EXECUTIVE NOTE TO

DRAFT SSI: THE HUMAN TISSUE (SCOTLAND) ACT 2006 (CONSEQUENTIAL AMENDMENT) ORDER 2008

The above instrument is being made in exercise of the powers conferred by section 58(1) and (2) of the Human Tissue (Scotland) Act 2006 ("the 2006 Act"). The instrument is subject to affirmative resolution procedure.

Policy Objectives

The purpose of the instrument is to amend section 4(4)(b) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 ("the 2004 Act") (trafficking people for exploitation) to replace the reference to the Human Organ Transplants Act 1989 ("the 1989 Act") with a reference to the 2006 Act.

Scottish Ministers are keen to ensure that Scottish legislation and procedures are compliant with the Council of Europe Convention on Action Against Trafficking in Human Beings ("the Convention") to allow the UK to ratify the Convention later this year. Article 18 of the Convention requires the criminalisation of trafficking in human beings for the purposes of exploitation. Exploitation is defined in Article 4 and includes the removal of organs. As part of the Scottish Government's preparatory work ahead of the United Kingdom's ratification of the Convention the terms of the 2004 Act have been examined.

The 2004 Act provides that it is an offence to arrange or facilitate the arrival in the United Kingdom of an individual for the purpose of exploitation, whether by the trafficker or another person. Along with sexual and labour exploitation, one form of exploitation recognised by the 2004 Act is human organ harvesting. Section 4 of the 2004 Act refers to offences under the 1989 Act or the Human Organ Transplants (Northern Ireland) Order 1989. The 2006 Act repealed the 1989 Act in so far as it had effect in Scotland and created new offences in sections 17 and 20 of the 2006 Act. Section 17 places restrictions on transplants involving a live donor and section 20 prohibits commercial dealing in parts of a human body for transplantation. The 2006 Act did not make a consequential textual amendment to section 4 of the 2004 Act to update the reference from the 1989 Act to the 2006 Act. As a result, there may be some doubt that the reference to the 1989 Act at section 4(4)(b) of the 2004 Act would be construed to be read as a reference to the 2006 Act. Making the consequential textual amendment to that provision puts this beyond doubt.

This Order therefore clarifies the references to Scottish legislation in the 2004 Act.

Consultation

As the Order is making a technical amendment to existing legislation, no consultation has been carried out.

Financial Effects

A Regulatory Impact Assessment has not been prepared as this instrument has no financial effect on the Scottish Government, local government or on business.

Scottish Government, Criminal Justice Directorate
May 2008