EXPLANATORY MEMORANDUM TO

THE TERRORISM ACT 2006 (DISAPPLICATION OF SECTION 25) ORDER 2007

2007 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 disapplies section 25 of the Terrorism Act 2006 for a period of one year beginning with 25th July 2007. Section 25 modifies the Terrorism Act 2000 to reduce the maximum period of detention under Schedule 8 to the Terrorism Act 2000 from 28 days to 14 days.

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

3.1 None.

4. Legislative Background

4.1 This Order disapplies section 25 of the Terrorism Act 2006 for a period of one year beginning with 25th July 2007. Without this Order the modifications in section 25 of that Act would take effect because section 25(1)(a) provides that section 25 is to apply to any time which is more than one year after the commencement of section 23. Section 23 was commenced on 25th July 2006 by S.I. 2006/1936.

4.2 Section 25 modifies the Terrorism Act 2000 to reduce the maximum period of detention under Schedule 8 to the Terrorism Act 2000 from 28 days to 14 days. Section 23 of the Terrorism Act 2006 increased the maximum period of detention from 14 days to 28 days. As a result of this Order, the modifications in section 25 will now take effect on 25th July 2008, unless a further Order is made.

4.3 The commitment to have section 23 subject to annual renewal was made during Parliamentary debates on what became the Terrorism Act 2006 and can be found in Lords Hansard, 13 December 2005, column 1216.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Tony McNulty has made the following statement regarding Human Rights:

> In my view the provisions of the Terrorism Act 2006 (Disapplication of Section 25) Order 2007 are compatible with the Convention rights.

7. Policy background

7.1 Section 23 of the Terrorism Act 2006 amends Schedule 8 to the Terrorism Act 2000 to increase the maximum period of detention without charge of terrorist suspects from 14 days to 28 days. This increase from 14 days to 28 days was considered necessary as a result of:

- Greater use of encrypted computers;
- Increasingly complex nature of terrorist networks;
- Increasingly international nature of terrorist networks meaning greater language difficulties and greater need to gather evidence from abroad;
- Difficulty of entering premises to search for evidence where it is suspected: CBRN material may be present;
- Need to halt questioning to allowed religious observance by detained people; and
- Tendency of members of terrorist groups all to employ the same lawyers, limiting opportunities for questioning.

7.2 Each extension of detention warrant is for a period of seven days, unless a shorter period is substituted by the police applying for the extension or the judicial authority granting it.

7.3 Section 24 amends Schedule 8 of the Terrorism Act in relation to the grounds for extending detention of a terrorist suspect. Continued detention of a terrorist will be permitted if needed:

a. To obtain relevant evidence whether by questioning him or otherwise;
b. To preserve relevant evidence; and
c. Pending the result of an examination or analysis of any relevant evidence or of anything the examination or analysis of which is to be, or is being carried out with a view to obtaining relevant evidence.

7.4 Section 25 creates the requirement for the annual renewal by Parliament of Section 23.

7.5 The level of media attention to this policy is always significant.

8. Impact

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

8.2 Given the small number of arrests for terrorism, the impact on the public sector is likely to be negligible, although there will be some impact on the work of police and prisons.

9. Contact

Lisa Dillon at the Home Office Tel: 020 7035 8959 or e-mail: lisa.dillon2@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.