EXPLANATORY MEMORANDUM TO

THE POLICE, PUBLIC ORDER AND CRIMINAL JUSTICE (SCOTLAND) ACT 2006 (CONSEQUENTIAL PROVISIONS AND MODIFICATIONS) ORDER 2007

2007 No.

1. This explanatory memorandum has been prepared by the Scotland 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 The Order makes stand alone provisions and modifications to primary and secondary legislation in consequence of the Police, Public Order and Criminal Justice (Scotland) Act 2006 ("the 2006 Act") relating to the establishment of the Scottish Police Services Authority ("the Authority"), the Scottish Crime and Drug Enforcement Agency ("the Agency"), the appointment of a Police Complaints Commissioner for Scotland ("the Commissioner") and the introduction of Football Banning Orders.

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

3.1 The Order is to be made in exercise of the powers conferred by sections 104, 112(1) and 113(2), (3) and (4) of the Scotland Act 1998 ("the 1998 Act"). The Order is, by virtue of section 115(1) and paragraphs 1,2 and 3 of Schedule 7 to that Act, subject to affirmative resolution procedure in both Houses of the UK Parliament. Section 104 of the 1998 Act provides for subordinate legislation to be made in the UK Parliament, which contains provisions that are necessary or expedient in consequence of any Act of the Scottish Parliament, in this case the Police, Public Order and Criminal Justice (Scotland) Act 2006.

3.2 A section 104 Order under the 1998 Act is necessary in consequence of the 2006 Act as the Scottish Parliament does not have the legislative competence under the 1998 Act in relation to reserved matters, or to make changes to the law of England and Wales and Northern Ireland. The Order makes provisions necessary as a consequence of the 2006 Act and makes the necessary consequential modifications to the enactments listed in the Schedule.

4. Legislative Background

4.1 The 2006 Act received Royal Assent on 4 July 2006. The Act contains four Parts in total, and provides for a range of measures to improve police effectiveness, strengthen law enforcement's hand in the fight against crime, including serious organised crime, and enhancing the safety of communities across Scotland.

4.2 Part 1 (Police) establishes a new body corporate, the Authority, which is required to provide a range of police support services, and is responsible for establishing and maintaining the Agency which will replace the Scottish Drug Enforcement Agency ("SDEA"). It sets out arrangements for the constitution, membership and staff of the Authority, as well as the core functions of the Authority and Agency. Part 1 also provides for the appointment of the

Commissioner. Part 2 (Public Order etc.) introduces Football Banning Orders in Scotland so that those who indulge in football related violence, sectarian behaviour or disorder can be banned from attending football grounds across the UK or other flashpoints, and, where appropriate, also prevent them from travelling to football matches overseas.

4.3 The Order makes provision in Article 3 aimed at enabling UK bodies in reserved areas to disclose information to the Agency and the Commissioner, if the purpose of the disclosure is connected with the exercise of the Commissioner's or the Agency's functions under the 2006 Act. Article 3 also makes it an offence for any person to disclose any information which is sent to the Agency or Commissioner by Her Majesty's Revenue and Customs without the consent of Her Majesty's Revenue and Customs. It should be noted that the maximum penalty under the Order in terms of imprisonment is lower than the maximum penalty that can be imposed in Scotland. This is because of the limitations imposed by section 113(10) of the Scotland Act 1998, which provide that the maximum period for imprisonment on summary conviction is 3 months. Article 3 also puts conditions on onward disclosure of information disclosed to a person by the Agency or Commissioner insofar as that further disclosure is not already covered by the 2006 Act.

4.4 The 2006 Act establishes the Police Complaints Commissioner, who will be responsible for overseeing how police organisations in Scotland handle complaints. The Commissioner will not have investigatory powers but will have powers to require complaints to be reconsidered by the police organisation which received the initial complaint, or by another relevant organisation. The purpose of Article 4 of the Order is to extend the Commissioner's remit to include overseeing any complaints made against UK-wide law enforcement agencies in respect of action taken in Scotland, for which there is currently no oversight arrangements. Article 4 will enable the Commissioner and the various UK law enforcement agencies to enter into agreements to establish procedures for reviewing complaints.

