EXPLANATORY MEMORANDUM TO

THE COUNTER-TERRORISM AND BORDER SECURITY ACT 2019 AND THE TERRORISM ACT 2000 (PORT EXAMINATION CODES OF PRACTICE) REGULATIONS 2025

2025 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by command of His Majesty.

2. Declaration

2.1 Dan Jarvis MBE MP, the Minister for Security at the Home Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Tom Rutherford, Deputy Director for the Borders and Aviation Security Unit at the Home Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Any enquiries relating to the instrument should be directed to the Borders and Aviation Security Unit at the Home Office via email at: Schedule3and7codes@homeoffice.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These regulations bring into operation revised codes of practice regarding functions under Schedule 7 and Schedule 8 to the Terrorism Act 2000 ("Schedule 7", "Schedule 8", and "the 2000 Act", respectively) and Schedule 3 to the Counter-Terrorism and Border Security Act 2019 ("Schedule 3" and "the 2019 Act", respectively). The revised code of practice relating to functions under Schedule 7, while also covering functions under Schedule 8, is referred to in this memorandum as the "revised Schedule 7 Code", in line with established usage. Accordingly, references in this memorandum to 'Schedule 7 powers' or similar expressions should be read as including the relevant functions under Schedule 8. The revised code of practice relating to functions under Schedule 3 is referred to as the "revised Schedule 3 Code". Together, the revised Schedule 7 Code and the revised Schedule 3 Code are referred to as the "revised Codes".

4.2 The revised Codes relate to powers exercisable by examining officers at UK ports and in the border area in Northern Ireland to stop, question, search, and detain persons to determine whether they appear to be someone who is, or has been, involved in terrorism (Schedule 7) or engaged in hostile activity (Schedule 3).

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the whole of the United Kingdom.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the whole of the United Kingdom.

5. Policy Context

What is being done and why?

5.1 Schedule 7 and Schedule 3 powers allow an examining officer at UK ports and in the border area in Northern Ireland to stop, question, search and detain persons to determine whether they appear to be someone who is, or has been, involved in the commission, preparation or instigation of acts of terrorism (Schedule 7) or engaged in hostile activity (Schedule 3).

5.2 Schedule 14 to the 2000 Act requires the issuance of a code of practice governing the exercise of functions conferred by that Act. Part 4 of Schedule 3 to the 2019 Act makes broadly equivalent provision in respect of the powers conferred under Schedule 3. The codes of practice provide guidance to those who exercise Schedule 7 and Schedule 3 powers by providing information on the processes and safeguards governing the use of these powers, and examples of best practice. For example, the Schedule 7 and Schedule 3 codes include considerations an examining officer may make when deciding to select a person to examine and clarify that selecting a person based on their protected characteristics alone is unlawful.

5.3 The most recent revisions of the codes of practice were brought into operation in July 2022 and December 2023.1 They relate to:

a) the training to be undertaken by examining officers and review officers;

b) the exercise by such persons of functions conferred on them by virtue of the 2000 Act and Schedule 3;

c) the exercise by review officers of their functions in relation to detentions under Schedule 3; and

d) the video recording (with sound) of interviews by constables of persons detained under Part 1 of Schedule 3 at a police station.

5.4 The additions and revisions made in the revised Codes implement recommendations from the Independent Reviewer of Terrorism Legislation2 ("the IRTL"), including on the stop of Ernest Moret3, and requests for additional clarity from examining officers exercising Schedule 7 and Schedule 3 powers.

5.5 The revised Codes clarify the use of the powers by examining officers in the areas described below and create modest additions to the safeguards to ensure that the powers are used appropriately. The changes are in four areas:

a) Schedule 7 and public order policing: The revised Schedule 7 Code provides further clarity about the purpose of Schedule 7 as a counter-terrorism power and explicitly excludes its use for public order policing purposes. However, the

[1] https://assets.publishing.service.gov.uk/media/62c58f4bd3bf7f3002fadb0a/Schedule_7_Code_of_Practice_-_July_2022.pdf and https://assets.publishing.service.gov.uk/media/6582a80e23b70a0013234c8a/E02999418_CTBSA_Schedule_3_Code_CoPs_National_Security_Act_Accessible__002_.pdf

[2] https://www.gov.uk/government/publications/the-terrorism-acts-in-2022

[3] In April 2023, Ernest Moret was stopped by Counter-Terrorism Police at St Pancras International Station. He was detained under Schedule 7 and questioned about his participation in protest activity in France. Moret pursued legal action against the Metropolitan Police which prompted the IRTL to conclude that the stop was inappropriate and that the powers had been misused.

revised Schedule 7 Code does provide that there may be times when it is appropriate for examining officers to use the powers to examine someone who is involved in protest where this activity may meet the definition of terrorism. This change implements the recommendation made by the IRTL in his report of 21 July 2023.

b) The Northern Ireland border area: The revised Codes explain the preparatory power at paragraph 3 of Schedule 7 and paragraph 2 of Schedule 3 and impose, where necessary, additional safeguards. These powers enable an examining officer to question a person in the border area of Northern Ireland for the purpose of determining whether their presence is connected with their entry into, or departure from, Northern Ireland, thereby putting them within scope of the powers. The change is designed to prevent unnecessary use of the powers by examining officers in the border area in Northern Ireland.

c) Rights to consular access and notification: The revised Codes (including in the annexed Notices of Detention) clarify an individual's rights to consular access and notification under the Vienna Convention on Consular Relations (1963).[4] The revised Codes specify that once a request for consular access or notification has been acted on by the examining officer, an individual can be questioned before their Consulate is available to speak to them or attend their place of detention. The change is designed to ensure clarity for an individual detained under Schedule 7 and Schedule 3 powers.

d) Notification requirements at the start of an examination: The revised Codes clarify that an examining officer can notify an individual of their examination in writing as this may be more appropriate in some circumstances. This change ensures that an individual is fully aware of their duties and obligations once they have been selected for examination.

