EXPLANATORY MEMORANDUM

The Police and Criminal Evidence Act 1984 (Codes of Practice) Order 2004 No. 1887

This explanatory memorandum is laid before Parliament by Command of Her Majesty

Department responsible: Home Office

1. This draft instrument will, if approved by resolution of each House, bring into effect on 1 August 2004 revised versions of the Codes of Practice on the use of police powers to investigate crime and to safeguard the rights of the individual. The Codes of Practice are issued under the Police and Criminal Evidence Act 1984 (as amended) and are commonly known as Codes A to F.

Legislative Background:

2. The instrument is being laid in draft before Parliament pursuant to section 67(7A) of the Police and Criminal Evidence Act 1984. Section 67(1) to (7D) were substituted by section 11 of the Criminal Justice Act 2003. During the course of debate on what became section 11 of the Criminal Justice Act 2003, Baroness Scotland of Ashtal QC, Minister of State at the Home Office, undertook to refer proposed revisions of the Codes of Practice to the Home Affairs Select Committee for consideration of the appropriate Parliamentary process to implement the revisions and be bound by that recommendation ((Lords Hansard 7 July 2003: Cols 37 & 38). The revisions which this instrument brings into force were duly referred to the HASC which recommended that the instrument bringing the revisions into force should be subject to the draft affirmative process. This is the first use of section 67 of the Police and Criminal Evidence Act 1984 since it was amended by the Criminal Justice Act 2003.

Extent:

3. The instrument (and the Codes of Practice) applies to England and Wales.

European Convention on Human Rights:

4. In the view of the Minister of State for the Home Department, Hazel Blears, the provisions of the instrument are compatible with the Convention Rights.

Policy background:

5. Sections 60, 60A and 66 (as amended) of the Police and Criminal Evidence Act 1984 provide for the Secretary of State to issue Codes of Practice governing certain key areas of police procedure. The existing Codes are:

- Code A: Stop and Search. This Code governs the exercise of police powers in respect of stopping and searching persons. The current version of this Code was introduced on 1 April 2003.

- Code B: Searching of premises and seizure of property. This Code governs the exercise of police powers in respect of the searching of premises and the seizure of property found by police officers on persons or premises. The current version of this Code was introduced on 1 April 2003.

- Code C: Detention, treatment and questioning. The purpose of this Code is to ensure that all persons suspected of being involved in crime, and others who are in police custody, are dealt with fairly and properly in accordance with the law. The current version of this Code was introduced on 1 April 2003.

- Code D: Identification. This Code concerns the principal methods used by police for identifying persons in connection with the investigation of offences and the keeping of accurate and reliable criminal records. The current version of this Code was introduced on 1 April 2003.

- Code E: Audio recording of interviews with suspects. This Code deals with the audio tape recording of interviews with persons suspected of certain types of criminal offences and governs the way in which tape recorded interviews are carried out. The current version of this Code was introduced on 1 April 2003.

- Code F: Visual recording of interviews. This Code deals with the visual recording with sound of interviews with persons suspected of criminal offences. This Code was introduced on 7 May 2002.

6. There have been a variety of legislative changes, primarily made by the Proceeds of Crime Act 2002 and the Criminal Justice Act 2003 which have affected police powers and procedures and rendered the current Codes out of date. The revised Codes reflect the changes to primary legislation and contain other minor amendments to ensure they reflect best policing practice.

7. Significant amendments to the Codes are detailed below:

- Code A: The extension of stop and search powers to articles which may be used for criminal damage to reflect provisions in the Criminal Justice Act 2003. Recording of stops has also been incorporated in the Code, implementing recommendation 61 of the Lawrence Inquiry Report.

- Code B: Powers of execution of warrants and seizure for persons accompanying police officers on searches have been amended in line with the Criminal Justice Act 2003. The requirement for an Inspector to be in charge of searches of premises has been removed in line with recommendations from the PACE Review 2002.

- Code C: The following changes to Code C have been made to reflect relevant contents of the Criminal Justice Act 2003:

  - ensuring suitable arrangements are in place when answering street bail
  - discretion for custody officers in recording property
  - scope to detain for up to 36 hours for all arrestable offences
  - telephone reviews of detention
  - CPS engagement in the charging process

  There have also been changes in relation to drug testing for Class A drugs, bringing the code into line with provisions in secondary legislation.

- Code D: Taking fingerprints and samples on arrest as provided for in the Criminal Justice Act 2003.

- Code E: There are no changes proposed to Code E other than very minor references to police staff rather than civilian staff.

- Code F: There are no amendments to the contents of Code F. It was developed in 2002 and was previously published as a separate document. It has now been added to the latest version of the Codes.

8. The Codes of Practice affect most people who are detained in a police station and others who come into contact with the police (for example because they are stopped and searched or their premises are searched). The revisions to the Codes, and the instrument bringing the revisions into force are therefore considered to be legally important.

Consultation:

9. In accordance with the provisions of Section 67(4) of the Police and Criminal Evidence Act 1984, the draft Codes of Practice have been through a period of public consultation. The consultation period ran from 22 March to 8 April 2004. The Codes have been amended in the light of some of the responses received from the consultation exercise.

Impact:

10. No Regulatory Impact Assessment has been prepared because no impact on the private or voluntary sector is foreseen. The instrument is not expected to have any additional impact on public sector resources over and above that which already is imposed by the current versions of the Codes of Practice.

Contact:

11. Further information on this instrument can be obtained from:

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