EXPLANATORY MEMORANDUM TO

THE CRIME AND COURTS ACT 2013 (CONSEQUENTIAL AMENDMENTS) ORDER 2014

2014 No. [XXXX]

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

2. Purpose of the instrument

2.1 This instrument amends section 195S of the Proceeds of Crime Act 2002 (c.29) ("the 2002 Act") to add 'immigration officer' to the officers to whom the code of practice issued by the Secretary of State under section 195S about the exercise of functions under Part 4 of the 2002 Act will apply. The instrument also defines 'senior officer' in relation to an immigration officer for the same purpose.

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

3.1 None.

4. Legislative Context

4.1 This instrument is an exercise of the power in the Crime and Courts Act 2013 ("the 2013 Act") to make amendments to primary legislation in consequence of that Act.

4.2 The 2013 Act amended the 2002 Act, to add immigration officers as appropriate officers who could exercise the functions under Part 4 of the 2002 Act , and to define what 'senior officer' means in relation to an immigration officer (see sections 190A(3)(ca), 195A(1)(aa) and 195G(3)(aa) respectively).

4.3 An amendment should have been made to section 195S so that the code of practice which the Secretary of State must issue under this section about the exercise of the powers of certain officers under Part 4 of the Act applies to immigration officers.

4.4 The provisions to which this instrument relates are not yet in force. The amendment to section 195S is being made so that the code of practice governing the exercise of the powers, which needs to be in place before the provisions can be commenced, can be made in anticipation of commencement.

5. Territorial Extent and Application

5.1 This instrument applies to Northern Ireland.

6. European Convention on Human Rights

The Home Secretary has made the following statement regarding Human Rights:

In my view the provisions of the Crime and Courts Act 2013 (Consequential Amendments) Order 2014 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 Section 195S of the 2002 Act is being amended so that the code of practice that the Secretary of State must issue under that section applies also to immigration officers, and senior immigration officers.

7.2 Part 4 of the 2002 Act governs the making of confiscation orders in Northern Ireland, whereby the calculated monetary benefit from criminal conduct can be ordered to be repaid by a convicted criminal. Part 4 also covers related provisions, including the exercise of powers of search, seizure and detention to prevent the dissipation of realisable property that may be used to satisfy a confiscation order. These powers may be exercised only by the appropriate officers listed in sections 190A (in relation to authorisation by restraint order of the detention of property seized by appropriate officers) and 195A (in relation to appropriate officers who may exercise the search and seizure powers under Part 4).

7.3 The addition of immigration officers as appropriate officers by 2013 Act grants immigration criminal investigators full powers under Part 4 of POCA, thereby enabling them to target the proceeds from immigration related criminal activity across the United Kingdom.

7.4 As a safeguard to ensure the lawful exercise of these powers by appropriate officers, the Secretary of State and the Department of Justice in Northern Ireland are required to make codes of practice governing the exercise of these powers in respect of the appropriate officers for which each authority is responsible. Immigration officers exercise non-devolved functions, therefore they are the responsibility of the Secretary of State. When the 2013 Act made immigration officers appropriate officers under section 195A, section 195S should have been amended to ensure that the exercise of powers by them was to be governed by a code of practice. This is the error this instrument corrects, and the future code of practice will apply to immigration officers.

- Consolidation

7.5 This is not a consolidation.

8. Consultation outcome

8.1 No consultation has been carried out on this instrument.

9. Guidance

9.1 No guidance will be issued about this instrument. The code of practice which will be issued under section 195S will contain guidance for appropriate officers and the public about the exercise of powers under Part 4 of the 2002 Act.

10. Impact

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

10.2 The impact on the public sector is nil.

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 There is no need to monitor or review this instrument.

13. Contact

Stephen Goadby at the Home Office Tel: 020 7035 1559 or email: Stephen.Goadby@homeoffice.x.gsi.gov.uk can answer any queries regarding the instrument.