EXPLANATORY MEMORANDUM TO

THE TERRORISM ACT 2000 (VIDEO RECORDING WITH SOUND OF INTERVIEWS AND ASSOCIATED CODE OF PRACTICE) (NORTHERN IRELAND) ORDER 2020

2020 No. XXXX

1. Introduction

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

2. Purpose of the instrument

2.1 This Order will, if approved: (a) re-enact the requirement that any interview by a constable of a person detained under section 41 of, or Schedule 7 to, the Terrorism Act 2000 ("TACT") which takes place in a police station in Northern Ireland is to be video recorded with sound, (b) require that recording to be in accordance with the Code of Practice for the Video Recording with Sound of Interviews (Northern Ireland) ("the revised Code of Practice"), (c) bring the revised Code of Practice into operation on the day this Order (if approved) is made; and (d) at the same time, revoke the existing Code of Practice and secondary legislation giving effect to the existing Code.

2.2 A draft of the revised Code of Practice was laid before Parliament on 8th June 2020. It is a revised version of the existing Code of Practice (dating from 2003) which applies to interviews in the same circumstances as described above. The amendments mainly relate to technical matters and are intended to allow the Police Service of Northern Ireland (PSNI) to use digital recording technology. This will bring Northern Ireland into line with the technology used in England, Scotland and Wales. The amendments also add guidance for the remote monitoring of interviews in order to future-proof the Code of Practice in anticipation of Home Office plans to update PACE Code H, and the England, Wales and Scotland Code of Practice for the video recording with sound of interviews of persons detained under section 41 of, or Schedule 7 to, the Terrorism Act 2000 and post-charge questioning of persons authorised under sections 22 or 23 of the Counter-Terrorism Act 2008. The Department of Justice Northern Ireland also has plans to update PACE (NI) Code H with guidance on remote monitoring

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument is limited to Northern Ireland.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 130 of TACT). However, the territorial application of this instrument is limited to Northern Ireland as it applies only to interviews of the type described above which take place in a police station in Northern Ireland.

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 Northern Ireland.

4.3 The revised Code of Practice shadows the current equivalent Code of Practice for England and Wales and Scotland[1] but does not exactly replicate it due to differences between the jurisdictions and the addition of guidance on remote monitoring of interviews.

5. European Convention on Human Rights

5.1 The Secretary of State for Northern Ireland has made the following statement regarding Human Rights:

"In my view the provisions of the Terrorism Act 2000 (Video Recording with Sound of Interviews and Associated Code of Practice) (Northern Ireland) Order 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 Paragraph 3(2) of Schedule 8 to TACT enables the Secretary of State to make an order requiring the video recording of interviews of persons detained under section 41 of, or Schedule 7 to, that Act. Where an order is made under this power, the Secretary of State is required to issue a Code of Practice about the video recording of interviews to which the order applies.

6.2 In accordance with the powers contained in paragraph 3(2) of Schedule 8 to TACT 2000, the revised Code of Practice applies to any interview by a constable of a person detained under section 41 of, or Schedule 7 to, TACT which takes place in a police station in Northern Ireland.

6.3 Under paragraph 4(5) of Schedule 8 to TACT, the Secretary of State may revise the Code of Practice. The Secretary of State must publish a draft of the revised Code of Practice, consider any representations made and, if appropriate, modify the draft (paragraph 4(2) of Schedule 8). The Secretary of State must then lay a draft of the revised Code of Practice before Parliament (paragraph 4(3) of Schedule 8). Paragraph 4(4) of Schedule 8 to TACT allows the Secretary of State to bring the Code into operation by Order (subject to Parliamentary approval of that Order).

7. Policy background

What is being done and why?

7.1 The Northern Ireland Office has proposed revising the Code of Practice for the video recording with sound of interviews of persons detained at a police station in Northern Ireland under section 41 of, or Schedule 7 to, TACT.

7.2 The equivalent Code of Practice for video recording with sound for police in England and Wales and Scotland was updated in 2012. The current Code of Practice for Northern Ireland came into operation in 2003 and has not been updated since then.

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1 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/97939/video-recording-code-of-practice.pdf

7.3 The draft revised Code of Practice was laid before Parliament on 8th June 2020.

7.4 The amendments made in the revised Code of Practice for Northern Ireland compared to the current Code relate to technical matters and are intended to allow the PSNI to use digital recording technology. The current Code of Practice allows for use of super VHS, tape, disc, "or any other format producing a record equal to or superior to" these.

