EXPLANATORY MEMORANDUM TO

THE NATIONAL SECURITY ACT 2023 (VIDEO RECORDING WITH SOUND OF INTERVIEWS AND ASSOCIATED CODE OF PRACTICE) REGULATIONS 2023

2023 No. 1384

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 The purpose of these Regulations is to:

a) Bring into force a code of practice in relation to the video recording with sound of any interview by a constable that takes place in a police station of a person detained under section 27 of the National Security Act 2023 (NS Act) (the Video Recording Code); and

b) Provide that the interviews referred to above must be video recorded with sound in accordance with the Video Recording Code.

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 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 Minister for Security has made the following statement regarding Human Rights:

"In my view, the provisions of the National Security Act 2023 (Video Recording with Sound of Interviews and Associated Code of Practice) Regulations 2023 are compatible with the Convention rights".

6. Legislative Context

6.1 On 11 May 2022 the Home Secretary introduced the National Security Bill into the House of Commons. This legislation updates espionage laws and creates new offences designed to address modern-day state threats. To support this, it provides law enforcement with enhanced investigative powers, including new powers of arrest and detention, under section 27 of and Schedule 6 to the Act, for anyone suspected to be involved in foreign power threat activity (as defined by section 33).

6.2 Schedule 6, paragraph 3(2) of the NS Act requires that the Home Secretary issue a code of practice about the video recording of interviews and must make regulations requiring that the video recording of interviews must be in accordance with that code.

6.3 In accordance with the powers contained in paragraph 3(2) of Schedule 6 to the NS Act, this code of practice will apply to video recording with sound of all interviews of persons detained in the United Kingdom under section 27 of the NS Act.

6.4 Schedule 6, paragraph 4(1) requires that before the Home Secretary issues this new code of practice, a statutory consultation must first be carried out. After Royal Assent on 11 July 2023, the Government launched a six week public consultation on the new draft Video Recording Code which ran from 20 July 2023 to 31 August 2023.

6.5 The Video Recording Code is to come into operation at the same time as section 27 of, and Schedule 6 to, the NS Act on 20 December 2023. Section 13(b) of the of the Interpretation Act 1978 is also relied upon.

7. Policy background

What is being done and why?

7.1 Paragraph 3 of Schedule 6 to the NS Act requires that any interview by a constable of a person detained under section 27 of the Act must be video recorded with sound in accordance with a code of practice. It was decided that all such interviews should be video recorded, given this enhances human rights of the individual as well as providing a more accurate record of responses, including recording the demeanour of the individual.

- The Video Recording Code includes guidance on:
- How interviews should be recorded.
- The conduct of the interview, including conducting interviews with those who may need more assistance (for example, who require an interpreter), taking breaks and remote monitoring.
- Media security, including guidelines for securely storing recordings and breaking their seal when the recordings are required for criminal proceedings or other purposes.
- The process for recording interviews by secure digital network.

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 Not applicable.

10. Consultation outcome

10.1 The Home Office ran a public consultation over the creation of the new Video Recording Code from 20 July 2023 to 31 August 2023. It sought views on the proposed drafting of the Video Recording Code.

10.2 We received responses from five separate individuals and organisations, including Police Scotland. The responses generally acknowledged that the creation of the Video Recording Code was key to ensuring police officers have clear guidance on the powers and ensuring the powers are used in a way that is fair and proportionate.

10.3 The codes have been amended in light of two inconsistencies noted from Police Scotland in relation to practice and procedure in Scotland. For full details of the changes made, see the Government's response to the consultation at www.gov.uk which will be published on the date of laying.

11. Guidance

11.1 This code has been based closely on the '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 approach taken in these Codes of Practice is in line with wider, standard police practice.

11.2 Ensuring there is similar guidance for all such police interviews supports the police in ensuring that the processes they follow and protections in place for the individual interviewed will be applied consistently.

11.3 This amended code includes notes for guidance to police officers and others about the application and interpretation of the code of practice.

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. Impact assessments have been prepared in relation to the NS Act. A copy of the relevant impact assessment for the NS Act is available at Impact Assessment (publishing.service.gov.uk). Paragraph 92 of this assessment notes the limited impact this legislation will have on government, business or the general public. Hard copies of the Video Recording Code and the NS Act impact assessments can be obtained by writing to the State Threats Unit, Homeland Security Group at the Home Office, 2 Marsham Street, London, SW1P 4DF.

13. Regulating small business

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

14. Monitoring & review

14.1 The Secretary of State, by virtue of powers contained at paragraph 3(7) of Schedule 6 to the NS Act, may make revisions to the code of practice.

14.2 The code of practice will be considered as part of the post-legislative scrutiny of the NS Act.

14.3 Part 3 of the NS Act creates the role of the Independent Reviewer of State Threats Legislation (IRSTL). The IRSTL will assess the operation of UK state threats legislation including its fairness, effectiveness and proportionality. As part of this, the IRSTL will consider the exercise of powers including the arrest and detention powers within the NS Act and the related guidance. The reviewer will report their findings and recommendations to Parliament in order to inform parliamentary and public debate on state threats law and civil liberties.

15. Contact

15.1 National Security Consultations team at the Home Office nationalsecurityconsultations@homeoffice.gov.uk will answer any queries regarding the instrument

15.2 The Deputy Director for the State Threats Unit at the Home Office can confirm that this explanatory memorandum meets the required standard.

15.3 The Rt. Hon. Tom Tugendhat MP, the Minister of State for Security at the Home Office can confirm that this explanatory memorandum meets the required standard.