EXPLANATORY MEMORANDUM TO

THE POLICE AND CRIMINAL EVIDENCE ACT 1984 (CODES OF PRACTICE) (REVISION OF CODE A) ORDER 2022

2022 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. Purpose of the instrument

2.1 The Order brings into force a revised Codes of Practice issued under the Police and Criminal Evidence Act 1984 ("PACE"), known as: Code A which concerns the exercise by police officers of statutory powers to stop and search. The changes will introduce a new temporary annex (Annex G) to the Code. This Annex outlines the powers under Section 324E of the Sentencing Act 2020 ("the Sentencing Code") in relation to individuals subject to a Serious Violence Reduction Order ("SVROs").

2.2 SVROs are a civil order which give the police powers to stop and search individuals convicted of an offence where a knife or offensive weapon was used or was present.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

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

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. European Convention on Human Rights

5.1 The Minister of State for Crime, Policing and Fire 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 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 Serious Violence Reduction Orders (SVROs) were inserted into Part 11 of the Sentencing Code by section 165 of the Police, Crime, Sentencing and Court ("PCSC") Act 2022.

6.2 SVROs implement a Government Manifesto commitment and are a new civil order that can be made by the Court in respect of adults (aged 18 and over), convicted of an offence where a bladed article or offensive weapon was used or was present. The

Order provides the police with the power to stop and search a person subject to an SVRO to ascertain if they have a bladed article or offensive weapon with them and to detain them for the purpose of carrying out that search. The orders are intended to help to reduce serious violence by deterring the carriage of weapons by individuals through increasing the risk of detection of such weapon carrying by individuals.

6.3 Section 66 of the Police and Criminal Evidence Act 1984 ("PACE") requires the Secretary of State 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 to bring it in in line with current legislation.

6.4 Section 67(4) of PACE requires that the Secretary of State must consult on a code, or revisions to a code before it is issued.

6.5 Section 166 of the PCSC Act requires that SVROs be piloted before the provisions in section 165 of that Act can be fully commenced in England and Wales. Commencement regulations (to be made under section 209(1) of the PCSC Act) are planned to be made later in the year to enable the pilot to commence on 17 January 2023. The pilot will be in place for 24 months, with an additional 6 months transitional period. The 6 month transitional period is intended to allow for SVROs which take effect before the end of the pilot period to remain "live" for 6 months after the end of the pilot, but it will not be possible to apply for new SVROs or renew existing SVROs once the pilot period ends. This will enable courts to issue an SVRO on the last day of the pilot for the minimum duration of the order (6 months).

6.6 The pilot will take place in Merseyside, West Midlands, Thames Valley and Sussex Police forces. Only courts within the pilot areas will be able to make an SVRO. However, the power conferred on constables under section 342E of the Sentencing Code to stop and search those subject to an SVRO will be commenced across the whole of England and Wales for the duration of the pilot and the transitional period to ensure SVROs made can effectively be enforced.

6.7 As a result, the revisions to PACE Code A made in Annex G of the revised Code brought into force by this Order apply to the whole of England and Wales for the specified period of 30 months, consisting of the 24 month pilot and the 6 month transitional period.

6.8 The pilot will test the effect of SVROs, community responses to SVROs, including any issues of disproportionality, and the outcomes for offenders who are subject to an SVRO. To inform this assessment, data will be gathered on a number of measures, including the age, sex and ethnicity of people subject to SVROs.

7. Policy background

What is being done and why?

7.1 Police powers in England and Wales are governed by the provisions of PACE and the accompanying Codes of Practice. PACE sets out the core framework of powers and the Codes govern the way in which the powers are exercised by the police whilst also ensuring that the rights and entitlements of individuals are safeguarded.

7.2 The changes will introduce a new temporary annex (Annex G) to the Code. This Annex outlines the powers under Section 324E of the Sentencing Code in relation to individuals subject to a Serious Violence Reduction Order (SVROs).

