2021 and the Enterprise Act 2002 confer functions on “the Secretary of State”, rather than a named Secretary of State, but these cannot be exercised by the Chancellor of the Duchy of Lancaster in the capacity of that office. Further, under the existing law, the new Secretaries of State (as set out in paragraph 2.1 above) are not corporations sole.

Why is it being changed?

- 7.4 In order to reflect the reallocation of responsibilities outlined under paragraph 7.1 above (and in more detail at paragraph 2.1), the functions which are currently allocated in legislation to the Secretary of State for Business, Energy and Industrial Strategy and the Secretary of State for Digital, Culture, Media and Sport are being transferred to the new Secretaries of State for Science, Innovation and Technology, for Energy Security and Net Zero, for Culture, Media and Sport and for Business and Trade, insofar as it relates to functions those new Secretaries of State are taking over. (See paragraph 6.4 to 6.7 for more detail on the functions which are transferring.)
- 7.5 The Chancellor of the Duchy of Lancaster is taking over national security and investment functions in his capacity as the Chancellor of the Duchy of Lancaster. Therefore, those functions which are at present exercisable only by a Secretary of State must be transferred so that they are exercisable concurrently with the Chancellor of the Duchy of Lancaster. It is necessary that these functions are exercisable concurrently (rather than being transferred solely to the Chancellor of the Duchy of Lancaster) because decisions taken under the National Security and Investment Act 2021 are of a quasi-judicial nature and it may be necessary that that decisions are made by another senior Minister, for example if the Chancellor of the Duchy of Lancaster has a conflict of interest.

What will it now do?

- 7.6 The Order transfers the various legislative functions specified above so that they are exercisable by the appropriate Secretaries of State. This will allow the Secretaries of State with current policy responsibility for the various functions to exercise those functions in law.
- 7.7 The Order also transfers various legislative functions concerning national security and investment so that they can be exercisable by the Chancellor of the Duchy of Lancaster, who now has policy responsibility for those functions.
- 7.8 The Order also transfers property, rights and liabilities relating to the functions being transferred by the Order, as well as functions that have already been transferred administratively following the changes announced on 7th February, and makes provision to ensure the continuity of the law. The Schedule to the Order contains a number of amendments to primary and secondary legislation which are consequential on the government reorganisation announced on 7th February 2023.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 While this Order amends a number of enactments in consequence of the transfer of functions, it does not in itself create a need for consolidation.

10. Consultation outcome

10.1 There is no requirement to consult on this Order, which gives effect to a machinery of Government change already announced by the Prime Minister, and there has not been any formal consultation on the Order itself.

11. Guidance

11.1 No guidance is being produced in connection with this Order as guidance is not required.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because there is no significant impact on business, charities, voluntary bodies or the public sector foreseen.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 No formal monitoring or review of this legislation is considered necessary.

15. Contact

15.1 Artan Zymberi at the Department for Energy Security and Net Zero Telephone: 07767005646 or email: artan.zymberi@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Artan Zymberi, Transition Director at the Department for Energy Security and Net Zero, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rt Hon Grant Shapps MP, the Secretary of State at the Department for Energy Security and Net Zero can confirm that this Explanatory Memorandum meets the required standard.