EXPLANATORY MEMORANDUM TO

THE TERRORISM ACT 2000 (ALTERATIONS TO THE SEARCH POWERS CODE FOR NORTHERN IRELAND) ORDER 2024

2024 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Northern Ireland Office (NIO) and is laid before Parliament by Command of His Majesty.

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

2. Declaration

2.1 Rt Hon Hilary Benn, Secretary of State at the NIO confirms that this Explanatory Memorandum meets the required standard.

2.2 James Crawford, Deputy Director for the Security and Protection Group, at the NIO confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 John Thompson at the NIO, telephone: 07974886144, or email: john.thompson@nio.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 The Secretary of State is under a legal duty by virtue of section 47AA of the Terrorism Act 2000 (TACT 2000) to prepare a code of practice containing guidance about the use of the power contained in new section 43C. Accordingly, the search powers code (known as the Code of Practice (Northern Ireland) for the Authorisation and Exercise of Stop and Search powers relating to section 43, 43A, 43C and section 47A of, and Schedule 6B to, the Terrorism Act 2000 (the Code)) requires alterations to include guidance in relation to this power.

4.2 Section 43C to TACT 2000, inserted by section 62 of the Protection of Freedoms Act 2012, provides a power for a constable to search a terrorist offender, who has been released on licence (and not recalled), and whose licence includes a search condition. The constable must be satisfied that it is necessary to do so for purposes connected with protecting members of the public from a risk of terrorism. The constable may conduct the search in any place he or she has access to legally (whether or not it is a place to which the public has access).

4.3 This Statutory Instrument allows for alterations to the Code giving guidance to officers as to the use and governance of the new power to come into force.

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

Where does the legislation extend to, and apply?

4.5 The extent of this instrument is Northern Ireland only.

4.6 The territorial application of this instrument is Northern Ireland only.

4.7 The revised Code shadows the current equivalent Code of Practice for England, Wales and Scotland but does not exactly replicate it due to differences between the jurisdictions.

5. Policy Context

What is being done and why?

5.1 The Police, Crime, Sentencing and Courts Act 2022 established three new powers for Counter-Terrorism Policing: personal search powers (new section 43C TACT 2000); premises search powers; and an urgent power of arrest. These powers were taken in response to recommendations made by Jonathan Hall KC, 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 KC'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].

5.2 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 Commissioners for Northern Ireland (PCNI) 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.

5.3 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.

5.4 The Government has revised the Code to include guidance on the use of 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 police are exercising the section 43C power.

5.5 Given the existing version of the Code was brought into force in 2012, the Government has also taken this opportunity to make other minor alterations to the Code to ensure it accurately reflects current practice, legislation, terminology and organisational responsibilities. The revised Code also highlights the need for the

[1] https://www.gov.uk/government/publications/multi-agency-public-protection-arrangements-review

[2] https://www.judiciary.uk/prevention-of-future-death-reports/fishmongers-hall-inquests-prevention-of-future-deaths-report/

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.

5.6 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.

What was the previous policy, how is this different?

5.7 Prior to 2022, both the Terrorism Act 2000 and its Northern Ireland Code did not include the power for a constable to search a terrorist offender, who has been released on licence (and not recalled), and whose licence includes a search condition. Following the introduction of section 43C by way of the Police, Crime, Sentencing and Courts Act 2022 this now allows for a constable to utilise this power if the circumstances allow.

5.8 By granting this Order it will allow for an updated Code to come into force giving guidance on the implementation and operation of the new section 43C power.

6. Legislative and Legal Context

How has the law changed?

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

6.2 Section 47AA(1)(a) 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 included the requirement to provide guidance on the exercise of powers in 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 Northern Ireland; in accordance with section47 AC(2) of TACT 2000, consulted the Lotrd Advocate and such other persons as he considered appropriate before preparing those alterations; and in accordance with sections 47 AB(1)(a) and 47 AC(3) of TACT 200, 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.

6.5 If approval for this Order is granted by the Houses of Parliament the updated Code will give context and guidance on the implementation and operation of the new TACT section 43C Stop and Search Power, allowing for a constable to search a terrorist offender, who has been released on licence (and not recalled), and whose licence includes a search condition. The constable must be satisfied that it is necessary to do so for purposes connected with protecting members of the public from a risk of terrorism. The constable may conduct the search in any place he or she has access to legally (whether or not it is a place to which the public has access).

Why was this approach taken to change the law?

6.6 This is the only approach provided for in TACT 2000 for making the alterations necessary for the Secretary of State to be in compliance with his duty to provide guidance on the power in new section 43C.

7. Consultation

Summary of consultation outcome and methodology

7.1 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.

7.2 In the course of revising the Code, and in accordance with section 47AC(2) of TACT 2000, the NIO conducted both a public (by way of government social media) and targeted consultation contacting thirty-eight bodies covering political parties, policing, academia, the judiciary and other appropriate persons and organisations. As part of this targeted consultation, the NIO also contacted the Lord Advocate for comment, as is required by legislation, without response.

7.3 Seven responses to the consultation were received including the Independent Reviewer of Terrorism Legislation, the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland. No responses were received from members of the general public. After analysing of the 17 comments/suggestions, the NIO has assessed that:

- The majority of respondents were in favour of updating the code of practice.
- Of the seven responses, six were in favour, none were against and one offered no views.
- The most common reason provided for approving of the update was that it would bring Northern Ireland into line with the rest of the UK.
- Five respondents made suggestions for minor amendments to the wording of the code.

7.4 The summary of responses is contained in the NIO's Consultation Response Document, as published on NIO/Gov.UK internet pages on 26 March 2024[3].

8. Applicable Guidance

8.1 The updated Code of Practice sets out the basic principles for the Authorisation and Exercise of Stop and Search Powers relating to section 43, 43A, 43C and section 47A of, and Schedule 6B to, the TACT 2000 in Northern Ireland.

8.2 The updated Code of Practice itself includes notes for guidance to police officers and others regarding its application and interpretation.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because impact considerations are covered in the Impact Assessment prepared for the Police, Crime, Sentencing and Courts Act 2022[4].

Impact on businesses, charities and voluntary bodies

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

9.3 The legislation does not impact small or micro businesses.

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

[3] https://www.gov.uk/government/publications/consultation-response-tact-code-of-practice

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

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 Sections 47AA and 47AC(1)(b) of TACT 2000 place requirements on the Secretary of State for Northern Ireland to prepare a code of practice containing guidance about the exercise of powers conferred by new section 43C, and to keep the search powers code under review.

10.2 As part of this requirement the NIO not only responds to (as in this case) updates in legislation but also considers recommendations made by Independent reviewers. Additionally, the NIO collates and publishes a report on annual terrorism legislation statistics.

10.3 The Code itself requires the Police Service of Northern Ireland (PSNI) to compile comprehensive statistical records of stops and searches, which annually are made available to not only the NIO for consideration but which are published. Moreover, PSNI are able to utilise these statistics to identify and investigate any apparently disproportionate use of these powers, and highlight these to NIO.

10.4 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The Order provides for the alterations to the 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.

11.2 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 Code to be in force as early as possible. The relevant police force, PSNI, who will exercise the relevant power have been consulted on the alterations and is therefore in a position to be ready for its commencement.

12. European Convention on Human Rights

12.1 The Permanent Under Secretary of State for Northern Ireland 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 Northern Ireland) Order 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").