4.5 The agreements will not be able to establish any procedures for reviewing complaints which may constitute a criminal offence or contain a statement about the terms and conditions of a person's service or employment with a UK-wide law enforcement agency. In addition, the agreements will not establish procedures for reviewing any complaints about UK-wide law enforcement agencies which occur outside of Scotland. Article 4 of the Order also enables the Commissioner and the Parliamentary Commissioner for Administration to disclose certain information to one another which they obtain in relation to Her Majesty's Revenue and Customs and immigration officers and in order that each body can carry out their respective functions.

4.6 The 2006 Act provides two methods for imposing Football Banning Orders in Scotland. Either a court can impose a banning order on an individual convicted of an offence instead of, or in addition to, any sentence imposed for the offence; or the police can make a summary application to a sheriff court for a banning order to be imposed on an individual. Any person who fails to comply with the terms of their banning order can be prosecuted and is liable on summary conviction to imprisonment for a period of up to 6 months, a fine not exceeding level 5 on the standard scale or both. The purpose of the Order in relation to Football Banning Orders is to give police in England, Wales and Northern Ireland powers to enforce Scottish banning orders and the Order provides that where a person subject to a banning order breaches it in England, Wales and Northern Ireland they will commit an offence. As outlined in paragraph 4.3 above, the maximum penalty under the Order in terms

of imprisonment is lower than the maximum penalty that can be imposed in Scotland. This is because of the limitations imposed by section 113 of the Scotland Act 1998, which provide that the maximum period for imprisonment on summary conviction is 3 months.

4.7 The 2006 Act provides that the Authority can make arrangements for constables of Scottish police forces to be seconded to the Authority as members of its staff, or to be further seconded to the Agency. It also provides for members of specified forces throughout the UK to be seconded in the same way and for the Authority to directly recruit police officers on behalf of the Agency. This creates new categories of "police officers" and a number of modifications to UK legislation are required and are included in the Schedule to the Order.

4.8 The Police Pensions Act 1976 ("the 1976 Act") provides that regulations about pensions can be made for members of police forces in Scotland. As the regulation of occupational and personal pensions is a reserved matter under Head F3 of Schedule 5 to the 1998 Act, it is not within the legislative competence of the Scottish Parliament to make amendments to the enabling powers in the 1976 Act, such as defining what constitutes "membership of a police force" and bodies which should be considered as a "police force" for the purposes of the 1976 Act. The Order therefore makes amendments to the 1976 Act which will ensure that the provisions of that Act will apply to police members of the Agency and police constables seconded to the Authority, both from Scottish and other UK police forces in exactly the same way as it does to constables serving in police forces. In respect of those persons seconded to the Authority and Agency the provisions of the 1976 Act will only apply where those persons are members of, or entitled to be members of the Police Pensions Schemes made under that Act (paragraph 2 of the Schedule).

4.9 Part III (sections 59 to 64) of the Police Act 1996 ("the 1996 Act") makes provision relating to the Police Federations, the Police Negotiating Board for the UK (PNB), the Police Advisory Boards and membership of trade unions by police officers. Part III was amended as regards the law of Scotland by the 2006 Act to take account of the establishment of the Authority and the Agency. However, the 2006 Act could not amend section 64 of the 1996 Act which sets out rules for membership of a trade union or certain associations by members of police forces. This is a reserved matter and the Order therefore amends section 38A(8) of the Police (Scotland) Act 1967 and section 64 of the 1996 Act to take account of the establishment of the Authority and Agency and to ensure that the provisions of section 64 apply to officers serving with those bodies (paragraphs 1 and 3(2) of the Schedule).

4.10 Section 97 of the 1996 Act makes provision for police officers in England and Wales who are engaged on temporary service outside their force with specified bodies, and provides that certain consequences follow as to their length of service, rank and eligibility for promotion. The Order amends section 97 of the 1996 Act to specify that temporary service with the Authority or the Agency is relevant service for the purposes of the 1996 Act (paragraph 3(3) of the Schedule).

4.11 The 2006 Act replaces the present arrangements whereby the SDEA is established through a combination of section 36 of and a section 12 collaboration agreement under the Police (Scotland) Act 1967. The SDEA is replaced by the Agency, which will be a separate legal entity responsible for the prevention and detection of serious organised crime in Scotland. To take account of the changes in the structure and governance of the Agency, and

in recognition of their remit of tackling serious organised crime in Scotland, the 2006 Act made provision for the Director General of the Agency to have investigatory powers under the Regulation of Investigatory Powers (Scotland) Act 2000. The Order makes similar provisions to extend to the Director General of the Agency's powers under the Regulation of Investigatory Powers Act 2000 to ensure parity with police forces and other law enforcement colleagues who are involved in these often complex and difficult cross-border investigations(paragraph 4 of the Schedule). Amendments are also made to subordinate legislation in Part 2 of the Schedule which prescribe the relevant rank or grade of persons in the Agency for the purposes of provisions in the 2000 Act.

