EXPLANATORY MEMORANDUM TO

THE SECRETARY OF STATE FOR ENERGY AND CLIMATE CHANGE ORDER 2009

2009 No. 229

1. This explanatory memorandum has been prepared jointly by the Department of Energy and Climate Change (DECC), the Department for Business, Enterprise and Regulatory Reform (BERR) and the Department for Environment, Food and Rural Affairs (Defra) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1. The position of Secretary of State for Energy and Climate Change was created on 3 October 2008, with the creation of DECC announced by the Prime Minister on that date. This Order has essentially three purposes. The first is to incorporate the Secretary of State for Energy and Climate Change as a "corporation sole", which will facilitate the execution of contracts and the holding of property by DECC. The second is to complete the process of transferring relevant functions from BERR and Defra to DECC. The third is to make supplementary and consequential provision, in relation for instance to the transfer of property, rights and liabilities to the new Secretary of State, and the updating of legislation and documents which refer to BERR and Defra or their Secretaries of State.

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

3.1. None

4. Legislative Context

4.1. Where functions are vested in the Secretary of State at large, they can be transferred by administrative means, for instance in this case by the Prime Minister's announcement of 3 October 2008. 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 given by sections 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 of establishing the Department of Energy and Climate Change which was created on 3 October 2008.

5. Territorial Extent and Application

5.1. This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1. The Secretary of State for Business, Enterprise and Regulatory Reform has made the following statement regarding Human Rights:

In my view the provisions of the Secretary of State for Energy and Climate Change Order 2009 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1. On 3 October 2008, the Prime Minister announced a change to the machinery of government which created a Secretary of State for, and Department of, Energy and Climate Change. This new department brings together the Energy Group previously located in BERR, and from Defra, international and domestic climate change policy (excluding domestic adaptation to climate change), energy efficiency, fuel poverty and radioactive waste as well as the Office of Climate Change. The Secretary of State for Energy and Climate Change has been given functions in the following policy areas.

7.2. Firstly, energy policy. The Government's energy policy has four overriding objectives:

- tackling climate change, ensuring security of energy supplies;
- promoting competitive markets in the UK and beyond;

- helping to raise the rate of sustainable economic growth and to improve our productivity;
- and ensuring that every home is adequately and affordably heated.

Long-term higher energy prices mean that these objectives have converged. All require a much greater focus on reducing energy demand and reducing energy bills through energy efficiency, and on the development and deployment of low carbon energy sources – nuclear, renewables and clean fossil fuels together with efforts domestically and internationally to ensure that energy markets function effectively. Developing diverse sources of supply and ensuring that energy supply needs are met, through the policies set out in the Energy White Paper, is an essential component of building a secure future and will remain a core objective. Energy demand and efficiency were previously the responsibility of Defra, while responsibility for energy supply and energy security lay with BERR. Tackling fuel poverty was shared between them. DECC brings together these policy areas.

7.3. Secondly, the enactment of the Climate Change Act. For the first time, this imposes legally binding 'carbon budgets' – the total emissions permitted over a five year period - on the Government. Previously Defra had responsibility for the management of carbon budgets while BERR controlled the major means of delivery. Now DECC will have responsibility for both. Meeting the Government's carbon budgets and building a low carbon economy will nevertheless remain a cross-Whitehall responsibility, and DECC works very closely with the other departments with major impacts on greenhouse gas emissions –Transport, Communities and Local Government, Business, Enterprise and Regulatory Reform, Environment, Food and Rural Affairs, Innovation, Universities and Skills, and HM Treasury as well as the devolved administrations on issues within their responsibilities.

7.4. Thirdly, achieving agreement at EU and international level on multilateral action to tackle and adapt to climate change, and implementing these agreements. The new Secretary of State will have the lead responsibility for the UK's international commitments and negotiations, working closely with the Secretary of State for Foreign and Commonwealth Affairs, the Secretary of State for International Development and other Cabinet colleagues.

7.5. DECC will assume responsibility for the Public Service Agreement to lead the global effort to avoid dangerous climate change and for the following Departmental Strategic Objectives:

- Ensure the reliable supply and efficient use of clean, safe and competitively-priced energy; and
- Manage energy liabilities effectively and responsibly (both previously BERR);
- Climate change tackled internationally and through domestic action to reduce greenhouse gas emissions (previously Defra).

- ***Consolidation***

7.6. The issue of consolidation does not directly arise. Although the Order amends a number of other instruments, those instruments are made under other powers and are in part the responsibility of other Government Departments. Moreover the amendments made are minor and consequential.

8. Consultation outcome

8.1. 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. Interested Government Departments have been consulted.

9. Guidance

9.1. The creation of DECC through the Machinery of Government change was publicised on 3 October 2008. BERR and Defra informed their stakeholders of the change and its implications at that time.

10. Impact

10.1. No Impact Assessment has been prepared because no impact on business or the voluntary sector is foreseen.

10.2. The impact on the public sector is neutral as resources are being transferred from BERR and Defra to DECC as a result of this Machinery of Government change.

11. Regulating small business

11.1. This order does not apply to small business.

12. Monitoring & review

12.1. Not applicable.

13. Contact

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