EXPLANATORY MEMORANDUM TO

THE SERIOUS ORGANISED CRIME AND POLICE ACT 2005 (AMENDENT) ORDER 2005

2005 No.

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

2. Description

2.1 The Order which comes into force on 1 January 2006 amends the Serious Organised Crime and Police Act 2005 ("the 2005 Act"), and provisions in the Police Act 1997 and the Police and Criminal Evidence Act 1984 ("PACE") which are prospectively inserted by the 2005 Act.

- Article 2 corrects a minor typographical error in section 142 (contracting out of local authority functions relating to anti-social behaviour orders) of the 2005 Act.
- Articles 3 and 4 correct minor errors in section 179 (extent) of the 2005 Act and article 5 removes some entries which were included in error in Schedule 17 (repeals) and which relate to the Proceeds of Crime Act 2002.
- Article 6 corrects minor typographical errors in provisions in Part 5 of the Police Act 1997 which are inserted by the 2005 Act.
- Article 7 corrects a minor drafting error in section 15 of PACE as amended by the 2005 Act.

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

3.1 None.

4. Legislative Background

4.1 The instrument is being laid in draft before parliament pursuant to section 172(5) of the 2005 Act.

4.2 Article 2 corrects a minor typographical error in section 142 of the 2005 Act.

4.3 Section 56 of the Serious Organised Crime and Police Act 2005 provides for the application of discrimination legislation to SOCA seconded staff. Articles 3 and 4 of the Order ensure that this provision will extend to Scotland and Northern Ireland.

4.4 Article 5 of the removes some entries which were included in error in Schedule 17 (repeals) and which relate to the Proceeds of Crime Act 2002. Article 6 corrects minor typographical errors in provisions in Part 5 of the Police Act 1997 which are prospectively inserted by the Serious Organised Crime and Police Act 2005.

4.5 Sections 113 and 114 of the Serious Organised Crime and Police Act 2005, when commenced, will amend sections 8, 15 and 16 of the Police and Criminal Evidence Act (PACE) 1984 to enable a constable to apply to a magistrate and be issued with a warrant to enter specific premises or as many sets of premises which it is desired to enter and search (an "all premises warrant").

4.6 The issue of the warrant must comply with the conditions set out in sections 15 and 16 of PACE and any warrant which fails to do so is rendered unlawful. One of those conditions relates to specific premises or all premises warrants being made under section 8 of PACE.

4.7 Unfortunately the amendments to sections 15 of PACE made by the 2005 Act do not take account of the ability of a constable to apply for a search warrant under individual statutes such as section 26 of the Theft Act 1968 and Section 23 of the Misuse of Drugs Act 1971. Therefore, it would not be possible for a warrant issued under other section 8 of PACE to comply with the conditions set out in sections 15 and 16 of PACE and such warrants would, accordingly be deemed unlawful. Articles 7 and 8 correct these unintended errors.

5. Extent

5.1 This instrument applies to the United Kingdom.

6. European Convention on Human Rights

The Minister of State for the Home Department, Hazel Blears, has made the following statement regarding Human Rights:

In my view the provisions of the Serious Organised Crime and Police Act 20005 (Amendment) Order 2005 are compatible with the Convention rights.

7. Policy background

7.1 The amendments to PACE in relation to search warrants are aimed at reducing the bureaucracy faced by both police and courts in applying for and issuing single warrants connected with the investigation of individual suspects. The policy should lead to improved efficiency and effectiveness on the issuing and execution of warrants and help ensure more successful outcomes to investigations.

7.2 The remaining amendments correct minor errors in the 2005 Act..

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 There is no impact on the public sector.

9. Contact

Alan Brown at the Home Office Tel: 020 7035 0877 or e-mail: Alan.Brown@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.