EXPLANATORY MEMORANDUM TO

THE TERRORISM (NORTHERN IRELAND) ACT 2006 (TRANSITIONAL PROVISIONS AND SAVINGS) ORDER 2007

2007 No.

1. This explanatory memorandum has been prepared by the Northern Ireland Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This instrument makes transitional and saving provision in relation to Part 7 of the Terrorism Act 2000 (the "2000 Act") which cease to have effect at the end of 31 July 2007. Many of these are being replaced by ones contained in the Justice and Security (Northern Ireland) Act 2007 (the "2007 Act"). The provisions of the 2000 Act to which these arrangements are to apply include those covering trials in criminal cases before non-jury (or "Diplock") courts, where these cases are in progress at 31 July; bail applications; and operations, including searches and arrests, carried out in accordance with the army and police powers contained in Part 7 of the 2000 Act.

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

3.1. None.

4. Legislative background

4.1 The Order is made under section 4 of the Terrorism (Northern Ireland) Act 2006 (the "2006 Act") which enables the Secretary of State by order to make transitional and savings provisions considered necessary in connection with provisions of Part 7 of the Terrorism Act 2000 ceasing to have effect. The power contained in section 4 was extended by section 8(4) of the 2007 Act to provide that an order may make provision disregarding the amendments made by Schedule 1 to the 2007 Act in the context of non-jury trial to various enactments for any purpose specified in the order. Section 8(4) of the 2007 Act is to be commenced before this order is made, in order that the extension of the power in section 4 of the 2006 Act is already in force when this order is made. As well as providing for non-jury trial, Part 7 of the 2000 Act contains the powers required to manage the specific security situation in Northern Ireland including arrest of suspected terrorists (s.81), examination of documents (s.87), power to stop and question (s.89), power of entry (s.90), taking possession of land, &c (s.91) and road closures (s.92, s.94).

5. Extent

5.1. The Order applies to Northern Ireland.

6. European Convention on Human Rights

6.1. The Secretary of State for Northern Ireland has made the following statement regarding Human Rights:

In my view the provisions of the Terrorism (Northern Ireland) Act 2006 (Transitional Provisions and Savings) Order 2007 are compatible with the Convention rights.

7. Policy background

7.1. The Belfast agreement states that the British Government will make progress towards the objective of as early a return as possible to normal security arrangements in Northern Ireland, consistent with the level of threat. This includes the removal of emergency powers in Northern Ireland.

7.2. The provisions of Part 7 were temporary in nature and subject to annual renewal by order, and also time-limited - in the absence of further primary legislation Part 7 would have expired at the end of 18th February 2006.

7.3. On 1st August 2005 the Secretary of Sate for Northern Ireland announced a programme of security normalisation, including the repeal of the Part 7 provisions by 31st July 2007, subject to an enabling environment.

7.4. At the time the Bill which resulted in the 2006 Act was introduced into Parliament, the Government assessed the security situation and determined that the Part 7 provisions remain necessary until the end of the normalisation programme. The 2006 Act therefore made provision for the Part 7 provisions currently in force (excluding section 78) to remain in force until 31st July 2007.

7.5. Part 7 of the 2000 Act contains temporary provisions particular to Northern Ireland. The provisions contained within Part 7 of the Act will cease to have effect on 31st July 2007 and the 2007 Act will make some replacement arrangements. The new provisions include a new system of trial without a jury where at least one of four conditions set out in the 2007 Act is satisfied; restrictions on disclosure of jury information; abolition of peremptory challenge in criminal cases; and updated police and army powers, as well as new arrangements for the review of these powers and military complaints procedures.

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.

9. Contact

9.1. Caroline Mersey in the Northern Ireland Office – Caroline.Mersey@nio.x.gsi.gov.uk – may be contacted with any queries on this instrument.