EXPLANATORY MEMORANDUM TO

THE TRANSFER OF FUNCTIONS (REPORT ON THE CIVIL ESTATE) ORDER 2011

2011 No. 740

1. This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

This instrument transfers to the Minister for the Cabinet Office the Treasury's functions relating to the annual report that must be laid before Parliament assessing the progress made towards improving the efficiency and contribution to sustainability of buildings that are part of the Government's civil estate. The instrument amends section 86 of the Climate Change Act 2008 ("the 2008 Act") in consequence.

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

None.

4. Legislative Context

4.1 This instrument uses general powers to give effect to one aspect of a machinery of Government change that was announced by the Prime Minister in June 2010 (the details and policy context of which are explained in paragraph 7 below). This instrument is the only 'transfer of functions' order under these powers that arises from that announcement. These powers are used to make the present instrument, as an Order in Council, because the functions concerned are conferred by primary legislation. More specific powers have already been used to replace the Treasury with the Minister for the Cabinet Office in an instrument relating to an unrelated function affected by the same announcement (see the Buying Agency Trading Fund (Amendment) Order 2010: SI 2010/2930).

4.2 The substantive functions that are transferred by this instrument are those conferred on the Treasury by section 86(1) and (7) of the 2008 Act (which came into force on 26 January 2009 by virtue of section 100(5) of the 2008 Act). Subsection (1) imposes on the Treasury the duty of laying the annual report before Parliament. Subsection (7) confers an order-making power under which the Treasury may provide for buildings of a specified description to be treated as being, or as not being, within the scope of the reporting obligation. This order-making power is exercisable by statutory instrument (see section 90(1) of the 2008 Act) and is subject to the affirmative resolution procedure (see sections 86(8) and 91(1) of the 2008 Act). This power has not been exercised.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Minister for the Cabinet Office has made the following statement regarding Human Rights:

In my view the provisions of the Transfer of Functions (Report on the Civil Estate) Order 2011 are compatible with the Convention rights.

7. Policy background

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

7.1 On 15 June 2010 the Prime Minister announced a machinery of Government change affecting HM Treasury and the Cabinet Office (Hansard vol 511, part 15, col 48WS). That included the transfer of responsibility for the Office of Government Commerce to the Minister for the Cabinet Office, and that they would become part of the Cabinet Office's Efficiency and Reform Group. The final paragraph of that statement stated that-

> "Property functions in the Office of Government Commerce and the shareholder executive will combine into a single unit responsible for property efficiency and will be based in the Shareholder Executive within the Department for Business, Innovation and Skills. It will report jointly to the Minister for the Cabinet Office and to the Chief Secretary as part of the efficiency and reform group."

7.2 The preparation of the annual report on the civil estate had in fact been undertaken by the Office of Government Commerce, as part of its property functions which would also, had the need arisen, have extended to considering and advising Ministers on the exercise of the order-making power conferred by section 86(7) of the 2008 Act.

7.3 The Government Property Unit (GPU) in the Shareholder Executive in the Department for Business, Innovation and Skills (BIS) was established as the property function of the Efficiency and Reform Group in the Cabinet Office and leads Government's property strategy across the public sector. It was set up to drive substantial efficiency savings across the estate as well improving the built environment and promoting economic growth where possible.

7.4 GPU reports to the Minister for the Cabinet Office on its core efficiency agenda and to BIS Ministers on its role in promoting economic growth.

- ***Consolidation***

7.5 This is not an amending order and so no question of consolidation arises. The amendments which the instrument makes to the Climate Change Act 2008 are minor.

8. Consultation outcome

There has been no consultation outside Government, given the nature of the change.

9. Guidance

There are no plans to issue guidance, given the nature of the change.

10. Impact

No impact on the private or voluntary sectors is foreseen. Therefore, an impact assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

There are no plans to subject the change to monitoring or review.

13. Contact

Richard Graham at the Government Property Unit in the Shareholder Executive (Tel: 020 7271 3121 or email: richard.graham@ogc.gsi.gov.uk) can answer any queries regarding the instrument.