EXPLANATORY MEMORANDUM TO

THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) (VARIATION) ORDER 2006

2006 No. 88

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

2. Description

The Order substitutes for Schedule 12A (access to information: exempt information) to the Local Government Act 1972 ("the 1972 Act") a new Schedule 12A. It also amends sections 100F (additional rights of access to documents for members of principal councils) and 100I (exempt information and power to vary Schedule 12A) in Part 5A of the 1972 Act. The Order also makes provision preserving the legal position under the existing Schedule 12A as it applies in relation to principal councils in Wales.

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

None.

4. Legislative Background

4.1 Part 5A of, and Schedule 12A to, the 1972 Act make provision in relation to access to meetings and documents of principal councils, and certain committees and sub-committees of those councils.

4.2 A principal council is a county council, district council or London borough council in relation to England and a county council or county borough council in relation to Wales. Principal councils also include, for the purposes of Part 5A, the bodies listed in section 100J (application to new authorities, Common Council, etc) of the 1972 Act.

4.3 In Part 5A, section 100A(4) (admission to meetings of principal councils) permits a principal council by resolution to exclude the public from a meeting during an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during that item there would be a disclosure to them of exempt information.

4.4 Exempt information is defined in section 100I (exempt information and power to vary Schedule 12A) as the descriptions of information which are, for the purposes of Part 5A, for the time being specified in Schedule 12A.

4.5 The Order substitutes a new Schedule 12A for the previous Schedule 12A. Parts 1 to 3 of the new Schedule 12A apply in relation to principal councils in England.

4.6 In Part 1 of the new Schedule 12A, some of the descriptions of information listed in Part 1 of the previous Schedule 12A are replaced by simpler and clearer descriptions. Similarly, in Part 2 of the new Schedule 12A, some of the previous qualifications are replaced by a public interest test. Consequential amendments are also made to sections 100F (additional rights of access to documents for members of principal councils) and 100I (exempt information and power to vary Schedule 12A).

4.7 The powers under sections 100F and 100I have been transferred to the National Assembly for Wales, insofar as they are exercisable in relation to principal councils in Wales, by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). It is understood that the National Assembly for Wales propose in due course to make an order to amend Schedule 12A as it applies in relation to principal councils in Wales.

4.8 In making the changes to Part 5A and Schedule 12A, it is necessary to preserve the legal position under those provisions, as they applied before these amendments, in relation to principal councils in Wales. This is achieved by consequential amendments to sections 100F and 100I and by the replication of Parts 1 to 3 of the previous Schedule 12A, which applied in relation to principal councils in Wales, in Parts 4 to 6 of the new Schedule 12A which apply in relation to those councils.

4.9 The Order also replaces references to ‘the Secretary of State’ in sections 100F and 100I with references to the appropriate authority, which is defined in those provisions as meaning in relation to England, the Secretary of State, and in relation to Wales, the National Assembly for Wales. This amendment is made so that the role of the National Assembly for Wales appears on the face of the Act. In the absence of such provision, the Order would need to make it clear that the National Assembly for Wales (Transfer of Functions) Order 1999, transferring the functions of the Secretary of State under sections 100F and 100I to the National Assembly of Wales, included a reference to the Secretary of State’s functions under those sections as amended by the present Order.

4.10 As the Order makes changes to primary legislation we have consulted with the Office of the Parliamentary Counsel. That Office has confirmed that it is content with the form and text of the Order.

5. Extent

This instrument applies to principal councils in England and Wales as mentioned above.

6. European Convention on Human Rights

The Minister for Local Government, Phil Woolas, has made the following statement regarding Human Rights:

In my view the provisions of the Local Government (Access to Information) (Variation) Order 2006 are compatible with the Convention rights.

7. Policy background

7.1 Part 5A of the Local Government Act 1972 provides for public access to the meetings and documents of principal councils and their committees and sub-committees, to increase transparency in local government decision making. However this access should not be available to the public where this would disclose confidential information.

7.2 Schedule 12A lists categories of such information and is the primary point of reference for council members and their officers in deciding which parts of meetings and documents are not to be open to public access. Schedule 12A therefore plays a key role in enabling principal councils to strike the right balance between the right of the public to attend meetings of principal councils and inspect minutes and related documents, and the need to safeguard information which it would be inappropriate to disclose to the public at those meetings.

7.3 Consultation on local authority information issues carried out in anticipation of the coming into force of the Freedom of Information Act 2000 by the Office of the Deputy Prime Minister in 2002 indicated a need for Schedule 12A to be revised. An access to information review group, whose membership was drawn from local government, information users and other Government Departments was set up to consider this and related issues. The group recommended that the Schedule be amended in the light of forthcoming legislation on information by simplifying the descriptions of exempt information in Part 1 of that Schedule. Simplified wording is a feature of the Freedom of Information Act 2000, and a good example of this

is the exemptions which can be found under Part 2 of that Act. The group also recommended replacing qualifications to certain exemptions with a public interest test along the lines of the one contained in that Act.

7.4 A draft Order, based on the review group's proposals, was consulted on with stakeholders. Responses to this consultation suggested amendments be made to the Order to reflect a number of concerns. These included concerns over the removal of the descriptions of exempt information listed in paragraphs 1 to 6 of Schedule 12A on the grounds that the safeguards in the Data Protection Act 1998 rendered them unnecessary. On consideration of these concerns, it was felt that because of the differences in the purpose of Part 5A and Schedule 12A on the one hand, and the Data Protection Act 1998 on the other, the descriptions should be retained. In the new Schedule 12A they have been subsumed within a single description of exempt information covering information relating to any individual.

7.5 Concern was also expressed that the paragraph intended to replace paragraphs 7 - 11 of Schedule 12A which was concerned with commercial interests only was phrased too narrowly with the result that it might not cover information relating to labour relations which is described in paragraph 11. In response, we decided that whilst a single paragraph, paragraph 3 in the new Schedule 12A describing information relating to the financial and business interests of a person would be likely to cover the descriptions in paragraphs 7 to 10, the wording of paragraph 11 should be retained and this is replicated in paragraph 4 of the new Schedule 12A.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is neutral.

9. Contact

Luke Scofield at the Office of the Deputy Prime Minister (tel: 020 7944 4275 or e-mail: luke.scofield@odpm.gsi.gov.uk) can answer any queries regarding the instrument.