EXPLANATORY MEMORANDUM TO

THE WELSH MINISTERS (TRANSFER OF FUNCTIONS) ORDER 2008

2008 No.

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

2. Purpose of the instrument

This draft statutory instrument makes provision for the transfer to the Welsh Ministers of functions of a Minister of the Crown under section 47 of the Prisons Act 1952.

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

This draft instrument is the second instrument to be made under section 58 of the Government of Wales Act 2006 ("GOWA 2006").

4. Legislative Context

4.1 Section 58(1) of GOWA 2006 provides that Her Majesty may by Order in Council:

(a) provide for the transfer to the Welsh Ministers, the First Minister or the Counsel General of any function so far as exercisable by a Minister of the Crown in relation to Wales;

(b) direct that any function so far as so exercisable is to be exercisable by the Welsh Ministers, the First Minister or the Counsel General concurrently with the Minister of the Crown: or

(c) direct that any function so far as exercisable by a Minister of the Crown in relation to Wales is to be exercisable by the Minister of the Crown only with the agreement of the Welsh Ministers, the First Minister or the Counsel General.

5. Territorial Extent and Application

This draft instrument extends to England and Wales.

6. European Convention on Human Rights

The Secretary of State for Wales has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

"In my view the provisions of the draft Welsh Ministers (Transfer of Functions)(No.1) Order 2009 are compatible with the Convention rights".

7. Policy background

Section 47 of the Prisons Act 1952

7.1 The duty to promote the education of the people of Wales contained in section 10 of the Education Act 1996 was transferred to the National Assembly for Wales in 1999 under National Assembly for Wales (Transfer of Functions) Order 1999 SI 1999/672 and is now exercised by Welsh Ministers by virtue of GOWA 2006. Responsibility for education of persons detained under order of a court is excluded from the scope of the duty in section 10.

7.2 When UK Government Ministers of the former Department for Education and Skills decided to make the planning and funding of prison education part of the Learning and Skills Council's responsibilities from 31 July 2006 the responsibility for prison education in Wales was raised as an issue for the Welsh Assembly Government to consider. In June 2007 the then Welsh Minister for Education, Culture and the Welsh Language wrote to UK Minister, at the Department for Education and Skills formally proposing that responsibility for prison education in Wales be devolved.

7.3 Responsibility for education in Welsh prisons currently lies with the UK Government, under HM Prison Service, now part of the National Offender Management Service (NOMS), acting on behalf of the Ministry of Justice, in conjunction with the Department for Innovation, Universities and Skills.

7.4 Education is provided in prisons in pursuance of rules made under section 47 of the Prisons Act 1952. Functions (including those relating to offender learning and the provision of library services in prisons in Wales) under that section are exercisable by the UK Government. From April 2006 the Department for Innovation, Universities and Skills (DIUS) funded NOMS Cymru for the delivery of prison education and training and the commissioning responsibilities for offender learning and skills provision in Wales became their responsibility.

7.5 The Welsh Assembly Government has a Memorandum of Understanding with NOMS Cymru and the two organisations will continue to work together throughout 2008-2009 on commissioning

arrangements for educational provision in Welsh prisons for the period following the transfer of functions on 1 April 2009.

7.6 Following the proposed transfer of functions under section 47 of the Prisons Act 1952, the Welsh Ministers will be responsible for making prison rules in relation to the provision of education and training, and library services to be made available to those offenders who are held in prisons in Wales.

7.7 Welsh Ministers already have powers under the original transfer of functions order made in 1999 SI (1999/672) in relation to education policy for those serving sentences in the community in Wales. Those people fall within the mainstream education system. It is not a practical proposition to seek powers in respect of prisoners from Wales serving sentences in England.

