EXPLANATORY MEMORANDUM TO

THE PROCEEDS OF CRIME ACT 2002 (MONEY LAUNDERING: EXCEPTIONS TO OVERSEAS CONDUCT DEFENCE) ORDER 2006

2006 No. 1070

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 Under amendments to the Proceeds of Crime Act 2002 which will come into force at the same time as this Order, there will be a new defence to the money laundering offences in that Act. The defence will apply where a person knows or believes on reasonable grounds that the acts which produced the proceeds took place in a particular country overseas and the acts were lawful in that country.

2.2 Under the Order the defence applies only if the act generating the proceeds would not be punishable in the United Kingdom by a maximum sentence of more than 12 months' imprisonment. The Order also sets out a few exceptions to this rule.

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

3.1 None.

4. Legislative Background

4.1 The money laundering offences in sections 327 to 329 of the 2002 Act relate to dealing with "criminal property" in the United Kingdom. "Criminal property" is defined to include the proceeds of acts which would be offences if committed in the United Kingdom, even though they are not offences in the places where they occurred. The provisions require both disclosure of a person's knowledge or suspicions about the property and law enforcement's agreement to that person continuing to deal with the property.

4.2 The effect of the new defence is that a person has a defence for failing to comply with the requirements in respect of the money laundering offences where he knew or believed on reasonable grounds that the acts which produced the proceeds took place in a particular country and the acts were lawful in that country.

4.3 The Order limits the scope of the defence. The defence applies only if the act generating the proceeds would not be punishable in the United Kingdom by a maximum sentence in excess of 12 months' imprisonment.

Proceeds from conduct which is lawful under local law would continue to fall within the money laundering offences if it constituted a serious offence here. The Order lists a few of exceptions to this rule.

5. Extent

5.1 This instrument applies to the whole of the United Kingdom.

6. European Convention on Human Rights

6.1 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 objective is to simplify and reduce the requirements of persons and businesses to report suspicions of money laundering in certain circumstances without weakening the UK's defences against money laundering. It is also to ensure that that the Serious Organised Crime Agency will no longer have to receive reports from the business sector which are of limited intelligence value.

7.2 The Government's objective is to have firm and effective legislation in place to combat money laundering. The Order will not damage the effectiveness of the money laundering reporting regime.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities and voluntary organisations.

8.2 The impact on the public sector is neutral. The instrument does not create new burdens.

9. Contact

9.1 Jim Bradley at the Home Office Tel: 020 7035 1554 or e-mail jim.bradley@homeoffice.gsi.gov.uk will answer any queries regarding the instrument.