EXPLANATORY MEMORANDUM TO

THE CO-OPERATION IN PUBLIC PROTECTION ARRANGEMENTS (UK BORDER AGENCY) ORDER 2011

2011 No. [DRAFT]

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 Section 325 of the Criminal Justice Act 2003 places a statutory duty on the police, probation and prison services to jointly make arrangements for assessing and managing the risks posed by certain violent and sexual offenders following their release from prison. Various other public bodies have a duty to cooperate with such risk management arrangements. This instrument adds the UK Border Agency to the list of public bodies that have a duty to cooperate with these risk management arrangements.

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

3.1 None

4. Legislative Context

4.1 Securing the co-operation of public bodies that hold relevant information about, or will come in contact with, certain violent and sexual offenders following their release from prison is an important element of the risk management arrangements made pursuant to section 325 of the Criminal Justice Act 2003. The bodies currently required to co-operate with these risk management arrangements include bodies operating in the fields of education, housing, social security, youth offending and electronic monitoring.

4.2 Parliament considered that it may be necessary to amend the list of bodies with a duty to co-operate with these risk management arrangements from time to time. Section 325 of the Criminal Justice Act 2003(7) gives the Secretary of State a power, subject to draft affirmative resolution, to add any persons to the list or remove them from it. This power has not been used since section 325 of the Criminal Justice Act 2003 came into force in 2004.

4.3 However, it is now considered desirable to add the UK Border Agency to the list. This will allow the Agency and the police, probation and prison services to more easily

share information about relevant offenders who are foreign nationals, and to better develop risk management strategies that are appropriate to their particular circumstance.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales only.

5.2 The instrument does not replicate legislation which already exists in another part of the UK.

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 Co-operation in Public Protection Arrangements (UK Border Agency) Order 2011 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 One of the aims of the Criminal Justice Act 2003 was to strengthen co-operation at a local level between the police, probation and prison services and other agencies involved in dealing with serious sexual and violent offenders in the community. The detail of the co-operation is set out in guidance issued by the Secretary of State under the Act. This creates a framework (known as Multi-Agency Public Protection Arrangements, or MAPPA for short) for identifying offenders who should be subject to these arrangements, sharing information about them, and assessing and managing the risks they pose through regular reviews and meetings.

7.2 A total of 3,851 offenders were subject to multi-agency management at 31 March 2010, the most recent date for which figures are available.

7.3 The UK Border Agency has an interest in one particular group of offenders among those who are subject to MAPPA – foreign national prisoners. The Agency needs to ensure that these offenders are identified, referred and managed appropriately when they enter the MAPPA system. The police, probation and prison services and the UK Border Agency already co-operate at an informal level, but it is thought that specific benefits would arise from formalising this co-operation by means of an amendment to the Criminal Justice Act 2003. For example:

- It may help ensure that valuable resources are not expended in planning for the community supervision of offenders who will be subject to automatic deportation;

- It may help ensure that the UK Border Agency can prioritise enforcement action for the most dangerous sexual and violent offenders;

- It may help improve the information flow to immigration detention centres to aid risk management and to safeguard vulnerable groups, such as avoiding the placement of certain offenders with children and vulnerable adults at the centres; and

- It will provide a clear lawful basis for (and therefore speed up) the exchange of classified information about specific offenders.

7.4 The policy aims to place on a formal and statutory basis those arrangements for co-operation that already exist. It has the potential to enhance public protection and is a logical extension to the existing arrangements with no significant resource implications. As such it should receive general support. It has not attracted any media attention so far.

7.5 Although the policy would improve the government's public protection arrangements, it could not be said to be politically or legally significant.

- Consolidation

7.6 Not applicable.

8. Consultation outcome

8.1 The UK Border Agency already co-operates informally with MAPPA and this Order merely places that informal co-operation on a formal and statutory basis. It does not amount to a change in policy and on that basis it was not considered necessary to go out to consultation in respect of it.

9. Guidance

9.1 The Secretary of State issues statutory Guidance for the bodies involved in risk management arrangements pursuant to section 325 of the Criminal Justice Act 2003. Specific guidance in relation to the UK Border Agency will be included in the next major revision of the statutory Guidance, which is currently under way.

9.2 Officials from the Ministry of Justice and the UK Border Agency are also currently providing training for casework staff at the UK Border Agency, and for staff of the police, probation and prison services who will be co-ordinating co-operation with the UK Border Agency in respect of these risk management arrangements.

10. Impact

10.1 No impact on business, charities or voluntary bodies is foreseen.

10.2 There should be no impact on the public sector, because the arrangements will operate within existing staffing complements.

10.3 In view of the above, 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 The operation of the new arrangements will be monitored internally and reviewed after a period of 12 months to assess the extent to which it is delivering the expected benefits.

13. Contact

James Toon at the Ministry of Justice (Tel: 020 7035 8208 or email: james.toon@noms.gsi.gov.uk) can answer any queries regarding the instrument.