EXPLANATORY MEMORANDUM TO

THE POLICE AND CRIMINAL EVIDENCE ACT 1984 (REMOTE REVIEWS OF DETENTION) REGULATIONS 2014

2014 No. 3279

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 instrument allows a review under section 40(1)(b) of the Police and Criminal Evidence Act 1984 (PACE) of the detention of a person who has been arrested but not charged to be conducted by a review officer who is not present at the police station where the person is being held, using video-conferencing facilities which enable that officer to communicate with persons at that police station.

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

3.1 None

4. Legislative Context

4.1 A new section 45A was inserted into PACE by the Criminal Justice and Police Act 2001 to enable regulations to be made to allow reviews of detention of a person who has not been charged to be carried out by video conferencing facilities. This instrument exercises that power to allow such reviews of detention to be carried out by a police officer who is not present at the police station where the person is detained, using video conferencing facilities. Video conferencing facilities means any facilities (whether a live television link or other facilities) by means of which the review officer, the person whose detention is being reviewed and their legal representative are all able to both see and to hear each other.

4.2 Review of police detention is governed by Section 40 of PACE which requires the detention of a person detained in connection with the investigation of an offence to be periodically reviewed. If the person has not been charged, the review must be carried out by an officer of at least the rank of inspector who has not been directly involved in the investigation. This review officer must decide whether there is enough evidence to charge a person with the offence and if there is not enough evidence, the officer may authorise their continued detention if it is necessary to obtain evidence of that offence. If detention is not necessary, the officer must order their release, with or without bail. Currently, such reviews may be carried out by the review officer being present at the station where the person is detained, or if the officer is not so present, by means of a discussion by telephone with the detained person and others at that station in accordance with section 40A of PACE.

4.3 When these new regulations to allow the use of video conferencing facilities are in force and it is reasonably practicable to use those facilities, a review of detention before charge cannot be carried out by telephone.

4.4 In each case, the process for reviewing the detention is similar. The review officer must communicate via telephone or video conferencing facilities to ensure that the person (unless they are asleep) or their solicitor and appropriate adult are allowed to make representations, and that an officer at the station where the person is held makes the required records in the person's presence, unless the person is asleep, incapable of understanding what is said to them, violent or likely to become violent or in urgent need of medical attention.

4.5 Although sections 40A and 45A give the review officer discretion whether to carry out a review in person or remotely using the telephone or video conferencing facilities, this discretion is subject to PACE Code C which concerns the detention, treatment and questioning of persons by police officers. Paragraph 15.3C of the Code requires the review officer to determine the form of the review on a case by case basis, taking full account of the needs of the detained person and always considering the benefits of carrying out a review in person. The Code also requires specific additional consideration if the person is under the age of 18, suspected of being mentally vulnerable or in need of medical attention for other than routine minor ailments or there are any other issues and concerns around their detention.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 The purpose of allowing reviews to be carried out by telephone and, subject to regulations being made, using video conferencing facilities is to improve efficiency and provide savings by reducing the need for review officers to travel and enabling reviews to be carried out from centralised locations.

7.2 It is recognised that compared with the telephone, video conferencing facilities provide for more effective and informative communication between a review officer, the detainee and any other person (a solicitor, appropriate adult or interpreter) involved in reviewing detention before charge. Better communication therefore enhances the safeguards which reviews of detention are intended to provide to prevent unnecessary detention.

7.3 In response to increased staff costs, the police have been investing in new and refurbished buildings with IT built-in from the outset. This reflects the overall

expansion of video link technology and the availability of good quality, good value equipment to support virtual courts and evidence by video-link. As a consequence, there is now considerable support from police for using video-conferencing facilities in preference to the telephone and the Regulations are being made in response to that support.

- ***Consolidation***

7.4 Not applicable

8. Consultation outcome

8.1 The provisions of section 45A of PACE under which the Regulations are made do not require any consulation.

9. Guidance

9.1 Provisions in PACE Code of Practice C are sufficient to inform the police and review officers in particular, about how video conferencing facilities may be used to review the detention of a person who has not been charged. The Notice given to detained persons also gives them sufficient information about reviews of detention.

9.2 A Home Office Circular will be published to inform police and other practitioner when the Regulations are in force.

10. Impact

10.1 No impact on business, charities or voluntary bodies.

10.2 The Regulations do not require police to install video conferencing facilities. However, in anticipation of the regulations being made, several forces have either made, or are actively making, plans to install the necessary equipment as a part of their expansion programmes or to make use of existing facilities. Benefits over telephone reviews arise from better communication and are expected to include improved understanding by suspects of the reasons for their detention and their ability to make representations to the review officer.

10.3 An Impact Assessment has not been prepared for this instrument but is is expected that the operational efficiency savings and opportunities will offset the costs of installing the facilities.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Individual forces will monitor the use of video conferencing facilities for carrying out reviews of detention on an ongoing basis in the same way as for review conducted by telephone and in person. Her Majesty's Inspector of Constabulary

(HMIC) will report on its use in context of its established programme for inspecting custody processes and procedures.

12.2 Success criteria for the changes measured against telephone reviews will be:

- Better communication between the review officer and the suspect and others at the police station, such as a solicitor, appropriate adult, interpreter and other officers;
- Improved understanding by suspects of the reasons for their detention and their ability to make representations to the review officer;
- Improved ability for solicitors and appropriate adults to make representations to the review officer; and as a consequence,
- Fewer telephone reviews

13. Contact

Brian Roberts at the Home Office Police Integrity and Powers Unit, Telephone number 020 7035 0850, can answer any queries regarding the instrument.