EXPLANATORY MEMORANDUM TO

THE CONTRACTING OUT (FUNCTIONS RELATING TO THE ROYAL PARKS) ORDER 2016

2016 No. 0000

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument empowers the Secretary of State to authorise another person to carry out the Secretary of State's functions of management of the Royal Parks and other open spaces under the Secretary of State's management, including Brompton Cemetery. This will allow the Secretary of State to contract out the provision of those services, instead of performing them himself as he does now through his executive agency, The Royal Parks.

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 This entire instrument applies only to England.

3.3 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this instrument of this instrument would not be within the devolved legislative competence of any of the Northern Ireland Assembly as a transferred matter, the Scottish Parliament or the National Assembly for Wales if equivalent provision in relation to the relevant territory were included in an Act of the relevant devolved legislature.

4. Legislative Context

4.1 The instrument empowers the Secretary of State to authorise another person to carry out the Secretary of State's functions of management of the Royal Parks. The Secretary of State's functions of management come from a number of enactments, which are set out in the instrument.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is set out in Section 3 under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

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

"In my view the provisions of the Contracting Out (Functions relating to the Royal Parks) Order 2016 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 At present The Royal Parks estate is managed by central Government through an executive agency set up in 1993. At that time most of the agency's funding came from Treasury Grant in Aid. Today the position is completely reversed and the organisation generates almost 70% of its own income.

7.2 Central Government control over the minutiae of park finances and management may have been appropriate when the organisation was almost entirely funded by Treasury, but that is not the case today.

7.3 The Government proposes to contract with a new organisation which will be a company limited by guarantee of the Secretary of State. It is intended that this new body will apply for charitable status. Through this contract the Secretary of State will provide resource funding, capital investment, and the ability to raise funds using the assets of the parks. The new organisation will raise funds including through rents of properties within the parks, events, catering and other concessions, as well as lottery bids and through philanthropic donations. In return the new organisation will manage the parks.

7.4 Changing the status of the organisation to a charitable public body better reflects the new financial realities and will deliver greater operational flexibility. The charitable status will allow the new organisation to better harness a wide range of opportunities such as attracting a greater number of volunteers, encouraging philanthropic giving and permitting a more effective use of its resources. This status would also make it possible for the Agency to join the Royal Parks Foundation, an existing charity that raises money for the parks, in forming the new organisation. Having one single organisation for the parks would bring greater coherence to fundraising, income generation and volunteering opportunities.

7.5 The current proportion of income that is self-generated means there is a strong possibility that the new body will be classified as a charitable Public Corporation. The classification of the new body will be determined by the Office of National Statistics (ONS) and the Charity Commission. However the body is classified, the Royal Parks will remain in the ownership of HM The Queen in right of the Crown and Government's statutory responsibility for their management and the other land currently managed by the Royal Parks Agency will not change.

7.6 The core purpose of the new organisation will continue to focus on protecting and enhancing the intrinsic qualities of the parks. It is not the intention to permit the estate to become overly commercialised; rather it will mean that we can broaden the current opportunities (see 7.4) in a more effective and beneficial way.

7.7 The Secretary of State will continue to make/be responsible for any subordinate legislation relating to the Royal Parks.

7.8 Local authorities exercise planning control over major events, such as Winter Wonderland, the summer concerts season and other key activities in the Royal Parks. This will continue to be the case.

7.9 The Metropolitan Police will continue, as now, to be responsible for policing in the Royal Parks including enforcing the Park Regulations

7.10 This order will allow the Secretary of State to contract out his functions under section 147 of the Police Reform and Social Responsibility Act 2011 and regulation 3A of the Royal Parks and Other Open Spaces Regulations 1997 of authorising the use of amplified noise equipment and camping equipment in the small areas of land around Parliament Square and the Palace of Westminster under his control. This function is currently carried out by The Royal Parks. Working in partnership with a multi-agency team including the Metropolitan Police and Westminster City Council, a protocol has been developed that allows the police to enforce the powers across the variety of land ownerships. It is proposed that the new organisation will carry out the Secretary of State's functions in this respect, just as the executive agency, The Royal Parks, does currently.

7.11 The management of Grosvenor Square Garden has been the responsibility of the Secretary of State since 1946 and although managed by the Royal Parks Agency is not part of the historic Royal Parks estate. This order will allow the Secretary of State to contract the Grosvenor Estate, which is the freeholder, to fund and manage the garden, subject to it remaining a free and well maintained public asset.

7.12 Kensington Gardens are not listed in the instrument as they were contracted out under the Contracting Out (Functions in relation to the Management of Crown Lands) Order 2003 (S.I. 2003/1998). The Gardens will be managed by the new charitable public corporation

Consolidation

7.13 Consolidation is not relevant to this instrument.

8. Consultation outcome

8.1 The Royal Parks will remain free to all and will continue to be managed as high quality listed landscapes. Given that this instrument amends the status of the organisation rather than changes the face of the parks as experienced by visitors, no formal consultation has been undertaken. There has however been engagement and discussion with key stakeholders and the wider public. There is broad support for the new proposal given its stated purpose is to deliver a more financially sustainable organisation, rather than one that is overly commercial or that significantly changes the way the green space is maintained.

9. Guidance

9.1 The instrument does not create any new obligations, and guidance is not being provided.

10. Impact

10.1 The impact on businesses operating in the parks is unlikely to be significantly affected by this change. Existing contracts and licences will be novated. The new organisation will continue to maintain and enhance the established strong partnerships with a wide range of charities and voluntary bodies. An impact assessment has not been prepared for this instrument.

10.2 In the longer term, once the new opportunities are harnessed, it is the expectation that this will lead to a reduction in the burden on the public purse.

10.3 Although the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended (TUPE) will apply, staff working in the existing Agency will cease to be civil servants. Consultation with staff representative bodies has started.

10.4 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 The instrument does not regulate business and there are no plans to review it. However, under the Deregulation and Contracting Out Act 1994, the authorisation provided by this instrument may only be given for a maximum of ten years. Therefore, reviews of any authorisations given under the instrument will be required at least every ten years.

12.2 The Secretary of State will continue to be responsible in Parliament for the Royal Parks. Changes to Park Regulations will continue to require Parliamentary agreement. The Charity Commission will also have responsibility for scrutinising the Royal Parks and the National Audit Office will audit the accounts

13. Contact

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