EXPLANATORY MEMORANDUM TO

THE INTERNATIONAL JOINT INVESTIGATION TEAMS (INTERNATIONAL AGREEMENT) ORDER 2009

2009 No. 3269

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. Purpose of the Instrument

2.1 The UK intends to ratify the Second Additional Protocol to the Council of Europe Convention on Mutual Legal Assistance in Criminal Matters ('the Second Additional Protocol'), article 20 of which provides a framework pursuant to which parties can establish joint investigation teams for the purposes of conducting criminal investigations. Articles 21 and 22 of the Second Additional Protocol, however, require parties to the protocol to ensure that where a foreign law enforcement official is operating as part of a joint investigation team established in accordance with the protocol, that foreign official shall be treated in the same way as an official of the hosting party for the purpose of any offences committed by or against them, and that the hosting party shall bear civil liability for any damage caused by that foreign official. This Order specifies the Second Additional Protocol as an international agreement for the purposes of provisions of the Police (Scotland) Act 1967, the Police Act 1996, the Police (Northern Ireland) Act 1998 and the Serious Organised Crime and Police Act 2005 in order to ensure that the UK can fully comply with the obligations imposed by Articles 21 and 22 of the Protocol once the UK has ratified it.

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

3.1 As the specification of the Second Additional Protocol for the purposes of the four statutes referred to above is necessary in order to enable the UK to ratify the Second Additional Protocol, the Order has been drafted so that it will come into force on the date on which the Protocol enters into force in respect of the UK. The Second Additional Protocol will enter into force in respect of the UK on the first day of the month following the expiry of three months after the date on which the UK deposits an instrument of ratification with the Secretary General of the Council of Europe. The Order also provides details of the page of the Council of Europe's website on which information as to the ratification of Council Europe instruments can be found. This information is included so as to enable the reader of the Order to discover when the UK has deposited the relevant instrument of ratification.

4. Legislative Context

4.1 The UK is a signatory to the 1959 European Convention on Mutual Assistance in Criminal Matters (ratified) and the Second Additional Protocol to that Convention (not ratified). Prior to ratification, domestic legislation must allow the UK to comply with the provisions of the Second Additional Protocol. The first Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters was ratified by the UK on 29/08/1991.

4.2 Article 20 of the Second Additional Protocol provides an international framework pursuant to which the UK and other states which are party to the protocol can form international joint investigation teams ('JITs') for the purpose of investigating criminal conduct. In order to comply with Article 21 of the Second Additional Protocol, however, the UK must be able to ensure that, in cases where it is the country hosting a JIT, foreign officials of the JIT fall to be treated as domestic officials for the purpose of criminal offences committed by or against them. Similarly, in order to comply with Article 22 of the Second Additional Protocol the UK must bear civil liability for any damage caused by foreign officials operating as part of a JIT whilst in the UK.

4.3 By specifying the Second Additional Protocol for the purpose of sections 39(6)(c) and 41(5)(c) of the Police (Scotland) Act 1967, sections 88(7)(c) and 89(5)(c) of the Police Act 1996, sections 29(7)(c) and 66(6)(c) of the Police (Northern Ireland) Act 1998 and sections 30(5)(c) and 57(6)(c) of the Serious Organised Crime and Police Act 2005, this Order ensures that the United Kingdom can comply with the obligations set out above where a joint investigation team is operating in the UK.

4.4 By virtue of the terms of sections 39(6)(c) and 41(5)(c) of the Police (Scotland) Act 1967 the Second Additional Protocol may only be specified in this order for the purposes of these provisions where the consent of the Scottish Ministers has been obtained. That consent was provided on 28 October 2009.

4.5 This instrument is subject to the negative resolution procedure.

5. Territorial Extent and Application

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

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The UK has signed and ratified the 1959 European Convention on Mutual Assistance in Criminal Matters. This forms the treaty basis for a high number of both incoming and outgoing requests for mutual legal assistance. The Second Additional Protocol to the 1959 Convention is aimed at strengthening mutual legal assistance amongst ratifying states and widening the pool of mutual legal assistance available.

The UK is a signatory to this protocol but has not yet ratified it. Prior to ratification the UK must ensure its domestic legislation complies with the protocol.

7.2 Article 20 of the Second Additional Protocol provides an international framework pursuant to which the UK and other states which are party to the protocol can form international joint investigation teams ('JITs') for the purpose of investigating criminal conduct. In order to comply with Article 21 of the Second Additional Protocol, however, the UK must be able to ensure that, in cases where it is the country hosting a JIT, foreign officials of the JIT fall to be treated as domestic officials for the purpose of criminal offences committed by or against them. Similarly, in order to comply with Article 22 of the Second Additional Protocol the UK must bear civil liability for any damage caused by foreign officials operating as part of a JIT whilst in the UK.

7.3 By specifying the Second Additional Protocol for the purpose of sections 39(6)(c) and 41(5)(c) of the Police (Scotland) Act 1967, sections 88(7)(c) and 89(5)(c) of the Police Act 1996, sections 29(7)(c) and 66(6)(c) of the Police (Northern Ireland) Act 1998 and sections 30(5)(c) and 57(6)(c) of the Serious Organised Crime and Police Act 2005, this Order ensures that the United Kingdom can comply with the obligations set out above where a joint investigation team is operating in the UK.

7.4 Once the Second Additional Protocol has been specified for the purpose of the provisions listed in paragraph 7.3 above, members of a JIT formed pursuant to Article 20 of the Protocol who are operating as part of a JIT operating in the UK will fall to be treated in the same way as a member of a JIT formed pursuant to the Convention on Mutual Assistance in Criminal Matters between Member States of the European Union.

8. Consultation outcome

8.1 Consultation has taken place with the Foreign and Commonwealth Office, the Home Office, the Crown Prosecution Service, the Revenue and Customs Prosecution Office, Her Majesty's Revenue and Customs, The Attorney General's Office, the Crown Office and the Procurator Fiscal Service, the Scottish Executive, the Metropolitan Police, the Serious Organised Crime Agency, the Northern Ireland Office, the Financial Services Authority and the Serious Fraud Office. No objections were raised.

9. Guidance

9.1 None.

10. Impact

10.1 There is likely to be no impact on business, charities or voluntary bodies as they are already required to comply with the necessary legislation.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument as no impact on the private, public or voluntary sector is foreseen.

11. Regulating small business

11.1 The legislation will not have an impact on small business.

12. Monitoring & review

12.1 The outcome will be subject to internal review following twelve months to assess if any unexpected impact has occurred.

13. Contact

Sara Khan at the Home Office Tel: 020 7035 1260 or e-mail: Sara.Khan@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.