EXPLANATORY MEMORANDUM TO

THE SERIOUS ORGANISED CRIME AND POLICE ACT 2005 (APPEALS UNDER SECTION 74) ORDER 2006

2006 No. 2135

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

2. Description

2.1 The Order sets out the process for appeals against decisions of the Crown Court in reviewing a defendant's sentence on the basis of assistance the defendant has given, agreed to give or failed to give to the authorities (Queen's evidence).

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

3.1 None

4. Legislative Background

4.1 Section 74(12) of the Serious Organised Crime and Police Act 2005 provides for the Secretary of State to make orders containing provisions corresponding to the provisions of the Criminal Appeal Act 1968 and the Criminal Appeal (Northern Ireland) Act 1980. The provisions relating to appeals under section 74 of the 2005 Act correspond to, but are not identical to, the wider appeal provisions. This is the first Order made under this section.

5. Extent

5.1 This instrument applies to England, Wales and Northern Ireland.

6. European Convention on Human Rights

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 Serious Organised Crime and Police Act 2005 puts existing common law provisions (known as Queen's Evidence) relating to reductions in sentence to reflect assistance given by defendants on a statutory footing. Section 74 provides that the Crown Court can review the sentence of a person on the basis of assistance the defendant has given, agreed to give or failed to give to the authorities. The section also provides that the general avenues of appeal apply to these decisions. The Order sets out the detailed provisions (bail, evidence, court powers, etc) as to how these appeals should be dealt with in both the Court of Appeal and the House of Lords.

These provisions correspond to the general provisions relating to appeals against sentence.

7.2 It is difficult to predict the number of sentences reviewed under these provisions and what proportion of those will be subject to appeal. However, the power to refer cases to the court for review rests with prosecutors specified by the 2005 Act and the numbers are expected to be small. The Order is not legally or politically important. There is unlikely to be any public interest in the Order.

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 The impact on the public sector will be in exactly how the courts and prosecution manage the small number of appeals under the 2005 Act.

9. Contact

Tim Wright at the Home Office (tel: 020 7035 1578 or e-mail: tim.wright@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument and its application in England and Wales.

Tom Haire at the Northern Ireland Office (tel: 028 9052 9122 or e-mail: tom.haire@nio.x.gsi.gov.uk) can answer any queries regarding the instrument and its application in Northern Ireland.