4.12 The Order seeks to modify existing references in the Serious Organised Crime and Police Act 2005 and the Prevention of Terrorism Act 2005 to replace references to the SDEA with references to the Agency (paragraphs 5 and 6 of the Schedule).

4.13 It is intended that the provisions in Part 1 relating to the establishment of the Agency and the Commissioner will come in to force on 1 April 2007. Some provisions relating to the Authority and the Commissioner were commenced on 1 January 2007 to enable them to start the process of employing staff, but they will not come fully in to force, with all their functions and powers, until 1 April 2007. The provisions in Part 2 relating to Football Banning Orders came in to force on 1 September 2006.

5. Extent

5.1 This Order extends to the whole of the UK subject to certain exceptions. These are that Article 5 on Football Banning Orders extends only to England, Wales and Northern Ireland and the modifications in the Schedule have the same extent as the provisions being modified - subject to paragraph 4(16) of the Schedule only extending to Scotland and paragraphs 4(17) and 6 of the Schedule only extending to England, Wales and Northern Ireland.

6. European Convention of Human Rights

6.1 The Parliamentary Under Secretary of State for Scotland has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

> In my view the provisions in the draft Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 are compatible with the Convention rights.

7. Policy Background

7.1 In *Partnership for a Better Scotland*, the Scottish Ministers made commitments to expand the SDEA and to improve the efficiency of police forces by providing more common police services (the Scottish Police College, the Scottish Criminal Record Office and the Scottish Police Information Strategy). They also made a commitment to reform the police complaints system in Scotland by establishing an independent police complaints body.

7.2 These commitments were followed up by the proposals set out in the Scottish Executive's consultation paper *Supporting Police, Protecting Communities: proposals for legislation*. This paper proposed to give effect to the Partnership Agreement commitments by

bringing forward legislation to put the SDEA and the common police services on a new statutory footing which would make them better able to modernise and meet future challenges. It proposed that a single statutory body should be established encompassing all the common police services, including the SDEA, to provide a coherent, practical and effective basis for the oversight and governance of all the common police services. It also proposed that, unlike its predecessor the SDEA should, through the new body, be able to directly recruit its own police officers and suggested widening the net to allow secondment from other UK forces – other than having to rely solely on police officers seconded from Scottish Police forces.

7.3 The consultation paper also outlined proposals to introduce Football Banning Orders in Scotland to prevent football-related violence and disorder. Historically, those who indulge in this kind of behaviour in Scotland have been tackled by the police by arresting people for offences and by clubs banning troublemakers from their grounds. Despite this, incidents of football-related violence and disorder have continued and the decision was taken that banning orders, already in force in England and Wales for a number of years, should be introduced in Scotland. Further proposals were outlined in this paper to establish a Commissioner to bring a new transparency and independence to the oversight of non-criminal police complaints handling by police organisations in Scotland.

7.4 The Police, Public Order and Criminal Justice (Scotland) Act 2006 brings these policy objectives into effect.

7.5 In addition, this Order gives effect to a policy which both Scottish Ministers and Westminster counterparts want to implement in relation to complaints about the actions of UK law enforcement agencies in Scotland. Both Scottish Ministers and Westminster Ministers recognise that there can be no oversight of complaints made about UK law enforcement agencies' actions in Scotland through the Independent Police Complaints Commissioner (IPCC), which has no remit in Scotland. They have agreed that provisions in this Order are an effective means of achieving the policy whereby the Commissioner and the relevant UK-wide law enforcement agencies will be empowered to enter into agreements to enable the Commissioner to oversee the handling of complaints made in relation to the actions in Scotland of the relevant UK-wide law enforcement agencies.

8. Impact

8.1 A regulatory impact assessment has not been prepared for this instrument as it has no impact on the private or voluntary sector.

8.2 There will be no impact on the public sector.

9. Contact

Adam Pile at the Scotland Office (email adam.pile@scotland.gsi.gov.uk) can answer any queries regarding this instrument.

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