7.5 The proposed updates allow for recording media or a secure digital network to be used to record interviews instead. 'Recording media' means any removable, physical video recording medium (such as magnetic tape, optical disc or solid state memory) which can be played and copied; and 'secure digital network' means a computer network system which enables an original interview video recording to be stored as a digital multimedia file or a series of such files, on a secure file server which is accredited by the National Accreditor for Police Information Systems.

7.6 The technology PSNI are using under the current Code of Practice is dated and maintenance is becoming an issue.

7.7 There are other minor changes that have been made to bring the Code into line with the Code of Practice for England and Wales and Scotland, but the revised Code of Practice will not change how interviews are conducted in any way; it will only impact how the interviews are recorded and how the recording is stored.

7.8 The amendments add guidance for the remote monitoring of interviews in order to future-proof the Code of Practice in anticipation of Home Office plans to update PACE Code H and the England, Wales and Scotland Code of Practice for the video recording with sound of interviews of persons detained under section 41 of, or Schedule 7 to, the Terrorism Act 2000 and post-charge questioning of persons authorised under sections 22 or 23 of the Counter-Terrorism Act 2008. The Department of Justice Northern Ireland also has plans to update PACE (NI) Code H with guidance on remote monitoring.

7.9 The proposed revised Code of Practice shadows the Code for England and Wales and Scotland but does not exactly replicate it due to differences between the jurisdictions. For example, the Code for England, Scotland and Wales contains references to post-charge questioning provisions as set out in the Counter-Terrorism Act 2008 but the revised Code of Practice does not.

7.10 This is because the Counter-Terrorism Act 2008 stipulates that, before its provisions on post-charge questioning can be commenced, Police and Criminal Evidence (PACE) codes must be amended to reflect how post-charge questioning should be dealt with and recorded. The Home Office amended the PACE Codes for England, Scotland and Wales. In Northern Ireland, following the devolution of policing and justice functions, PACE codes are now the responsibility of the Department of Justice. The necessary changes to PACE Code H have not been agreed by the Northern Ireland Assembly's Justice Committee and it has therefore not been possible to commence post-charge questioning provisions under TACT.

7.11 This Order, if approved, will (a) re-enact the requirement that any interview by a constable of a person detained under section 41 of, or Schedule 7 to, TACT which takes place in a police station in Northern Ireland is to be video recorded with sound, (b) require that recording to be in accordance with the updated Code of Practice, (c) bring the revised Code of Practice into operation on the same day the Order is made

(as well as revoke existing secondary legislation to ensure that the current Code of Practice ceases to have effect).

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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 There is no consolidation of legislation as a result of this instrument.

10. Consultation outcome

10.1 To comply with the consultation requirements in paragraph 4(2) of Schedule 8 to TACT, a 12-week public consultation on the proposed amendments to the Code of Practice ran from 22 July 2019 to 14 October 2019. A range of groups and organisations were invited to comment on the proposed amendments. These included groups with an interest in human rights; groups concerned with policing and justice; political parties; independent reviewers; and academics.

10.2 The consultation received a total of six responses and all of these were in favour of amending the Code of Practice. Three of these responses suggested further minor amendments which the Secretary of State took into consideration.

10.3 A summary of consultation responses, including the suggested minor amendments, is available on the Northern Ireland Office's website[2].

11. Guidance

11.1 The updated Code of Practice sets out the basic principles for the video recording with sound of interviews of persons detained at a police station in Northern Ireland under Section 41 of, or Schedule 7 to TACT.

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

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 because no, or no significant, impact on the private, voluntary or public sectors is foreseen.

13. Regulating small business

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

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2 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/883127/200504_TACT_Consultation_Response_Document_PDF.pdf

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to request that the PSNI report any issues or requests regarding this legislation to the Northern Ireland Office. The Secretary of State, by virtue of powers contained at paragraph 4(5) of Schedule 8 to the Terrorism Act 2000 may make revisions to the Code of Practice.

14.2 The regulation does not include a statutory review clause.

15. Contact

15.1 Kathy Donnell at the Northern Ireland Office Telephone: 02890523501 or email: kathy.donnell@nio.gov.uk can be contacted with any queries regarding the instrument.

15.2 Adele Brown, Deputy Director for the Security and Protection Group, at the Northern Ireland Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Secretary of State for Northern Ireland at the Northern Ireland Office can confirm that this Explanatory Memorandum meets the required standard.