EXPLANATORY MEMORANDUM TO

THE FREEDOM OF INFORMATION (ADDITIONAL PUBLIC AUTHORITIES) ORDER 2010

2010 No. 937

AND

THE FREEDOM OF INFORMATION (REMOVAL OF REFERENCES TO PUBLIC AUTHORITIES) ORDER 2010

2010 No. 939

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 2010 adds public bodies to Schedule 1 to the Freedom of Information Act 2000 ("the Act"). As a public authority for the purposes of the Act, each body 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 2010 removes references to public authorities from Schedule 1 of the Act, as on the date the order enters into force they will have either ceased to exist or ceased to satisfy the first or second condition set out in section 4(2) and 4(3).

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 designate a body or office as a "public authority" and so bring it within the scope of the Act, provided that the following conditions, set out in section 4(2) and 4(3), are met:

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 bodies covered by the Act.

4.3 The bodies 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 seventh 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 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 the 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 2010 and The Freedom of Information (Removal of References to Public Authorities) Order 2010 are compatible with the Convention rights.

7. Policy background

7.1 The Act makes provision for the disclosure of information held by public authorities. This contributes to the Government's aim to strengthen the connection between citizens and the state. 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 bodies that are being added to the list of public authorities in the Schedule to the Act include a number of newly created public bodies, and some that were not included previously but that perform comparable functions to those that are already in the list. The Act will apply to most

of these bodies from 1st October 2010. The exceptions are the Building Regulations Advisory Committee for England and the Building Regulations Advisory Committee for Wales, which will each be added to Schedule 1 on 31st December 2011. This is because the Welsh Ministers (Transfer of Functions) (No. 2) Order 2009 replaces the current Building Regulations Advisory Committee with two separate committees (one for England and one for Wales) and this order will not come into force until 31st December 2011.

7.3 The Freedom of Information (Removal of References to Public Authorities) Order 2010 removes a number of 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. The exception is the Building Regulations Advisory Committee, which will cease to exist on the coming into force of the Welsh Ministers (Transfer of Functions) (No. 2) Order 2009 on 31st December 2011. This body will therefore be removed from Schedule 1 of the Act from that date.

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 as 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 for Wales confirmed on 8 February 2010 that he was content with those bodies whose functions are exercisable only or mainly in or as regards to Wales, to be included in the section 4(1) order. No Northern Ireland bodies are included in the Section 4(1) order.

9. Guidance

9.1 The Ministry of Justice provides guidance on its website for all bodies 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 FOI 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 that are added to the Schedule and 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 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 reply to vexatious requests or those that exceed a costs threshold which is determined from time to time 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: jane.sigley@justice.gsi.gov.uk can answer any queries regarding the instruments.