EXPLANATORY MEMORANDUM TO THE

SCHEDULE 5 TO THE ANTI-TERRORISM, CRIME AND SECURITY ACT 2001 (MODIFICATION) ORDER 2012

2012 No. [XXXX]

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. The instrument seeks to ensure that the Anti-Terrorism, Crime and Security Act 2001 ("ATCSA") strikes the right balance between maintaining biosecurity standards whilst not imposing disproportionate burdens on those engaged in legitimate and important scientific research. Part 7 of the Act sets out a list of controls for the security of the substances listed in Schedule 5 to the Act. The proposed amendments add one substance and removes four substances from Schedule 5.

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

3.1. None.

4. Legislative Context

4.1. The instrument is being made to implement recommendations from a review conducted by government, academic and industry experts.

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 has made the following statement regarding Human Rights:

In my view the provisions of Schedule 5 to the Anti-Terrorism, Crime and Security Act 2001 (Modification) Order 2012 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1. The purpose of the ATCSA is to build on legislation in a number of areas to ensure that the Government has the necessary powers to counter the terrorist threat to the UK. Part 7 of the Act is intended to improve the security of dangerous biological substances that may be targeted or used by terrorists. Schedule 5 lists the substances that are subject to the provisions of Part 7 of the Act.

7.2. The amendments relate to recommendations of a review of the list of Schedule 5 substances that seek to ensure that the ATCSA strikes the right balance between maintaining biosecurity standards whilst not imposing disproportionate burdens on those engaged in legitimate and important scientific research.

- Consolidation

7.3. The instrument does not amend any other instrument.

8. Consultation outcome

8.1. Laboratories and law enforcement staff were consulted on the proposed amendments over two 12 week periods. Consultation responders were all supportive of the proposals and agreed with estimated costs and benefits in the Impact Assessment.

9. Guidance

9.1. Laboratories and law enforcement staff have been aware of the proposed amendments for over 18 months. The National Counter-Terrorism Security Office will update and re-issue classified guidance on laboratory security standards.

10. Impact

10.1. The impact on business, charities or voluntary bodies is an estimated saving of £55,000 per annum.

10.2. The impact on the public sector is an estimated saving of £110,000 per annum.

10.3. An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1. The legislation applies to small business.

11.2. To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to ensure all security advice is proportionate to the terrorist risk posed by misuse of the substance held. The legislation therefore necessarily applies to such firms in the same way that it does for larger firms.

11.3. The basis for the final decision on what action to take to assist small business was the findings of the consultation exercises and discussion with stakeholders. There are very few small companies involved in microbiology work and information from responders suggests none would be concerned with the addition of SARS Coronavirus.

12. Monitoring & review

12.1. The overall intention behind the legislation is that the risk of acquisition of substances on Schedule 5 from a site is reduced whilst at the same time ensuring that the measures are not disproportionate to this aim.

12.2. The outcome will be subject to expert review in 2013.

12.3. Further detail is provided in the Impact Assessment on page 9.

13. Contact

13.1. Anne-Marie Fry at the Home Office can answer any queries regarding this instrument (Tel: 020 7035 0896 or email:anne-marie.fry9@homeoffice.x.gsi.gov.uk)