EXPLANATORY MEMORANDUM TO

THE PROCEEDS OF CRIME ACT 2002 (INVESTIGATIONS IN DIFFERENT PARTS OF THE UNITED KINGDOM) (AMENDMENT) ORDER 2008

2008 No. 298

THE PROCEEDS OF CRIME ACT 2002 (EXTERNAL REQUESTS AND ORDERS) (AMENDMENT) ORDER 2008

2008 No. 302

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

2. Description

2.1 These two Orders and the Orders which they amend are made under Part 11 of the Proceeds of Crime Act 2002 ("the 2002 Act"). Part 11 provides that Orders in Council may make provision for cooperation in the investigation and enforcement of orders relating to recovering the proceeds of crime. The Orders provide for cooperation between the authorities in the jurisdictions of the United Kingdom and between the UK authorities and overseas authorities.

2.2 The two amendment Orders are necessary because of amendments made to the 2002 Act by the Serious Crime Act 2007, which include the abolition of the Assets Recovery Agency (ARA) and its Director and the transfer of some of their functions to other agencies. The Orders being amended need to be updated in light of those amendments.

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

3.1 None.

4. Legislative Background

The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) (Amendment) Order 2008

4.1 Section 443(1)(d) and (e), (3) and (4) of the 2002 Act provide for investigation orders and warrants made under Part 8 of the 2002 Act in each of the three jurisdictions of the United Kingdom to be enforced in the other UK jurisdictions. The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (2003 No. 425) made arrangements for this enforcement.

4.2 Section 74(2) of and Part 4 of Schedule 8 to the Serious Crime Act 2007 amend the 2002 Act to transfer ARA's investigation functions to the Serious Organised Crime Agency. The intention is that these amendments will come into

force on 1st April 2008. Section 80 of the Serious Crime Act 2007 also amends the 2002 Act to allow accredited financial investigators to execute a warrant in respect of a confiscation investigation and money laundering investigation. (An accredited financial investigator is an investigator who has been trained and accredited and is being monitored under section 3 of the 2002 Act.) It is intended to bring this amendment into force on 6th April 2008.

4.3 The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) (Amendment) Order 2008 makes the necessary consequential amendments to the provisions in the 2003 Order to take account of those made to the 2002 Act by the Serious Crime Act 2007 described above.

The Proceeds of Crime Act 2002 (External Requests and Orders) (Amendment) Order 2008

4.4 Section 444 of the 2002 Act provides for the freezing of property in the United Kingdom which may be needed to satisfy overseas orders in relation to the recovery of criminal proceeds, and for the enforcement of such orders by the realisation of property in any part of the United Kingdom. The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (2005 No. 3181) made such provision corresponding to the domestic provisions in Part 2, 3 and 4 (confiscation) and Part 5 (civil recovery) of the 2002 Act.

4.5 Section 74(2) of and Schedule 8 to the Serious Crime Act 2007 abolish the confiscation functions of ARA and its Director and transfer their civil recovery functions to, in England and Wales, the Serious Organised Crime Agency, the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions and the Director of the Serious Fraud Office, and in Northern Ireland, the Serious Organised Crime Agency, the Director of the Serious Fraud Office and the Director of Public Prosecutions for Northern Ireland. Schedule 8 also makes other minor and technical amendments. These include consequential amendments to the Limitation Act 1980 and the Limitation (Northern Ireland) Order 1989. It is intended that these amendments will be brought into force on 1st April 2008.

4.6 Section 83 of the Serious Crime Act amends the 2002 Act to provide for a new type of receiver in civil recovery proceedings whose only function will be to manage property which is subject to a property freezing order under section 245A of the 2002 Act (inserted by section 98 of the Serious Organised Crime and Police Act 2005). It is intended that this amendment will be brought into force on 6th April 2008.

4.7 The Proceeds of Crime Act 2002 (External Requests and Orders) (Amendment) Order 2008 makes amendments to the 2005 Order to correspond to those made to the 2002 Act by the Serious Crime Act 2007 outlined in the previous paragraphs.

5. Extent

5.1 These instruments apply to all of the United Kingdom, although the amendments make provision for England and Wales and Northern Ireland.

6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State for the Home Department, Vernon Coaker, has made the following statement regarding Human Rights:

In my view the provisions of The Proceeds of Crime Act 2002 (External Requests and Orders) (Amendment) Order 2008 are compatible with the Convention rights.

6.2 As the Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) (Amendment) Order 2008 is subject to negative resolution procedure and does not amend primary legislation, no statement is required in respect of that instrument.

7. Policy background

7.1 The two Orders that are being amended are intended to provide intra-United Kingdom and international cooperation in investigating, freezing and recovering the proceeds of crime. The Serious Crime Act 2007 is making a number of amendments to the equivalent domestic schemes in the 2002 Act, including in particular the abolition of ARA and its Director and the transfer of its civil recovery and investigation functions to other agencies; and the introduction of civil recovery management receivers. These amendments necessitate parallel amendments to the two Orders so that the Orders refer to the correct agencies and so that the co-operation, enforcement and investigation regimes in them continue to function effectively.

8. Impact

8.1 The potential work generated by these Orders is a redistribution of work already available under existing orders and so any additional impact on business, charities or voluntary businesses will be negligible.

9. Contact

Stephen Goadby at the Home Office Tel: 020 7035 1559 or e-mail: stephen.goadby@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.