EXPLANATORY MEMORANDUM TO

THE TERRORISM ACT 2000 (CODE OF PRACTICE FOR EXAMINING OFFICERS AND REVIEW OFFICERS) ORDER 2014

2014 No.

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 This instrument brings into operation a code of practice in relation to the exercise of powers under schedule 7 to the Terrorism Act 2000 and under Schedule 8 to that Act where those powers are exercised in connection with Schedule 7.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Schedule 9 to the Anti-social Behaviour, Crime and Policing Act 2014 amended Schedules 7, 8 and 14 to the Terrorism Act 2000.

4.2 In summary, the amendments subject the exercise of powers under Schedule 7 to further constraints and safeguards. In particular, the amendments require the Secretary of State to issue codes of practice in relation to:

a. the training of examining officers under Schedule 7 to the Terrorism Act 2000 [paragraph 1A(1)(a) of Schedule 7 to that Act].
b. the procedure for designating immigration and customs officers to be examining officers under Schedule 7 to the Terrorism Act 2000. [paragraph 1A (1)(b) of Schedule 7 to that Act].
c. the review of detentions under Schedule 7 to the Terrorism Act 2000 including, in particular, the training which must be undertaken by persons who are to act as review officers. [paragraph 20K(8) and (9) of Schedule 8 to that Act].

4.3 Paragraph 6 of Schedule 14 to the Terrorism Act 2000 requires the Secretary of State to issue codes of practice about the exercise by officers of functions conferred on them by that Act. Paragraph 6A of that schedule, which was inserted by the Anti-Social Behaviour, Crime and Policing Act 2014, provides that ‘officer’ includes a constable, immigration or customs officer

who has functions under Schedule 7 or under Schedule 8 in relation to a person detained under Schedule 7. This means that review officers may be subject to a code of practice issued under Paragraph 6 to Schedule 14 of the Terrorism Act 2000.

4.4 The Anti-Social Behaviour, Crime and Policing Act (Commencement No. 2 Transitional and Transitory Provisions) Order 2014 brought into force the following provisions of Schedule 9 of the Anti-social Behaviour, Crime and Policing Act 2013 on 13th May 2014:

(a) paragraph 1(1) and (3) to Schedule 9 of that Act, to the extent that it inserts new paragraph 1A(1) to (3) into Schedule 7 to the Terrorism Act 2000. This requires the Secretary of State to issue codes of practice concerning the training of examining officers and the procedure for designating officers.

(b) paragraph 7(1) and (3), to the extent that it inserts new paragraph 20K(8) and (9) into Schedule 8 to the Terrorism Act 2000. This requires the Secretary of State to issue a code of practice about the review of persons detained under Schedule 7 and the training to be undertaken by review officers.

(c) paragraph 8. This amends Schedule 14 to the Terrorism Act 2000 so that Codes of Practice issued under that schedule are applicable to review officers as well as examining officers.

4.5 It is proposed to commence the remaining provisions of Schedule 9 of the Anti-Social Behaviour, Crime and Policing Act in July 2014 to coincide with the issue of the code of practice brought into operation by this instrument with the exception of the remainder of paragraph 7(3). It is proposed to bring into force paragraph 7(3) for the purpose of inserting paragraphs 20K(1) to (7) of Schedule 8 to the Terrorism Act 2000 in April 2015. These are the provisions requiring review of the detention of persons detained under Schedule 7. After consultation with National Business Leads a delay was agreed to allow sufficient time to develop, accredit and train all examining and review officers)

4.6 Paragraph 7(1) to Schedule 14 of the Terrorism Act 2000 requires the Secretary of State to publish a draft code of practice; consider any representations made about that draft and, if considered appropriate, modify that draft . A four week consultation for the Code of Practice for examining officers and review officers under Schedule 7 to the Terrorism Act 2000 closed on 13th May 2014. We received 29 responses and following consideration of those responses minor modifications have been made to the draft Code to clarify its meaning.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Home Secretary has made the following statement regarding Human Rights:

In my view the provisions of the Terrorism Act 2000 (Code of Practice for Examining Officers and Review Officers) Order 2014 are compatible with the Convention rights.

7. Policy background

7.1 Schedule 7 to the Terrorism Act 2000 ('Schedule 7') allows an examining officer to stop, question, search and detain individuals travelling through ports, airports, international rail stations or the border area to determine whether that person appears to be someone who is or has been concerned in the commission, preparation or instigation of acts of terrorism.

7.2 Examining people at ports and the border area contributes daily to plan, finance, train for, and commit their attacks. Most major international terrorist plots have involved individuals travelling through international borders to plan and prepare their attacks. Schedule 7 is an important part of the UK's counter-terrorism strategy and key to the UK's border security arrangements.

7.3 The changes to Schedule 7 in the Anti-Social Behaviour, Crime and Policing Act are intended to reduce the potential scope for Schedule 7 powers to be operated in an unnecessary or disproportionate way, whilst still retaining their operational effectiveness.

