EXPLANATORY MEMORANDUM TO

THE CROWN AGENTS HOLDING AND REALISATION BOARD (PRESCRIBED DAY) ORDER 2008

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

2. Description

2.1 The purpose of this order is to set 1 April 2008 as the day on which the property, rights, liabilities or obligations of the Crown Agents Holding and Realisation Board (the Board) will transfer to the Secretary of State for International Development (the Secretary of State) and to effect this transfer. After the coming into force of the order, the Board will continue in existence but only for as long as needed to draw up final accounts.

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

3.1 None

4. Legislative Background

4.1 This order is to enable the Secretary of State to prescribe 1 April 2008 as the day on which the property, rights, liabilities or obligations of the Board will transfer to the Secretary of State under the Crown Agents Act 1979 (the Act). This has the effect of ending the current financial year in relation to the Board on 31 March 2008 in accordance with paragraph 24(1) of Schedule 5 to the Act.

4.2 The Secretary of State is empowered to make the order with the consent of the Treasury if he is satisfied that the duties of the Board under section 25(3)(a) and (c) of the Act have been substantially discharged. These duties are: (a) to secure the realisation of the Board's assets and the assets of the Board's subsidiaries and the application of the proceeds in or towards discharging the liabilities of the Board and their subsidiaries; and
(c) to discharge the liabilities of the Board and of each of their subsidiaries so far as not discharged in pursuance of paragraph (a).

4.3 The order must make provision for the transfer and disposal of the Board’s property, rights, liabilities or obligations. It must also make provision for the payment into the Consolidated Fund of sums transferred by or accruing under the order, and the payment out of money provide by Parliament of any sums to be provided for the purposes of the order.

4.4 The Secretary of State was given responsibility under the Act by the Transfer of Functions (International Development) Order 1997/1749.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom

6. European Convention on Human Rights

6.1 Douglas Alexander, the Secretary of State for International Development has made the following statement regarding Human Rights:

In my view the provisions of the Crown Agents Holding and Realisation Board (Prescribed Day) Order 2008 are compatible with the Convention rights

7. Policy background

7.1 Between 1967 and 1974 the Crown Agents for Oversea Governments and Administrations whose traditional business was as procurement agents for former British territories and others, significantly increased business carried out on their own account (i.e as principal rather than as agent) particularly in property investment and banking. In the secondary banking crisis of 1973-74 they incurred significant losses on these activities; as they were a public sector body, the government provided a total of £175 million to meet the losses [1].

7.2 The Crown Agents Act 1979 provided a new legislative framework for Crown Agents' activities, It created two separate statutory corporations as successors to the "unincorporated" Crown Agents

- The Crown Agents for Oversea Governments and Administrations: a body continuing the traditional work of Crown Agents with a statutorily defined business remit largely confined to agency activities, a balance sheet appropriate to this business, and much clearer accountability to Ministers
- The Crown Agents Holding and Realisation Board (the Board): a body with the specific remit to realise any value from assets remaining from the property and banking business which Crown Agents had carried out on their own account up to 1974.

7.3 It was intended that the Board should have a limited life and the Act included a procedure under which it could be wound-up when its statutory purposes had been substantially discharged. Subsequently the Crown Agents Act 1995 provided for the sale of the main Crown Agents business and in 1997 this business was transferred to the ownership of the private sector Crown Agents Foundation and ceased to a statutory body responsible to Ministers However, the 1995 Act continued in force the provisions of the 1979 Act applying to the Board.

[1] A full description and analysis of these events is in the report of the Fay Committee of Enquiry (HC 49 of 1977-78); and the subsequent Croom-Johnson Tribunal of Enquiry (HC 364 1981-82)

7.4 The Crown Agents Act 1979 provided that the £175 million of grants made to the unincorporated Crown Agents would no longer be owed to the Government by either the statutory Crown Agents or the Board. However the Act provided that in considering the disposal of any surplus revenue of the Board, the government should have regard to the fact that the grants would have been repayable but for this provision. In practice all the amounts realised by the Board (£38 million by 31 December 2007) have been returned to the Consolidated Fund as a contribution towards the losses incurred in 1974.

7.5 Most of the substantive realisations achieved by the Board were in the first few years after 1979 including a significant realisation of Australian property interests. For some years the Board has made few realisations; however it has been convenient for it to continue in existence to deal with some extended payments receivable from the administrators of firms in liquidation. Almost all of these payments have now been received. The Board's accounts for 2006 were presented to Parliament by the National Audit Office in June 2007 (HC 678); at 31 December 2006 net current assets other than cash were £71,000.

7.6 Given the limited assets which now remain to be dealt with, the Secretary of State with the agreement of the Board has concluded that the duties set out in paragraph 4.2 above have been substantially discharged and that there is now no longer a need or justification for a separate statutory body to exist; any minor residual work can be undertaken by and in the name of the Secretary of State until all the property, rights, liabilities or obligations have been disposed of.

7.7 The present order implements this policy conclusion. Its effect will vest the Board's balance sheet in DFID on 1 April 2008. The Board will continue to exist to prepare final accounts for the period to 31 March 2008. Once these accounts have been audited and presented to Parliament, the Board will be formally dissolved. This will be by a further order. In accordance with procedures in the Public Records Act 1958, those of the Board's records which justify permanent preservation will be deposited in the National Archives.

8. Impact

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

8.2 The impact on the public sector is to reduce the number of Non-Departmental Public Bodies. There should be no net financial impact on the public sector (the audited net asset value of the Board will be incorporated into DFID's resource accounts for the year to 31 March 2009).

8.3 The Board has two unpaid members and does not employ any staff (day to day work is contracted out to Crown Agents). Closure of the Board will not therefore involve redundancy payments or surplus property.

9. Contact

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