

EXPLANATORY MEMORANDUM TO
THE TRANSFER OF FUNCTIONS (EQUALITY) ORDER 2007

2007 No. 2914

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 The Transfer of Functions (Equality) Order 2007 transfers to the Lord Privy Seal various functions conferred by legislation on the Secretary of State, and makes other such functions exercisable concurrently by the Lord Privy Seal with the Secretary of State. It also transfers property, rights and liabilities associated with those functions; incorporates the Lord Privy Seal as a corporation sole; designates the Lord Privy Seal in relation to discrimination for the purposes of the European Communities Act 1972; and makes supplemental provision, and consequential amendments to primary legislation.

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

3.1 This Order reflects a commitment to transfer functions to the Lord Privy Seal at the meeting of Her Majesty's Privy Council on 10 October 2007, to enable the holder of that office effectively and immediately to take responsibility for equality policy and for the new Government Equalities Office ("GEO"). The transfers and related changes made by the Order are urgent. They are also important to ensure the proper continuity of Government business in this area. This political imperative means that it is regrettably necessary to breach the 21 day rule.

4. **Legislative Background**

4.1 This Order transfers certain functions under the following legislation, for which the Department for Communities and Local Government ("CLG") at present has legal responsibility:

- the Equal Pay Act 1970
- the Sex Discrimination Act 1975
- the Race Relations Act 1976
- the Sex Discrimination (Election Candidates) Act 2002
- the Civil Partnership Act 2004
- the Equality Act 2006.

4.2 The Order also enables the concurrent exercise, by the Lord Privy Seal and the Secretary of State, of functions conferred under the Employment and Training Act 1973 and the Charities Act 2006 in relation to grant-making.

4.3 Most functions under this legislation are conferred upon the Secretary of State, and were transferred administratively to CLG in 2006. Rights and liabilities relating to functions under the Equal Pay Act 1970, the Sex Discrimination Act 1975, and Part 1 of the Equality Act 2006, were transferred to CLG by article 7 of the Secretary of State for Communities and Local Government Order 2006 (S.I. 2006/1926). Property, rights and liabilities relating to functions under the Race Relations Act 1976 and Part 2 of the Equality Act 2006 were transferred to CLG by virtue of article 5 of the Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951).

4.4 The present Order is made under section 1 of the Ministers of the Crown Act 1975 which confers power to transfer functions of one such Minister to another and also to direct that functions of one Minister shall be exercisable concurrently with another. A “Minister of the Crown” is defined in section 8(1) of the Act as meaning the holder of an office in Her Majesty’s Government in the United Kingdom. The Lord Privy Seal is such a Minister but is not a Secretary of State. This Order makes it possible for the Lord Privy Seal to exercise the relevant functions.

4.5 The Order also makes use of powers conferred by section 2(2) of the European Communities Act 1972 for the purpose of the designation of the Lord Privy Seal in relation to discrimination, by article 6 of the Order.

4.6 Article 4 of the Order incorporates the Lord Privy Seal as a corporation sole, to permit the holding of property transferred under article 4 of the Order.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain, but does not affect devolved functions.

6. European Convention on Human Rights

The Secretary of State for Communities and Local Government has made the following statement regarding Human Rights:

In my view the provisions of the Transfer of Functions (Equality) Order 2007 are compatible with the Convention rights.

7. Policy background

7.1 Without this Order, the Lord Privy Seal would not be empowered to act under the legislation for which the GEO now has responsibility. The GEO has been formed by bringing together the former Women and Equality Unit (which was based in CLG) and other staff working on cross-cutting equality issues.

7.2 The GEO will take on responsibility for the Government’s overall policy and legislation on equality issues, and for sponsorship of the Commission for Equality and Human Rights. It will also be responsible for policy on gender equality and sexual orientation, and for integrating work on race, and on religion or belief equality, into the overall equality framework. The lead on race and faith (other than in respect of certain equality matters) will remain with CLG where it links strongly with the Department’s

work on community cohesion and preventing extremism. The lead on disability will remain in the Department for Work and Pensions.

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.

9. Contact

Melanie Field, Head of Discrimination Law, at the Government Equalities Office (tel: 020 7944 0626 or e-mail: Melanie.field@communities.gsi.gov.uk) can answer any queries regarding the instrument.