EXPLANATORY MEMORANDUM TO

THE PROSCRIBED ORGANISATIONS (NAME CHANGE) ORDER 2016

2016 No. 1187

1. Introduction

1.1 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 is made under the power in section 3(6) of the Terrorism Act 2000 ("TACT") which permits the Secretary of State to specify names to be treated as other names for an organisation that is already a proscribed organisation listed in Schedule 2 to TACT. The proscribed organisation in question is Al Qa'ida, which also operates under the names "al Nusrah Front" and "Jabhat al-Nusrah li-ahl al Sham". The alternative name for Al Qa'ida specified by this instrument is "Jabhat Fatah al-Sham".

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This Order comes into force on the day after it is laid before Parliament and accordingly breaches the 21 day convention. Any significant delay between the laying and coming into force of the instrument would alert the organisation to the impending change to the law that would result in it being recognised as "Jabhat Fatah al-Sham", and may result in pre-emptive action by the organisation's members designed to circumvent the provisions of TACT and/or the criminal law. Breaching the 21 day convention will also assist in any prosecutions that may be brought since the Order will remove the need for the prosecuting authorities, in addition to making out the offence in question, to have to prove beyond reasonable doubt that "Jabhat Fatah al-Sham" is one and the same as Al Qa'ida.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

4.1 Section 3(3) of TACT allows the Secretary of State, by Order, to add an organisation to the list of proscribed organisations in Schedule 2 to TACT, to remove an organisation from that list or to amend Schedule 2 in some other way.

4.2 Section 3(6) of TACT permits the Secretary of State, by Order, to provide that a name that is not specified in Schedule 2 is to be treated as an alternative name for an organisation that is already proscribed. This is the eighth Order made under this power and the second made in respect of this proscribed organisation.

4.3 The Secretary of State has regard to several factors 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 the fight against terrorism.

4.4 An organisation is proscribed in the UK as soon as an Order adding it to Schedule 2 comes into force. It is a criminal offence for a person to belong to, or invite support for, a proscribed organisation. It is also a criminal offence to arrange a meeting to support a proscribed organisation; or to wear clothing or carry articles in public which arouse reasonable suspicion that an individual is a member or supporter of a proscribed organisation.

4.5 A proscribed 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 Appeal Commission.

4.6 For an Order under section 3(6) of TACT to be made specifying a new or additional name under which a proscribed organisation is operating, there must be credible evidence to suggest that:

- the ideology, aims and methods of each of the groups are essentially the same in all material respects;
- the leaders or key individuals involved in each group are either the same people or are materially the same group of people; and
- those who are members of each group are also members of the other group (or at the least, that generally speaking is the position).

5. Extent and Territorial Application

5.1 The extent of this instrument is the whole of the United Kingdom.

5.2 The territorial application of this instrument is the whole of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 Section 3(6) of TACT permits the Secretary of State, by Order, to provide that a name that is not specified in Schedule 2 to TACT is to be treated as an alternative name for a terrorist organisation that is already proscribed. Article 2(2) of this Order provides that "Jabhat Fatah al-Sham" is to be treated as an alternative name for the proscribed organisation that is listed in Schedule 2 as Al Qa'ida, which is also recognised as operating under the names "al Nusrah Front" and "Jabhat al-Nusrah li-ahl al Sham" (article 2(2) of the Proscribed Organisations (Name Changes) Order 2013 (2013/1795)). The part of Al Qa'ida operating under the name "al-Nusrah Front" is now assessed as operating under the name "Jabhat Fatah al-Sham".

Consolidation

7.2 The Department does not assess that there is any need for consolidation measures.

8. Consultation outcome

8.1 No consultation has been undertaken in connection with this instrument.

9. Guidance

9.1 No guidance is necessary in connection with this instrument.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 If a proscribed organisation, or any person affected by the proscription of the organisation, applies to the Secretary of State for deproscription, the proscription of the organisation will be reviewed.

13. Contact

13.1 The CT Pursue Unit at the Home Office can answer any queries regarding the instrument and can be contacted at the Home Office, 5th Floor, Peel Building, 2 Marsham Street, London, SW1P 4DF, telephone: 020 7035 4848.