EXPLANATORY MEMORANDUM TO

THE POLICE AND CRIMINAL EVIDENCE ACT 1984 (CODES OF PRACTICE) (REVISION OF CODE A) ORDER 2015

2015 No. [XXXX]

1. This explanatory memorandum has been prepared by Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Order brings into force a revised Code of Practice issued under the Police and Criminal Evidence Act 1984 (PACE), known as Code A, which deals with the exercise by police officers of statutory powers of stop and search The changes revise the previous wording of the code to make clear what constitutes 'reasonable grounds for suspicion' and to emphasise that officers who misuse these powers may be subject to performance or disciplinary procedures. It comprises a re-structure of the text, explanatory additions and updates from case law.

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

3.1 None.

4. Legislative Context

4.1 Section 66 of the Police and Criminal Evidence Act 1984 ('PACE') requires the Home Secretary to issue a number of codes of practice in connection with the exercise by police officers of statutory enforcement powers. These codes of practice also set out associated rights and safeguards for suspects in England and Wales. These codes include a code of practice in connection with the exercise by police officers of statutory powers to search a person without first arresting them, and to search a vehicle without making an arrest ("Code A"). This Order brings into force a revised Code A.

4.2 Section 67(4) of PACE requires that where the Home Secretary wishes to issue a revision of a code, a statutory consultation must first be carried out. This has been carried out in accordance with section 67(4).

4.3 On 30 April 2014 the Home Secretary announced a comprehensive package of measures to reform the police use of the powers of stop and search (13 Apr 2014: Column 831). This followed a 12 week consultation from 2 July 2013 to 24 September 2013. One of the measures was to:

'Revise the Police and Criminal Evidence Act 1984 (PACE) Code of Practice A to make clear what constitutes 'reasonable grounds for suspicion' – the legal basis upon which police officers carry out the vast majority of stops. The revised code will also emphasise that where officers are not using their powers properly they will be subject

to formal performance or disciplinary proceedings.'(Source: Police Powers of Stop and Search – Summary of Consultation Responses and Conclusions (April 2014)).

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Minister for Policing, Criminal Justice and Victims has made the following statement regarding Human Rights:

In my view, the provisions of the Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Code A) Order 2015 are compatible with the Convention rights.

7. Policy background

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

7.1 In line with the Home Secretary's announcement, the revisions to Code of Practice A which this Order brings into force are designed to ensure that the police are clear about the legal basis under which most of their powers of stop and search are exercised (not including section 60 Criminal Justice and Public Order Act 1994 powers) and about the consequences of unlawful use. This follows a finding of Her Majesty's Inspectorate of Constabulary that 27 per cent of the stop and search records that they examined did not contain reasonable grounds to search people. They attribute this finding to poor levels of understanding among officers about what constitutes reasonable grounds and poor supervision.

7.2 Another measure announced was the College of Policing commission to review the national training on stop and search. In particular, the College of Policing are working with Chief Constables and Police and Crime Commissioners to develop robust training for probationers, existing officers, supervisors and police leaders. Training for frontline officers will include awareness of unconscious bias in decisions concerning the use of the powers. Additionally, the College of Policing will consider introducing a requirement that stop and search training should be subject to assessment and refreshed on a rolling basis. Failure to pass would mean that officers could not use the powers in the course of their duties.

7.3 These measures, together with the changes to Code of Practice A that this Order will bring into force, are designed to reduce the possibility that police officers are using their powers of stop and search ineffectively or unlawfully.

- ***Consolidation***

7.4 Not applicable.

8. Consultation outcome

8.1 The Home Office consulted over revisions to Code of Practice A (stop and search) from 26th August 2014 to 20th October 2014 (see https://www.gov.uk/government/consultations/revised-pace-code-a).
It sought views on proposed revisions to implement the Government's commitment set out in the consultation on Stop and Search to: 'Revise the Police and Criminal Evidence Act 1984 (PACE) Code of Practice A to make clear what constitutes 'reasonable grounds for suspicion' (the legal basis upon which police officers carry out the vast majority of stops). The revised code also emphasises that where officers are not using their powers properly they will be subject to formal performance or disciplinary proceedings' (see https://www.gov.uk/government/consultations/stop-and-search).

8.2 We received responses from 21 separate individuals and organisations. These included six police forces, the National Crime Agency, the College of Policing, Crown Prosecution Service, legal representative bodies (London Criminal Courts Solicitor's Association and the Chartered Institute of Legal Executives), a Police and Crime Commissioner and a number of campaign and community support groups and organisations concerned with the way in which stop and search powers are used.

8.3 The Codes have been amended in the light of some of the responses received from the consultation exercise. To improve the presentation and help understanding, new subheadings have been introduced to break up the provisions and the order in which certain aspects appear has been changed. Other changes have been made in the interests of clarity, legal accuracy and to reflect current practice. As a result of the consultation, some provisions have been substantially extended and a number of new provisions have been added. For full details of the changes made, see the Government's response to the consultation at www.gov.uk.

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9. Guidance

9.1 The Home Office will work with the National Policing Leads and College of Policing to determine whether there is a need for further guidance and support.

9.2 A Home Office Circular will be issued to publicise the revised code and the changes within it.

10. Impact

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

10.2 The impact on the public sector is expected to include an improved understanding of the grounds for most stop and search powers, leading to fewer stop searches and better outcomes.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Success criteria for the changes will be:

- Proper use of the powers of stop and search through the correct application of 'reasonable grounds of suspicion'.
- Reduction in the use of stop and search and improvements in police and community relations.
- Increased police accountability for their use of stop and search.
- Improved and updated text to underpin officer learning and development, both nationally and locally.
- Clear and unambiguous reference for the police, judiciary and the public on the correct operational use of 'with suspicion' powers of stop and search.

12.2 The National Policing Leads, in conjunction with the College of Policing, the Home Office and Her Majesty's Inspector of Constabulary will monitor the implementation and impact of the amendments on an ongoing basis. The latter, in particular, are to assess forces use of stop and search as part of the new annual PEEL inspections.

13. Contact

John de Sousa at the Home Office Tel: 020 7035 0911 or john.desousa2@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.