

Executive Note
The Serious and Organised Crime and Police Act 2005 (Consequential and Supplementary Amendments) (Scotland) Order 2006 (S.S.I 2006/129)

1. The above instrument was made in exercise of the powers conferred by section 173(1) to (3) and (5) of the Serious and Organised Crime and Police Act 2005. The instrument is subject to the negative resolution procedure.

Policy Objectives

2. The purpose of the instrument is to amend subordinate legislation consequential on Part 1 (sections 1 to 59 and Schedules 1 to 4) of the Serious and Organised Crime and Police Act 2005 (“the Act”), which establishes the Serious and Organised Crime Agency (SOCA) which will take up its functions on 1 April 2006. On the same date the National Criminal Intelligence Service (NCIS) will be abolished.

3. The Serious Organised Crime Agency will bring NCIS and National Crime Squad together with those parts of Her Majesty’s Revenue and Customs that deal with drug trafficking and associated criminal financing. It will also incorporate those in the Home Office dealing with organised illegal immigration. It will be an Executive Non-Departmental Public Body for whom the Home Secretary will be accountable to Parliament. SOCA’s functions, as set out in the Serious Organised Crime and Police Act 2005 will be:

- preventing and detecting serious organised crime; and
- contributing to the reduction of such crime in other ways and to the mitigation of its consequences.

4. Under section 173(5)(a) of the Act amendments cannot be made in respect of Scotland if the subject matter falls within the competence of the Scottish Parliament. The Order therefore extends only to amendments that are considered to be within the devolved competence of the Scottish Parliament.

5. A separate Order has been made by Home Office (The Serious and Organised Crime and Police Act 2005 (Consequential and Supplementary Amendments to Secondary Legislation) Order 2006 SI.2006/594) and makes equivalent amendments in relation to subordinate legislation for England and Wales and for the non-devolved functions of SOCA in Scotland.

Detail of Amendments

6. Paragraph 6 of the Schedule to the Order removes the references in the Scotland Act Cross Border Public Authorities) (Scotland) (Specification) Order 1999 to the National Criminal Intelligence Service (NCIS) and their Service Authorities, in respect of their devolved functions in Scotland. Those references would have no legal effect from 1st April 2006 due to the abolition of NCIS but the opportunity is taken to tidy up the 1999 Order by textually removing the entries. An equivalent textual removal is being made in the Home Office Order for England and Wales for the reserved functions of NCIS.

7. Paragraph 9 of the Schedule to the Order substitutes a reference to NCIS with SOCA in the Civil Contingencies Act 2004 (Contingency Planning)(Scotland) Regulations 2005. It is considered that it is within devolved competence to make this substitution as the purpose of the amendments is civil planning.

8. In respect of paragraphs 7 and 10 of the Schedule the references to NCIS have been revoked and not replaced with a reference to SOCA. These amendments relate to the Race Relations Act 1976 (Statutory Duties) (Scotland) Order 2002 (2002/62) and the Disability Discrimination (Public

Authorities) (Statutory Duties) (Scotland) Order 2005 (2005/565). These SSIs impose various equality type duties on bodies in Scotland, including cross border public authorities.

9. At present NCIS is subject to the requirements of the Scottish SSIs in respect of its devolved functions in Scotland and is subject to the separate requirements of the UK SI in respect of its functions in England and Wales and any reserved functions in Scotland.

10. However, the position for SOCA will be different. It will only be subject to the requirements of the UK SI. This is because unlike NCIS, SOCA is not a cross border public authority within the meaning of section 88 of the Scotland Act. The relevant powers in the Race Relations Act 1976 and the Disability Discrimination Act 1995 only allow Scottish Ministers to impose duties on, inter alia, cross-border public authorities within the meaning of the Scotland Act.

11. Because the power to impose the relevant equality duties on SOCA is reserved the necessary consequential amendments are included in the Westminster Order and SOCA will be covered by the Westminster Order in respect of its equality duties in Scotland. Consideration is being given to whether or not further legislative change is required to allow SOCA to be covered by the Scottish legislation in respect of its devolved functions.

12. Paragraphs 1 to 5 and 8 of the Schedule to the Order make various amendments to Road Traffic statutory instruments to allow SOCA. The amendments exempt SOCA from various road traffic requirements in the same way as police and other emergency vehicles are exempt. Although the relevant Road Traffic legislation is reserved, it is considered within competence to make these amendments in respect of the devolved functions of SOCA as this is for a devolved police purpose and the amendments do not have a greater effect on the reserved road traffic law than necessary. A similar approach to amending road traffic legislation was recently taken in an Order under sections 87 and 88(2) of the Fire (Scotland) Act in consequence of that Act - The Fire (Scotland) Act 2005 (Consequential Modifications and Amendments) (No. 2) Order 2005.

13. Equivalent amendments are being made to the relevant road traffic legislation by the Home Office in respect of the functions of SOCA in England and Wales and in respect of the reserved functions of SOCA. The Home Office Order also makes some amendments to road traffic legislation for the whole of the functions of SOCA in Scotland in cases where it was not considered within devolved competence to make the amendment in the Scottish Order, because it could not be said that the amendments did not have a greater effect on the reserved road traffic legislation than was necessary.

Consultation

14. There is no consultation requirement in relation to this type of Order under the Serious and Organised Crime and Policing Act 2005. However formal consultation was not considered necessary and relevant stakeholders are aware of the changes.

Financial Effects

15. The instrument has no financial effects on the Scottish Executive, local government or on business.