EXPLANATORY MEMORANDUM TO

THE COUNTER-TERRORISM AND SECURITY ACT 2015 (RISK OF BEING DRAWN INTO TERRORISM) (REVISED GUIDANCE) REGULATIONS 2024

2024 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 Rt Hon Tom Tugendhat, the Minister for Security at the Home Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Cathryn Ellsmore, Deputy Director for Prevent, at the Home Office, 5th Floor Peel Building, 2 Marsham Street, London, SW1P 4DF confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Becky Sullivan at the Home Office, 5th Floor Peel Building, 2 Marsham Street, London, SW1P 4DF email: PreventDutyGuidance1@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument gives effect to the revised guidance under section 29 of the Counter-Terrorism and Security Act 2015 ("CTSA 2015") to specified authorities[1] in Scotland in relation to their Prevent duty under section 26 CTSA 2015. The Prevent duty states that a specified authority "must, in the exercise of its functions, have due regard to the need to prevent people from being drawn into terrorism". The guidance advises specified authorities (such as local government, health and social care providers, education and childcare providers, prisons and the Scottish Police Authority) how they can implement this duty and help stop people from becoming terrorists or supporting terrorism.

4.2 Following the Independent Review of Prevent, (the "IRP"), the Government committed to updating the Prevent duty guidance for England, Wales and Scotland. The updated Prevent duty guidance for England and Wales was laid in Parliament on 7th September 2023 and came into force on 31st December 2023. This instrument updates the guidance for Scotland. Prevent is a reserved function, but is delivered through devolved structures, so the Prevent duty guidance for Scotland has been developed with the Scottish Government.

4.3 The Prevent duty guidance has been updated to reflect developments since the previous guidance of 2015. It includes the current threat picture and changes in

[1] https://www.legislation.gov.uk/ukpga/2015/6/schedule/6

legislation since 2015. The updated guidance has refreshed terminology and reflects current best practice.

4.4 The updated Prevent duty guidance also incorporates several recommendations of the IRP to strengthen the delivery of Prevent. It updates Prevent's objectives to make it clear that Prevent should 'tackle the ideological causes of terrorism'. It sets out requirements more clearly, articulating the need for high quality training so risk can be identified and managed. It gives details of the strategic Security Threat Check (STC) which helps Prevent recognise and respond to the greatest threats. Updating this guidance will support practitioners so that Prevent is well-equipped to counter the threats that we face and the ideologies underpinning them.

4.5 The revised guidance is annexed to this instrument and replaces previous guidance issued in 2015 to specified authorities in Scotland.

Where does the legislation extend to, and apply?

4.6 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales and Scotland.

4.7 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Scotland.

4.8 There is standalone statutory guidance for specified authorities in England and Wales, The Counter-Terrorism and Security Act 2015 (Risk of Being Drawn into Terrorism) (Revised Guidance) Regulations 2023, which was laid in Parliament on 7th September 2023 and came into force on 31st December 2023.

5. Policy Context

What is being done and why?

5.1 Prevent is one of the pillars of CONTEST, the United Kingdom's counter-terrorism strategy. The aim of Prevent is to stop people from becoming terrorists or supporting terrorism. Prevent also extends to supporting the rehabilitation and disengagement of those already involved in terrorism. CTSA 2015 provided for a duty on specified authorities to "prevent people from being drawn into terrorism" in the exercise of their functions.

5.2 During the passage of the Counter Terrorism and Border Security Act 2019, the Government committed to carrying out the IRP. In January 2021, the Home Secretary appointed William Shawcross as the Independent Reviewer. The report of the IRP was published on 8th February 2023 and made 34 recommendations – all of which were accepted by the Home Secretary in the Government response.[2]

5.3 Revising the statutory guidance responds to a number of the recommendations made in the IRP. Key changes to the statutory guidance include: amending the first Prevent objective to "tackle the ideological causes of terrorism"; updating terminology to reflect current best practice and terminology; communicating the need for genuine concern about an individual's path to radicalisation and that ideology should be a critical consideration (to improve the quality of referrals); and outlining the new STC. The STC, which consists of three questions, will ensure that high level decision-making within Prevent is always informed by proper consideration of the terrorism threat picture.

[2] https://www.gov.uk/government/publications/independent-review-of-prevents-report-and-government-response/independent-review-of-prevent-one-year-on-progress-report-accessible

5.4 The revised guidance is a public document and key tool in supporting specified authorities in Scotland in fulfilling their statutory duty. It is intended for use by:

(a) senior leadership teams in any of the specified authorities listed in Part 2 of Schedule 6 CTSA 2015;

(b) those with dedicated Prevent and / or safeguarding responsibilities;

(c) people in specified authorities with responsibility for how resources and funding are used, and for external partnerships; and

(d) those who are in a frontline role, who are likely to engage with people who may be susceptible to radicalisation.

