

EXPLANATORY MEMORANDUM TO
THE CHANCELLOR OF THE DUCHY OF LANCASTER ORDER 2015
2015 No. 1376

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

2. Purpose of the instrument

2.1 This Order, made under the Ministers of the Crown Act 1975, makes provision in connection with the transfer to the Chancellor of the Duchy of Lancaster of functions under a number of enactments in relation to elections and related matters.

2.2 Where a function of the Secretary of State is currently exercisable concurrently with the Lord President of the Council, the Order provides for the transfer of that function so that it is instead exercisable concurrently with the Chancellor of the Duchy of Lancaster. Where a function is currently exercisable by the Lord President of the Council only, the Order provides for the transfer of the function so that it is transferred to the Chancellor of the Duchy of Lancaster. The Order also provides for some functions of the Secretary of State relating to police and crime commissioner elections taking place after April 2016 to be exercisable concurrently with the Chancellor of the Duchy of Lancaster.

2.3 The Order also transfers property, rights and liabilities associated with the functions transferred, and makes consequential amendments to relevant legislation.

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

3.1 The coming into force date of the Order is 22 June 2015 so it does not comply with the usual practice of instruments coming into force at least 21 days after they are laid. The reason it is necessary for the Order to come into force on 22 June is a policy one. There are some decisions which need to be made by the Chancellor of the Duchy of Lancaster as the minister responsible for matters relating to elections before the expiry of the 21 day rule. It is important that the machinery of government changes made by the Prime Minister are given legislative effect as quickly as possible to ensure the efficient functioning of government. The coming into force date of 22 June will enable the Chancellor of the Duchy of Lancaster to exercise functions in relation to the administration of elections in order to deliver his ministerial responsibilities effectively. The instrument has been made at the earliest possible opportunity following the announcement of the machinery of government changes and taking into account the dates of Privy Council meetings.

4. Legislative Context

4.1 The decision to make the statutory functions in question exercisable concurrently by the Chancellor of the Duchy of Lancaster and the Secretary of State requires an Order under the Ministers of the Crown Act 1975 and cannot be implemented administratively. The same applies in relation to the transfer of the functions from the

Lord President to the Chancellor of the Duchy of Lancaster. The Order is also required to make appropriate supplementary provision in relation to these matters.

4.2 The functions that are to be exercisable under the Order by the Chancellor of the Duchy of Lancaster concurrently with the Secretary of State include those functions that were made exercisable by the Lord President of the Council by the Lord President of the Council Order 2010 (SI 2010/1837), the Transfer of Functions (Elections and Referendums Order) 2013 (SI 2013/2597) and the Transfer of Functions (Elections) Order 2014 (SI 2014/268). The functions transferred from the Lord President of the Council to the Chancellor of the Duchy of Lancaster include those functions that were transferred to the Lord President by the Lord President of the Council Order 2010 (SI 2010/1837).

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Lord President of the Council considers that the provisions of the Order are compatible with Convention rights.

7. Policy background

Change in ministerial responsibilities

7.1 Following The Queen's approval of the ministerial appointments announced since the General Election in May 2015, the Chancellor of the Duchy of Lancaster is in overall charge of the Cabinet Office and has responsibilities which include advising the Prime Minister on how to implement government policy and constitutional reform. Constitutional reform was previously the responsibility of the Deputy Prime Minister, Lord President of the Council.

7.2 The Prime Minister made a Written Ministerial Statement [HCWS 401] on 12 March 2015 confirming that policy responsibility for the conduct of elections in relation to Police and Crime Commissioners would transfer from the Home Office to the Cabinet Office, effective from 1 April 2015, though the Home Office retain responsibility for the conduct of any Police and Crime Commissioner elections held before May 2016. The Home Office retains all other responsibilities in relation to Police and Crime Commissioners.

7.3 With these responsibilities for constitutional reform, comes the responsibility for the underlying administrative and policy areas.

7.4 It is to give effect to this transfer that the Order makes provision for functions exercisable by the Lord President of the Council, the Secretary of State, or concurrently by the Lord President of the Council and the Secretary of State, under the enactments relating to electoral and related matters to be exercisable by the Chancellor of the Duchy of Lancaster or concurrently by the Secretary of State and the Chancellor of the Duchy of Lancaster.

7.5 Those electoral and related functions that were made exercisable concurrently by the Secretary of State and the Lord President of the Council in the Lord President of the Council Order 2010 (SI 2010/1837), have been made under this Order exercisable concurrently by the Secretary of State and Duchy of Lancaster. This is to retain flexibility so that, for example, functions which may more appropriately be performed separately in relation to different parts of the United Kingdom may be performed by the relevant Secretary of State. Certain functions have been excepted from the general approach, as they were in the Lord President of the Council Order 2010, and remain exercisable by the Secretary of State alone because they are particularly specific to Northern Ireland and are most appropriately performed by the Secretary of State for Northern Ireland.

7.6 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. The question of whether there is a need for consolidation of the body of electoral legislation will be more appropriately addressed in the context of further reforms.

8. Consultation outcome

8.1 There is no statutory 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.

9. Guidance

9.1 There does not appear to be any need to issue guidance on the change in ministerial responsibilities or on the Machinery of Government change, and there are no plans to do so.

10. Impact

10.1 An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

10.2 The impact on the public sector is negligible.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 As the Order is limited to making provision giving effect to a change in ministerial responsibilities, no monitoring or review is felt to be necessary. Should experience indicate that any further adjustment of functions between Ministers of the Crown is necessary, that will be addressed by further changes in ministerial responsibilities, machinery of Government change or in the course of further reforms.

13. Contact

Carol Gokce at the Cabinet Office, tel 020 7271 2679, email Carol.Gokce@cabinetoffice.gov.uk can answer any queries regarding the instrument.