EXPLANATORY MEMORANDUM TO

THE PREVENTION OF TERRORISM ACT 2005 (CONTINUANCE IN FORCE OF SECTIONS 1 TO 9) ORDER 2011

2011 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"), from 11 March 2010 until the end of 31 December 2011. The powers ensure that a control order can continue to be made (and remain in place) 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 considers 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 renewal by Order if they are to remain in force. These sections make provision in relation to the making and maintenance of control orders. The Order continues in force those sections of the Act until the end of 31 December 2011. These provisions would otherwise expire at the end of 10 March 2010.

4.2 This is the sixth 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), 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), for the period 11 March 2009 to 10 March 2010 by the Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2009 (SI 2009 No. 554) and for the period 11 March 2010 to 10 March 2011 by the Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2010 (SI 2010 No. 645).

4.3 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 Theresa May 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 2011 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 used to address 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.

7.2 Control orders themselves are based on a menu of possible obligations that may be imposed to tackle the particular terrorism-related risk the individual subject to that order is assessed to pose. 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 (which is made by the court on application by the Secretary of State) 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 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 16 December 2010 (*Official Report cols. 124WS – 125WS*), the Secretary of State announced that as of the end of 10 December 2010, there were eight 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 High Court will review the material put before it – to determine whether the Secretary of State's decision to make a control order was 'flawed' (although case law now requires a more rigorous review by the Court).

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 an appeal mechanism under the Act to deal with these applications where the Secretary of State does not agree to such requests. The Secretary of State may modify the control order without the individual's consent where she considers it necessary and again, there is an appeal mechanism in relation to such decisions.

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. On 26 January 2011, the Government laid before Parliament the findings of its review of a number of counter-terrorism and security powers *(Review of counter-terrorism and security powers – review findings and recommendations (Cm 8004)*). One of the powers reviewed was the control order regime. The Government has concluded that the Act should be repealed, and control orders replaced by a new – less intrusive and more focused – system, which will be accompanied by an increase in the resources available to the Security Service and the police. However, the Government considers that it should renew the control order powers pending implementation of the new regime. This Order therefore continues in force sections 1 to 9 of the Act until 31 December 2011, pending the replacement of the Act; it does not change the policy relating to control orders.

- ***Consolidation***

7.12 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 of Berriew QC), the Intelligence Services Commissioner (the Rt. Hon. Sir Mark Waller), 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 at any time direct to Lord Carlile (or from 21 February 2011 his successor David Anderson QC, whose contact details will appear on the Home Office web site shortly). 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 relates.

9. Guidance

9.1 As above, this Order does not change the policy relating to control orders; it simply continues in force the Act until 31 December 2011. 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 until 31 December 2011. 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.