EXPLANATORY MEMORANDUM TO

THE DATA PROTECTION (PROCESSING OF SENSITIVE PERSONAL DATA) (ELECTED REPRESENTATIVES) (AMENDMENT) ORDER 2010

2010 No. 2961

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

To amend the Data Protection (Processing of Sensitive Personal Data) Elected Representatives) Order 2002 (SI 2002/2905) (the 2002 Order) to replace an out of date reference to the Government of Wales Act 1998.

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

None.

4. Legislative Context

4.1 The Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order 2002 (SI 2002/2905) contains an out of date reference to the Government of Wales Act 1998, the reference is in paragraph 2(b) of the Schedule to that Order. This Order enables elected representatives to process sensitive personal data in specific circumstances; these include processing in relation to the discharge of the functions of an elected representative carried out following a request by the data subject to the elected representative to take action on his behalf or that of another individual. The Order defines who is to be regarded as an elected representative to include members of the National Assembly for Wales and also defines when a person should cease to be so regarded and thus no longer entitled to process sensitive personal data; this latter definition is by reference to the relevant provisions of the Government of Wales Act 1998.

4.2 Under the Government of Wales Act 1998 an Assembly member ceased to be a member at the end of the day before the day of the poll at an ordinary election (section 2(5)(b)). This was different to the position of members of the House of Commons, the Scottish Parliament and the Northern Ireland Assembly and for this reason paragraph 2(b) of the Schedule was inserted into the 2002 Order. However, following the passing of the Government of Wales Act 2006, an Assembly member ceases to be an Assembly member on dissolution of the Assembly (section 14(b) of the Government of Wales Act 2006). This means that an Assembly member is now in the same position as a member of the House of Commons, the Scottish Parliament and the Northern Ireland Assembly.

4.3. We thus need to amend the 2002 Order to implement section 14(b) of the 2006 Act and provide that an Assembly member ceases to be regarded as an elected representative as at the date of dissolution of the Assembly, which itself is 21 days before the date of the election (disregarding Saturdays, Sundays, bank holidays and any days appointed for public thanksgiving or mourning). This will then apply the protection of the 2002 Order in a way consistent for all devolved legislatures and replace the out of date reference to the 1998 Act with a current reference.

5. Territorial Extent and Application

This instrument applies to England and Wales.

6. European Convention on Human Rights

The Rt Honourable Cheryl Gillan MP, Secretary of State for Wales, has made the following statement:

"*In my view the provisions of the Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) (Amendment) Order 2011 are compatible with Convention rights.*"

7. Policy background

Section 160 of the Government of Wales Act 2006 provides a mechanism to make modifications to enactments as a result of the coming into force of provisions in that Act. As a result of a review by the Assembly Parliamentary Service, an out of date reference to the Assembly as constituted under the Government of Wales Act 1998 was noticed in the 2002 regulations which this Order will rectify and will thus ensure that the protection given to Assembly members by the 2002 Order will be correctly applied.

8. Consultation

There has been no consultation in relation to this instrument.

9. Guidance

There is no guidance relevant to this instrument.

10. Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

11. Regulating small business

This does not apply to this Order.

12. Monitoring & review

This does not apply to this Order.

13. Contact

Susan Olley (Tel: 02920 89 8568 or email susan.olley@walesoffice.gsi.gov.uk) can answer legal queries about the instrument.