5.5 The revised guidance replaces guidance that came into effect on 18th September 2015 for specified authorities in Scotland by virtue of the Counter-Terrorism and Security Act 2015 (Risk of Being Drawn into Terrorism) (Guidance) Regulations 2015 (S.I. 2015/1697). That guidance was:

- "Revised Prevent Duty Guidance: for Scotland"; and
- "Prevent Duty Guidance: for further education institutions in Scotland"; and
- "Prevent Duty Guidance: for higher education institutions in Scotland".

What was the previous policy, how is this different?

5.6 The new guidance responds to several recommendations of the IRP and was developed in consultation with a range of key government partners and frontline practitioners. Key changes include:

5.7 Updating Prevent's first objective to 'tackling the ideological causes of terrorism'. We have also set out clearly that the ideological component of terrorism is what sets it apart from other acts of serious violence, and the importance of applying common thresholds across ideologies.

5.8 Clearly setting out that the threat from terrorism is becoming more diverse, but Islamist terrorism currently remains our primary and deadliest threat.

5.9 Including 'Reducing Permissive Environments' as a key theme to tackle the ideological causes of terrorism. Drawing out this theme significantly changes the tone of the guidance and encourages the challenging of ideas linked to terrorism such as antisemitism or using blasphemy to justify violence.

5.10 Clarifying appropriate terminology, with 'susceptibility to radicalisation' and 'susceptibility to becoming a terrorist or supporting terrorism' now the standard terminology. The term 'vulnerability' has also been clearly defined to ensure it is only used when appropriate.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 26(1) CTSA 2015 provides that a specified authority must, in the exercise of its functions, have due regard to the need to prevent people from being drawn into terrorism. Part 2 of Schedule 6 CTSA 2015 lists the specified authorities in Scotland, which include education, health, local authorities, police and criminal justice agencies (prisons, probation and youth justice). Under section 29(1) CTSA 2015 the Secretary of State may issue guidance to specified authorities about the exercise of their duty.

6.2 Section 29(6) CTSA 2015 allows for the Secretary of State to revise 'from time to time' the statutory guidance issued under Section 29(1). The guidance takes effect on

the date appointed in a statutory instrument subject to the draft affirmative procedure (section 29(4) and (7)).

7. Consultation

Summary of consultation outcome and methodology

7.1 A public consultation was conducted in advance of the first Prevent duty guidance for England, Wales and Scotland in 2015. It ran between 18th December 2014 and 30th January 2015. The 2015 consultation sought views on the guidance from the broad range of sectors and bodies that are covered by the Prevent duty. Whitehall departments also consulted their principal partners. 1,792 written responses were received, and 316 delegates attended the consultation events.[3]

7.2 The 2024 Prevent duty guidance for Scotland was informed by a consultation undertaken in 2023 when developing the Prevent duty guidance for England and Wales. Interviews took place between January and February 2023. The Home Office commissioned an external consultation with front-line practitioners and others working in various capacities for the specified authorities who were likely to use the guidance in their roles; surveys and one-to-one interviews were conducted with various individuals who used the previous guidance. The consultation provided feedback and advice on the structure, terminology, and tone, for example. The Prevent duty guidance was appreciated for being clear, concise, easy to understand, well-structured and detailed. The consultation recommended that the Prevent duty guidance cater to a broad spectrum of stakeholders with different needs, knowledge bases and operating environments which was implemented.

7.3 A further external consultation was commissioned in advance of the Prevent duty guidance for Scotland in 2023. It ran between 7th December 2023 and 14th December 2023 with stakeholders from across the statutory sectors in Scotland. Stakeholders generally found the PDG for Scotland to be a well-drafted document which was accurate, clear, and reflective of the context for Scotland. As was found during the research for the E&W redraft, the consultation highlighted challenges for creating a document that will meet the needs of all users. The consultation highlighted strengths around readability and accessibility. Stakeholders reported that the draft did not 'negatively profile' any group based on protected characteristics. The consultation highlighted a need for further formatting considerations, including to reduce replication. These issues have been addressed. Overall, stakeholders were positive about many aspects of the re-drafted PDG for Scotland. It was appreciated for its clarity and readability, which some respondents felt was an improvement on previous versions.

8. Applicable Guidance

8.1 No guidance is necessary in connection with this instrument.

[3] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/409886/Prevent_Duty_Guidance_-_Summary_of_repsonses.pdf

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 An impact assessment of the duty under section 29(1) CTSA 2015 was prepared in 2015. This updated Prevent duty guidance for Scotland does not confer new functions on any specified authority, therefore no Impact Assessment is required.

9.2 The updated guidance advises on and reflects existing good practice. It is not anticipated that the updated guidance will result in additional burdens.

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business, charities or voluntary bodies as a result of this instrument. The revision of guidance to specified authorities as to how to comply with their duty under section 29(1) CTSA 2015 does not confer any additional obligation or result in significant impact.

9.4 A small business may constitute a specified authority subject to the duty at section 26(1) CTSA 2015. This instrument and the revised guidance to which it relates do not impose any additional obligations on such businesses.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The instrument does not include a statutory review clause.

10.2 The effect of this instrument and the revised guidance will be monitored through ongoing engagement with specified authorities and others by the Home Office.

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 Rt Hon Tom Tugendhat, the Minister for Security 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) (Revised Guidance) Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").