EXPLANATORY MEMORANDUM TO

THE PROCEEDS OF CRIME ACT 2002 (BUSINESS IN THE REGULATED SECTOR) ORDER 2006

2006 No. 2385

1. This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Order amends the Proceeds of Crime Act 2002 (the Act) to add to the list of excluded activities, the new regulated activities of arranging and advising on investments in home reversion plans and home purchase plans from April 2007. The Order is subject to the negative resolution procedure.

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

3.1 None.

4. Legislative Background

4.1 The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383) amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (2001/544) to introduce from 6 April 2007 new regulated activities of entering into, advising on, arranging and administering home reversion plans and home purchase plans. Under the Financial Services and Markets Act 2000 (FSMA) only those who are either authorised by the Financial Services Authority (FSA) or exempt under FSMA are allowed to carry on a regulated activity.

4.2 Section 330 of the Act contains an offence of failing to disclose information, which relates to information that comes to a person in the course of a business in the regulated sector. The Order amends the Act by adding to the list of excluded activities the activities of arranging or advising on investments where the investment consists of rights under a home reversion plan or rights under a home purchase plan. The effect of this is that a business will not be in the regulated sector to the extent it conducts such activities.

5. Extent

5.1 The Order applies to all of the United Kingdom

6. European Convention on Human Rights

6.1 The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

'In my view the provisions of the Proceeds of Crime Act 2002 (Business in the Regulated Sector) Order 2006 are compatible with the Convention rights.'

7. Policy background

7.1 The Act created a new consolidated framework for tackling the proceeds of crime throughout the UK, and updated the law in respect of money laundering. Certain requirements to have in place systematic and other controls to report suspected transactions are placed on firms in the financial services sector, although some activities are excluded from those requirements. The effect of the Order is to expand the category of excluded activities to include arranging and advising on home reversion plans and home purchase plans. The impact of this measure is to reduce the burdens on firms in so far as they arrange, or advise on, investments in home reversion plans and home purchase plans. Providers of home reversion plans and home purchase plans continue to be subject to the usual requirements on financial services firms pursuant to FSA regulation.

8. Impact

8.1 A Regulatory Impact Assessment has been prepared and is available at http://www.hm-treasury.gov.uk

8.2 The impact on the public sector is negligible.

9. Contact

Keith Davis at the HM Treasury Tel: 020 7270 5266 or e-mail: keith.davis@hm-treasury.x.gsi.gov who can answer any queries regarding the Order.