EXPLANATORY MEMORANDUM TO

THE NATIONAL ASSEMBLY FOR WALES (TRANSFER OF FUNCTIONS) ORDER 2006

2006 No. 1458

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

2. Description

This draft instrument makes provision for and in connection with the transfer to the National Assembly for Wales ("the Assembly") of a range of functions of a Minister of the Crown relating to The Regulatory Reform (Fire Safety) Order 2005 (SI 2005/1541) so far as those functions are exercisable in relation to Wales. It also provides for the transfer to the Assembly of the functions of the Secretary of State under section 1 of the Education (Fees and Awards) Act 1983.

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

None.

4. Legislative Background

4.1 This draft instrument is the latest in a series of instruments to be made under section 22 of the Government of Wales Act 1998.

4.2 Section 22 of the 1998 Act provides that Her Majesty may by Order in Council provide for the transfer to the Assembly of any function so far as exercisable by a Minister of the Crown in relation to Wales or direct that any function so far as is exercisable shall be exercisable by the Assembly concurrently with the Minister of the Crown.

4.3 Section 22(4) also provides, however, that no recommendation may be made to Her Majesty in Council to make such an Order unless a draft of the instrument containing it has been laid before, and approved by a resolution of, each House of Parliament and, in the case of an Order varying or revoking a previous Order, unless such a draft has also been laid before, and approved by a resolution of, the Assembly.

4.4 On 4th May 2005, the Assembly in plenary agreed to the making of the Regulatory Reform (Fire Safety) Order 2005 and a proposal to transfer the functions under that Order to the Assembly.

4.5 The draft Order does not vary or revoke any previous Transfer of Functions Orders and so does not therefore require approval by the

Assembly under section 22(4)(b) of the Government of Wales Act 1998.

5. Extent

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 National Assembly for Wales (Transfer of Functions) Order 2006 are compatible with the Convention rights.

7. **Policy background**

The Regulatory Reform (Fire Safety) Order 2005

7.1 The Regulatory Reform (Fire Safety) Order 2005 was made on 7th June 2005 and the functions under the Order that it is proposed are transferred to the Assembly in relation to Wales are scheduled to come into force on 1st October 2006.

7.2 The Order is a reform of all the current fire safety law, which is contained in over one hundred separate pieces of legislation. The main emphasis of the changes will be to move towards fire prevention. Fire certificates will be abolished and will cease to have legal status. Under the Order the responsible person for each premise will be required to carry out an assessment of the risks of fire (risk assessment) and take steps to reduce or remove the risk. Risk assessments will have to take into consideration the effect a fire may have on anyone in or around premises.

7.3 The transfer to the Assembly of functions under the Order is intended to give the Assembly a level of responsibility for such matters in relation to Wales which is equivalent to that of the Secretary of State in relation to England.

7.4. The transfer of functions is necessary to complement the devolution of responsibility for the fire and rescue services in Wales to the Assembly. That took place in November 2004 and should lead to greater consistency in the responsibility and accountability of the Assembly for such matters.

Section 1 of the Education (Fees and Awards) Act 1983

7.5 The functions of the Secretary of State under the Education (Fees and Awards) Act 1983 were, so far as exercisable in relation to Wales, transferred to the Assembly by the National Assembly (Transfer of Functions) Order 1999 (S.I.1999/672), with the exception of functions under section 1 of that Act. That section enables the Secretary of State to make regulations authorising or requiring certain institutions to charge students who do not have such a connection with the United Kingdom as is specified in regulations fees which are higher then those charged to students who do have such a connection. Policy responsibility for student support has since been transferred to the Assembly. It is therefore no longer appropriate for the Secretary of State for Education and Skills to retain the power under section 1 of the Education (Fees and Awards) Act 1983 to make regulations regarding the charging of fees at universities and further education establishments in relation to Wales.

7.6 Since the functions of the Secretary of State under section 2 of the 1983 Act (which makes further provision in relation to post-compulsory education awards by LEAs) have been transferred to the Assembly but not those under section 1. The regulations made under the 1983 Act have become complex in their application to Wales, with some elements being made by the Assembly and others by the Secretary of State.

7.7 In recognition of the Assembly's new responsibility for student support and in order to facilitate the creation of future policy, it is necessary to provide for the transfer of section 1 functions to the Assembly.

8. **Impact**

8.1 A Regulatory Impact Assessment has been carried out on the Regulatory Reform (Fire Safety) Order by the Office of the Deputy Prime Minister. It was found that the proposed move to a system based on risk assessment should not create new burdens to business. This is because all those who would be covered by the Order are already required to undertake such assessments under existing legislation.

8.2 The proposed transfer of function under section 1 of the Education (Fees and Awards) Act 1983 has been considered against the following criteria:

- The function relates entirely or principally to Wales in that it will be transferred to the Assembly in so far as it is exercisable in or as regards to Wales;
- The powers under section 1 mirror previously transferred powers under section 2 of the 1983 Act and this transfer will lead to the alignment of the two functions. It will also enable for the development of policy to be streamlined and allow better delivery of services;

- The proposal raises no significant issues of affordability and the alignment of the functions following devolution will allow for greater accountability;
- The proposal is administratively sensible in removing the present anomaly and will not hinder the delivery of services elsewhere within the UK.

9. Contact

Cedric Longville at the Wales Office, Tel: 029 2089 8564 or e-mail: **cedric.longville@walesoffice.gsi.gov.uk** can answer queries regarding this instrument.

Other contacts are as follows: Chris Humphreys, Legal Services Department, Welsh Assembly Government, Tel: 029 2080 1303 or e-mail: **Christopher.humphreys@wales.gsi.gov.uk** for the Regulatory Reform (Fire Safety) Order 2005

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