EXPLANATORY MEMORANDUM TO

THE POLICE, CRIME, SENTENCING AND COURTS ACT 2022 (CONSEQUENTIAL PROVISION) REGULATIONS 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 Her Majesty.

2. Purpose of the instrument

2.1 These Regulations amend section 47AA of the Terrorism Act 2000 ('TACT 2000') so that it applies to new section 43C of TACT 2000, which allows for the stop and search of terrorist and terrorism-connected offenders released on licence. Section 43C was inserted by section 185 of the Police, Crime, Sentencing and Courts Act 2022.

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 territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 The Minister of State for Security and Borders, Damian Hinds MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Police, Crime, Sentencing and Courts Act 2022 (Consequential Provision) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 These Regulations have been made under section 205 of the Police, Crime, Sentencing and Courts Act 2022.

6.2 The Police, Crime, Sentencing and Courts Act 2022 provided for a new personal search power in TACT 2000 (section 43C), which enables the police to stop and search an offender released on licence for purposes connected with protecting the public from a risk of terrorism.

6.3 Section 47AA of TACT 2000 imposes a requirement on the Secretary of State to prepare a code of practice containing guidance about the exercise of stop and search powers that are conferred by that Act. The effect of the Police, Crime, Sentencing and Courts Act 2022 (Consequential Provision) Regulations 2022 is to amend section 47AA of TACT 2000 so that it applies to the new section 43C search power.

7. Policy background

What is being done and why?

7.1 The Police, Crime, Sentencing and Courts Act 2022 established three new powers for Counter-Terrorism Policing: personal (new section 43C TACT 2000) and premises search powers, and an urgent power of arrest. These powers were taken in response to recommendations made by Jonathan Hall QC, the Independent Reviewer of Terrorism Legislation, following his independent review of the Multi Agency Public Protection Arrangements (MAPPA) used to supervise terrorist and terrorism-risk offenders on licence. Mr Hall QC's review was commissioned by the Home Secretary following the terrorist attack at Fishmongers' Hall in November 2019. The Fishmongers' Hall Prevention of Future Deaths report also recommended that a new power of personal search be created.

7.2 The section 43C personal search power enables the police to stop and search a terrorist or terrorism-connected offender who has been released on licence, for purposes connected with protecting the public from a risk of terrorism. The power will apply UK-wide and will only be used against those terrorist and terrorism-connected offenders that are required to submit to the search by their licence conditions. In most cases, the Parole Board will determine whether it is appropriate for the offender, when released, to have this licence condition expressed as part of the conditions of their release. This assessment will be based on a contemporary assessment of the offender's risk profile i.e. whether or not they are judged to represent a high or very high risk to the public.

7.3 The benefits of section 43C include providing a deterrent for offenders who have been released on licence to take weapons with them when travelling, as well as reducing the risk that offender managers are exposed to in meetings with high-risk offenders. Existing stop and search powers may not extend to such scenarios. The new power allows anything carried by the offender to be searched. As well as identification of weapons, this allows officers to search for items, such as electronic communications devices, which may be possessed contrary to licence conditions and could be used to contact terrorist networks. The new power also allows for the search of a vehicle, addressing the possibility of vehicle attacks and preventing the possibility of offenders in scope avoiding being searching by travelling in a vehicle.

7.4 The Police, Crime, Sentencing and Courts Act 2022 (Consequential Provision) Regulations 2022 have been made under section 205 of the same Act and amend section 47AA of TACT 2000 so that it applies to new section 43C in TACT 2000. This technical amendment will create a requirement for the Secretary of State to prepare a code of practice containing guidance about the exercise of the power conferred by new section 43C. Once section 47AA has been amended the Government will prepare amendments to the code of practice it provides for and lay this before Parliament for its approval.

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 This instrument does not amend other secondary legislation.

10. Consultation outcome

10.1 The Devolved Administrations were consulted on, and supported, the inclusion of a new power of personal search in the Police, Crime Sentencing and Courts Act 2022.

11. Guidance

11.1 No guidance is necessary in connection with this instrument

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 A separate Impact Assessment has not been prepared for this instrument, as impact considerations are covered in the Impact Assessment prepared for the Police, Crime, Sentencing and Courts Act 2022.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The instrument does not include a statutory review.

14.2 Statistical data on the use of police powers in TACT 2000 in Great Britain is published by the Home Office on a quarterly basis.

15. Contact

15.1 The CT Pursue Unit at the Home Office can answer any queries regarding the instrument and can be contacted at the Home Office, 5th Floor, Peel Building, 2 Marsham Street, London, SW1P 4DF. Telephone (9am-5pm): 020 7035 4848.

15.2 The Deputy Director for CT Pursue Unit at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister of State for Security and Borders, Damian Hinds MP, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.