EXPLANATORY MEMORANDUM TO

THE PUBLIC SERVICES REFORM (SCOTLAND) ACT 2010 (CONSEQUENTIAL MODIFICATIONS OF ENACTMENTS) ORDER 2011

2011 No. [XXXX]

1. 1.1 This explanatory memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the instrument

2.1 This Order makes modifications in consequence of the passing of the Public Services Reform (Scotland) Act 2010 (asp 8) (the "2010 Act") by the Scottish Parliament and in consequence of secondary legislation made by the Scottish Ministers under that Act.

2.2 The 2010 Act made provision for the reduction and simplification of public bodies in Scotland. In particular it:

2.2.1 dissolved the Deer Commission for Scotland, merging its functions with Scottish Natural Heritage,

2.2.2 dissolved the Scottish Arts Council, transferring its functions and those of Scottish Screen to a new public body called Creative Scotland,

2.2.3 dissolved the Scottish Commission for the Regulation of Care,

2.2.3.1 transferring its care service scrutiny functions, the functions of the Social Work Inspection Agency and the child protection functions of Her Majesty's Inspectorate of Education in Scotland to a new public body called Social Care and Social Work Improvement Scotland; and,

2.2.3.2 transferring its independent health care scrutiny functions and the NHS scrutiny functions that were exercised by the Special Health Board, Quality Improvement Scotland to a new public body called Healthcare Improvement Scotland,

2.2.4 made provision to dissolve the Water Customer Consultation Panel and abolished the position of Convenor of those panels; and

2.2.5 made or enabled appropriate modifications of enactments to provide for same.

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

3.1 This Order is to be made in exercise of the powers conferred by sections 104, 112(1) and 113(2), (4) and (5) of the Scotland Act 1998 ("the 1998 Act"). Section 104 of the 1998 Act provides for subordinate legislation to be made in the UK Parliament which contains provisions which are necessary or expedient in consequence of any provision made by or under any Act of the Scottish Parliament; in this case the 2010 Act. This order is subject to affirmative resolution in the UK Parliament.

3.2 This Order is necessary and expedient in consequence of the 2010 Act. The order ensures references to dissolved bodies are removed from the UK statute book; where appropriate it also replaces those references to dissolved bodies with references to the successor bodies that now undertake the dissolved bodies functions. It also updates references to the functions of those bodies, applies legislation as appropriate to the new bodies and updates definitions now need to refer to updated definitions in the 2010 Act.

4. Legislative Context

4.1 This instrument is being made because the passing of the 2010 Act which dissolved a number of public bodies and consolidated their functions in existing or new public bodies. The 2010 Act also made or enabled appropriate modifications of enactments to provide for such.

4.2 Many pieces of existing legislation on the UK Statute book make reference to a body whose functions have now been altered or which has been dissolved by the 2010 Act, or to legislation that has now been modified by that Act. these reference no longer make sense and the therefore the legislation does not work as intended. Such legislation also needed to be updated to apply to the new legislation.

4.3 This Order accordingly makes amendments to existing legislation to ensure that references to bodies or legislation are updated to reflect the amended legislative regime in Scotland Act.

5. Territorial Extent and Application

5.1 This instrument extends to the United Kingdom but the modifications in the Schedule have the same extent as the provisions they are modifying.

5.2 Schedules 1 and 2 to the Order will come into force the day after the day on which the Order is made. Schedule 3 will come into force the day after the day on which the Order is made only if section 3 of the 2010 Act is already in force by then. If section 3 of the 2010 Act is not in force by then, Schedule 3 will come into force the day section 3 of the 2010 Act comes into force.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for Scotland, Rt. Hon. David Mundell MP has made the following statement regarding Human Rights:

> *'In my view the provisions of the Public Services Reform (Scotland) Act 2010 (Consequential Modifications of Enactments) Order 2011 are compatible with the Convention rights'.*

7. Policy background

7.1 The overarching purpose is to simplify and streamline the public bodies landscape in Scotland to deliver improved public services and better outcomes for the people of Scotland.