7.8 The transfer of functions would apply to the existing public prisons at Swansea, Cardiff, Usk and Prescoed and any new prisons built in Wales but not to prisons in the private sector which contract with NOMS Cymru. The Welsh Assembly Government would also work with NOMS Cymru, who are responsible for the commissioning and provision of educational services in prisons within Wales, to ensure that there is a consistent approach to delivering education and training across all prisons in Wales, including the HMP/Young Offenders Institution Parc Prison with which it contracts.

7.9 From the date of the transfer of functions, the budget for the transferred services will move from the UK Government (DIUS) to the Welsh Assembly Government.

7.10 The agreed transfer of resources to the Welsh Assembly Government from DIUS in relation to the proposed transfer of functions under s.47 of the Prisons Act 1952 is projected to be, for 2009-10 is £2,656,000 and for 2010-11 will be £2,733,000. This is an appropriate transfer of resources.

7.11 Assurances have been given by the Secretaries of State for Innovation, Universities and Skills; Children, Schools and Families; and Justice that if a new prison was built within Wales, or if an existing prison was expanded, the current process for securing additional funding from the UK Government for education and training, and libraries, would apply. The Welsh Assembly Government would work with NOMS Cymru on the business case to Treasury for funding for prison expansion, to be covered in the winter or spring Supplementary Budget. The UK Government have also provided assurances that consequential funding for prisoner funding in Wales will be provided for 2011-2012 onwards.

7.12 In line with the aspirations set out in 'Learning to Change,' the Welsh Assembly Government/ NOMS Cymru joint strategy on developing skills to reduce re–offending in Wales, there is a need to ensure that those within the criminal justice system have access to high quality and relevant learning opportunities.

7.13 A transfer of these functions should enable the Welsh Assembly Government to:

- take a strategic planning and management role, linked to its wider skills and social justice agenda, providing a consistent level of service across the prison estate in Wales including in the contracted HMP/Young Offenders Institution, Parc Prison;

- integrate prison education in Wales within mainstream education and training, helping to provide co-ordinated learning for offenders before, during and after their sentences. This will involve co-ordination of the education and training provided in prisons and by the probation service and participation in Children and Young People's Partnerships in relation to young offenders.

- develop local solutions for the training and education needs of prisoners by utilising a diverse range of local providers;

- ensure that learning provision within prisons is more responsive to labour market opportunities in Wales, thereby increasing the employment rate of ex-offenders (which is an important factor in reducing re-offending);

- use the opportunity to innovate and trial new approaches, for example in linking to Careers Wales services or new approaches to information systems; and

- develop its Welsh-specific policy for prisoner education in Wales, potentially including personal support for offenders aged 25 and younger to support their transition from custody to community.

7.14 It is appropriate that the Welsh Ministers should exercise this function for prisoners in Wales as education and training are devolved matters. It will allow prison education to be fully integrated with current Welsh Assembly Government policies on education, training and lifelong learning.

7.15 The Welsh Minister for Children, Lifelong Learning and Skills has consented to the proposed transfer of functions from the UK Government.

8. Consultation Outcome

The Welsh Assembly Government's skills and employment strategy: 'Skills that Work for Wales' 2008 specifically cites partnership working to support offenders in developing their skills and achieving sustainable employment. This strategy has been subject to extensive consultation both with key stakeholders and the public with a key action being the completion of the transfer of functions.

9. Guidance

No guidance has been, or will be, issued in relation to this Order. This Explanatory Memorandum explains the scope and policy context of matters included in the draft Order.

10. Impact

A Regulatory Impact Assessment has not been prepared for this instrument. This Explanatory Memorandum explains the scope and the policy context of the transfer of these functions.

11. Regulating small business

This Order does not apply to small business.

12. Monitoring and review

This proposed Order transfers functions to Welsh Ministers. The monitoring or review the carrying out of these functions in a matter for the Welsh Assembly Government and/or the National Assembly for Wales.

13. Contact

Susan Olley at the Wales Office, Tel: 029 2089 8568 or e-mail: susan.olley@walesoffice.gsi.gov.uk can answer queries regarding this instrument.