

EXPLANATORY MEMORANDUM TO
THE CONSTITUTIONAL REFORM ACT 2005 (CONSEQUENTIAL AMENDMENTS)
ORDER 2011

2011 No. 1242

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

2. Purpose of the instrument

2.1 The Constitutional Reform Act 2005 (“the 2005 Act”) abolished the appellate jurisdiction of the House of Lords and established the Supreme Court of the United Kingdom. There are numerous references to the House of Lords in its appellate jurisdiction in legislation made before the entry into force of the 2005 Act. Schedule 9 to the 2005 Act replaced earlier references in *primary* legislation to the House of Lords with references to the Supreme Court. However the 2005 Act contains no similar provision replacing such references in *secondary* legislation. Rather, the 2005 Act enables this to be done by Order made by the Lord Chancellor.

2.2 The present Order replaces references to the House of Lords in the following secondary legislation with references to the Supreme Court:

The Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003 [S.I. 2003/82]

The Proceeds of Crime Act 2002 (Appeals under Part 4) Order 2003 [S.I. 2003/458]

The Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005 [S.I. 2005/2798]

The Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) (Northern Ireland) Order 2005 [S.I. 2005/3179]

The Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) Order 2005 [S.I. 2005/3180]

The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 [S.I. 2005/3181]

The Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006 [S.I. 2006/2135]

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

3.1 None.

4. Legislative Context

4.1 There is no special legislative context to this instrument.

5. Territorial Extent and Application

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

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The 2005 Act sets out how appeals to the House of Lords in primary legislation now lie to the Supreme Court, but leaves similar appeal rights created in secondary legislation to be dealt with by statutory instrument. If existing references in secondary legislation to the House of Lords are not replaced with references to the Supreme Court, it would be possible to argue that an appeal has been abolished.

7.2 Although these appeals are extremely rare, it has come to the government's attention that a question had arisen in the context of a recent Court of Appeal case as to whether an appeal right had indeed been abolished. This Order is intended to put the question beyond doubt.

8. Consultation outcome

8.1 This instrument is technical and a public consultation is unnecessary. It has, however, been prepared in consultation with relevant interests, including the Registrar of Criminal Appeals and the Registrar of the Supreme Court. As noted, the Order extends to Northern Ireland. The Northern Ireland devolved administration has been consulted as to, and is content with, the Order's application to Northern Ireland.

9. Guidance

9.1 No guidance is planned.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as it is not anticipated to incur any new costs and has no impact on the private or third sectors.

11. Regulating small business

11.1 This instrument has no impact on small business.

12. Monitoring & review

12.1 The Government will keep under review that this Order has the required effect.

13. Contact

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