5.6 This instrument also corrects minor errors in the existing codes of practice. The revised Schedule 3 Code, at paragraph 124, refers to the correct paragraphs of the primary legislation relating to confidential business material. In the Schedule 7 and Schedule 3 Codes, at footnotes 31 and 33 respectively, reference to a review officer – an officer of a more senior rank who has certain functions in the exercise of Schedule 7 and 3 powers – has been amended.

What was the previous policy, how is this different?

5.7 The general policy principles of the 2000 Act and the 2019 Act remain unaffected. This instrument brings into operation revised versions of the Schedule 7 and Schedule 3 Codes. The revised Codes clarify the use of the powers by examining officers and create modest additions to the safeguards to ensure that the powers are used appropriately.

6. Legislative and Legal Context

How has the law changed?

6.1 The instrument brings into operation the revised Codes which further clarify the use of the powers in several areas and, where necessary, impose modest additions to the safeguards.

[4] https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf

Why was this approach taken to change the law?

6.2 Under paragraph 6 of Schedule 14 to the 2000 Act, the Secretary of State shall issue, and may revise, codes of practice about the exercise by officers of functions conferred on them by virtue of that Act. The Schedule 7 Code was last revised and brought into operation on 8 July 2022 by the Terrorism Act 2000 (Code of Practice for Examining Officers and Review Officers) Order 2022 (S.I. 674/2022).

6.3 Under paragraph 56 of Schedule 3 to the 2019 Act, the Secretary of State shall issue, and may revise, codes of practice about the exercise by officers of functions conferred on them by virtue of that Act. The Schedule 3 Code was last revised and brought into operation on 20 December 2023 by the Counter-Terrorism and Border Security Act 2019 (Port Examination Code of Practice) Regulations 2023 (S.I. 2023/1385).

6.4 For both revised Codes, the Secretary of State is required to publish a draft of the code, consider any representations made in response to it, and, if appropriate, modify the draft in light of those representations. Following this, the Secretary of State must lay the draft code before Parliament. Under Schedule 14 of the 2000 Act, once laid, the Secretary of State may bring the code into operation by order. Under Schedule 3, it is by way of regulations. Section 105 of the Deregulation Act 2015 provides that powers to make orders, regulations and rules may be used to make a single instrument. This instrument therefore brings both revised codes of practice into operation by way of regulations. A statutory instrument containing such regulations may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. This instrument fulfils these procedural requirements.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Home Office ran a public consultation in respect to these changes from 17 March 2025 to 27 April 2025. This was aimed at UK police forces, including the Police Service of Northern Ireland and Police Scotland, interest groups and the wider public. It was published on GOV.UK5. Responses were accepted via email.

7.2 In total, there was one response to the consultation. This requested further clarity for all stakeholders in respect to the border area, as well as offering suggestions to improve structure and language. In particular, the Home Office received comments to rearrange paragraphs and include additional footnotes to refer to relevant sections of the primary legislation. The respondent only had comments on the proposed additions and clarifications in relation to the border area. No further comments were made on any of the other changes to the codes of practice.

7.3 Another organisation emailed within the consultation period requesting permission to submit their response late. An additional week was granted however, no response was submitted.

7.4 The Home Office also delivered consultation sessions with counter-terrorism police to seek views on the changes proposed. The officers were supportive of the changes and had no concerns with the proposed clarifications.

7.5 The IRTL, Jonathan Hall KC, expressed support for the proposed changes in discussions with the Home Office.

[5] https://www.gov.uk/government/consultations/changes-to-the-codes-of-practice-for-schedule-7-and-schedule-3

7.6 A minor amendment has been made to the draft revised Codes in response to the consultation feedback. Specifically, a footnote within the new text referencing the primary legislation has been added. The Home Office does not intend to make any further changes to the draft Codes, as the desired outcome has already been achieved, and additional changes are considered unnecessary.

7.7 The Government's response to the consultation is available on GOV.UK[6].

8. Applicable Guidance

8.1 The revised Codes brought into operation by the instrument contain guidance itself, including about the effects of the codes of practice as set out above. The codes of practice are publicly available.[7]

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

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

9.2 The legislation does not impact small or micro businesses.

9.3 There is no, or no significant, impact on the public sector. A proportionate economic appraisal has been conducted demonstrating low familiarisation costs of between £700 and £2,900 for Counter-Terrorism Policing.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring and reviewing Schedule 7 is granted under section 36 of the Terrorism Act 2006. This requires that the Secretary of State must appoint a person to review the operation of the provisions of the 2000 Act, the IRTL. This role is currently fulfilled by Jonathan Hall KC.

10.2 The approach to monitoring and reviewing Schedule 3 is granted under section 63 of the National Security Act 2023. This requires that the Secretary of State must appoint a person to review the operation of Schedule 3, except the functions of the Investigatory Powers Commissioner under Part 1 of the Schedule. This person is known as the Independent Reviewer of State Threats Legislation ("the IRSTL") whose role is currently fulfilled by Jonathan Hall KC.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Minister of State for Security, Dan Jarvis MBE MP has made the following statement regarding Human Rights:

[6] https://www.gov.uk/government/consultations/changes-to-the-codes-of-practice-for-schedule-7-and-schedule-3

[7] https://www.gov.uk/government/publications/codes-of-practice-for-officers-using-examination-powers-at-ports

"In my view the provisions of the Counter-Terrorism and Border Security Act 2019 and the Terrorism Act 2000 (Port Examination Codes of Practice) Regulations 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

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