EXPLANATORY MEMORANDUM TO

THE EUROPEAN COMMUNITIES (DEFINITION OF TREATIES) (AGREEMENT AMENDING THE COTONOU AGREEMENT) ORDER 2007

2007 No. 2135

1. This explanatory memorandum has been prepared by the Department for International Development 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 Order would declare that the Agreement amending the 2000 Partnership Agreement between the Members of the African, Caribbean and Pacific (ACP) Group of States, of the one part, and the European Community and its Member States, of the other part, (the Cotonou Agreement), signed in Luxembourg on 25 June 2005 (the Amending Agreement) is to be regarded as a Community Treaty as defined in section 1(2) of the European Communities Act 1972.

2.2 The provisions of section 2 of the European Communities Act 1972 (which provide for the general implementation of Community Treaties) would then apply in relation to the Amending Agreement; they could be used for the implementation of the provisions of the agreement and would allow financial commitments made by the United Kingdom to contribute to Community co-operation with the ACP States to be provided pursuant to the Cotonou Agreement to be met out of the Consolidated Fund.

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

None.

4. Legislative Background

4.1 The Amending Agreement was made by the European Community and all the Member States, and must be ratified by each of those States as well as by the Community (and at least two-thirds of the ACP States) before it can come into force.

4.2 The Government intends, subject to the making of this Order, to ratify the Amending Agreement on behalf of the United Kingdom. The United Kingdom must be in a position to implement all the provisions of the Amending Agreement before it can ratify it. The Order would provide the necessary powers, under section 2 of the European Communities Act 1972.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Secretary of State for International Development has made the following statement regarding Human Rights:

In my view the provisions of the European Communities (Definition of Treaties) (Agreement amending the Cotonou Agreement) Order 2007 are compatible with the Convention rights.

7. Policy background

7.1 The Cotonou Agreement was signed on 23 June 2000 and was concluded for a period of 20 years. It covers political and trade relations and development co-operation and has, as its central objective, the reduction and eventual eradication of poverty. The Cotonou Agreement is subject to review every five years. It was specified as a Community Treaty under S.I. No. 3935/2001.

7.2 The first review of the Cotonou Agreement was conducted between May 2004 and February 2005. Following the review and further negotiations, the parties signed the Amending Agreement on 25 June 2005. The amendments have three central aims:

a) to address new political and security concerns, including the fight against terrorism, combating the proliferation of weapons of mass destruction, and cooperation with the International Criminal Court;

b) to strengthen and develop cooperation strategies, in particular putting the achievement of the Millennium Development Goals at the forefront of Community cooperation; extending more favourable treatment to countries in post-conflict and post-natural disaster situations; and strengthening the provisions for trade cooperation and economic and social development including in regard to HIV/AIDS and other poverty diseases, and youth development; and

c) to update, clarify and establish further implementation procedures relating to the management of country and regional resources including the management of resources in crisis situations, and the operation of the lending facility of the Cotonou Agreement managed by the European Investment Bank.

7.3 The provisions of the Amending Agreement also enhance the procedures and mechanisms for the conduct of political dialogue including where a party fails to fulfil its obligations under certain provisions. These provisions (known as the “essential elements” of the agreement) relate to human rights, democratic principles, the rule of law and, by virtue of the amending provisions referred

to in paragraph 7.2(a) above, the counter proliferation of weapons of mass destruction. A consequence of an obligation being an essential element is that the parties may, as a last resort, suspend the Cotonou Agreement in relation to a party that fails to comply with that obligation.

7.4 The Amending Agreement also provides for a new multi-annual financial framework of Community cooperation under the Cotonou Agreement as amended. This framework was subsequently established by an Internal Agreement on the financing of Community Aid between the Member States of the European Community signed on 17 July 2006. The specification of that Internal Agreement as a Community Treaty is the subject of a separate Draft Order and Explanatory Memorandum.

7.5 A summary of the main provisions of the Amending Agreement is set out in the Annex to this Memorandum.

7.6 The Parliamentary EU Committees were consulted on the revisions included in the Amending Agreement. DFID discussed the timeframe of the negotiations of the Cotonou amendments with Civil Society organisations, including through regular (quarterly) meetings with the European Policy Group of the British Overseas NGOs for Development (BOND), the umbrella group for British development NGOs. Representatives from Oxfam, ActionAid, Oneworld Action and Christian Aid, among others, attended different meetings. BOND representatives were updated on progress and asked for their views. These discussions highlighted the need for a larger, more effective 10th European Development Fund. These views were broadly in line with those of HMG and a larger, more effective fund was in fact agreed, with an increase in total funding from €13,800 million to €22,682 million (covering 6 years) and a more strategic management role for Member States. In addition, NGOs were able to express their views directly to the Commissioner at the regular meetings that were organised by DG Development.

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 No impact on the public sector is foreseen.

9. Contact

Either Helen O'Connor (Tel: 020 7023 1742; email h-oconnor@dfid.gov.uk) or Paul Hailston (Tel: 020 7023 0772; email p-hailston@dfid.gov.uk) in the European Union department of the Department for International Development, 1 Palace Street, London, SW1E 5HE can answer any queries regarding the instrument.

ANNEX

Summary of the Amending Agreement

The Amending Agreement provides for:

a) a commitment to fight international crime and to ratify and implement the Rome Statute of the International Criminal Court;

b) cooperation regarding the fight against terrorism;

c) cooperation to counter the proliferation of weapons of mass destruction;

d) enhanced procedures and mechanisms for the conduct of political dialogue including where a party fails to fulfil its obligations under certain provisions regarding human rights, democratic principles, the rule of law and weapons of mass destruction; the mechanism for political dialogue allows the parties, as a last resort, to suspend the agreement in relation to such a party;

e) cooperation in the fight against HIV/AIDS and other poverty-related diseases;

f) enhanced cooperation concerning youth issues;

g) cooperation with the development and use of traditional knowledge and information and communication technology;

h) cooperation with and funding of local decentralised authorities and non-state actors;

i) extending more favourable treatment to ACP states facing post-conflict and post-natural disaster situations;

j) the establishment of a new multi-annual financial framework from January 2008;

k) revision of the operation the Investment Facility (the lending facility under the Cotonou Agreement, managed by the European Investment Bank (EIB)), including in regard to the provision of ordinary loans for infrastructure projects by commercially run public entities in countries subject to restrictive borrowing conditions, project related technical assistance, EIB remuneration and procurement rules; and

l) enhanced management and implementation procedures including clarification of the roles of the Commission and the ACP States particularly in crisis situations.