7.3 The revisions to the Code set out the operational considerations that should be made when conducting searches in relation to SVROs and the general principles to be considered when conducting searches to ensure that they are fair and responsible. In particular, Annex G:

- Highlights that the power does not require officers to have prior reasonable grounds but must not be based on prejudice;
- Highlights that searches can only be conducted on those with an SVRO and officers should seek to confirm the identity of the individual;
- Outlines that the use of the power like all other stop and search powers is discretionary, and officers will be expected to use their judgement when choosing to conduct searches;
- Outlines that the new Annex shall apply for the period of the pilot (24 months) plus an additional 6-month transitional period. The 6 month transitional period is intended to allow for SVROs which take effect before the end of the pilot period to remain "live" for 6 months after the end of the pilot, but it will not be possible to apply for new SVROs or renew existing SVROs once the pilot period ends. This allows courts to issue an SVRO on the last day of the pilot for the minimum duration of the order (6 months) and;
- Outlines the territorial extent of the use of the powers. This includes that SVROs will only be issued in the pilot police forces areas however the stop and search powers are enforceable across England and Wales. This is aimed at supporting an operational response across jurisdictions, allowing constables from non-pilot forces to stop and search individuals subject to SVROs if they travel outside of the pilot area.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

9.1 Not applicable.

10. Consultation outcome

10.1 The Home Office consulted on the revisions to PACE Code A from 16 May 2022 to 27 June 2022. In accordance with section 67(4) of the Police and Criminal Evidence Act 1984, statutory consultees and others were invited to comment.

10.2 Responses were received from 11 separate individuals and organisations. They came from police forces, civil society, stop and search community monitoring groups, the Crown Prosecution Service (CPS), His Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS), IOPC and legal professionals.

10.3 The majority of responses acknowledged that the proposed changes to PACE Code A were key to ensuring police officers have clear guidance on the powers and to ensuring that stop and search powers in relation to SVROs are used in a way that is

fair and proportionate. A number of themes were raised in responses to the consultation in particular the fair and proportionate use of the power, monitoring any disproportionality in the application and use of the power, the territorial extent of the power including the use by officers outside of the pilot areas and wider comments on the SVRO pilot and policy.

10.4 The outcome of the consultation prompted clarification that a person accompanying, or in a group with someone that has an SVRO should not be searched unless a constable has the relevant reasonable grounds for suspicion. Minor typographical and grammatical corrections have also been made.

10.5 For details of the changes made, see the Government's response to the consultation at https://www.gov.uk/government/consultations/revising-pace-code-a-2022.

11. Guidance

11.1 The Home Office is working with relevant stakeholders to develop further statutory guidance and support material in respect of SVROs. A draft of the statutory guidance can be found at Serious Violence Reduction Orders: draft statutory guidance (publishing.service.gov.uk)

11.2 A Home Office Circular will be issued to publicise the revised Codes and the changes within them.

12. Impact

12.1 There is no impact on business, charities or voluntary bodies as the power will apply only for use by the police.

12.2 The changes will have some impact on police forces across England and Wales. Whilst during the pilot SVROs will only be able to be issued in four pilot force areas (West Midlands, Sussex, Merseyside and Thames Valley), the stop and search power will be available to police constables across England and Wales in respect of individuals subject to an SVRO.

12.3 An Impact Assessment was conducted as part of the Police Crime Sentencing and Court Act 2022 which introduced SVROs. (See Police, Crime, Sentencing and Courts Act 2022: overarching documents - GOV.UK (www.gov.uk))

13. Regulating small business

13.1 The legislation does not apply to small business.

14. Monitoring & review

14.1 The success criteria for the changes will be:

- Professional use of the stop and search power relating to SVROs.
- Police accountability for their use of the stop and search power relating to SVROs.
- Clear and unambiguous guidance to officers on the use of powers relating to SVROs.

14.2 SVROs will be piloted in Thames Valley, West Midlands, Merseyside and Sussex Police forces. An evaluation of the pilot will be conducted by an independent evaluator and a report of the pilot will be laid in parliament.

15. Contact

15.1 Courtney DuCille-Smith at the Home Office; email: courtney.ducille-smith@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Laura Baynton, Head for Serious Violence Unit at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Jeremy Quin, Minister for Crime, Policing and Fire at the Home Office can confirm that this Explanatory Memorandum meets the required standard.