EXPLANATORY MEMORANDUM TO

THE JUSTICE AND SECURITY (NORTHERN IRELAND) ACT 2007 (EXTENSION OF DURATION OF NON-JURY TRIAL PROVISIONS) ORDER 2011

2011 No. [XXXX]

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

2. Purpose of the instrument

2.1 This Order extends the duration of non-jury trial arrangements specific to Northern Ireland for a period of two years.

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

3.1 None.

4. Legislative Context

4.1 Sections 1 to 9 of the Justice and Security (Northern Ireland) Act 2007 provide for a system of non-jury trial for Northern Ireland. This system will expire on 31 July 2011 (four years after it was commenced) unless the effective period during which the provisions are in force is extended. An order extends the effective period for two years. This is the second time an order is being made to extend the effective period.

5. Territorial Extent and Application

5.1 This instrument applies to Northern Ireland.

6. European Convention on Human Rights

The Minister of State (Hugo Swire) has made the following statement regarding Human Rights:

In my view the provisions of The Justice and Security (Northern Ireland) Act 2007 (Extension of Duration of Non-jury Trial Provisions) Order 2011 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 The non-jury trial system contained in the Justice and Security (Northern Ireland) Act 2007 applies only in Northern Ireland. It replaced the

old “Diplock” system that existed from 1972 until its repeal in 2007. The system in the 2007 Act is risk-based: it enables the Director of Public Prosecutions to issue a certificate for non-jury trial if one or more of four conditions in the Act apply, and in view of that there is a risk that the administration of justice might be impaired if the trial were to be conducted with a jury. The four conditions relate to connections between the offence or the defendant with proscribed organisations; or connections between the offence and religious or political hostility.

7.2 The system is temporary, and expires on 31 July 2011. However, its operation can be extended for periods of two years. This reflects Government’s view that this is an exceptional system that ought to be kept in force for as short a time as possible. Government has made clear on many occasions its aspiration to return to jury trial for all cases as soon as the security situation allows.

7.3 A system of non-jury trial for exceptional cases was considered necessary to address paramilitary and community-based pressures on jurors that create a risk to the administration of justice. These risks are considered more significant in Northern Ireland than elsewhere in the UK.

8. Consultation outcome

8.1 No formal public consultation was held on this issue. However, views on extension were sought from a number of interested groups and individuals, including political parties, NGOs and practitioners in the criminal justice system. The majority of respondents clearly provided views in favour of extension, given the current threat environment.

9. Guidance

9.1 As this Order merely continues in force existing provisions it is not considered necessary to provide guidance.

10. Impact

10.1 The Order has no impact on business, charities or voluntary bodies.

10.2 The Order has no impact on the public sector: it continues existing provisions in force.

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 business.

12. Monitoring & review

12.1 A statement is made to Parliament on the volume of non-jury trials under the Act each year. The temporary nature of the provisions means that the necessity for them is reviewed every two years.

13. Contact

Francesca Higgins at the Northern Ireland Office Tel: 020 7210 0209 or 028 9052 7032, or email: Francesca.higgins@nio.x.gsi.gov.uk can answer any queries regarding the instrument.