EXPLANATORY MEMORANDUM TO

The International Joint Investigation Teams (International Agreements) (EU Exit) Order (Northern Ireland) 2019

S.R. 2019 No. 40

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Justice to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under the Police (Northern Ireland) Act 1998 and is subject to the negative resolution procedure.

2. Purpose

2.1. This instrument concerns Joint Investigation Teams (JITs). JITs facilitate co-ordination of criminal investigations and prosecutions conducted in parallel by two or more countries.

2.2. This instrument will ensure that, following its exit from the EU, the UK can continue lawfully to participate in JITs with EU member states that have (i) not incorporated into domestic law the Second Protocol to the Council of Europe Convention on Mutual Assistance in Criminal Matters 1959, but which have (ii) adopted certain relevant UN Conventions described below, and which this instrument will designate into UK law.

3. Background

3.1. Currently, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union [2000] and the Council Framework Decision on joint investigation teams [2002/465/JHA] together provide the legal bases in EU law on which competent authorities of two or more Member States may set up a JIT.

3.2. Following the UK's exit from the EU, the legal basis for JITs with EU member states will be provided, in most cases, by the Second Protocol to the Council of Europe Convention on Mutual Assistance in Criminal Matters 1959.

3.3. Owing to gaps in ratification by four EU member states, namely Italy, Greece, Luxembourg and Slovakia, the legal basis will be provided by specifying in this instrument, for the purpose of sections 29(7)(c) and 66(6)(c) of the Police (Northern Ireland) Act 1998 (the 1998 Act), the following United Nations Conventions:

- United Nations Convention against Transnational Organised Crime 2000;
- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988; and,
- The United Nations Convention against Corruption 2003.

3.4. The effect of specifying the Conventions under these sections is that relevant provisions of the 1998 Act apply to these JITs with these four

countries. This has a range of benefits for JITs formed under the Conventions. For example:

- s29 of the 1998 Act regarding the liability for wrongful acts by constables will also apply to foreign officers operating in the UK;
- s66 of the 1998 Act relating to assaults on constables will apply to constables acting in a JIT formed under the Conventions; and
- s16 of the Crime (International Co-operation) Act 2003 will also become applicable, ensuring that statutory search powers of constables are extended to JITs formed under these powers.

3.5. This measure does not seek to make changes to powers or introduce new powers. Instead it specifies alternative international agreements, for the purposes of the 1998 Act, to ensure that JITs retain the same powers and operational capability that are currently provided by EU legal bases.

4. Consultation

4.1. Law enforcement agencies were consulted by Home Office on the overall approach by the UK.

5. Equality Impact

5.1. An equality screening exercise was carried out. This indicated that a full equality impact assessment was not required under section 75 of the Northern Ireland Act 1998.

6. Regulatory Impact

6.1. Assessment was not necessary as this measure results in no, or negligible, costs or savings and is intended to preserve existing arrangements.

7. Financial Implications

7.1. There are no, or negligible, costs or savings.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied that this instrument does not contravene that provision.

9. EU Implications

9.1. The measure relates to the withdrawal of the UK from the EU because it specifies alternative legal bases in the place of an EU Convention that the UK will no longer be party to after it withdraws from the EU.

10. Parity or Replicatory Measure

10.1. This instrument replicates measures being taken forward at Westminster and the Scottish Parliament.

11. Additional Information

11.1. The UK's National Member at Eurojust has engaged the affected countries on the plans to use the alternative legal bases. The UK desk will transfer the legal bases for current JITs and establish new ones under the alternative bases.