EXPLANATORY MEMORANDUM TO

THE FREEDOM OF INFORMATION (TIME FOR COMPLIANCE WITH REQUEST) REGULATIONS 2010

2010 No. [DRAFT]

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by command of Her Majesty.

2. **Purpose of the instrument**

2.1 Public authorities usually have 20 working days within which to reply to requests made under the Freedom of Information Act 2000 ("the Act"). In certain circumstances, these Regulations extend the time period within which the proprietors of Academies must respond to a request made under the Act.

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

3.1 None

4. **Legislative Context**

4.1 Section 10(1) of the Act requires public authorities to respond to a written request for information promptly, and in any event, not later than 20 working days from date of receipt. The proprietors of Academies in England are public authorities under the Act by virtue of paragraph 52A Part 4 Schedule 1 to the Act. Section 10(4) of the Act allows the Secretary of State to make Regulations to extend this 20 day time period to a maximum of 60 working days from the date of receipt of the request, although the legislation still requires that requests should be answered as promptly as possible. Section 10(5) allows such regulations to prescribe a different number of days in relation to different cases.

4.2 Two sets of Regulations have already been made under section 10(4) of the Act: the Freedom of Information (Time for Compliance with Request) Regulations 2004 (SI 2004/3364 – the "2004 Regulations") and the Freedom of Information (Time for Compliance with Request) Regulations 2009 (SI 2009/1369 – the "2009 Regulations"). Amongst other things, the 2004 Regulations make provision in respect of governing bodies of certain schools in England and Wales, and the 2009 Regulations make provision in respect of the managers of certain educational establishments in Northern Ireland. These Regulations make similar provision in respect of Academy proprietors.

5. **Territorial Extent and Application**

5.1 This instrument extends to the United Kingdom.

6. **European Convention on Human Rights**

6.1 Lord McNally, the Minister of State for Justice, has made the following statement regarding Human Rights:

"In my view the provisions of The Freedom of Information (Time for Compliance with Request) Regulations 2010 are compatible with the Convention rights."

7. Policy background

7.1 The Act provides for the right to make a request for information to a public authority. It entitles a person making such a request: (a) to be informed in writing by the public authority whether it holds information, and (b) if that is the case, to have that information communicated to them (section 1(1)).

7.2 Section 10(1) of the Act requires a public authority to comply with a request promptly, and in any event, not later than 20 working days following the date of receipt. Where the authority gives the applicant a fees notice, the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority, are to be disregarded for the purpose of calculating the twentieth working day (section 10(2)).

7.3 These Regulations are made under section 10(4) of the Act. They allow Academy proprietors a longer maximum period of time than is provided under section 10(1) to comply with section 1(1) of the Act. This is to take account of the fact that Academies close for periods well in excess of 20 working days (school summer holidays for example), making it impractical to deal with FOI requests within the normal 20 working days. Academy proprietors will not have to count any working day that is not a school day towards the period of 20 working days within which they have to answer requests for information, provided that the request is answered no later than 60 working days following the date of receipt of the request. Academy proprietors remain subject to the obligation to respond promptly: so if a request can be answered in less than the maximum period allowed by these Regulations, then it must be.

8. Consultation outcome

8.1 Prior to the making of these Regulations, the Department for Education informed existing Academies of the amendments in the Academies Act 2010 to extend the Act to them. In the same letter they were also informed that an order would be laid to allow Academies up to 60 working days to comply with requests under the Act.

9. Guidance

9.1 The Department for Education will write to inform Academies when these Regulations come into force and provide appropriate support. General guidance on section 10 is already provided by the Information Commissioner's Office and the Ministry of Justice.

10. Impact

10.1 Under section 12 of the Academies Act, any academy proprietor which is a company limited by guarantee with charitable objects and with registered offices in England and Wales becomes a charity. Academy proprietors established prior to the passage of the Academies Act are already companies limited by guarantee.

10.2 A Regulatory Impact Assessment has not been prepared for this instrument because it has no impact on business, charities or voluntary bodies. The Regulations assist the proprietors of Academies which receive an FOI request shortly before or during periods when there is no session at the school or unit by allowing them more than the normal time limit of 20 working days to respond to the request.

11. **Regulating small business**

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Information Commissioner's Office is the independent authority set up to ensure public authorities comply with their statutory obligations under the Act. If the Commissioner receives a significant increase in the number of complaints from requesters regarding the performance of Academies as a consequence of these Regulations, the Ministry of Justice will review the situation to ensure that the Act continues to work effectively.

13. Contact

Oliver Lendrum or Julianne Peterson of the FOI Policy and Strategy Team, Ministry of Justice will respond to any queries relating to the instrument. Tel 020 3334 3555

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