EXPLANATORY MEMORANDUM TO

THE ECCLESIASTICAL EXEMPTION (LISTED BUILDINGS AND CONSERVATION AREAS) (ENGLAND) (AMENDMENT) ORDER 2010

2010 No. 1806

1. This explanatory memorandum has been prepared by the Department for Culture, Media and Sportand is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order amends the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) (England) Order 2010 (SI 2010/1176) (the "2010 Order"). The 2010 Order replaced the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994 (the "1994 Order") and comes into force on 1 October 2010. The 2010 Order excludes the ecclesiastical exemption contained in section 60(1) and (2) and section 75(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 in respect of all ecclesiastical buildings other than those listed in the Order. The purpose of this Order is to correct a drafting error whereby a province of the United Reformed Church was inadvertently excluded from Schedule 2 of the 2010 Order.

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

3.1 None

4. Legislative Context

4.1 The Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Act") provides the legal basis for the way in which buildings considered to be of historic or architectural interest are identified and protected in England and Wales. The Act requires the Secretary of State to compile a list of buildings which merit special architectural or historic interest, or to approve such a list compiled by the Historic Buildings and Monuments Commission for England (known as English Heritage). These buildings are referred to as "listed buildings" under the Act. In general, works carried out to listed buildings require listed building consent from the local authority for works that affect their special interest.

4.2 Section 60(1) and (2) of the Act provides that ecclesiastical buildings which are for the time being used for ecclesiastical purposes are not subject to sections 3,4,7 to 9, 47, 54, 59 and 74 of the 1990 Act. These sections relate to listed building control, including building preservation notices, restrictions on works of demolition, alteration or extension, compulsory acquisition of buildings

in need of repair, urgent preservation works and offences in relation to intentional damage. Section 75 of the Act provides that ecclesiastical buildings which are for the time being used for ecclesiastical purposes are not subject to section 74 of the Act which relates to the control of demolition of building in a conservation area. These exemptions are commonly collectively referred to as ecclesiastical exemption. The meaning of "ecclesiastical building" is not defined in the Act and therefore is given its ordinary meaning.

4.3 The ecclesiastical exemption under the 1990 Act is subject to sections 60(3) and 75(5) of the Act which provide that the ecclesiastical exemption does not apply to a building which is used or available for use by a minister of religion wholly or mainly as a residence from which to perform the duties of his office.

4.4 Section 60(5) and section 75(7) of the Act enables the Secretary of State to make an order restricting or excluding the provisions in section 60(1) to (3) and section 75(1)(b) of the Act which confer the ecclesiastical exemption. The 2010 Order, and the 1994 Order which it replaced, have been the only instruments to be made under section 60(5) and section 75(7) of the 1990 Act.

4.5 The 2010 Order was made to apply the ecclesiastical exemption to objects and structures that were not previously exempt and restrict the exemption for some of the special cases that were referred to under the 1994 Order. The 2010 Order inadvertently omitted one of the provinces of the United Reformed Church listed under Schedule 2 of the 1994 Order which did not reflect the policy intention.

4.6 The Schedule 2 'provinces' reflect the 12 Synods of the United Reformed Church under which their buildings are administered and controlled. A building falling within one of the provinces and held on one of the Trusts specified under the United Reformed Church Act 1972 can take the benefit of the exemption under the 2010 Order. The omission of one of the provinces has inadvertently excluded a number of buildings from the benefit of the exemption who had previously enjoyed exemption under the 1994 Order and who were intended by policy to be included under the exemption conferred by the 2010 Order.

4.7 This Order does not reflect any change in policy. In summary, this Order amends the 2010 Order which contained a drafting error in Schedule 2 omitting the Northern Province included in Schedule of the 1994 Order and which policy had intended be included in the 2010 Order.

4.8 This instrument is being laid with a deferred coming into force date to coincide with the coming into force date of the 2010 Order which it amends.

5. Territorial Extent and Application

5.1 The Order will only apply in respect of buildings situated in England. Functions of the Secretary of State under the Act (except the Treasury functions under section 83(8)) so far as exercisable by Wales, were transferred to the National Assembly for Wales by virtue of article 2 of the Transfer of Functions Order 1999 (SI 1999/672).

