

**EXPLANATORY MEMORANDUM TO**  
**THE TRANSFER OF FUNCTIONS (MISCELLANEOUS) ORDER 2008**  
**2008 No. 1034**

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

2. **Description**

2.1 The Transfer of Functions (Miscellaneous) Order 2008 transfers some functions inadvertently retained by the First Secretary of State to “the Secretary of State” at large and to other named Secretaries of State. It also transfers certain property, rights and liabilities associated with those functions and makes consequential amendments to relevant legislation.

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

3.1 None.

4. **Legislative Background**

4.1 The Secretary of State for Communities and Local Government Order 2006, SI 2006/1926 (“the 2006 Order”) did not transfer all functions of the First Secretary of State which needed to be transferred. The omission was first discovered in the context of certain functions relating to Somerset House. Article 3(1) of the Secretary of State for the Environment, Transport and the Regions Order 1997 (SI 1997/2971) transferred functions of the Secretary of State for the Environment to the Secretary of State for the Environment, Transport and the Regions (“SSETR”). By article 4(1) of that Order, ownership of Somerset House was also transferred to SSETR. Article 6(2) of that Order had effect for the construction of certain enactments so that references to the Secretary of State for the Environment were to be construed as references to SSETR.

4.2 Then, by the Secretaries of State for Transport, Local Government and the Regions and for Environment, Food and Rural Affairs Order 2001 (SI 2001/2568), certain functions of SSETR, and immoveable property of SSETR including Somerset House, were transferred (arts. 7 and 8) to the Secretary of State for Local Government, Transport and the Regions (“SSTLR”). Again no relevant textual amendments of other enactments were made, but article 10(5) of that Order had effect for the construction of the Somerset House Act 1984.

4.3 Functions, and civil estate property of SSTLR, were transferred to the First Secretary of State by the Transfer of Functions (Transport, Local

Government and the Regions) Order 2002 (SI 2002/2626). By the 2006 Order, immovable property of the First Secretary of State was transferred to the Secretary of State for Communities and Local Government (“SSCLG”). However, art. 4(1) of the 2006 Order only transferred certain specified functions of the First Secretary of State to SSCLG: those functions being ones conferred on the First Secretary of State by name, or where textual amendment made by earlier Orders had resulted in such functions being so conferred. However, in the 2006 Order there was no general provision transferring all functions and property of the First Secretary of State to SSCLG, in particular functions such as those under the Somerset House Act 1984 which had, by the chain of transfer of functions orders summarised above, been transferred without textual amendment. The inadvertent effect of the 2006 Order was, therefore, that Somerset House came into the ownership of SSCLG - but the separate statutory power of granting leases of Somerset House free from restrictions in earlier Acts, which is conferred by the Somerset House Act 1984, remained with the First Secretary of State.

4.4 Similar anomalies were subsequently discovered in relation to functions of the First Secretary of State under section 23 of the National Trust Act 1971 (consent to building on common land), and to the definition of “the appropriate Minister” in section 78(1)(f) of the New Towns Act 1981 and in section 51 of the Opencast Coal Act 1958. The present Order is intended to correct such anomalies and to make general provision, in case further such anomalies exist which have not yet been identified.

## **5. Territorial Extent and Application**

5.1 This instrument applies to Great Britain, but does not affect devolved functions.

## **6. European Convention on Human Rights**

6.1 The Secretary of State has made the following statement regarding Human Rights:

6.2 In my view the provisions of the Transfer of Functions (Miscellaneous) Order 2008 are compatible with the Convention rights.

## **7. Policy background**

7.1 As a result of machinery of government changes in May 2006, most of the statutory and departmental functions of the Deputy Prime Minister as First Secretary of State were entrusted to the Secretary of State for Communities and Local Government. A transfer of functions order was made to give effect to such changes which could not be accomplished by administrative means.

7.2 The 2006 Order came into force on 21 August 2006. However, it subsequently became apparent that some functions exercised by the First Secretary of State had not expressly been transferred by textual amendment. Instead, supplementary provisions in various orders preceding the 2006 order,

including references in enactments to “the Secretary of State for the Environment” were construed as references to the First Secretary of State. The position of First Secretary of State is not currently in use and the functions concerned are not relevant to the current responsibilities of the Secretary of State for Communities and Local Government.

7.3 The present Order is therefore intended to correct this situation, which is unsatisfactory both legally and practically, by transferring these residual functions (together with any related property, rights and liabilities) either to named Secretaries of State or, as appropriate, to the Secretary of State at large.

7.4 Other Government departments with an interest in these functions, i.e. the Department for the Environment, Food and Rural Affairs, the Department for Culture, Media and Sport, Ministry of Justice and the Department for Transport, have been consulted and closely involved in the preparation of the draft Order.

## **8. Impact**

8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

## **9. Contact**

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