EXPLANATORY MEMORANDUM TO

THE COUNTER-TERRORISM AND SECURITY ACT 2015 (RISK OF BEING DRAWN INTO TERRORISM) (AMENDMENT AND GUIDANCE) REGULATIONS 2015

2015 No. 928

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 The Counter-Terrorism and Security Act 2015 ("the Act") contains a duty on "specified authorities", when exercising their functions, to have due regard to the need to prevent people from being drawn into terrorism. These regulations amend the Act so that various Scottish bodies are made subject to this duty. These regulations also provide for the coming into effect of guidance issued by the Secretary of State concerning the performance by English, Welsh and Scottish specified authorities of this duty.

2.2 These regulations also have the purpose of amending the Act so that Scottish local authorities are made subject to the duty placed by the Act on local authorities to ensure panels are in place to provide support to people who are identified as being vulnerable to being drawn into terrorism. These regulations also add various Scottish bodies to the list of panel partners who are required to co-operate with such panels.

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

3.1 None.

4. Legislative Context

4.1 Section 26(1) of the Act imposes a duty on "specified authorities", when exercising their functions, to have due regard to the need to prevent people from being drawn into terrorism. Those specified authorities are listed in Schedule 6 to the Act. Section 27(1) provides that the Secretary of State may amend Schedule 6 by regulations, and section 27(3) provides that regulations may also make consequential amendments to Chapter 1 of Part 5 of the Act. Section 27(4) provides that such regulations may not be made unless a draft of the instrument has been laid before each House of Parliament and approved by a resolution of each House. Section 28 makes provision concerning the addition, removal and amendment of entries for Welsh and Scottish authorities to the list in Schedule 6. When the power is exercised for these purposes, the Welsh or (as appropriate) Scottish Ministers must first be consulted.

4.2 Section 29(1) of the Act provides that the Secretary of State may issue guidance to specified authorities about the exercise of their duty under section 26(1).

Section 29(3) provides that the Secretary of State may issue guidance to all specified authorities, to particular specified authorities, or to specified authorities of a particular description. Section 29(5) provides that such guidance takes effect on whatever day the Secretary of State appoints by regulations, and that those regulations may not be made unless a draft of the instrument has been laid before each House of Parliament and approved by a resolution of each House. Specified authorities must, under section 29(2), have regard to any such guidance in carrying out the duty in section 26(1).

4.3 Section 36(1) of the Act requires that each local authority must ensure that a panel of persons is in place for its area with the function of assessing the extent to which identified individuals are vulnerable to being drawn into terrorism, and with the other functions mentioned in section 36(4) (which concern the provision of support to such individuals where they have consented to receive it). Section 38 provides that "the partners of a panel" must, so far as appropriate and reasonably practicable, act in co-operation with the panel in the carrying out of its functions and with the police in the carrying out of their functions in connection with section 36. Partners of panels are those persons listed in Schedule 7 to the Act. Section 39 provides the Secretary of State with a power, exercisable by regulations subject to the affirmative procedure, to amend the definition of "local authority" in section 41 and to amend Schedule 7. Section 39(3) provides that where this power is to be exercised so as to add any description of authority in Scotland to the definition of "local authority", or to add to, amend or remove from Schedule 7 an entry for a Scottish authority, the Scottish Ministers must first be consulted. Section 39(4) provides that any regulations made under this power may also make consequential or supplemental provision.

4.4 This instrument is made under the above provisions so that the provisions of Part 5 of the Act apply in Scotland. These are the first regulations made under these powers.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales and Scotland.

6. European Convention on Human Rights

6.1 The Immigration and Security Minister, James Brokenshire, has made the following statement regarding Human Rights:

> "In my view the provisions of The Counter-Terrorism and Security Act 2015 (Risk of Being Drawn into Terrorism) (Amendment and Guidance) Regulations 2015 are compatible with the Convention rights".

7. Policy background

- ***What is being done and why***

Placing Prevent on a statutory footing in Scotland

7.1 The duty in section 26(1) has the effect of placing the Government's Prevent Strategy, as it applies to the specified authorities, on a statutory footing. The rationale for this legislation is to improve consistency of application around the country. On

receiving Royal Assent, Schedule 6 to the Act contained authorities in England and Wales only. The Government's intention was to add Scottish authorities to the Schedule once consultation and discussions with the Scottish Government had concluded. Those discussions have now concluded and these regulations have the effect of applying the section 26(1) duty to certain specified authorities in Scotland.

7.2 The Scottish bodies that these regulations add to Schedule 6 to the Act by means of regulation 7 and Schedule 1 are broadly equivalent to those already included for England and Wales. They cover local government, prison and young offenders institution governors, schools (in both the public and private sectors), further education institutions, higher education institutions, health and social care bodies, and the Scottish Police Authority.

