EXPLANATORY MEMORANDUM TO
THE DEPARTMENTS (TRANSFER OF FUNCTIONS) ORDER (NORTHERN IRELAND) 2006

2006 No. 192

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

This memorandum contains information for the House of Lords Select Committee on the Merits of Statutory Instruments.

2. Description

2.1 This Order transfers to the Department for Social Development certain functions of the Department for Employment and Learning and the Department of the Environment.

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

3.1 None

4. Legislative Background

4.1 This Order is made under Article 8 of the Departments (Northern Ireland) Order 1999 and is laid before Parliament under paragraph 7(3) of the Schedule to the Northern Ireland Act 2000.

4.2 Article 8 vests powers in the First Minister and deputy First Minister of Northern Ireland to jointly make, by Order, any transfer of functions from one Northern Ireland Department to another as appears to them to be appropriate. Such an Order is subject to the affirmative resolution procedure in the Northern Ireland Assembly. During the current period of suspension of the Northern Ireland Assembly, the powers under Article 8 are exercisable by the Secretary of State for Northern Ireland and any Order made under it is subject to the negative resolution procedure at Westminster.

4.3 The purpose of this Order is to transfer to the Department for Social Development the functions of the Department for Employment and Learning under the Pneumoconiosis, etc., (Workers' Compensation) (Northern Ireland) Order 1979; and the functions of the Department of the Environment under Article 31(5) of the Land Acquisition and Compensation (Northern Ireland) Order 1973.

5. Extent

5.1 This Order applies to Northern Ireland only.

6. European Convention on Human Rights

6.1 Peter Hain MP, the Secretary of State for Northern Ireland, has made the following statement regarding Human Rights:

In my view the provisions of the Departments (Transfer of Functions) Order (Northern Ireland) 2006 are compatible with the Convention rights.

7. Policy Background

7.1 The Order transfers certain functions between Northern Ireland departments but no policy change is involved.

Pneumoconiosis, etc., (Workers' Compensation) (NI) Order 1979

7.2 The Department for Employment and Learning currently has responsibility for payments under the Pneumoconiosis, etc., (Workers' Compensation) (Northern Ireland) Order 1979. The 1979 Order is parity legislation corresponding to the Pneumoconiosis, etc, (Workers' Compensation) Act 1979 (1979 c.41) in Great Britain. The scheme involves assessing and making lump sum payments to certain persons disabled by asbestosis and other prescribed dust related diseases, or to their dependants, provided no damages have been recovered from any employer in respect of the disablement and there is no employer available to sue for damages.

7.3 The Social Security Agency (SSA) is an executive agency of the Department for Social Development (DSD) and has a key role in the administration of the scheme as applicants must already be in receipt of Industrial Injuries Disablement Benefit (IIDB) – a benefit which the SSA is responsible for administering in Northern Ireland. As applicants have already been medically assessed for IIDB, this avoids the need for the Department for Employment and Learning to carry out further medical examinations. Transferring responsibility for the pneumoconiosis scheme to DSD (and ultimately the SSA) provides claimants and all interested parties with a single public body which is responsible for this area. It should also be noted that the pneumoconiosis scheme in Great Britain was transferred in 2002 from the Department of Transport to the Department for Work and Pensions (DWP). The responsibilities of DWP closely mirror those of DSD and therefore if and when legislative change is necessary in this area it is considered it would be more straight forward, where appropriate, to replicate in Northern Ireland.

Land Acquisition and Compensation (Northern Ireland) Order 1973

7.4 Part IV of the Land Acquisition and Compensation (Northern Ireland) Order 1973, as amended by the Home Loss Payments (Northern Ireland) Order 1992, sets out the entitlement of a person to a home loss payment in certain circumstances where that person is displaced from a dwelling on any land. Article 30 of the 1973 Order sets out the circumstances of entitlement where that person is displaced in consequence of -

- the compulsory acquisition of an interest in the dwelling,
- the making or acceptance of a housing order or undertaking in respect of the dwelling,
- the carrying out of any improvement of the dwelling or redevelopment on the land where an acquiring authority holds the land, and
- the carrying out of any improvement to the dwelling or of redevelopment on the land by a registered housing association which has previously acquired the land.

7.5 The Department of the Environment no longer acquires land for planning purposes, powers under Part VII (development schemes and acquisition of land) of the Planning (Northern Ireland) Order 1991 having transferred to the Department for Social Development in 1999. The Department of Environment is no longer involved in activities that give rise to home loss payments.

7.6 Article 31(1) and (2) of the 1973 Order set out maximum, minimum and flat rate amounts of home loss payment. Under Article 31(5) the Department of the Environment may by regulations prescribe a different maximum, minimum or flat rate for the purposes of Article 31(1) and (2). The Department of the Environment last made Regulations under Article 31(5) increasing all three rates in 2004. At that time it was established that whilst the Department for Regional Development Roads Service estimated the additional costs of the increases at £10,000 to £15,000 per year, the Department for Social Development Housing Division estimated the likely increase in NIHE expenditure could be in the order of £1,925,000 per year.

7.7 The Department of the Environment has sought and obtained the agreement of the Department for Social Development to the transfer of the function under Article 31(5) of the Land Acquisition and Compensation (Northern Ireland) Order 1973. The Department for Social Development agrees that as the Housing Executive incurs the greatest outlay in Home Loss Payments, it would be appropriate for that Department to assume responsibility for the regulation-making function.

8. Impact

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

8.2 There is no impact on public sector policy or costs.

9. Contact

The content of this Explanatory Memorandum has been agreed between the Department for Employment and Learning and the Department of the Environment.

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