EXPLANATORY MEMORANDUM TO

THE POLICE AND CRIMINAL EVIDENCE ACT 1984 (CODE OF PRACTICE C AND CODE OF PRACTICE H) ORDER 2006

2006 No. 1938

1. This explanatory memorandum has been prepared by The Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This statutory instrument brings into force on 25 July 2006 a Code of Practice (Code H) in connection with the detention, treatment and questioning by police officers of persons under section 41 of, and Schedule 8 to, the Terrorism Act 2000 (the 2000 Act). It also brings into force a revised version of the Code of Practice (Code C) in connection with the detention, treatment and questioning of persons by police officers. These Codes replace the existing Code C, which has been in force since 1 January 2006.

2.2 Both Codes of Practice are issued under section 66(1)(b) of the Police & Criminal Evidence Act 1984 (the 1984 Act). Section 67(5) of the 1984 Act states that a Code, or revision of a Code, does not come into operation until the Secretary of State by order so provides.

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

3.1 None

4. Legislative Background

4.1 Code H is concerned only with persons arrested under section 41 of the 2000 Act. Code H fulfils a commitment made by the Government to issue a Code of Practice for the detention of terrorist suspects, prior to commencing sections 23-25 of the Terrorism Act 2006 (the 2006 Act), which include a provision to extend the maximum amount of time that individuals may be detained after being arrested under section 41 of the 2000 Act, to 28 days.

4.2 Detention of persons arrested under section 41 of the 2000 Act is dealt with at present by the provisions of Code C. It was agreed in Parliament that a separate Code of Practice in connection with terrorist suspects should be issued to reflect the particular situation of extended detention.

4.2 This commitment was made during Parliamentary debates on what became the Terrorism Act 2006, and can be found at Hansard 9 November 2005 Column 329

4.2 Code C is revised to reflect that individuals arrested under section 41 of the 2000 Act, will no longer be covered by the provisions of Code C.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Minister of State for the Home Department, Tony McNulty, has made the following statement regarding Human Rights:

In my view the provisions of The Police and Criminal Evidence Act 1984 (Code of Practice C and Code of Practice H) Order 2006 are compatible with the Convention rights.

7. Policy background

7.1 Section 66(1)(b) of PACE provides for the Secretary of State to issue Codes of Practice for the detention, treatment, questioning and identification of persons by police officers. The existing Code C covers all forms of detention, including detention of persons arrested under section 41 of the 2000 Act.

7.2 During debates on what became sections 23-25 of the Terrorism Act 2006, the Secretary of State for the Home Department, Charles Clarke, agreed that a separate Code of Practice should be produced for those detained having been arrested under section 41 of the 2000 Act. This was to address the possibility of individuals being detained for up to 28 days and the subsequent need for a different approach in certain regards, from the provisions within the existing Code C.

7.3 The provisions of sections 23-25 of the 2006 Act, which include the extension of the maximum period of detention for terrorist suspects, from 14 to 28 days, will not be commenced until Code H has been issued.

7.4 Code H largely reflects the provisions of PACE Code C, as the majority of these are applicable to all pre-charge detainees, but expands on the provisions that relate to terrorism investigations and the potential length of detention. These include:

- Transfer to prison on the issue of a warrant that would take detention beyond 14 days (Prison Rules would apply once a detainee is in prison custody);
- Further consideration of visiting rights and exercise – especially in cases of prolonged detention;
- Specific provision for the allocation of reading material, including religious texts;
- A requirement for a daily healthcare visit;
- Notes for Guidance on extension of detention applications.

7.5 In accordance with the provisions of Section 67(4) of the Police and Criminal Evidence Act 1984, Code H has been through a period of public consultation. The consultation period ran from 2 May 2006 to 23 May 2006 and received 26 responses. The general response to the production of a Code of Practice was positive.

7.6 The Codes have been amended in the light of some of the responses received from the consultation exercise, including the following:

- inaccurate references to custody officers authorising detention were removed;
- clarification that moving a detainee from a police station for medical treatment, or any other reason, does not “stop the clock” in terms of the period of detention, as it does under PACE;

- that for reasons of operational security, it may not be possible to give as full an account of the grounds for arrest as may be possible for non-terrorism arrests;
- a clear demarcation has been made between visits from friends and family, and those from "official" visitors, to reflect the different status afforded to independent custody visitors.

7.7 One of the most commented upon provisions was transfer to prison. Of those who expressed a view, roughy half were in favour and roughly half against. The provision has been included as a means of ensuring detainees are held in establishments that have the experience and facilities to deal with extended detention. The proposal is strongly recommended by the independent reviewer of terrorism legislation, Lord Carlile of Berriew QC.

7.8 As a consequence of producing a separate Code for detention under the 2000 Act, PACE Code C will require revision, purely to remove references to detention under section 41 and Schedule 8 to the 2000 Act.

7.9 The Home Affairs Select Committee were consulted on the proposal to issue both Codes further to the same Order subject to affirmative resolution. The Committee were content with this.

7.10 Code H will affect individuals who are arrested and detained under section 41 of the 2000 Act. During the passage of the 2006 Act, there was significant public interest in the amendments to the 2000 Act, to enable terrorist suspects to be detained for a maximum of 28 days. We therefore consider it likely there will be public interest in Code H and the Order bringing it into force. As the revisions to Code C are minor, we consider it is less likely there will be public interest in

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 Given the small number of arrests for terrorism and the fact that Code H is based largely on existing provisions, the impact on the public sector is likely to be negligible, although there will be some impact on the work of police and prisons. Code H has been drawn up in consultation with the police units most likely to be affected, and the National Offender Management Service.

9. Contact

9.1 Crime Reduction & Community Safety Group at the Home Office Tel: 0207 035 3694 or email: TerrorismDetentionCode@homeoffice.gsi.gov.uk.