EXPLANATORY MEMORANDUM TO

THE TERRORISM ACT 2000 (ALTERATIONS TO THE SEARCH POWERS CODE FOR ENGLAND AND WALES AND SCOTLAND) 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 Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The Secretary of State has made alterations to the Code of Practice (England, Wales and Scotland) for the Exercise of Stop and Search Powers under sections 43 and 43A of the Terrorism Act 2000, and the Authorisation and Exercise of Stop and Search Powers Relating to Section 47A of, and Schedule 6B to, the Terrorism Act 2000 issued under section 43AB of the Terrorism Act (TACT) 2000. The Code was originally brought into force on 10 July 2012 in accordance with S.I. 2012/1794.

2.2 The alterations primarily reflect the creation of the new power of a constable to stop and search terrorist offenders released on licence under section 43C of TACT 2000, which was inserted by section 185 of the Police, Crime, Sentencing and Courts Act 2022, and make other minor changes. The new stop and search power applies when a terrorist offender's licence includes a search condition and the constable is satisfied that the search is necessary for purposes connected with protecting members of the public from a risk of terrorism.

2.3 This Order brings the alterations to the search powers code into force following its approval by each House of Parliament.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Order provides for the alterations to the search powers code to come into force on the day after the day on which they are made. It is considered justified for the commencement to occur without further delay.

3.2 The purpose of the code is to provide safeguards surrounding the exercise of the relevant power. The section 43C search power has now commenced, and it is considered to be in the public interest for the alterations to the search powers code to be in force as early as possible. The relevant Police Forces who will exercise the relevant power have been consulted on the alterations and are therefore in a position to be ready for their commencement.

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 England and Wales and Scotland.

5. European Convention on Human Rights

5.1 The Secretary of State for the Home Department, Rt Hon Priti Patel MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Terrorism Act 2000 (Alterations to the Search Powers Code for England and Wales and Scotland) Order 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 The Police, Crime, Sentencing and Courts Act 2022 provided for a new stop and search power by amending TACT 2000 to insert new section 43C.

6.2 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 Police, Crime, Sentencing and Courts Act 2022 (Consequential Provision) Regulations 2022 (S.I 2022/746) amended the scope of section 47AA of TACT 2000 so that it applies to new section 43C.

6.3 The Secretary of State has: in accordance with section 47AC(1)(b) of TACT 2000, prepared alterations to the search powers code for England, Wales and Scotland; in accordance with section 47AC(2) of TACT 2000, consulted the Lord Advocate and such other persons as she considered appropriate before preparing those alterations; and in accordance with sections 47AB(1)(a) and 47AC(3) of TACT 2000, laid those alterations before Parliament.

6.4 This Order has been laid before Parliament in accordance with sections 47AB(1)(b), 47AC(3) and 123(4)(ab) of TACT 2000.

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[1]. 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[2].

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

1 https://www.gov.uk/government/publications/multi-agency-public-protection-arrangements-review
2 https://www.judiciary.uk/publications/fishmongers-hall-inquests-prevention-of-future-deaths-report/

risk profile i.e. whether or not they are judged to represent a high or very high risk to the public.

7.3 Section 47AA of TACT 2000 sets out that the Secretary of State is required to prepare a code of practice containing guidance about the exercise of search powers that are conferred by that Act. The Police, Crime, Sentencing and Courts Act 2022 (Consequential Provision) Regulations 2022 amended section 47AA of TACT 2000 so that it also applies to new section 43C in TACT 2000.

7.4 The Government has revised the search powers Code to reflect the new section 43C stop and search power, setting out for police officers the basic principles for its use and clarity on its scope. This includes providing guidance on the thresholds to be met before the power can be used, scenarios in which it might be appropriate for use, the powers of seizure associated with the search power, and the limitations on the clothing that a person can be required to remove when the section 43C power is being exercised by the police.

7.5 Given the existing version of the Code was brought into force in 2012, the Government has also taken this opportunity to make other minor amendments to the Code to ensure it accurately reflects current practice, legislation, terminology and organisational responsibilities. These amendments include reflecting the creation of Police and Crime Commissioners, the establishment of the College of Policing and its production of Authorised Professional Practice, the most up-to-date version of the Government's counter-terrorism strategy (CONTEST), and clarifying the authorisation process to stop and search individuals under section 47A of TACT 2000. The revised Code also highlights the need for the police to ensure that in the discharge of their functions they have regard to the need to safeguard and promote the welfare of all persons under the age of 18.

7.6 The revised Code promotes the fundamental principles to be observed by the police and helps preserve the effectiveness of, and public confidence in, the use of police powers to stop and search under TACT 2000.

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 the new stop and search power in the Police, Crime, Sentencing and Courts Act 2022.

10.2 In the course of revising the Code, and in accordance with section 47AC(2) of TACT 2000, the Home Office has consulted the Lord Advocate and other appropriate persons and organisations, including the Independent Reviewer of Terrorism Legislation and Counter Terrorism Policing, all of whom are supportive of the approach being taken.

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[3].

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 A copy of the revised code of practice referred to in this instrument can be found publicly available online at www.gov.uk and hard copies can be obtained by writing to the Home Office, 2 Marsham Street, London, SW1P 4DF.

15.2 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.

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

15.4 The Secretary of State for the Home Department, Rt Hon Priti Patel MP, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

3 https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-overarching-documents