EXPLANATORY MEMORANDUM TO

THE TERRORISM ACT 2000 (CODE OF PRACTICE FOR AUTHORISED OFFICERS) ORDER 2024

2024 No. XXX

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 This Order is made under paragraph 7(3) and (4) of Schedule 14 to the Terrorism Act 2000 (c. 11) ("TACT") and brings into force a revised code of practice providing guidance and operational requirements for authorised officers in relation to the exercise of certain functions relating to the terrorist property provisions in Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 (c. 25) ("ATCSA").

2.2 The revised code is required as a result of amendments to ATCSA made by the Economic Crime and Corporate Transparency Act 2023 (c. 56) ("the ECCT Act").

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 the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

5.1 The Rt. Hon. Tom Tugendhat has made the following statement regarding Human Rights:

"In my view the provisions of the Terrorism Act 2000 (Code of Practice for Authorised Officers) Order 2024 are compatible with the Convention rights."

6. Legislative Context

6.1 TACT and ATCSA provide the core legislative framework for countering terrorism and terrorist financing. TACT provides the various powers and offences relating to terrorist property and terrorist financing, and ATCSA provides various powers and offences relating to the civil forfeiture of terrorist property. Paragraph 6(1) of Schedule 14 to TACT requires the Secretary of State to issue a code of practice in relation to the exercise of powers conferred on officers by the "terrorist property" provisions in Schedule 1 to ATCSA. Under paragraph 6(4) of Schedule 14 to TACT, the Secretary of State may issue a revised code.

6.2 Both TACT and ATCSA were last amended substantially by the Criminal Finances Act 2017 (c. 22) ("the CFA"), which introduced powers to forfeit terrorist listed assets and money held in bank accounts. Schedule 10 to the ECCT Act will introduce similar powers to those introduced by the CFA for cash and listed assets in relation to the seizure, detention or freezing, and forfeiture of cryptoassets (such as bitcoin) which a court is satisfied are "terrorist cryptoassets".

6.3 The revised code of practice applies to officers who are authorised to exercise functions under the terrorist property provisions (meaning the provisions in Schedule 1 to ATCSA). An "officer" for these purposes is defined in paragraph 1(a) of Schedule 14 to TACT as an authorised officer under Schedule 1 to ATCSA (including when referred to in those provisions as "an enforcement officer" or "a senior officer").

6.4 The revised code contains provisions concerning the use of civil forfeiture powers – the seizure, detention or freezing, and forfeiture of terrorist assets – in Parts 1 to 4BD of Schedule 1 to ATCSA as amended by the ECCT Act.

6.5 The code of practice brought into operation by this instrument replaces the previous code that came into force in January 2018, following the amendments to ATCSA by the CFA.

7. Policy Background

What is being done and why?

7.1 The amendments made by the ECCT Act mirror the new civil forfeiture powers in Part 5 of the Proceeds of Crime Act 2002 (c. 29) ("POCA") in Schedule 1 to ATCSA. This will provide sufficient flexibility for law enforcement to be able to suppress the risk that cryptoassets are used for terrorist purposes, as well as criminal purposes.

7.2 The reforms to ATCSA will enable authorised officers to seize and detain cryptoassets and cryptoasset-related items; to freeze cryptoassets held in crypto wallets administered by cryptoasset service providers; and, ultimately, to forfeit terrorist cryptoassets.

7.3 A code of practice made under ATCSA provides guidance to the officers and other persons exercising their statutory functions and establishes procedural requirements to ensure that the functions concerned are exercised lawfully, proportionately, consistently, and in a focused manner. This code is also of interest to persons who are the subject of the powers.

7.4 The code includes detailed and clear explanations of the powers and the legal requirements that must be met before these powers are exercised by officers. It sets out guidance on how to consider those legal requirements, on balancing the need for using intrusive powers against the interference with a person's privacy or possessions, and what further issues should be considered when using the powers. The code requires an officer who is contemplating using the powers to consider the impact on their use, balanced against the public interest and the benefit the use of the powers would add to the investigation. The code also contains direct operational guidance or procedural requirements in relation to various aspects of the actual use of the powers and the manner in which they should be used.

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 A consolidation will not be taking place.

10. Consultation outcome

10.1 The code was subject to a twelve-week public consultation from 28th March to 20th June 2023, alongside the revised and new codes of practice under the Proceeds of Crime Act 2002. See the following link for the consultation document: Draft codes of practice issued under POCA 2002 and the Terrorism Act 2000 - GOV.UK (www.gov.uk)

10.2 The stakeholders the Government consulted on the revised Code of Practice for Authorised Officers acting under Schedule 1 to ATCSA are supportive of the approach being taken. These include Counter-Terrorism Policing – who in turn consulted the wider-CT Network – the Independent Reviewer of Terrorism Legislation, other Government departments and the Devolved Administrations. The Government considers this to be an appropriate level of consultation given the revisions being made to the code are necessary and in consequence of changes being made to the associated legislation.

11. Guidance

11.1 The Code of Practice brought into operation by this instrument contains guidance and operational requirements as to the use of the powers to which it relates.

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 An Impact Assessment has not been prepared for this instrument as we have considered the overall impact of commencing the 2023 Act during Bill passage rather than preparing separate assessments for each statutory instrument in this package. See the following link for the impact assessment: Economic Crime and Corporate Transparency Bill 2022: impact assessments - GOV.UK (www.gov.uk)

13. Regulating small business

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

14. Monitoring and review

14.1 The approach to the monitoring of this legislation is that the code will be reviewed whenever issues arise as a matter of their operation in practice, but also where amendments are made to ATCSA or TACT, which require a revised or new code of practice to be produced.

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. E-mail: PursuePolicyTeam@homeoffice.gov.uk

15.2 The Deputy Director for CT Pursue Unit at the Home Office (email: PursuePolicyTeam@homeoffice.gov.uk) can confirm that this explanatory memorandum meets the required standard.

15.3 The Rt. Hon. Tom Tugendhat, at the Home Office can confirm that this explanatory memorandum meets the required standard.