EXPLANATORY MEMORANDUM TO

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

2015 No. [XXXX]

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. Section 26(1) of 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. Those specified authorities are listed in Schedule 6 to the Act. Under section 29(1) of the Act the Secretary of State may issue guidance to specified authorities about the exercise of their duty in section 26(1). These regulations provide for the coming into effect of guidance issued by the Secretary of State to certain specified authorities which are in the further and higher education sectors (as referred to in section 31(1)). The guidance deals in particular with the question of what the section 26(1) duty requires when such specified authorities are considering how to manage external speakers and events.

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, all of whom are required under section 29(2) of the Act to have regard to any guidance issued by the Secretary of State under section 29(1) about the exercise of their duty under section 26(1).

4.2 Certain of the specified authorities listed in Schedule 6 to the Act are proprietors or governing bodies of further and higher education institutions. Section 31(2) of the Act provides that specified authorities to which that section applies are, when carrying out the section 26(1) duty, required to have particular regard to the need to ensure freedom of speech[1]; and must have particular regard to the importance of academic freedom (if the authority is the proprietor or governing body of a "qualifying institution", which is defined in section 202(3) of the Education Reform Act 1988). Under section 31(3) the Secretary of State, when issuing guidance to such

[1] Whether because they are English or Welsh institutions which are subject to the duty to ensure freedom of speech contained in section 43(1) of the Education (No. 2) Act 1986 or because they are post-16 education bodies within the meaning of the Further and Higher Education (Scotland) Act 2005 which are required to pay particular regard to the need to ensure freedom of speech under section 31(2)(aa) of the Act.

specified authorities, is also required to pay particular regard to the need to ensure freedom of speech and the importance of academic freedom.

4.3 Section 29(3) of the Act provides that the Secretary of State may issue guidance under section 29(1) to all specified authorities, to particular specified authorities, or to specified authorities of a particular description. Section 29(6) allows the Secretary of State from time to time to revise guidance issued under section 29. Guidance issued under section 29(1) (or revised under section 29(6)) takes effect on whatever day the Secretary of State appoints by regulations, and 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 (section 29(5)).

4.4 This instrument provides that new guidance issued under section 29(1) and (3) to the further and higher education institutions referred to in section 31(1) of the Act takes effect. This instrument also brings into effect revised guidance, which is identical to guidance previously issued under section 29(1) other than that sector-specific sections addressed to further and higher education institutions have been omitted as they have been superseded by the new guidance.

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 Security Minister, John Hayes, 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) (Guidance) Regulations 2015 are compatible with the Convention rights".

7. Policy background

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

7.1 The duty in section 26(1) of the Act has the effect of placing the Government's Prevent Strategy, as it applies to the specified authorities in Schedule 6 to the Act, on a statutory footing. The rationale for this legislation is to improve consistency around the country in terms of the consideration that specified authorities give, when exercising their functions, to the need to prevent people from being drawn into terrorism.

7.2 Some of those specified authorities are institutions in the further and higher education sectors. These institutions were made subject to the Prevent duty in recognition of the very real risk of radicalisation in these sectors. Young people continue to make up a disproportionately high number of those arrested in this country for terrorist-related offences and of those who are travelling to join terrorist organisations in Syria and Iraq. Radicalisation on campus can be facilitated through events held by extremist speakers, while radicalised students can act as a focal point

for further radicalisation through personal contact with fellow students and social media activity.

7.3 During passage of the Counter-Terrorism and Security Bill, serious concerns were expressed about the implications of the section 26(1) duty for specified authorities in the further and higher education sectors which have to manage the issue of external speakers and events. The key concern was that the imposition of the section 26(1) duty would give rise to conflicts with, and impinge on, universities' and other education institutions' academic freedom and their obligations to ensure freedom of speech. The Counter-Terrorism and Security Bill was therefore amended during the Lords stages to include section 31, which ensures that, when complying with the section 26(1) duty, specified authorities in the further and higher education sectors to which that section applies are required to pay particular regard to the importance of academic freedom and the need to ensure freedom of speech if they are English or Welsh institutions subject to the duty in section 43(1) of the Education (No. 2) Act 1986 or are post-16 education bodies within the meaning of the Further and Higher Education (Scotland) Act 2005 and are subject to section 31(2)(aa). Section 31 also provides that when issuing guidance to such specified authorities, the Secretary of State is required to pay particular regard to these matters.

7.4 Following enactment of the Bill, guidance was issued to all specified authorities under section 29(1). The guidance was debated and approved by Parliament and the Counter-Terrorism and Security Act 2015 (Risk of Being Drawn into Terrorism) (Amendment and Guidance) Regulations 2015 (S.I. 2015/928) ("the First Guidance Regulations") brought the guidance into effect on 25th March 2015. However, the guidance did not contain anything on the issue of external speakers and events; instead, it indicated that further guidance would be issued on this at a later date.

7.5 This instrument brings into effect four new guidance documents: "Prevent Duty Guidance: for further education institutions in England and Wales"; "Prevent Duty Guidance: for higher education institutions in England and Wales"; Prevent Duty Guidance: for further education institutions in Scotland"; and "Prevent Duty Guidance: for higher education institutions in Scotland". Appropriate stakeholders, including Universities UK, were consulted on the drafting of these guidance documents. The new guidance includes information for higher and further education institutions referred to in section 31(1) of the Act about the policies and procedures they should have in place for the management of events and use of premises in order to comply with the section 26(1) duty. The new guidance documents (which can be found at https://www.gov.uk/government/publications/prevent-duty-guidance) take effect on the day on which this instrument comes into force.

7.6 This instrument also brings into force "Revised Prevent Duty Guidance: in England and Wales" and "Revised Prevent Duty Guidance: in Scotland", which are identical to the guidance documents given effect by the First Guidance Regulations other than that they do not contain sector-specific guidance for the further and higher education institutions since that is now included in the four new stand-alone guidance documents. The revised guidance documents (which can be found at https://www.gov.uk/government/publications/prevent-duty-guidance) take effect on the day on which this instrument comes into force.

- ***Consolidation***

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

8. Consultation outcome

8.1 A consultation on the Prevent Duty Guidance in England and Wales 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. A summary of responses is available here: https://www.gov.uk/government/consultations/prevent-duty.

8.2 When drafting the new guidance, further and higher education stakeholders were consulted including, Universities UK (UUK). The Scottish Government was also consulted. Following the consultation and discussion within Government, the wording relating to external speakers was revised.

9. Guidance

9.1 No guidance is necessary in connection with this instrument.

10. Impact

10.1 The issuance of guidance to specified authorities in the further and higher education sectors referred to in section 31(1) about how to comply with the section 26(1) duty does not in itself result in any significant impact on those bodies. The impact of the imposition of the section 26(1) duty on those bodies has been described in the impact assessment for the Act itself.

10.2 An Impact Assessment for Act 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 Secretary of State will appoint an appropriate body to assess the specified authorities' compliance with the Prevent duty in the further and higher education sectors. A separate monitoring framework will be published setting out the details of how this body will undertake monitoring of the duty.

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.