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 The Department's policy is that the Ecclesiastical Exemption from Local Authority controls should only apply to buildings covered by a denominational system of control that provides equivalent protection provided by the Act. It was considered that only religious denominations which had a developed internal system of control to provide equivalent protection for buildings should benefit from the exemption under section 60 of the Act. An Order was made in 1994, which restricted the exemption to buildings of the Church of England, the Church in Wales, the Roman Catholic Church, the United Reformed Church, the Methodist Church, the Baptist Union of England and the Baptist Union of Wales. These denominations were considered to have developed internal systems of control to meet the policy objective.

7.2 The exempt denominations' systems of control follow the requirements of a code of practice issued by the Department which has been revised to reflect the provisions this Order. All denominational approval bodies are required to have representation from English Heritage (EH), local planning authorities (LPAs) and the amenity societies and should either include, or have arrangements for obtaining advice from, persons with professional conservation, archaeological and planning expertise in relation to the protection of ecclesiastical listed buildings and archaeological sites and the working of the secular planning system. In relation to applications for approval of works, systems are further required to include arrangements for consultation with EH, LPAs and the amenity societies.

7.3 Denominational arrangements are as follows:

- In the Church of England, decisions are made by diocesan chancellors, sitting in Consistory Court. Chancellors can seek advice from Diocesan Advisory Committees;

- In the Roman Catholic Church, decisions fall to one of 13 Historic Churches Committees which cover England and Wales;
- In the Methodist Church, decisions fall to a single Listed Buildings Advisory Committee;
- In the United Reformed Church, a Listed Building Advisory Committee to which decisions on works fall, is attached to each of 12 Synods covering England and Wales (as listed under Schedule 2 of the 1994 Order);
- In the Baptist Unions of England and Wales, a single Listed Buildings Advisory Committee makes decisions.

7.4 The 2010 Order was made to

- reduce the administrative burdens upon exempt denominations of caring for historic churches and their associated structures by removing inadvertent 'dual control' (whereby both Local Authority and denominational consents are needed); and
- remove the exemption from some of the 'special cases' which benefited under the 1994 Order, i.e. individual buildings which were able to take the benefit of the exemption despite not coming under denominational controls.

7.5 The policy intention of the 2010 Order did not include a reduction in the provinces of the United Reformed Church listed in Schedule 2 of the 1994 Order, which reflects the 12 Synods of the United Reformed Church in England and Wales under which their exempt churches are administered and controlled.

7.6 The policy intention of this Order is to amend the 2010 Order so as to correct a drafting error and include the Northern Province of the United Reformed Church in Schedule 2 of the 2010 Order as it had been under the 1994 Order.

Consolidation

7.7 This instrument represents a minor amendment to the 2010 Order and as such, there are no immediate plans to consolidate the legislation. Consolidation will be considered at the point of the next substantive amendment to the 2010 Order.

8 Consultation outcome

8.1 The Department has not consulted on the change to be made under this Order as the amendment corrects an error and reflects the policy which underpinned the 2010 Order on which substantive consultation was conducted.

9. Guidance

9.1 The Department and English Heritage publish guidance for owners of listed buildings and for local authorities. Guidance on the Ecclesiastical Exemption is being revised and a new version published in good time for the coming into force of this amendment.

9.2 In addition, the exempt denomination affected by both the drafting error under the 2010 Order and the amendment under this Order has been informed of the change and given contact details.

10. Impact

10.1 There is no impact on business or any other body or person as a result of this Order as it reinstates the position of the 1994 Order which continues to apply until both the 2010 Order and the amendment under this Order come into force on 1 October 2010.

10.2 There is therefore no Impact Assessment attached to this memorandum.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & Review

12.1 Successful outcomes achieved by this measure will be the correction of a drafting error under the 2010 Order in order to maintain the position under the 1994 Order. As such, no monitoring or review will be undertaken in relation to the amendment under this Order.

13. Contact

Jeremy Dann at the Department for Culture, Media and Sport, Tel: 020 7211 2348 or email: jeremy.dann@culture.gsi.gov.uk can answer any queries regarding the instrument.