EXPLANATORY MEMORANDUM TO

THE SERIOUS ORGANISED CRIME AND POLICE ACT 2005 (DESIGNATED SITES UNDER SECTION 128) (AMENDMENT No. 2) ORDER 2012
2012 No. 2709

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument corrects a drafting omission in the Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) (Amendment) Order 2012 (SI 2012 No 1769) to ensure the effect of that Order is to designate a particular site (detailed below) under section 128 of the Serious Organised Crime and Police Act 2005. Under section 128 of that Act, a person commits an offence if he enters, or is on, any designated site in England or Wales as a trespasser.

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

3.1 It is considered necessary on this occasion to breach the 21 day rule so that the statutory instrument correcting the drafting oversight comes into force the day after it has been laid. The Department's reasons for breaching the 21 day rule are as follows:

- The intended effect of the Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) (Amendment) Order 2012 is to designate a particular site under section 128 of the Serious Organised Crime and Police Act 2005, with the consequence that anyone who enters the site as a trespasser commits a criminal offence under section 128(1) of that Act. At present, due to a drafting omission highlighted by the Joint Committee on Statutory Instruments, which the present instrument seeks to rectify, there is serious doubt both in law and in the public's mind as to whether the site mentioned in article 2(12) of the Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) (Amendment) Order 2012 is designated. It is essential that the position is corrected as soon as possible so that the general public are clear about what behaviour is subject to criminal sanction.

- From the perspective of the protection of the site itself from trespass, it is important to correct the drafting omission as soon as possible to ensure that there is a criminal sanction for trespass of the site. As expanded upon below, a policy decision has already been made that such a sanction (and resultant power of arrest given to the police) is a necessary and effective deterrent to potential trespassers.

4. Legislative Context

4.1 This instrument is the fifth order made under section 128 or section 129 (the corresponding Scottish offence) of the Serious Organised Crime and Police Act 2005. The first was the Serious Organised Crime and Police Act 2005 (Designated Sites) Order 2005 (SI 2005 No. 3447). The second was the Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) (Amendment) Order 2007 (SI 2007 No. 1387) which substituted a new map for one of the sites designated under SI 2005 No 3447. The third was the Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) Order 2007 (SI 2007 No 930). The fourth was the Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) (Amendment) Order 2012 (SI 2012 No. 1769), which the present instrument seeks to amend.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

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

- **What is being done and why**

7.1 The creation of the offence of criminal trespass on protected sites in sections 128 to 131 of the Serious Organised Crime and Police Act 2005 was a response to a recommendation in the report prepared by Commander Armstrong of the City of London Police (following an intrusion at Windsor Castle on 21 June 2003). The report recommended the consideration of a new offence of criminal trespass "into secure/specified (Royal/Government) premises". This recommendation was endorsed in the Security Commission Inquiry Report of May 2004 (following revelations of a journalist's activities in Buckingham Palace late in 2003). After careful consideration it was agreed that a new criminal offence was necessary for two reasons:

- To create a deterrent to intrusions at secure, sensitive sites. It was noted that it had not been possible to secure prosecution (with an appropriate penalty) of any of the individuals who had carried out high profile intrusions at Buckingham Palace and the Palace of Westminster.

- It gives the police a specific power of arrest of a trespasser at a sensitive site where no other apparent existing offence had been committed. This was something for which the police responsible for security at such sites had been lobbying. The specific power of arrest in section 130(1) of the Serious Organised Crime and Police Act 2005 has now been superseded by the general power of arrest inserted into the Police and Criminal Evidence Act 1984 by section 110 of the Serious Organised Crime and Police Act 2005.

7.2 This instrument corrects a drafting omission in the Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) (Amendment) Order 2012 (SI 2012 No 1769) to ensure the effect of that Order is to apply the offence to the following site:

- Kensington Palace, Kensington Gardens, London, W8 4PU

7.3 The concentration of senior, recognisable Members of the Royal Family in residence at the site has significantly raised its profile. On this basis, we assess there to be a substantially increased risk of the site being targeted by fixated individuals, significant numbers of the media and members of the general public (especially the drunk, mischievous or homeless). This has the scope to hamper the MPS counter-terrorist security operation at the site including by distracting police officers from such operations work. There have already been incidents involving individuals straying beyond the public boundaries.

7.4 The designated site has a clearly defined boundary (marked on the map in Schedule 11 of SI 2012 No. 1769) designating the area within the outer boundary of the site. Clear signage where appropriate, has already been put in place to ensure that members of the public are aware of the extent of the area. Section 128(4) also provides that it is a defence for a person charged with an offence under this section to prove that he did not know, and had no reasonable cause to suspect, that the site in relation to which the offence is alleged to have been committed was a protected site. Furthermore, no prosecution can be brought without the consent of the Attorney General.

7.5 The boundary has been agreed in close liaison with all those involved at the site, including the Royal Household, the Police, and Historical Royal Palaces. Discussions also took place with the local planning offices at the Royal Borough of Kensington and Chelsea Council.

- **Consolidation**

7.6 The Department does not assess that there is any need for consolidation measures.

8. Consultation outcome

8.1 Prior to the coming into force of the Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) (Amendment) Order 2012, the Department conducted detailed discussions with Historic Royal Palaces, English Heritage and the Royal Borough of Kensington and Chelsea in relation to ensuring there were no planning issues; deciding upon the boundary of the designated site; and the need for any steps which might be required to inform the public that the site is designated, pursuant to section 131(2) of the Serious Organised Crime and Police Act 2005. A public consultation was not deemed necessary in light of these discussions and because of the requirement for the protection of the designated site from criminal trespass, as assessed by the Home Office, Police and Royal Household

9. Guidance

9.1 All parties are fully aware of the implications of amending the list of designated sites under SOCPA and have been fully involved in the process at every stage, therefore no guidance will be issued. All parties have been informed of the drafting error in the Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) (Amendment) Order 2012 and will be informed by letter when the present instrument is laid and the date when it will come into force.

10. Impact

10.1 As per the assessment for the Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) (Amendment) Order 2012, there is no impact on business, charities or voluntary bodies.

10.2 Similarly, as per the assessment for the Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) (Amendment) Order 2012, the impact on the public sector is expected to be minimal. Protected public sector sites will incur costs of signage, the extent of which will be dependant on the size and complexity of boundaries. A very low number of arrests and prosecutions are anticipated and so the additional burden on the police and criminal justice system should be limited.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring and review

12.1 The success criteria for this instrument are that in effect it would be a deterrent against criminal trespassers on the designated site and also that it would enable the Police to effectively protect the site in the event of such a trespass by providing for a power of arrest.

12.2 If the list of persons residing in the designated site changes, this would trigger a review by the Home Office, Police and Royal Household into the need for the site to remain designated.

13. Contact

13.1 Kevin Pollard/Shauna Dimadis at the Home Office, Tel: 020 7035 3779 or 020 7035 3768 can answer any queries regarding this instrument.