EXPLANATORY MEMORANDUM TO
THE PROCEEDS OF CRIME ACT 2002 (REFERENCES TO FINANCIAL INVESTIGATORS) (AMENDMENT) ORDER 2006

2006 No. 57

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 This Order amends the Proceeds of Crime Act 2002 (References to Financial Investigators) Order 2003 (SI 2003/172) ("the principal Order"), as amended by SI 2004/8, SI 2004/3339 and SI 2005/386. The principal Order lists provisions of the Proceeds of Crime Act 2002 ("the Act") that contain references to accredited financial investigators and provides that investigators of the descriptions set out in the Order are accredited financial investigators for the purposes of the listed provisions.

2.2 This Order adds investigators who are members of staff of the Serious Organised Crime Agency, the Royal Mail Group Plc and the Home Office to the principal Order.

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

3.1 None

4. Legislative Background

4.1 Under section 3 of the Act, the Director of the Assets Recovery Agency ('the Director') has established a system for the accreditation of financial investigators. Financial investigators are accredited by the Agency as possessing the skills to apply in England, Wales and Northern Ireland for restraint orders and certain ancillary orders under Parts 2 and 4, and for certain investigation orders under Part 8. The Director is able to provide different classes of accreditation for different purposes.

4.2 The Act provides that a number of powers in the Act can be exercised by an accredited financial investigator. Under section 453 of the Act the Secretary of State has the power to provide by Order that a specified reference in the Act to an accredited financial investigator is a reference to an accredited financial investigator as described in the Order. The principal Order is made under section 453 and section 459(2) of the Act. It specifies three sets of references to accredited financial investigators. The first are in sections 42(2)(c) and 68(3)(c), which provide powers in relation to restraint orders under Part 2 of the Act (confiscation in England and Wales). The second are in sections 191(2)(c) and 216(3)(c), which provide powers in relation to restraint orders under Part 4 of the Act (confiscation in Northern Ireland). The third are in section 378(1)(b), (2)(d), (4)(a) and (6)(c), which relate to powers in relation to confiscation and money laundering investigations in Part 8 of the Act.

4.3 This Order is made under section 453 and 459(2) of the Act. It amends the principal Order to add to the descriptions of accredited financial investigators for the purposes of the specified references in the Act to those investigators. An investigator who is a member of the staff of the Serious Organised Crime Agency, the Royal Mail Group Plc or the Home Office is added for the purposes all the powers in relation to restraint orders in Parts 2 and 4 of the Act and all the powers of investigation in Part 8. For the purposes of section 68(3)(c), 216(3)(c), 378(2)(d) and 378(6)(c) a member of staff of the Serious Organised Crime Agency must be of the grade of at least grade 2 Senior Manager, a member of the staff of the Royal Mail Group Plc must be of the grade of at least Business Personal Contract Holder Grade 9 and a member of staff of the Home Office must be of the grade of at least Senior Executive Officer.

5. Extent

5.1 England, Wales and Northern Ireland

6. European Convention on Human Rights

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

7. Policy Objective

7.1 The objective is to introduce an amendment order that will add an accredited financial investigator who is a member of the staff of the Serious Organised Crime Agency, the Managed Migration Intelligence Team (Work Permits UK) of the Home Office (the Order refers to "a member of staff of the Home Office" to cover members of that team who are not immigration officers, as immigration officers were included in a previous order) and the Royal Mail Group Plc to the list of descriptions of investigators who are able to exercise powers in relation to restraint proceedings, and confiscation and money laundering investigations under the Act. By providing the Order making power in section 453, the Act ensures that it is the Secretary of State (and not the Director) who decides ultimately who should have access to the powers of restraint and investigation. The Director can accredit a person as a financial investigator, but financial investigators only have access to the powers in the Act where they fall within the specified description - e.g. as to their employer, and in certain cases, their grade – in an order made under section 453.

7.2. Adding these particular descriptions of investigators will enable the organisations of which they are members to operate more flexibly and more independently of the police in the pursuit of the proceeds of crime.

7.3 The listed bodies requested their own inclusion in the Order to enable them to train a body of internal investigators who will be more familiar with, and therefore more effective at, pursuing criminality both within their own organisation and in their wider field of operation. This will also have the effect of making them less reliant on more traditional law enforcement agencies.

7.4 Public interest is likely to be minimal as the Order merely adds three new organisations to an existing list of bodies able to access the investigative and

restraint provisions of the Act. The bodies and their access to the provisions are not considered to be contentious or controversial.

8. Impact

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

8.2 Neither is there an impact on the public sector.

9. Contact

Lee Stephen at the Home Office Tel: 020 7035 1573 or email: lee.stephen@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.