

**EXPLANATORY MEMORANDUM TO**  
**THE TERRORISM ACT 2000 (PROSCRIBED ORGANISATIONS) (AMENDMENT)**  
**(NO.3) ORDER 2021**

**2021 No. [XXX]**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 This Order amends the list of proscribed organisations in Schedule 2 to the Terrorism Act 2000 (“the Act”) by amending the listing of “*Hamas Izz al-Din al-Qassem Brigades*” to “*Harakat al Muqawama al-Islamiyya (Hamas)*” to the list of proscribed organisations “concerned in terrorism”.

**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 made. Although the 21-day convention does not apply to affirmative instruments, an instrument which imposes duties that are significantly more onerous than before should not usually be brought into force earlier than 21 days after it is made. This is such an instrument, as it has the effect of applying the offences in sections 11 to 13 of the Act to the organisations. However, any significant delay between the laying and coming into force of the Order would alert the organisation to its impending proscription and may result in pre-emptive action by the organisation’s members designed to circumvent the provisions of the Act and/or the criminal law.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
- 4.2 Subject to paragraph 4.3, the territorial application of this instrument is the whole of the United Kingdom.
- 4.3 Section 17 of the Terrorism Act 2006 makes provision for extra-territorial jurisdiction and has effect that where a person takes an action outside of the United Kingdom that if done in a part of the United Kingdom would have amounted to an offence under section 11 of the Act, they shall be guilty of that offence. Section 17 similarly applies to the offences under sections 12 and 13 of the Act, but only applies if at the time of committing the offence the person is a United Kingdom national or a United Kingdom resident.

**5. European Convention on Human Rights**

- 5.1 The Home Secretary Priti Patel has made the following statement regarding Human Rights:

“In my view the provisions of the Terrorism Act 2000 (Proscribed Organisations) (Amendment) (No. 3) Order 2021 are compatible with the Convention rights.”

## **6. Legislative Context**

- 6.1 Section 3 of the Act 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 Act to include organisations which unlawfully glorify the commission or preparation of acts of terrorism. Section 3 also allows the Secretary of State, by order, to remove an organisation from the list of proscribed organisations in Schedule 2 to the Act, or amend the Schedule in some other way. Twenty-eight Orders have been laid previously, in 2001, 2002, 2005, 2006, 2007, 2008 (2), 2010, 2011, 2012 (2), 2013 (2), 2014 (3), 2015 (2), 2016 (3), 2017, 2019 (2), 2020 (2) and 2021 (2).
- 6.2 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.
- 6.3 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 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 rouse reasonable suspicion that an individual is a member or supporter of a proscribed organisation.
- 6.4 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.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The Home Secretary has decided to exercise the proscription power in section 3 of the Act in respect of the following organisation.
- 7.2 Harakat al Muqawama al-Islamiyya ( Hamas ) is a militant Islamist movement that was established in 1987, following the first Palestinian intifada. Its ideology is related to that of the Muslim Brotherhood combined with Palestinian nationalism. Its main aims are to liberate Palestine from Israeli occupation, the establishment of an Islamic state under Sharia law and the destruction of Israel (although Hamas no longer demands the destruction of Israel in its Covenant). The group operates in Israel and the Occupied Palestinian Territories. Hamas formally established Hamas IDQ in 1992. Hamas IDQ was proscribed by the UK in March 2001. At the time it was Her Majesty’s Government’s assessment that there was a sufficient distinction between the so called political and military wings of Hamas, such that they should be treated as different organisations, and that only the military wing was concerned in terrorism. The

Government now assess that the approach of distinguishing between the various parts of Hamas is artificial. Hamas is a complex but single terrorist organisation.

- 7.3 The Government assess that Hamas commits and participates in terrorism. Two key examples put forward are:
  - 7.3.1 Hamas has used indiscriminate rocket or mortar attacks, and raids against Israeli targets. During the May 2021 conflict, over 4000 rockets were fired indiscriminately into Israel. Civilians, including two Israeli children, were killed as a result.
  - 7.3.2 Palestinian militant groups, including Hamas, frequently use incendiary balloons to launch attacks from Gaza into southern Israel. There was a spate of incendiary balloon attacks from Gaza during June and July 2021, causing fires in communities in southern Israel that resulted in serious damage to property.
- 7.4 The Government assesses that Hamas prepares for acts of terrorism. One incident of preparatory activity is that Hamas recently launched summer camps in Gaza which focus on training groups, including minors, to fight. This is evidence of Hamas being responsible for running terrorist training camps in the region. In a press statement, Hamas described the aim of these camps as to “ignite the embers of Jihad in the liberation generation, cultivate Islamic values and prepare the expected victory army to liberate Palestine”.
- 7.5 The Government also assesses that Hamas promotes and encourages terrorism.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

## **9. Consolidation**

- 9.1 The Government does not assess that there is any need for consolidation measures.

## **10. Consultation outcome**

- 10.1 No consultation has been undertaken in connection with this instrument.

## **11. Guidance**

- 11.1 No guidance is necessary in connection with this instrument.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument.

## **13. Regulating small business**

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

## **14. Monitoring & review**

- 14.1 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.

**15. Contact**

- 15.1 The Counter-Terrorism 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 (9am-5pm): 020 7035 4848.
- 15.2 The Deputy Director for CT Pursue Unit at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Secretary of State for the Home Department can confirm that this Explanatory Memorandum meets the required standard.