

**EXPLANATORY MEMORANDUM TO  
THE TRANSFER OF FUNCTIONS (THIRD SECTOR, COMMUNITIES AND  
EQUALITY) ORDER 2006**

**2006 No. 2951**

1. This explanatory memorandum has been prepared by the Home Department and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 Responsibility for Race Equality, Community Cohesion, Faith Engagement and Civil Renewal has transferred by administrative means from the Secretary of State in the Home Department to the Secretary of State in the newly created Department for Communities and Local Government as announced by the Prime Minister on 5th May 2006. This Order makes some supplementary provisions in relation to the transfer of these functions.

2.2 The Order also transfers to the Minister for the Cabinet Office certain statutory functions conferred on the Secretary of State, which were formerly the responsibility of the Home Secretary. Apart from these statutory functions, responsibility for the coordination of Government policy in relation to the voluntary and community sector has already passed by administrative means from the Secretary of State in the Home Department to the Minister for the Cabinet Office. This comprises charity law and regulation, volunteering and charitable giving, the delivery of public services by the sector, the Government's relationship with the sector, and sector capacity building. The Prime Minister also announced this transfer on 5th May 2006.

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

3.1 None.

**4. Legislative Background**

4.1 This Order is made in pursuance of sections 1 and 2 of the Ministers of the Crown Act 1975. It provides consequential provisions in connection with the Machinery of Government changes announced by the Prime Minister on 5<sup>th</sup> May 2006. It also transfers statutory functions which are currently vested in the Secretary of State to the Minister for the Cabinet Office. Statutory functions in the areas of policy that have transferred to the Secretary of State for Communities and Local Government do not need to be transferred by this Order since they are vested in the Secretary of State at large.

4.2 The statutory functions to which this order relates are as follows:

- a) **Charity law and regulation**  
Certain statutory functions under The Police, Factories, &c. (Miscellaneous Provisions) Act 1916, The House to House Collections Act 1939, The Charities Act 1992, and The Charities Act 1993.
- b) **Race equality and race relations**  
The Race Relations Act 1976 and subsequent amending legislation.
- c) **Equality on grounds of religion or belief**  
Part 2 of the Equality Act 2006, which remains to be brought into force by a commencement order under the 2006 Act.

## 5. Extent

- 5.1 This instrument applies to the whole of the United Kingdom.
- 5.2 The functions in relation to charity law and regulation to which this Order relates extend only to England and Wales, as these matters are devolved in Scotland and Northern Ireland. The other functions to which this instrument applies in relation to the voluntary and community sector extend only to England, since these policy areas are devolved in the other administrations.
- 5.3 The Race Relations Act and Part 2 of the Equality Act 2006 extend to Scotland, but functions and powers conferred on Scottish Ministers are not transferred and remain to be exercised by the relevant Scottish Ministers.

## 6. European Convention on Human Rights

- 6.1 The Secretary of State for the Home Department has made the following statement regarding Human Rights:  
  
“In my view the provisions of the Transfer of Functions (Third Sector, Communities and Equality) Order 2006 are compatible with the Convention rights.”

## 7. Policy background

- 7.1 In his letter to Ruth Kelly on 9th May<sup>1</sup> the Prime Minister set out his rationale behind the decision to create the new Department of Communities and Local Government (DCLG) and to transfer responsibility for Race, Faith and Cohesion from the Home Office. The Prime Minister wrote that by bringing together for the first time responsibilities for local government, social exclusion and neighbourhood renewal which the Office of the Deputy Prime Minister already had, with new responsibilities for communities, race, faith, and equalities it would allow the Secretary of State at DCLG to develop the important themes of social mobility and economic inclusion. The Prime Minister felt that the new and enhanced role for DCLG provided a unique

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<sup>1</sup> The full letter is available at <http://www.pm.gov.uk/output/Page9429.asp>

opportunity to address some of the most pressing challenges that the country faces, including globalization, security and democratic renewal:

*“In particular, local communities need to be able to challenge robustly the ideas of those extremists who seek to undermine our way of life. I would like you to work closely with the Home Office and other Departments on this issue and to chair the Commission on Integration and Cohesion that I announced last year..... And I would also like us to have an early discussion with Hilary Armstrong on how to build on the major contribution your department is already making to the cross-cutting challenges of tackling social exclusion and developing the role of the voluntary sector.”*

7.2 The transfer includes responsibility for the funding and oversight of the Commission for Racial Equality (CRE), a Non-Departmental Public Body. The Order transfers to the Secretary of State for Communities and Local Government any property, rights and liabilities related to the CRE to which the Secretary of State for the Home Department was formerly entitled or subject, and ensures that anything the Secretary of State for the Home Department has done or is doing in relation to the CRE (or other relevant matters) is treated as having been done by and may be continued by the Secretary of State for Communities and Local Government

7.3 The newly formed Office of the Third Sector in the Cabinet Office is the government lead for the third sector, including the voluntary and community sector, charity law and regulation, volunteering and charitable giving issues, and social enterprise (the last of which is transferring into the Office from the Department of Trade and Industry, and is not covered by this Order). It reflects the government's recognition of the value, influence and importance of the third sector and the impact its work has on society. The Office has been set up to drive forward the government's role in supporting a thriving sector and will co-ordinate third sector related policy work across government, reporting to a dedicated minister for the third sector (Ed Miliband, Minister for the Third Sector) in the Cabinet Office, whose primary responsibilities lie in working with the sector.

7.4 The Prime Minister explained in his letter of 20<sup>th</sup> May 2006 to Hilary Armstrong<sup>2</sup>, Minister for the Cabinet Office and Social Exclusion (and Chancellor of the Duchy of Lancaster), the importance of the role of the new Office of the Third Sector in the Cabinet Office:

*“The new Office of the Third Sector needs to have a strong influence across Whitehall and to enjoy the confidence of the sector. You should work in partnership with the sector to make progress in the key areas of public service delivery, philanthropy, volunteering, building strong communities and social enterprise. You should also maintain and improve the legal, regulatory, fiscal and funding framework in which the sector operates.”*

7.5 The transfer of functions to the Cabinet Office includes responsibility for the funding and oversight of the following Non-Departmental Public Bodies:

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<sup>2</sup> The full letter is available at: <http://www.pm.gov.uk/output/Page9490.asp>

- a) Capacity Builders – set up in 2005 to administer the Change Up funding programme to increase voluntary and community sector infrastructure and capacity.
- b) Commission for the Compact – a new organisation charged with strengthening the Compact. The Compact is the agreement between government and the voluntary and community sector in England to improve their relationship for mutual advantage. It sets out the statement of intent to work in partnership and is supported by five codes.

## **8. Impact**

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has a neutral impact on business, charities or voluntary bodies.
- 8.2 The impact on the public sector is neutral, as resources are being transferred from the Home Department into the Department for Communities and Local Government, and the Cabinet Office as a result of these Machinery of Government changes.

## **9. Contacts**

Andrew Englefield at the Home Office, Tel: 0207035 8849 or email: [andrew.inglefield@homeoffice.gsi.gov.uk](mailto:andrew.inglefield@homeoffice.gsi.gov.uk) can answer questions regarding the instrument

Tony Strutt at the Department of Communities and Local Government Tel: 020 7035 0436 or e-mail: [tony.strutt@homeoffice.gsi.gov.uk](mailto:tony.strutt@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.

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