7.4 Changes made under the Act are in line with the Government's commitment to ensure the right balance between security and individual freedoms, and are as follows:

- Reducing the maximum period of examination from nine to six hours;
- Extending to individuals detained at a port the statutory rights to have a person informed of their detention and to consult a solicitor privately;
- Ensuring access to legal advice for all individuals examined for more than one hour;
- Clarifying that the right to consult a solicitor includes consultation in person;
- Introducing statutory review of the need for continued detention;
- Introducing a statutory requirement for training of examining and reviewing officers;
- Establishing a statutory basis for undertaking strip searches to require suspicion that the person is concealing something which may be evidence

that the person is involved in terrorism and a supervising officer's authority;
- Repealing the power to seek intimate samples (e.g. blood, semen); and
- Providing expressly that an examining officer may make and retain a copy of information obtained or found in the course of an examination.

- Consolidation

7.5 This order does not amend any existing instrument.

7.6 The new code of practice will revise the existing Schedule 7 code of practice for examining officers to reflect the amendments made to Schedule 7 to the Terrorism Act 2000 by the Anti-Social Behaviour, Crime and Policing Act and consolidate further codes of practice which the amendments require the Secretary of State to issue (see paragraph 4.4 above).

8. Consultation outcome

8.1 We carried out a 12 week public consultation in the autumn of 2012 inviting views on potential changes to the counter-terrorism border security powers contained in Schedule 7 to the Terrorism Act 2000. We published our response on 11 July 2013.

8.2 We carefully considered the responses and decided to make changes to the legislation. The changes to Schedule 7 legislation will reduce the potential scope for the powers to be operated in an unnecessary or disproportionate way that may interfere with individuals' rights – whilst still retaining its operational effectiveness.

8.3 We received 395 responses. To raise awareness of the consultation we wrote to police forces, legal organisations, industry groups and a wide range of community and faith groups. With the help of the police and local authorities we carried out a series of community engagement events throughout the UK.

8.4 These events have provided useful opportunities for groups affected by the use of the powers to provide direct feedback. This feedback showed an understanding of why the power exists but there was a clear consensus that the proposed changes should be made so that the power is subject to further safeguards. We published our response to the consultation on 11 July 2013.

8.5 Following changes to the legislation, we revised the code of practice. Given that interested groups had already been extensively engaged in a wide-ranging 12 week public consultation on the operation of Schedule 7 in advance of legislative changes in the Anti-Social Behaviour, Crime and Policing Act; and given that the current consultation is only to confirm that the revised code appropriately reflects the changes made in the Act, we considered 4 weeks to be an appropriate consultation period.

8.6 Prior to consultation, we engaged with key stakeholders, such as the Association of Chief Police Officers, the Independent Reviewer of Terrorism Legislation as well as key groups like the Equality and Human Rights Commission. We received 29 responses, almost half of which were from the police.

8.7 The majority of consultation respondents agreed that the revised code clearly reflected the changes made to Schedule 7 powers in the ASBCP Act. Where possible, we have incorporated feedback, the most significant change being a safeguard suggested by The Law Society in relation to legally professional privilege material. We have made a number of minor changes to Code to improve clarity, as a result of suggestions by respondents, and these are detailed below:

- The maximum period of examination has been made more prominent by referencing it in the Notice of Detention under Schedule 7 to the Terrorism Act 2000;
- The circumstances in which a Superintendant may delay the statutory right of an individual to have a person informed of their detention at a port is now explained;
- It is made clear that both UK and non-UK Nationals can apply for legal aid, which is subject to a means and merits test;
- The definition of 'urgent operational need' and when unaccredited constables can use Schedule 7 in an emergency has been clarified;
- The additional powers that examining officers may seek to use during an examination have been highlighted;
- We have removed the reference to common law powers regarding screening questions as it created a false impression that police officers have an additional port and border security power, which they do not; and
- We have specified in more detail what the Public Information Leaflet will contain.

9. Guidance

9.1 The Home Office are working closely with the Association of Chief Police Officers to implement the changes to Schedule 7 to the Terrorism Act 2000.

10. Impact

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

10.2 The impact on the public sector is deemed low.

10.3 An Impact Assessment was not deemed necessary due to the low costs and impact associated with these changes.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Individuals can complain about a Schedule 7 to the Terrorism Act 2000 examination by writing to or emailing the Chief Officer of the police force concerned. All Schedule 7 complaints are overseen by Independent Police Complaints Commission.

12.2 Additionally, the power itself is kept under review by the Independent Reviewer of Terrorism Legislation, David Anderson Q.C. He is responsible for reporting each year on the operation of the Terrorism Act 2000, including Schedule 7.

13. Contact

13.1 The Schedule 7 team at the Home Office, tel: 020 7035 0653 or 020 7 035 5626 or email: Schedule7Review@homeoffice.x.gsi.gov.uk can answer any queries regarding the instrument.