**EXPLANATORY MEMORANDUM TO**

**THE CRIMINAL JUSTICE ACT 2003 (COMMENCEMENT NO.12 AND TRANSITORY PROVISIONS) ORDER 2005**

**2005 No.**

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

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

## 2. Description

2.1 This draft Order is a commencement order that brings into force on 1st January 2006 those parts of Part 7 of the Criminal Justice Act 2003 that provide for prosecution applications for certain serious and complex fraud cases to be conducted without a jury, subject to the transitory provisions contained in article 3.

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

3.1 The Committee may wish to note that for ease of reference the draft Order has been assigned the number ("Commencement No. 12") that it is expected to bear when made. At present there have been ten commencement orders made under the Criminal Justice Act 2003. However, the next available number (11) is being assigned to another commencement order that the Home Office will be making before the draft Order is actually made.

## 4. Legislative Background

4.1 Section 43 of the Criminal Justice Act 2003 provides for prosecution applications for certain serious and complex fraud cases to be conducted without a jury. Unusually, by virtue of section 330(5) of the Criminal Justice Act 2003, a statutory instrument containing an order under section 336 of that Act bringing into force section 43 requires an affirmative resolution of both Houses of Parliament.

## 5. Extent

5.1 This instrument applies to England, Wales and Northern Ireland.

## 6. European Convention on Human Rights

The Parliamentary Under-Secretary of State, Fiona Mactaggart, has made the following statement regarding Human Rights:

In my view the provisions of the Criminal Justice Act 2003 (Commencement No.12 and Transitory Provisions) Order 2005 are compatible with the Convention rights.

## 7. Policy background

7.1 The Government considers that there are certain fraud cases where the length or complexity of the trial is likely to be so burdensome to the jury that it is in the interests of justice that the trial be conducted without a jury by a judge sitting alone. Provisions in Part 7 of the Criminal Justice Act 2003 give effect to this policy and provide for prosecution applications for certain fraud cases to be conducted without a jury. The requirement that the provisions apply only to cases where a notice has been given under section 51B of the Crime and Disorder Act 1998 limits them to cases of serious or complex fraud.

7.2 The provisions operate only where an application is made by the prosecution, the judge is satisfied that the length or complexity of the trial is likely to make it so burdensome upon the jury that the interests of justice require a non jury trial, and the Lord Chief Justice or a judge nominated by him gives his approval.

7.3 It is the Minister's view that the provisions in Part 7 of the Criminal Justice Act 2003 for non jury trials for certain fraud cases are compatible with Convention Rights, as Article 6 of the Convention (right to a fair trial) does not include a right to trial by jury. The Joint Committee on Human Rights commented (Second Report: Criminal Justice Bill, paragraph 5) -
"We do not consider that the proposed limitations on jury trial under Part 7 raise any human rights issue, despite their politically controversial nature."

7.4 The trigger for an application under section 43 is that a notice is given under section 51B of the Crime and Disorder Act 1998. Such a notice can only be given if the prosecution consider the evidence of the offence charged reveals a case of fraud of such seriousness or complexity that it is appropriate that the case is immediately taken over by the Crown Court. This section is added to the 1998 Act by Schedule 3 to the Criminal Justice Act 2003, but is not yet in force. Article 3 of the draft Order provides for transitory provisions that ensure that in the meantime applications under section 43 are similarly limited to serious and complex fraud cases. The three transitory triggers set out in Article 3 are that the defendants have been sent for trial under section 51 of the 1998 Act and the evidence of the offence charged reveals a case of serious or complex fraud, or that a notice has been given under either section 4 of the Criminal Justice Act 1987 or article 3 of the Criminal Justice (Serious Fraud)(Northern Ireland) Order 1988. Notices under the latter two Acts can only be given if the prosecution consider the evidence of the offence charged reveals a case of fraud of such seriousness or complexity that it is appropriate that the case is transferred immediately to the Crown Court. However, at present in England and Wales indictable only offences are automatically transferred to the Crown Court under section 51 of the Crime and Disorder Act 1998. The first transitory trigger therefore ensures that applications under section 43 can only apply to these cases too, if they reveal a case of serious or complex fraud. Whether a case involves serious or complex fraud is also the determinant under the Criminal Justice Act 1987 of whether a case can be investigated by the Serious Fraud Office.

## 8. Impact

8.1 A 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 expected to be minimal as the provisions simply provide that a limited number of fraud trials are held in front of a judge as opposed to a jury.

## 9. Contact

9.1 Richard Chown at the Office for Criminal Justice Reform (Tel: 020 7035 8485 or e-mail: Richard.Chown@cjs.gsi.gov.uk) can answer any queries regarding the instrument.