7.3 Regulation 3 concerns guidance issued by the Secretary of State under section 29(1) to the specified authorities listed in Schedule 6 to the Act. During the passage of the bill, the Government amended the legislation to provide for an affirmative procedure for the guidance. There will be two sets of guidance, one for England and Wales, and one for Scotland. The guidance concerns what is required of the specified authorities in order to comply with the duty in section 26(1), and section 29(2) provides that authorities must have regard to it in carrying out the duty in section 26(1). The guidance, which is annexed to this Explanatory Memorandum, takes effect on the day on which regulation 3 comes into force.

7.4 Amendments which are consequential upon the application of the section 26(1) duty to Scottish specified authorities are also made by these regulations, to ensure that the provisions in the Act which apply to England and Wales have equivalent application in Scotland.

7.5 Regulation 4 amends section 30(1) of the Act, which provides that when the Secretary of State is satisfied that an authority has failed to discharge the duty in section 26(1), he may give a direction to that authority for the purpose of enforcing the performance of the duty. Regulation 4 provides the mechanism in Scotland by which such a direction may be enforced by the courts, which is by application by the Secretary of State to the Court of Session for an order of specific implement.

7.6 Regulation 5 amends section 31 of the Act, which provides that when English and Welsh further and higher education institutions are carrying out the section 26(1) duty they should have particular regard to the duty to ensure freedom of speech (as established by section 43(1) of the Education (No.2) Act 1986) and to the importance of academic freedom (a principle described in section 202(2)(a) of the Education Reform Act 1988). Regulation 5 ensures that when considering how they should discharge the duty in section 26(1), further and higher education authorities in Scotland will also need to pay particular regard, among all the factors they should take into account, to the need to ensure freedom of speech and the importance of academic freedom.

Applying the provisions of Chapter 2 of Part 5 of the Act in Scotland

7.7 Chapter 2 of Part 5 of the Act has the effect of placing the support programme for people vulnerable to being drawn into terrorism (known as Channel in England

and Wales, and Prevent Professional Concerns process in Scotland) on a statutory footing. The rationale for the legislation is to improve consistency of application around the country. The programme is a multi agency programme which provides tailored support to people who have been identified as at risk of radicalisation and relies on the co-operation of statutory partners in the whole process. Attendance can vary between areas and when there is not full or consistent attendance referred individuals might not have access to the full range of support available. On receiving Royal Assent, Schedule 7 to the Act contained authorities in England and Wales only. The Government's intention was to add Scottish authorities to the Schedule once consultation and discussions with the Scottish Government had concluded. Those discussions have now concluded and these regulations have the effect of placing the Chapter 2 support programme on a statutory footing in Scotland.

7.8 Regulation 6 has the effect of extending the scope of the section 36(1) duty on local authorities to ensure panels are in place so that Scottish local authorities are under such a duty. It also makes a consequential amendment to Chapter 2 of Part 5 so that references to a chief officer of police are taken to include references to the chief constable of the Police Service of Scotland. This ensures that the duties of the police under Chapter 2 of Part 5 are extended so that they are imposed on the police in Scotland.

7.9 Schedule 7 to the Act lists partners of panels required to be in place under section 36(1). These panels are established to assess the extent to which individuals are vulnerable to being drawn into terrorism, and to arrange support for them where they agree to receive such support. Regulation 8 and Schedule 2 amend Schedule 7 to the Act by adding Scottish partners of local panels, which has the effect of imposing on those Scottish partners the duty to co-operate with panels put in place by local authorities.

- ***Consolidation***

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

8. Consultation outcome

8.1 A consultation on the guidance began on 18th December 2014 and ran until 30th January 2015. Responses to the consultation were submitted online and a number of consultation events were held across the country with representatives from the sectors that are covered by the duty. 1,792 written responses were received, and 316 delegates attended the consultation events. Many of the responses questioned the meanings of the terms "British values", and "extremism", whilst others focussed on the impact of the Prevent duty on freedom of speech. A number of responses focussed on implementation, risk assessment, resources, training and roles. A summary of responses is available here: https://www.gov.uk/government/consultations/prevent-duty.

9. Guidance

9.1 No guidance is necessary in connection with this instrument.

10. Impact

10.1 There will be some impact on businesses, charities and the voluntary sector to the extent that businesses, charities and voluntary sector bodies are added by these regulations to Schedules 6 and 7 to the Act. This will mainly be independent schools and further and higher education institutions.

10.2 There will be an impact on those parts of the public sector which are added by these regulations to Schedules 6 and 7 to the Act.

10.3 An Impact Assessment can be found here:

https://www.gov.uk/government/collections/counter-terrorism-and-security-bill-impact-assessments.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Home Office will oversee central monitoring of the new section 26(1) duty and the degree to which those subject to it, including the Scottish bodies added by these regulations, comply with the duty. The Home Office will also monitor the effectiveness of the Prevent Professional Concerns process in Scotland.

13. Contact

13.1 Any enquiries about the contents of this memorandum should be addressed to: Prevent Delivery Unit, Home Office, 6th Floor, Peel Building, 2 Marsham Street, London, SW1P 4DF, telephone: 020 7035 4848.