7.2 The Act comprises the following Parts:

7.2.1 Part 1 makes provision for the purpose of simplifying public bodies, including the transfer and delegation of certain functions, the dissolution of certain bodies and provision in relation to the regulation of officers of court,

7.2.2 Part 2 enables provision to be made for the purpose of improving the exercise of public functions and for removing and reducing burdens resulting from legislation,

7.2.3 Part 3 makes provision for the publication of information on expenditure and certain other matters by the Scottish Ministers and certain public bodies,

7.2.4 Part 4 establishes Creative Scotland with functions in relation to the arts and culture and industries and other activity the focus of which is the application of creative skills (the creative industries),

7.2.5 Part 5 establishes Social Care and Social Work Improvement Scotland with scrutiny functions in relation to care services and social work services,

7.2.6 Part 6 establishes Healthcare Improvement Scotland with scrutiny and other functions in relation to services provided under the National Health Service and independent health care services,

7.2.7 Part 7 amends the Mental Health (Care and Treatment) (Scotland) Act 2003 to make provision in relation to the Mental Welfare Commission for Scotland, focusing its role as a protective body, ensuring joined up working arrangements with the new scrutiny bodies and making changes to its structure,

7.2.8 Part 8 makes provision about the exercise of scrutiny functions by certain bodies, including provision in respect of the involvement of users of scrutinised services, cooperation and joint inspections. It also amends Part 2 of the Public Finance and Accountability (Scotland) Act 2000 in relation to audit authorities and audit reports and examinations under that Part and amends the Scottish Public Services Ombudsman Act 2002 to make provision in relation to complaints handling procedures of listed authorities,

7.2.9 Part 9 amends the Charities and Trustee Investment (Scotland) Act 2005 in relation to the regulation of charities and charity trustees,

7.2.10 Part 10 makes other miscellaneous and general provision.

7.3 The policy objective of the Order is to ensure that the enactments modified by it continue to operate where they interact with the new devolved legislation and to make provision as necessary in those enactments for the newly established bodies and procedures.

7.4 The modifications made to existing legislation by this Order are of a technical nature. They are required to ensure that existing legislation continues to operate effectively by recognising the modifications made to various prices of legislation by the 2010 Act and subordinate legislation made under it.

7.5 The modifications made by Schedule 1 of the Order substitute references in the House of Commons Disqualification Act 1975 and public Contract Regulations 2008 in consequence of the establishment of Creative Scotland and the dissolution of the Scottish Arts Council.

7.6 The modifications made by Schedule 2 of the Order generally substitute references to the Scottish Commission for the Regulation of Care, NHS Quality Improvement Scotland, and the Regulation of Care (Scotland) Act 2001 (asp 8) with references to Social Care and Social Work Improvement Scotland, Healthcare Improvement Scotland, the Public Services Reform (Scotland) Act 2010 (asp 8) and the National health Service (Scotland) Act 1978 (c.29) as appropriate.

7.7 The modifications made by Schedule 3 of the Order omit references to a Water Consultation Panel and the Convenor of the Water Consultation panel in various enactments in consequence of the abolition of the position of the Convenor of the Water Customer Consultation Panels and the dissolution of Water Customer Consultation Panels.

7.8 Section 104 of the Scotland Act is used to make this order as it is specifically designed to allow Parliament to make changes in consequence of an Act of the Scottish Parliament and subordinate legislation. The amendments proposed in this Order are all in consequence of the 2010 Act and subordinate legislation made under it.

Consolidation

7.9 This does not apply in relation to this order because there is nothing to consolidate the Order with.

8. Consultation outcome

8.1 The effect of the order is to maintain current policy. The Departments with responsibility for the legislation which this Order affects have been consulted during the drafting of this Order. All amendments contained in this Order have the approval of the relevant departments.

9. Guidance

9.1 Public Services are broadly devolved and so guidance on the working of the 2010 Act and associated legislation is a matter for the Scottish Government. Additionally, departments with responsibility for the legislation being amended will be able to provide guidance to stakeholders if required.

10. Impact

10.1 There will be no impact on business, charities or voluntary bodies.

10.2 The will be no impact on the public sector .

10.3 An Impact Assessment has not been prepared for this Instrument as the changes made by this order will have no impact on the private or voluntary sector.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The effect of this Order is purely consequential. It does not create new policy or frameworks and therefore no monitoring or review of the effects of this Order is required.

13. Contact

13.1 Lizzie Walker at the Scotland Office Tel: 020 7270 6811 or email: lizzie.walker@scotlandoffice.gsi.gov.uk can answer any queries regarding the instrument.