

**EXPLANATORY MEMORANDUM TO**  
**THE LORD CHANCELLOR (TRANSFER OF FUNCTIONS AND**  
**SUPPLEMENTARY PROVISIONS) (NO.3) ORDER 2006**

**2006 No. 1640**

**1.** This explanatory memorandum has been prepared by Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 The draft Order does two things. It transfers certain functions from the office of Lord Chancellor to the office of Speaker of the House of Lords. It also, consequential to the transfer of functions, provides for the remuneration and pension of a Speaker of the House of Lords who is elected directly by the House.

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

3.1 None.

**4. Legislative Background**

4.1 The Constitutional Reform Act 2005 (CRA) makes significant changes to the office of the Lord Chancellor to give effect to the Government's objective that the Lord Chancellor should become a Ministerial office, with his judicial functions transferred to a reformed office of the Lord Chief Justice. The Government also proposed that the Lord Chancellor should cease to sit as the Speaker of the House of Lords. Schedule 6 to the CRA makes provision to substitute the words 'Speaker of the House of Lords' for those of 'Lord Chancellor' in most of the places where references to the Lord Chancellor are clearly to him acting in his capacity as the Speaker of the Lords. However, a decision on who should act as the Speaker of the Lords is a matter for the Lords alone; the Government's legislative provision was simply to facilitate splitting the two posts if the House agreed to do so. The House agreed on 12 July 2005 to set up a separate office of Lord Speaker. It agreed on 2 May 2006 that the salary of the Lord Speaker should be the same as that of a Cabinet Minister in the Lords.

**5. Extent**

5.1 This instrument applies to all of the United Kingdom.

**6. European Convention on Human Rights**

The Lord Chancellor has made the following statement regarding Human Rights:

In my view the provisions of the Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No 3) Order 2006 are compatible with the Convention rights.

## **7. Policy background**

7.1 In June 2003, the Government announced that it proposed to abolish the office of Lord Chancellor. The traditional functions of the Lord Chancellor would be split three ways. His ministerial functions would pass to a Secretary of State who would have no special status within Government. His judicial functions as Head of the Judiciary in England and Wales would pass to the Lord Chief Justice, and the Lord Chancellor would cease to be a judge. His functions as Speaker of the House of Lords would pass to a Speaker elected by the Lords themselves. The intention of the reform was to enhance the separation of powers within the UK. The Government felt that it was no longer justifiable that a senior Cabinet Minister should also be head of the judiciary. They also felt that it was inappropriate that the Prime Minister should appoint the presiding officer of one of the Houses of Parliament.

7.2 The Government introduced in February 2004 into the House of Lords a Constitutional Reform Bill to give effect to these proposals. During the course of extensive debates on the Government's proposals, the Government agreed to keep the name of the office of Lord Chancellor for the holder of the ministerial functions. The transfer of the judicial functions, however went ahead. The Bill also provided for the separation of the offices of Lord Chancellor and Speaker of the House of Lords. It did not, however, create a new office nor a new procedure for selecting the Speaker, since those were matters for the House to decide for itself.

7.3 The House of Lords appointed on 3 July 2003 a select committee to consider the question of what the functions of the new office should be. At the time the Committee sat, they assumed that the office of Lord Chancellor would in fact be abolished, as the Prime Minister had proposed, and therefore that they must provide for an alternative. The Committee reported on 18 November 2003. In respect of remuneration, the Committee recommended that the new Speaker should be paid the same as a Cabinet Minister in the Lords.

7.4 When the Government agreed to reform, rather than abolish, the office of Lord Chancellor, the House of Lords had to consider the question of its future presiding officer on a rather different basis. The House agreed on 12 July 2005 that it should in future elect its own presiding officer and re-appointed the select committee to consider in detail how to achieve this. The select committee reported on 13 December 2005. In respect of salary and pension, the Committee this time recommended that "The Senior Salaries Review Body (SSRB) should be invited to propose a salary and pension arrangements which would be appropriate vis-à-vis those of the Chairman and Principal Deputy Chairman of Committees.". The House approved the Report from the Select Committee on 31 January 2006 and invited the SSRB to recommend a salary and pension arrangements for the Speaker.

7.5 The SSRB responded in March 2006. It proposed an annual salary of £101,668, subject to annual uprating on 1 April, in line with the average movement of the mid-points of the senior Civil Service pay bands. This would give the Lord Speaker the same salary as a Cabinet Minister in the House of Lords. Secondly, it proposed a pension in accordance with the normal pension scheme provisions for

Ministers, MPs and the Chairman and Principal Deputy Chairman of Committees in the House of Lords. In addition, the House Committee considered that the Lord Speaker should be entitled to claim the same expenses as other paid office holders in the House of Lords.

7.6 Since the SSRB made its recommendation, it has further recommended and the Government has accepted, an uprating in the salaries for Cabinet Ministers in the Lords from 1 April 2006. The figure in the order therefore reflects the final salary award payment for 2006-7. The increase will be staged, with an annual salary of £102,685 from 1 April and £103,701 from 1 November.

## **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.

## **9. Contact**

Judith Simpson at the Department of Constitutional Affairs (tel 020 7210 8517) email : [judith.simpson@dca.gsi.gov.uk](mailto:judith.simpson@dca.gsi.gov.uk) can answer any queries relating to the instrument.