EXPLANATORY MEMORANDUM TO

THE FREEDOM OF INFORMATION (ADDITIONAL PUBLIC AUTHORITIES) ORDER 2011

2011 No. 1041

And

THE FREEDOM OF INFORMATION (REMOVAL OF REFERENCES TO PUBLIC AUTHORITIES) ORDER 2011

2011 No. 1042

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 The Freedom of Information (Additional Public Authorities) Order 2011 adds a number of bodies and officer holders to Part 6 and Part 7 of Schedule 1 to the Freedom of Information Act 2000 ("the Act"). Bodies and office holders listed in Schedule 1 to the Act are considered to be public authorities for the purposes of the Act and as a result each body and office holder will be required to make information available to the public in accordance with the Act.

2.2 The Freedom of Information (Removal of References to Public Authorities) Order 2011 removes references to public authorities from Part 6 and Part 7 of Schedule 1 of the Act. On the date the Order enters into force those authorities will have either ceased to exist or ceased to satisfy the first or second condition set out in section 4(2) and 4(3) of the Act which set out the criteria for inclusion within Schedule 1 to the Act.

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

3.1 None

4. Legislative Context

4.1 Section 4(1) of the Act allows the Secretary of State to amend Schedule 1, and bring within the scope of the Act, a body or office holder who meets the following conditions, set out in section 4(2) and 4(3):

4.1.1 that the body or office is established by Her Majesty's prerogative, enactment or subordinate legislation, or by a Minister of the Crown, a government department, the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government; and

4.1.2 that in the case of a body, it is wholly or partly constituted by appointment made by the Crown, a Minister of the Crown, a government department, the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government; and that in the case of an office, appointments are made by the Crown, a Minister of the

Crown, a government department, the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government.

4.2 The purpose of an order under section 4(1) of the Act is to add newly created public bodies or offices, or public bodies or offices which had not previously been added, to the list of "public authorities" to whom the Act applies.

4.3 The bodies and office holders to be added to Schedule 1 by this Order each meet the conditions set out in section 4(2) and (3) of the Act. The Order is the eighth order to be made under section 4(1) of the Act.

4.4 Section 4(5) of the Act provides that the Secretary of State may remove from Schedule 1 a reference to any body or office holder that has:

4.4.1 ceased to exist, or

4.4.2 ceased to satisfy either the first or second condition for inclusion in an Order under section 4(1) of the Act.

4.5 The purpose of an order under section 4(5) of the Act is to remove references to bodies that have ceased to exist or ceased to satisfy the first or second condition set out in section 4(2) and 4(3).

5. Territorial Extent and Application

5.1 These instruments apply to the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister of State has made the following statement regarding Human Rights:

In my view the provisions of The Freedom of Information (Additional Public Authorities) Order 2011 and The Freedom of Information (Removal of References to Public Authorities) Order 2011 are compatible with the Convention rights.

7. Policy background

7.1 The Act makes provision for the disclosure of information held by public authorities. These orders contribute to the Government's aim to extend the scope of the Act to provide greater transparency. The Act aims to enable greater transparency, accountability and engagement, for example by providing more information about how public money is spent and providing the context for better-informed public debate.

7.2 The 20 bodies that are being added to the list of public authorities in Schedule 1 to the Act include a number of newly created public bodies, some that had previously been regarded as being part of another public authority but which actually meet the conditions for designation in their own right, and some that were not included previously but that perform comparable functions to those that are already in the list. It will also amend entries where a body has had a

statutory name change. The Act will apply to these bodies from 1 October 2011.

7.3 The Freedom of Information (Removal of References to Public Authorities) Order 2011 removes 14 public bodies from the scope of the Act. All but one of those bodies have already ceased to exist, so there will be no practical reduction in the scope of the Act.

7.4 Schedule 13 to the Justice (Northern Ireland) Act 2002 removes the Law Reform Advisory Committee for Northern Ireland ("the Committee") from Part 7 of Schedule 1 to the Act. However, the paragraph in Schedule 13 that removes the Committee from Schedule 1 to the Act was never commenced and it is considered to be more efficient to remove the Committee's entry in Schedule 1 to the Act through the section 4(5) Order rather than a separate commencement order.

8. Consultation outcome

8.1 Section 4(7)(a) and (b) states that the Secretary of State will consult with Welsh Assembly Government in respect of those bodies or office holders whose functions are exercisable only or mainly in or with regards to Wales and the Office of the First Minister and Deputy First Minister in respect of those bodies that would become Northern Ireland public authorities before making a section 4(1) Order.

8.2 The First Minister and Deputy First Minister of Northern Ireland confirmed on 3rd March 2011 that they were content with the two bodies whose functions are exercisable only or mainly in or as regards to Northern Ireland, to be included in the section 4(1) Order. No bodies or office holders whose functions are exercisable only or mainly in or with regards to Wales are included in the Section 4(1) Order.

8.3 There is no similar requirement to consult the Welsh Assembly Government or the First Minister and Deputy First Minister of Northern Ireland in relation to section 4(5) Orders.

9. Guidance

9.1 The Ministry of Justice provides guidance on its website for all bodies and officer holders covered by the Act. The guidance covers the obligations of the bodies and offices covered and also procedural matters and enforcement of the Act. The guidance is freely available to all users of the Act.

10. Impact

10.1 An Impact Assessment has not been prepared for these instruments because they do not impose or reduce costs on business, charities or voluntary bodies.

10.2 A public sector Impact Assessment has not been carried out for these instruments. The absence of an impact assessment is justified for the following reasons. The change covered by the instruments does not impose new costs of more than £5 million per annum on any of the public bodies covered by the instruments. Based on the figures provided in the 'Independent Review of the Impact of the Freedom of Information Act' published in 2006 which estimated that for central government the average cost of officials' time for dealing with an initial freedom of information request is £254, it is unlikely that levels of requests to the bodies being added to Schedule 1 will reach a level to cause a significant impact.

10.3 The public sector bodies and office holders that are added to the Schedule and become covered by the Act will be required to produce a list of publications that they routinely make available (a publication scheme) and publish in accordance with it. The public sector bodies and office holders will also be required to answer requests for information. This will require them to determine if they hold requested information, and if so disclose that information, unless they consider relevant exemptions from disclosure apply and reply accordingly. There is no obligation for public authorities to comply with vexatious requests or those that exceed a costs threshold determined by the Secretary of State. The costs of disbursements can be recovered. There is no significant impact on any other part of the public sector.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 No specific monitoring and review arrangements are needed.

13. Contact

Jane Sigley at the Ministry of Justice Tel: 020 3334 5442 or email: informationrights@justice.gsi.gov.uk can answer any queries regarding the instruments.