EXPLANATORY MEMORANDUM TO

THE CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ACT 1990 (ENFORCEMENT OF OVERSEAS FORFETURE ORDERS) (NORTHERN IRELAND) ORDER 2005

2005 No. 3179

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

2. Description

2.1 This Order enables assistance to be given to other countries or territories designated under the Order by enforcing a forfeiture order made by an overseas court in respect of anything used or intended for use in connection with the commission of an offence. This Order will come into effect on [31 December 2005] subject to annulment in pursuance of a resolution of either House.

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

3.1 None

4. Legislative Background

4.1 This Order is made under section 9 of the Criminal Justice (International Co-operation) Act 1990, as amended most recently by the Serious Organised Crime and Police Act 2005 (section 95). Under section 9(1), Her Majesty may by Order in Council provide for the enforcement of any order which is made by a court in a country or territory outside the United Kingdom designated for the purposes of that section and which is for the forfeiture and destruction (or other disposal) of anything in respect of which an offence to which section 9 applies has been committed. Section 95 of the 2005 Act extended the offences to which section 9 applies from primarily drug-related offences to cover any offence that corresponds to, or is similar to, an offence under the law of any part of the United Kingdom.

4.2 This Order replaces an existing Order (SI 1464/1991) and brings the requirements for handling overseas requests for instrumentalities of crime into line with those in respect of assets under the Proceeds of Crime Act 2002 and the Order made under section 444 of that Act. Instrumentalities of crime do not come within the scope of powers in respect of the proceeds of crime and therefore require separate provision. There are separate Orders made under section 9 of the 1990 Act in respect of England and Wales and Scotland.

5. Extent

5.1 This instrument applies to 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 Order will broaden the circumstances in which it is possible to give effect to an overseas forfeiture order in respect of instrumentalities of crime to forfeiture orders involving any offence. The existing order is restricted to drug-related offences. The Government is committed to combating all forms of transnational crime. By providing assistance in a greater range of circumstances, the UK will be able to fulfil requirements to confiscate instrumentalities of crime under various international agreements. In particular, it will fulfil our obligations under the United Nations Convention against Transnational Organised Crime (UNTOC) and the United Nations Convention against Corruption (UNCAC) and allow the United Kingdom to ratify these important Conventions.

7.2 The UN Convention against Transnational Organised Crime was signed in 2000. It promotes international co-operation to address transnational organised crime and requires State parties to criminalise activities associated with organised crime. The Convention came into force in September 2003. There are also 3 protocols to the Convention dealing with the trafficking of persons, the smuggling of migrants and the manufacture and trafficking of firearms. The UN Convention against Corruption was signed in 2003 and will strengthen international co-operation against corruption and facilitate the recovery of stolen state assets. It is due to come into force on 14 December 2005.

7.3 The procedures for giving effect to an overseas forfeiture order under this Order have been extensively revised to bring them into line with those established under the Proceeds of Crime Act 2002. The High Court will be the competent court for registering an overseas order. The authorities responsible for making an application to the High Court are the Director of Public Prosecutions for Northern Ireland or the Director of the Serious Fraud Office. The Order makes it possible for a restraint order to be granted from the start of a criminal investigation which is likely to result in a forfeiture order being made in a country designated for the purposes of section 9. An order registered by the Court is regarded as satisfied when the property specified by the order has been forfeited and disposed of in accordance with the order, for example by destruction or repatriation.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has negligible impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is also negligible. Although the Order extends the scope of the existing Order to cover any offence, we do not expect a significant increase in the number of requests for forfeiture.

9. Contact

Angela Bell at the Northern Ireland Office, Tel: 028 90527612 or e-mail: angela.bell@nio.x.gsi.gov.uk , can answer any queries regarding the instrument.