EXPLANATORY MEMORANDUM TO

THE CRIMINAL JUSTICE AND COURT SERVICES ACT 2000 (AMENDMENT) ORDER 2007

2007 No. 2171

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

2. Description

2.1 The purpose of the Order is to correct some omissions in the consequential amendments made by the Fraud Act 2006 ("the Fraud Act") to Schedule 6 to the Criminal Justice and Court Services Act 2000 ("Schedule 6"), which specifies "trigger offences" for the purposes of testing persons for specified Class A drugs in a number of circumstances. The Order substitutes a new paragraph in Schedule 6 for that specifying attempted offences in relation to the Theft Act 1968. This omits the reference to section 15 (obtaining property by deception), which was repealed by the Fraud Act, and adds a reference to section 1 of the Fraud Act 2006 (fraud) in its place.

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

3.1 None

4. Legislative Background

4.1 "Trigger offences" as specified in Schedule 6 trigger the provisions in section 63B of the Police and Criminal Evidence Act 1984 ("PACE") allowing for the taking of samples from persons in police detention and at later stages in the criminal justice system, to test for the presence of specified Class A drugs (heroin, cocaine/crack). The offences initially included acquisitive crime (shown by research to be those most closely associated with the misuse of specified Class A drugs) and offences under sections 4, 5(2) and 5(3) of the Misuse of Drugs Act 1971 (relating to the production, possession and supply of controlled drugs) if committed in respect of a specified Class A drug.

4.2 Further offences were added to Schedule 6 with effect from 27 July 2004 by the Criminal Justice and Court Services Act 2000 (Amendment) Order 2004 (S.I. 2004/1892). These included attempts (under section 1(1) of the Criminal Attempts Act 1981) in relation to some of the Theft Act 1968 offences, including section 15 (obtaining property by deception), which were inserted in a new paragraph 3.

4.3 The Fraud Act (subject to some transitional provisions set out in Schedule 2 to that Act) repealed section 15 of the Theft Act 1968 (obtaining

property by deception) and repealed the reference to that offence as a trigger offence from paragraph 1 of Schedule 6. It also inserted in Schedule 6 (in a second paragraph 3) three provisions under the Fraud Act as trigger offences, namely section 1 (fraud); section 6 (possession etc of articles for use in frauds) and section 7 (making or supplying articles for use in frauds).

4.4 These amendments, as contained in Schedules 1 and 3 to the Fraud Act (minor and consequential amendments and repeals) took effect on 15 January 2007 when the Fraud Act came into force (by virtue of S.I. 2006/3200).

4.5 The Fraud Act consequential amendments failed to take account of the existing paragraph 3 in Schedule 6 (relating to the attempted offences) and as a consequence of this oversight failed to repeal the reference to the attempted offence of obtaining property by deception and to provide for an attempted offence of fraud in its place.

4.6. As there is no general provision in the Fraud Act to make further consequential amendments, an Order is being made under section 70(2) of the Criminal Justice and Courts Services Act 2000 ("CJCSA") to rectify and clarify the position as soon as possible. This provides for the Secretary of State (in practice, the Home Secretary) by order, to amend Schedule 6 so as to add, modify or omit any description of offence.

4.7 Whether an offence is a trigger offence is significant in determining whether the criteria, set out in certain statutory provisions, for testing for specified Class A drugs are met. Those provisions are:

- Section 63B of PACE (testing for presence of Class A drugs). This provides for a sample of urine or a non-intimate sample to be taken from a person in police detention for the purpose of ascertaining whether he has any specified Class A drug in his body, when arrested for, or charged with a trigger offence.

- Section 65 of the Criminal Justice Act 1991 (supervision of young offenders after release). Where a young offender (18-21) is released from the custodial element of a term of detention he is subject to a period of supervision, during which he must comply with a set of requirements. Where the detention was imposed for a trigger offence, the notice of supervision may include a requirement for the young offender to provide a sample for a test for specified Class A drugs.

- Section 64 of the CJCSA (release on licence etc: drug testing requirements). This provides that one of the criteria for including a drug-testing requirement as a condition of release on licence is that the person concerned has been released from a sentence of imprisonment imposed for a trigger offence.

4.8 There are also other purposes for which trigger offences originally applied but which now have very limited effect. These are drug abstinence requirements (made as part of Community Rehabilitation Orders or

Community Punishment Orders under section 42 and 47 of the Powers of Criminal Courts (Sentencing) Act 2000, and Drug Abstinence Orders under section 58A of that Act. These provisions were repealed, subject to saving provisions, on 4 April 2005 by the Criminal Justice Act 2003 (Commencement) No. 8 and Transitional and Saving Provisions) Order 2005 (SI 2005/950).

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

In my view the provisions of the Criminal Justice and Court Services Act 2000 (Amendment) Order 2007 are compatible with the Convention rights.

7. Policy background

7.1 The offence of obtaining property by deception ceased to be a trigger offence for the purposes of drug testing on 15 January 2007 when that offence was repealed from Schedule 6 by the Fraud Act. In its place, the Fraud Act added the offence of fraud (section 1 of that Act) as a trigger offence in Schedule 6.

7.2 The Order corrects the present anomaly in the trigger offences specified in Schedule 6 whereby the offence of obtaining property by deception has been repealed as a trigger offence but the attempted offence remains listed as a trigger offence. It adds attempted fraud as a trigger offence to ensure that the offending previously captured by the attempted offence of obtaining property by deception continues to be so captured. These amendments will clarify the position with regard to trigger offences for practitioners, particularly police and probation staff responsible for conducting drug testing.

7.3 Drug testing persons in police detention is a way of identifying drug misusers at an early stage in the criminal justice system and, under provisions in the Drugs Act 2005, a person who tests positive on arrest or charge may be required to attend assessments of that drug misuse leading to treatment and/or other assistance where appropriate. Trigger offences facilitate that process. Tests may also be undertaken in the case of other offences but only where an officer of at least the rank of inspector has reasonable grounds for suspecting that the misuse of heroin, cocaine or crack/cocaine caused or contributed to the offence and authorises the test.

7.4 Drug testing on licence or notice of supervision is targeted at known drug users who may revert to drug use on release. The purpose of testing is to

monitor their behaviour and ensure that those testing positive receive appropriate treatment.

7.5 Whilst the legislative provisions for testing persons in police detention on arrest or charge and for testing persons released on licence or on a notice of supervision apply to England and Wales, their operation is targeted. Drug testing on arrest or charge operates in selected police stations in police areas with the highest levels of acquisitive crime, subject to the relevant statutory notification for such testing having been issued by the Secretary of State to Chief Constables concerned. (23 police force areas as at April 2007). Testing in respect of release on licence or notice of supervision is limited by the National Offender Management Service to offenders who are defined by local crime and disorder reduction partnerships (CDRPs) as 'prolific and other priority offenders' (PPOs) who have a substance misuse habit linked to their offending.

7.6 Stakeholders and practitioners will be informed of the changes made by the Order by means of a Circular and the earlier guidance issued to police and probation strategic leads about the changes in trigger offences made by the Fraud Act will be updated.

8. Impact

8.1 A full 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 minimal.

9. Contact

Marilyn Blomfield at the Home Office Tel: 020 7035 0537 or e-mail: marilyn.blomfield@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.