EXPLANATORY MEMORANDUM TO

THE PREVENTION OF TERRORISM ACT 2005 (CONTINUANCE IN FORCE OF SECTIONS 1 TO 9) ORDER 2009

2009 No.

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 provides for the continuation of the powers in sections 1 to 9 of the Prevention of Terrorism Act 2005 ("the Act") for another year, from 11 March 2009 until the end of 10 March 2010. The powers are needed to ensure that a control order can continue to be made against any individual where the Secretary of State has reasonable grounds for suspecting that individual is or has been involved in terrorism-related activity and it is necessary to impose obligations on that individual for purposes connected with protecting members of the public from a risk of terrorism.

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

3.1 None.

4. Legislative Background

4.1 Sections 1 to 9 of the Act require annual renewal. The Order continues in force those sections of the Act for a period of one year, beginning with 11 March 2009. These provisions would otherwise expire at the end of 10 March 2009. This is the fourth renewal Order. The Act received Royal Assent on 11 March 2005 and was renewed for the period 11 March 2006 to 10 March 2007 by the Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2006 (SI 2006 No. 512), for the period 11 March 2007 to 10 March 2008 by the Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2007 (SI 2007 No. 706), and for the period 11 March 2008 to 10 March 2009 by the Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2008 (SI 2008 No. 559).

4.2 The Order provides for the continuation of the powers to make a control order against an individual where the Secretary of State has reasonable grounds for suspecting that the individual is or has been involved in terrorism-related activity and where she considers it is necessary to impose obligations on that individual for purposes connected with protecting members of the public from a risk of terrorism.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Home Secretary Jacqui Smith has made the following statement regarding Human Rights:

"In my view the provisions of the Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2009 are compatible with the Convention rights".

7. Policy background

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

7.1 The Act provides for the imposition of non-derogating control orders upon anyone that the Secretary of State has reasonable grounds for suspecting is or has been involved in terrorism-related activity and where she considers it necessary for the protection of members of the public from a risk of terrorism. The measures can be applied to any individual, whether a UK national or a non-UK national, and whatever the nature of the terrorist activity (international or domestic). Control orders are a key measure for addressing the threat posed by suspected terrorists who cannot currently be prosecuted or, in respect of foreign nationals, removed from the UK. The current threat level to the UK from people suspected of involvement in terrorism is assessed by the Joint Terrorism Analysis Centre (JTAC) as 'Severe'. Threat levels are designed to give a broad indication of the likelihood of a terrorist attack. 'Severe' means that an attack is highly likely and indicates a continuing high level of threat to the UK. The scale of the threat is not likely to diminish significantly for some years. This necessitates renewal of sections 1 to 9 of the Act by the Order.

7.2 Control orders themselves are based on a menu of options that can be employed to tackle particular terrorism activity on a case by case basis. This could for example include measures ranging from a ban on the use of communications equipment to a restriction on an individual's movement.

7.3 The legislation makes provision for both derogating and non-derogating control orders. A derogating control order is one that imposes obligations that amount to a deprivation of liberty within the meaning of Article 5 of the European Convention on Human Rights (ECHR) and would therefore require the Government to derogate from that Article of the ECHR before the order could be made. A non-derogating control order is one in which the obligations imposed do not amount to such a deprivation of liberty.

7.4 The Secretary of State reports to Parliament every quarter on the exercise of control order powers, including on the total number of control orders in force. In the statement of 15 December 2008 (*Official Report cols. 82WS – 84WS*), the Minister for Security, Counter-Terrorism, Crime and Policing (Vernon Coaker) announced that as of the end of 10 December 2008, there were fifteen non-derogating control orders in force. No derogating orders have been made and the Secretary of State has not sought a derogation.

7.5 The Secretary of State makes a non-derogating control order after seeking permission from the court. However, in cases of urgency, the Secretary of State can make an order without first seeking the permission of the court, but she must refer it immediately to the court for confirmation.

7.6 Non-derogating control orders last for a period of 12 months but may be renewed.

7.7 There is an automatic review process – where the court will review the material put before it – to determine whether the Secretary of State's decision to make a control order was flawed.

7.8 It is also open to the individual subject to the control order to apply for modifications or revocation of the order if he considers that there has been a change of circumstances affecting the order. There is a separate appeal mechanism to deal with these applications where the Secretary of State does not agree to such requests.

7.9 Breach of any of the obligations of the control order without reasonable excuse is a criminal offence punishable with a prison sentence of up to five years or a fine or both.

7.10 Control order powers and their use have attracted public and media attention. This Order does not change the policy; it simply continues in force the Act for another year.

- ***Consolidation***

7.11 Not applicable.

8. Consultation outcome

8.1 In accordance with section 13(3) of the Act, the Secretary of State has consulted the independent reviewer of the Act (Lord Carlile), the Intelligence Services Commissioner (the Rt. Hon. Sir Peter Gibson), and the Director-General of the Security Service (Jonathan Evans). The consultees were content with the proposal to renew the Act. Any comments on the legislation from interested parties or members of the public can be sent direct to Lord Carlile at any time. Lord Carlile's annual report on the operation of the Act was laid before Parliament on the same day as the Order to which this Explanatory Memorandum refers.

9. Guidance

9.1 As above, this Order does not change the policy relating to control orders; it simply continues in force the Act for another year. So no guidance is being issued.

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 minimal.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 Also as above, this Order does not change the policy relating to control orders; it simply continues in force the Act for another year. The views of the statutory consultees listed at paragraph 8.1 above are sought each year before the renewal Order is made. The independent reviewer of the Act produces an annual report on the operation of the Act, which is laid before Parliament. The Secretary of State also produces reports to Parliament every quarter on the exercise of control order powers under the Act.