

## **EXPLANATORY MEMORANDUM TO**

### **THE TRANSFER OF FUNCTIONS (SECRETARY OF STATE FOR FOREIGN, COMMONWEALTH AND DEVELOPMENT AFFAIRS) ORDER 2020**

**2020 No. 942**

#### **1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Foreign, Commonwealth and Development Office (FCDO) and is laid before Parliament by Command of Her Majesty.

#### **2. Purpose of the instrument**

- 2.1 The office of the Secretary of State for Foreign, Commonwealth and Development Affairs was created on 2 September 2020 with the creation of the Foreign, Commonwealth and Development Office (FCDO), announced by the Prime Minister on that date. The creation of the FCDO follows the merger of the Department for International Development (DFID) and the Foreign and Commonwealth Office (FCO), with the transfer of functions from DFID and the FCO to the new department.
- 2.2 This Order has three primary purposes. The first is to incorporate the Secretary of State for Foreign, Commonwealth and Development Affairs as “corporation sole”. This will facilitate the execution of contracts and the holding of property by DFID and the FCO.
- 2.3 The second purpose is to complete the process of transferring relevant functions from DFID and the FCO to the FCDO.
- 2.4 The third purpose is to make supplementary and consequential provision, in relation to, amongst other things, the transfer of property, rights and liabilities to the new Secretary of State, and the updating of legislation and documents, which refer to DFID, the FCO, or their Secretaries of State.

#### **3. Matters of special interest to Parliament**

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

- 3.1 None.

##### *Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

#### **4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is to all of the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

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

5.1 The Secretary of State for Foreign, Commonwealth and Development Affairs has made the following statement regarding Human Rights:

“In my view the provisions of the Transfer of Functions (Secretary of State for Foreign, Commonwealth and Development Affairs) Order 2020 are compatible with the Convention rights.”

## **6. Legislative Context**

6.1 Where functions are vested in the Secretary of State at large, they can be transferred by administrative means. However, in some cases functions are assigned by legislation to a named Minister, in which case they must be transferred by legislation: in the present case, using the powers in section 1 and 2 of the Ministers of the Crown Act 1975. Those powers also enable appropriate supplementary and consequential provision to be made and allow the incorporation of a Secretary of State as a distinct legal person or “corporation sole”. Thus, the Order completes the process relating to the establishment of the Foreign, Commonwealth and Development Office created on 2 September 2020.

## **7. Policy background**

### *What is being done and why?*

7.1 The Prime Minister's statement to the House of Commons on 16 June 2020 outlined the need to create a new department, the Foreign, Commonwealth and Development Office (FCDO). The statement also explained the machinery of government changes required to create the FCDO, which involved merging the Department for International Development DFID and the Foreign and Commonwealth Office (FCO). Statement to the House of Commons on 16 June 2020 available here: <https://www.gov.uk/government/speeches/prime-ministers-statement-to-the-house-of-commons-16-june-2020>.

7.2 The Transfer of Functions (Secretary of State for Foreign, Commonwealth and Development Affairs) Order 2020 fulfils the Prime Minister's requirement to transfer the functions from the former departments of DFID and the FCO to the FCDO on 2 September 2020.

7.3 The UK is an active, confident, internationalist, burden-sharing and problem-solving nation. The new Foreign, Commonwealth and Development Office (FCDO) will integrate development and diplomacy in a single new department that brings together the best of Britain's international efforts, acting as a force for good in the world and protecting our national interests. By building shared global prosperity, eradicating poverty, tackling climate change, strengthening the international rule of law and global security, and promoting free, open societies, we are supporting more secure and prosperous lives for the people we serve at home.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 The issue of consolidation does not directly arise and consolidation is not being done. Although the Order makes a number of minor and consequential amendments to other instruments, those instruments are made under other powers and are in part the responsibility of other Government Departments.

## **10. Consultation outcome**

- 10.1 No impact on business or the voluntary sector is foreseen as a result of this Order, therefore there has not been a public consultation on the Order.

## **11. Guidance**

- 11.1 The creation of the FCDO through the machinery of government changes were publicised on 2 September 2020. A new section was created on GOV.UK with details of the new department and relevant information about policies and programmes. It went live on 2 September at [www.gov.uk/fcdo](http://www.gov.uk/fcdo). This page was promoted through FCDO communication.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because there is no significant impact foreseen as a result of this Order. This Order is for the transfer of existing functions from DFID and the FCO to the FCDO, and does not amend the remit of those functions.

## **13. Regulating small business**

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

## **14. Monitoring & review**

- 14.1 The legislation completes the creation of the FCDO, so there are no plans for monitoring or review.

## **15. Contact**

- 15.1 Gareth Weir at the Foreign, Commonwealth and Development Office. Telephone: 07949 930770 or email: [Gareth.Weir@fcdo.gov.uk](mailto:Gareth.Weir@fcdo.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Nic Hailey, Director General Transformation Team, at the Foreign, Commonwealth and Development Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Secretary of State for Foreign, Commonwealth and Development Affairs at the Foreign, Commonwealth and Development Office can confirm that this Explanatory Memorandum meets the required standard.