EXPLANATORY MEMORANDUM TO
THE SERIOUS ORGANISED CRIME AND POLICE ACT 2005 (DESIGNATED SITES UNDER SECTION 128) (AMENDMENT) ORDER 2013

2013 No. 1562

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

2. Purpose of the instrument

2.1 This instrument designates one site 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 None.

4. Legislative Context

4.1 This instrument is being made because it appears to the Secretary of State that it is appropriate to designate the site in the interests of national security, pursuant to section 128 (3)(c) of the Serious Organised Crime and Police Act 2005 (as amended). This is the Sixth order made under section 128 or section 129 (the corresponding Scottish offence). 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 Serious Organised Crime and Police Act 2005 (Designated Sites) Order 2005 (SI 2012 No. 1769). The fifth was Serious Organised Crime and Police Act 2005 (Designated Sites) Order 2005 (SI 2012 No.2709), which corrected a drafting omission in SI 2012 No 1769.

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

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 applies the offence to the following sites:

- Anmer Hall, Anmer, Norfolk, PE31 6RW

- St James's Palace, Cleveland Row, London, SW1A 1BA

7.3 The residence of senior, recognisable Members of the Royal Family at the Anmer Hall 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 or mischievous). This has the scope to potentially hamper the counter-terrorist security operation at the site by Norfolk Constabulary. There has already been media interest in the property since it was made public that the principals were to make this their home.

7.4 The designated site at Anmer Hall has a clearly defined boundary (marked on the attached map) designating the area within the outer boundary of the site and it is intended that necessary measures, including clear signage where appropriate, will be in place to ensure that members of the public are aware of the provisions of the offence. 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 designated site at St James's Palace has a clearly defined boundary (marked on the attached map). The proposal is to amend the current boundary which at present follows the building line into Friary Court so anyone climbing the gate there could not theoretically be charged under SOCPA as the boundary currently stands. Measures, including clear signage where appropriate, are already in place to ensure that members of the public are aware of the provisions of the offence. Since the original designation, new railings have been installed along the edge of Friary Court. The boundary line will move out to where the new railings have been installed whilst not impeding the public's access to the pavement along Marlborough Road.

7.6 The boundaries have been agreed in close liaison with all those involved at the site, including the Royal Household and the Police.

8. Consultation Outcome

8.1 Formal written consultation is not required in this case. However the Ministry of Justice (MoJ) gateway for criminal offences and the Cabinet Office have been consulted. In agreeing boundaries there has been close liaison with all those involved at the site, including the Royal Household, the principals and the police.

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 will be informed by letter when the instrument is laid and the date when it will come into force.

10. Impact

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

10.2 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.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring and Review

12.1 There are no plans at present to designate any other sites. However, the position is kept under review.

13. Contact

Shauna Dimadis at the Home Office, Tel: 020 7035 3768 can answer any queries about this instrument.