

**EXPLANATORY MEMORANDUM TO**  
**THE SERIOUS ORGANISED CRIME AND POLICE ACT 2005**  
**(AMENDMENT OF SECTION 61(1)) ORDER 2006**

**2006 No.1629**

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 The Serious Organised Crime and Police Act 2005 gives prosecutors the power to require individuals to produce documents, provide information or answer questions if they have information of significant value to the investigation of one of the relevant offences listed in the Act (organised crime lifestyle offences, terrorism or tax fraud). This order adds offences of bribery to that list of offences.

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

3.1 None.

4. **Legislative Background**

4.1 Part 2, Chapter 1 of the Serious Organised Crime and Police Act 2005 confers powers on the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions and the Lord Advocate (“the Investigating Authority”) to give, or to authorise a constable, a member of SOCA staff or a Revenue and Customs officer to give, a disclosure notice. A disclosure notice requires the recipient to answer questions, provide information or produce documents where there are reasonable grounds for suspecting that certain offences (listed in section 61(1)) have been committed and that the disclosure notice will compel the production of information of substantial value to the investigation. Sections 60 (2), (3) and (4) allow the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions and the Lord Advocate to delegate these powers to a Crown Prosecutor, a Revenue and Customs Prosecutor and a procurator fiscal respectively. Section 61(4) empowers the Secretary of State to amend, by order, section 61 (1) in its application to England and Wales so as to remove an offences from the list or add an offence to it. This is the first use of this order-making power.

5. **Extent**

5.1 This instrument applies to England and Wales.

## **6. European Convention on Human Rights**

Paul Goggins has made the following statement regarding Human Rights:

In my view the provisions of the Serious Organised Crime and Police Act 2005 (Amendment of Section 61(1)) Order 2006 are compatible with the Convention rights.

## **7. Policy background**

7.1 During Lords Committee Stage of the then Serious Organised Crime and Police Bill, Baroness Whitaker put down an amendment to extend the use of disclosure notices to investigations relating to offences of bribery. The amendment was resisted because it was technically deficient and because, despite relatively wide consultation on the new disclosure notices, this was the first time the issue of bribery had been raised. However, Baroness Scotland expressed support for the amendment in principle and undertook to consider the issue in more detail and consider adding these offences by order at a later date.

7.2 Many allegations of bribery are investigated by the SFO, which already has a power to compel the provision of information under s2 of the Criminal Justice Act 1987. However, SFO's focus is primarily on bribery by enterprises that are otherwise legitimate; where bribery is an intrinsic part of organised criminal activity SOCA would appear to be the best agency to tackle it. Also, SOCA is intended to use proactive techniques (complementing SFO investigations which are largely reactive) and will have officers based abroad (including in Africa, where tackling corruption is high on the Government's agenda).

7.3 Disclosure notices would therefore be of value to other investigators (SOCA and police forces) in corruption cases. Although these cases are comparatively rare, SOCA or police forces should not be hindered by lack of powers in a corruption investigation. Making the change would also demonstrate the Government's commitment to tackling corruption vigorously.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as its impact on business, charities or voluntary bodies is likely to be negligible.

## **9. Contact**

Caroline Johnson at the Home Office Tel: 020 7035 1562 or e-mail: [Caroline.Johnson@homeoffice.gsi.gov.uk](mailto:Caroline.Johnson@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.

