EXPLANATORY MEMORANDUM TO

THE CHILD ABDUCTION AND CUSTODY ACT 1985 (JERSEY) ORDER 2006

2006 No. 1917

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Order will allow The Hague Convention on the Civil Aspects of International Child Abduction 1980 and the European Convention on Recognition and Enforcement of Decision concerning Custody of Children and on Restoration of Custody of Children 1980 to apply between Jersey and the constituent parts of the United Kingdom.

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

3.1 None.

4. Legislative Background

4.1 The Order is made under the Child Abduction and Custody Act 1985 which gives effect, in the United Kingdom, to the Hague Convention on the Civil Aspects of International Child Abduction 1980 and the European Convention on Recognition and Enforcement of Decision concerning Custody of Children and on Restoration of Custody of Children 1980

5. Extent

5.1 This Order extends to England and Wales, Scotland and Northern Ireland.

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

7.1 The UK government is responsible for the international relations of the Crown Dependencies. When the UK entered into the Hague Convention on the Civil Aspects of International Child Abduction 1980 and the European Convention on Recognition and Enforcement of Decision concerning Custody of Children and on Restoration of Custody of Children 1980 the Conventions were not extended to Jersey. The Island did not have the necessary legislation in place to give effect to them at that time.

7.2 Jersey has now enacted the necessary domestic legislation in this respect and, with effect from 1 January 2006, the UK's ratification of both Conventions was extended to the Island. The Conventions will in future apply between Jersey and all the other contracting states. The Order is needed to modify the Child Abduction and Custody Act 1985 in order

that the UK may discharge its international obligations which now exist in respect of Jersey and to extend the rule-making powers in that Act to make reciprocal provision relating to court proceedings in Jersey.

7.3 Issues of child abduction and custody will engage Article 8 (right to respect for private and family life) of the European Convention on Human Rights. In resolving child abduction and custody issues in favour of one parent, for example, as against another, the Article 8 rights of the other will be infringed. However, in doing so the aim is to protect the interests of the child, which is considered to be a legitimate aim for the purposes of Article 8(2) of the European Convention on Human Rights.

7.4 The Family Procedure Rule Committee has agreed the policy behind these changes. The final text of the Orders has been agreed with the authorities in Jersey.

8. Impact

8.1 No Regulatory Impact Assessment has been prepared because there is no regulatory impact on any part of the private or voluntary sector. There are no implications for the Exchequer.

9. Contact

9.1 Any enquiries about the contents of this memorandum should be addressed to: Mrs S Smith, Crown Dependencies Branch, Crown Division, 6.04 Selborne House, 54 Victoria Street, London SW1E 5QW