EXPLANATORY MEMORANDUM TO

THE TERRORISM ACT 2000 (CODE OF PRACTICE FOR EXAMINING OFFICERS) (REVISION) ORDER 2009

2009 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 order brings into effect the revised Code of Practice for Examining Officers issued under Schedule 14 of the Terrorism Act 2000 (TACT).

2.2 The revised code provides further clarification and guidance for examining officers (who may be a police constable, or an immigration officer or a designated customs officer) operating at ports and in border areas.

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

3.1 None

4. Legislative Context

4.1 Paragraph 6(1) of Schedule 14 to TACT requires the Secretary of State to issue a code of practice about the exercise of officers functions conferred on them by TACT.

4.2 Under paragraph 7(1) of Schedule 14 to TACT, before issuing a code of practice the Secretary of State must publish a draft code, consider any representations made and, if appropriate modify the draft in light of any representations made to her.

4.3 Paragraph 7(2) of Schedule 14 to TACT requires a draft copy of the code to be laid before Parliament.

4.4 Paragraph 7(3) of Schedule 14 to TACT states that when the Secretary of State has laid a draft code before Parliament she may bring it into operation by order.

4.5 Section 123(4)(m) of TACT requires that an order under Paragraph 7(3) shall not be made, subject to reasons of urgency, unless a draft has been laid before and approved by resolution of each House of Parliament.

4.6 Paragraph 7(4) states that the above paragraphs also apply in relation to the issue of a revised code.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Home Office Minister of State for Security, Counter-Terrorism, Crime and Policing Vernon Coaker has made the following statement regarding Human Rights:

In my view the provisions of the Terrorism Act 2000 (Code of Practice for Examining Officers) (Revision) Order 2009 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 The existing Code of Practice for Examining Officers was issued in 2001. A revised version has been prepared in the light of a practitioner review and public consultation exercise. A number of anomalies and other issues have been identified and the revised code is intended to incorporate recommendations and address concerns where possible.

- Consolidation

7.2 No changes to primary legislation in relation to these powers are planned.

8. Consultation outcome

8.1 Some of the main responses and recommendations are as follows:

- Inconsistency in paragraph 10 of Schedule 8, which sets out that, where consent is given, fingerprints may be taken at the port, whereas the code of practice requires fingerprints to be taken at a police station. Technological improvements in capability allow examining officers to use mobile fingerprint capture systems, e.g. Livescan, at the port. This does not require a change in legislation and the code has been revised accordingly.
- Practitioners were uncertain as to the distinction between screening questions used to establish, for example, where a passenger had come from after arriving in a busy arrivals hall and when a Schedule 7 examination begins. Clarification was also sought on the time limits concerned. Lord Carlile provided opinion on these issues. With the aid of Home Office lawyers, clearer guidance has been incorporated into the code.

- Further guidance has been added to the code to account for the greater use of electronic devices and give examining officers direction as to how to deal with such devices and obtain access to the data held on them.
- The term "objective assessment" has been removed from the code. The term had never been defined and was confusing in the context of the use of these powers.
- Wider concerns were raised about the subjectivity of examining officers using the powers in their selection of individuals for screening or examination, the content and relevance of the questions asked during examination, the treatment of vulnerable persons, and unwelcome attempts to enlist individuals in information-gathering.
- A further recommendation was made to provide a standard template for the forms used in examination and detention.
- Further changes to the code have been made to account for:
    - An amendment made to the Terrorism Act 2000 in the Anti Terrorism Crime and Security Act 2001 to allow examination of any ship or aircraft which has arrived at any place whether from within or outside Great Britain or Northern Ireland;
    - Reference to an international rail journey has been included in the code in accord with The Channel Tunnel (International Arrangements) (Amendment) Order 2001;
    - Clearer, up to date, advice has been incorporated to provide a mechanism for making complaints to the appropriate body.

9. Guidance

9.1 The Home Office has worked closely with the Office of the National Co-ordinator of Ports Policing and Lord Carlile, the Independent Reviewer of Terror Legislation, in formulating a practicable code of practice for Examining Officers.

9.2 The Office of the National Co-ordinator of Ports Policing is developing training and doctrine for examining officers which will incorporate the revisions planned for the code of practice and reflect the importance of community support for the Prevent strategy in countering radicalisation.

10. Impact

10.1 An Impact Assessment has not been prepared for the Terrorism Act 2000 (Code of Practice for Examining Officers) (Revision) Order 2009 as it has no impact on business, charities or voluntary bodies and has no impact on the public sector.

10.2 The impact of the revised code of practice is that it ensures the rights of those individuals examined or detained whilst maintaining the effectiveness of the officer's powers to prevent, detect and investigate terrorism.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Independent Reviewer of Terror Legislation, Lord Carlile of Berrirew, contributed to the development of the revised code of practice and monitors its application as part of his remit.

13. Contact

Border Security and Ports Policing Section, Office of Security and Counter-Terrorism, Home Office, Peel Building, 2 Marsham Street, London, SW1P 4DF or email: Schedule7@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.