EXPLANATORY MEMORANDUM TO

THE TERRORISM ACT 2000 (PROSCRIBED ORGANISATIONS)(AMENDMENT) ORDER 2008

2008 No. [XXXX]

1. This explanatory memorandum has been prepared by The Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Order amends Schedule 2 to the Terrorism Act 2000 by removing "Mujaheddin e Khalq" from the list of proscribed organisations concerned in terrorism, so that it is no longer proscribed.

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

3.1 None.

4. Legislative Background

4.1 Part 2 of the Terrorism Act 2000 provides that the Secretary of State may, by Order, add an organisation to the list of proscribed organisations in Schedule 2 to the Act, remove an organisation from that list or amend the Schedule in some other way. Five Orders have been laid previously in 2001, 2002, 2005, 2006 and in 2007. "Mujaheddin e Khalq" was added to the list of proscribed organisations by S.I. 2001/1261 in March 2001.

4.2 This Order gives effect to the decision of the Court of Appeal in the case of *Secretary of State for the Home Department v Lord Alton of Liverpool and Others* [2008] EWCA Civ 443.

5. Extent

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:

6.2 In my view the provisions of the Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2008 are compatible with the Convention rights.

7. Policy background

7.1 Section 3 of the Terrorism Act 2000 provides a power to proscribe, by order, an organisation which commits or participates in acts of terrorism, prepares for, promotes or encourages terrorism or is otherwise concerned in terrorism. Section 21 of the Terrorism Act 2006 amended the grounds for proscription in section 3 of the Terrorism Act 2000 to include organisations which unlawfully glorify the commission or preparation of acts of terrorism.

7.2 Additional criteria are applied (announced by the Secretary of State in 2001) in deciding as a matter of discretion whether or not to proscribe an organisation. These are:

- The nature and scale of the organisation's activities;
- The specific threat that it poses to the UK;
- The specific threat that it poses to British nationals overseas;
- The extent of the organisation's presence in the UK; and
- The need to support international partners in fight against terrorism.

7.3 An organisation is proscribed in the UK as soon as the Order comes into force. It is a criminal offence for a person to belong to or encourage support for a proscribed organisation. It is also a criminal offence to arrange a meeting in support of a proscribed organisation or to wear clothing or to carry articles in public which arouse reasonable suspicion that an individual is a member or supporter of the proscribed organisation. Proscription means that the financial assets of the organisation become terrorist property and can be subject to freezing and seizure.

7.4 The organisation, or any person affected by the proscription of the organisation, may apply to the Secretary of State for deproscription and, if the Secretary of State refuses that application, the applicant may appeal to the Proscribed Organisations Appeals Commission.

7.5 An application was made to the Secretary of State for the deproscription of "Mujaheddin e Khalq", which was refused in September 2006. The applicants appealed to the Proscribed Organisations Appeals Commission, which allowed the appeal and in November 2007 directed that the Secretary of State lay an order removing "Mujaheddin e Khalq" from the list of proscribed organisations. The Secretary of State was subsequently refused permission to appeal that ruling to the Court of Appeal in May 2008.

8. Impact

8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 There is no impact on the public sector.

9. Contact

9.1 J. Fanshaw at the Home Office (Tel: 020 7035 3704) can answer any queries regarding the instrument.