

EXPLANATORY MEMORANDUM TO
THE TRANSFER OF FUNCTIONS (INTERNATIONAL DEVELOPMENT) ORDER
2017

2017 No. 1283

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order makes provision for certain functions of the Secretary of State in relation to international development to be exercisable concurrently with the Treasury.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Section 1 of the Ministers of the Crown Act 1975 enables Her Majesty by Order in Council to provide for the transfer of functions between Ministers. The Order may make incidental, supplemental and consequential provision, including provision which amends legislation relating to the transferred functions.
- 4.2 This Order provides for certain functions under sections 1, 4, 7 and 11 of the International Development Act 2002 (“the IDA”) to be exercised concurrently by the Secretary of State and the Treasury. It also makes consequential amendments to the Parliamentary Commissioner Act 1967, the IDA and the Asian Infrastructure Investment Bank (Initial Capital Contribution) Order 2015 (SI 2015/1835) (“the 2015 Order”).

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

- 6.1 The Chancellor of the Exchequer has made the following statement regarding Human Rights:

“In my view the provisions of the Transfer of Functions (International Development) Order 2017 are compatible with the Convention rights.”.

7. Policy background

What is being done and why

- 7.1 The UK joined the Asian Infrastructure Investment Bank (AIIB) in 2015 as a founder member. The AIIB is a multilateral investment bank investing in large-scale infrastructure projects across Asia to improve economic development and growth potential. UK membership was approved through the 2015 Order and the Asian Infrastructure Investment Bank (Immunities and Privileges) Order 2015 (SI 2015/1884). The 2015 Order was made under section 11(4) of the IDA by the then First Secretary of State and Chancellor of the Exchequer, with the approval of the Treasury.
- 7.2 The AIIB will have \$100bn total authorised capital, financed by members' contributions proportionate to their economic size. The UK's total capital contribution will be \$3.054 billion (around £2.2 billion). 20% of this contribution is paid in capital, made in five equal annual instalments of \$122 million; the remaining 80% of the contribution is in the form of callable capital, which is a contingent liability on departmental accounts. The Chancellor of the Exchequer is the UK Governor for the AIIB.
- 7.3 Although the Treasury has policy responsibility for the AIIB, it currently has no power to deliver those matters under IDA, other than via another government department, due to the way the Act is drafted to provide powers to the Secretary of State. In 2015 and 2016 the Treasury was able use powers under the IDA, due to the Chancellor also holding office as First Secretary of State. Before 2015 and since 2016, that has not been possible. At a practical level this prevents the Treasury and the Chancellor from making payments directly to the AIIB, despite the Chancellor's status as UK Governor. Other departments – those with a Secretary of State – are able to use any of the powers under the IDA.
- 7.4 The Treasury made the initial capital instalment in January 2016, but to ensure that the UK could meet its legal obligations to the AIIB, the Department for International Development has taken responsibility for subsequent payments. This has created split accountability between departments, despite the Chancellor's position as UK Governor, and the Treasury's Accounting Officer's responsibility for UK membership of the Bank and our shareholding. In line with the principles of good governance, this Order seeks to resolve this situation by enabling the Treasury to make payments under section 11 of the IDA, which would allow further capital payments to the AIIB to be made by the Treasury, the department with policy responsibility for the AIIB.
- 7.5 The Order also enables the Treasury to exercise certain functions concurrently with the Secretary of State under sections 1, 4, 7 and 11 of the IDA for similar accountability reasons. This ensures that in future the Treasury will not have to rely on other departments in areas of spending on development assistance for which it has policy responsibility, and so removes the risk of split accountability. The powers in section 1 of the IDA (development assistance) will in particular allow the Treasury to make payments under the cross-Whitehall Prosperity Fund where the department leads on projects financed by the Fund.
- 7.6 This Order will resolve accountability issues by:
- Providing for the concurrent exercise of certain functions under sections 1, 4, 7 and 11 of the IDA by the Secretary of State and the Treasury. These

functions concern the provision of development assistance and the making of payments to multilateral development banks, including the AIIB.

- Consequentially amending the IDA and the 2015 Order. These amendments will give full effect to the transfer of functions mentioned in the previous bullet point and ensure HM Treasury can make further payments to the AIIB in accordance with the department's responsibilities to support the Chancellor as UK Governor.

7.7 The Order does not make any provision in relation to other areas of the IDA, for example in relation to humanitarian assistance, assistance to British overseas territories, or in relation to the obligations in respect of the 0.7% ODA target as set out in the International Development (Official Development Assistance Target) Act 2015. The Treasury does not envisage making wide or regular use of the powers covered by this Order, outside the issues noted above in relation to the AIIB and to the Prosperity Fund.

Consolidation

7.8 The Department does not intend to consolidate the legislation which is amended by this Order.

8. Consultation outcome

8.1 There has not been a public consultation on the Order as no impact on business or the voluntary sector is foreseen.

9. Guidance

9.1 No guidance has been prepared.

10. Impact

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

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

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

12. Monitoring & review

12.1 No monitoring or review of this Order is planned.

13. Contact

13.1 Robin Tasker at the Treasury Telephone: 020 7270 2899 or email: robin.tasker@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.