EXPLANATORY MEMORANDUM TO

THE LORD PRESIDENT OF THE COUNCIL ORDER 2010

2010 No. 1837

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 This Order, made under the Ministers of the Crown Act 1975, makes provision in connection with the entrustment to the Lord President of the Council of functions in relation to elections, political parties and related matters, and various constitutional matters, following the Prime Minister's Written Ministerial Statement on 2 June 2010.

2.2 The Order provides for functions under a number of enactments dealing with elections, political parties and related matters, presently exercisable by the Secretary of State, to be exercisable concurrently by the Secretary of State and the Lord President of the Council, and for functions under the Political Parties, Elections and Referendums Act 2000, which are exercisable concurrently by the Secretary of State and the Lord Chancellor, instead to be exercisable concurrently by the Secretary of State and Lord President of the Council.

2.3 The Order also transfers some functions of the Lord Chancellor to the Lord President of the Council; and it transfers property, rights and liabilities associated with the functions transferred or made exercisable concurrently, and makes consequential amendments to relevant legislation.

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

3.1 None.

4. Legislative Context

4.1 The decision to make the statutory functions in question exercisable concurrently by the Lord President of the Council and the Secretary of State requires an Order under the Ministers of the Crown Act 1975 and cannot be implemented administratively. The same applies in relation to the transfer of the functions from the Lord Chancellor to the Lord President. The Order is also required to make appropriate supplementary provision in relation to these matters.

4.2 The functions of the Lord Chancellor which are transferred by the Order are not functions which are reserved by virtue of the Constitutional Reform Act 2005, and so may be the subject of an Order under the Ministers of the Crown Act 1975.

4.3 The functions of the Secretary of State under a number of the enactments covered by the Order were made exercisable concurrently by the Secretary of State and the Lord Chancellor by the Transfer of Functions (Transport, Local Government and the Regions) Order 2002 (SI 2002/2626), and subsequently (with the exception of functions under the Political Parties, Elections and Referendums Act 2000) transferred to the Secretary of State alone by the Secretary of State for Constitutional Affairs Order 2003 (SI 2003/1887). Other functions in relation to certain constitutional issues which are transferred to the Lord President of the Council alone were transferred to the Lord Chancellor from the Home Secretary by the Transfer of Functions (Miscellaneous) Order 2001 (SI 2001/3500).

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Secretary of State for Justice has made the following statement regarding Human Rights:

"In my view the provisions of the Lord President of the Council Order 2010 are compatible with the Convention rights."

7. Policy background

- What is being done and why

7.1 In the Written Ministerial Statement of 2 June 2010, the Prime Minister announced that, to bring into effect the decision that the Deputy Prime Minister should be given special responsibility for political and constitutional reform, responsibility for a range of matters relating to elections, the duration of Parliaments and the make-up of Parliament, and for specific bodies including the Electoral Commission, would transfer from the Secretary of State for Justice to the Deputy Prime Minister. With these responsibilities for reform, and for the policy relating to specific bodies, comes the responsibility for the underlying administrative and policy areas.

7.2 It is to give effect to this transfer that the Order makes provision for the functions of the Secretary of State under the enactments relating to electoral and related matters to be exercisable concurrently by the Secretary of State and the Lord President of the Council. (The office of Lord President of the Council is held by the Deputy Prime Minister.)

7.3 The electoral and related functions are made exercisable concurrently by the Secretary of State and Lord President of the Council, rather than being transferred outright, to retain flexibility so that, for example, functions which may more appropriately be performed separately in relation to different parts of the United Kingdom may be performed by the relevant Secretary of State. Certain functions have been excepted from the general approach and remain exercisable by the Secretary of State alone because they are particularly specific to Northern Ireland and are most appropriately performed by the Secretary of State for Northern Ireland.

7.4 Functions of the Lord Chancellor in relation to the Monarchy, titles and dignities, ceremonial matters and bodies or organisations established or incorporated by Royal Charter have been entrusted to the Deputy Prime Minister as Lord President of the Council under the prerogative and associated transfers made administratively. The constitutional functions which are transferred by the Order are accordingly a residual grouping for which legislative change, and hence an Order under the Ministers of the Crown Act 1975, is required.

- Consolidation

7.5 While this Order amends a number of enactments in consequence of the transfer of functions, it does not in itself create a need for consolidation. The question of whether there is a need for consolidation of the body of electoral legislation will be more appropriately addressed in the context of further reforms.

8. Consultation outcome

8.1 There is no statutory requirement to consult on this Order, which gives effect to a machinery of Government change already announced to Parliament; and there has not been any formal consultation on the Order itself.

9. Guidance

9.1 There does not appear to be any need to issue guidance on the machinery of Government change, and there are no plans to do so.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 As the Order is limited to making provision giving effect to a machinery of Government change, no monitoring or review is felt to be necessary. Should experience indicate that any further adjustment of functions between Ministers of the Crown is necessary, that will be addressed by further machinery of Government change or in the course of further reforms.

13. Contact

Alasdair Wallace at the Ministry of Justice Tel: 0203 334 4798 or email: Alasdair.Wallace@justice.gsi.gov.uk can answer any queries regarding the instrument.