STATUTORY INSTRUMENTS

2020 No. 795

PREVENTION AND SUPPRESSION OF TERRORISM

The Port Examination Codes of Practice and National Security Determinations Guidance Regulations 2020

Made - - - - 22nd July 2020

Coming into force in accordance with regulation 1

The Secretary of State makes the following Regulations in exercise of the powers conferred by paragraph 57(3) of Schedule 3 to the Counter-Terrorism and Border Security Act 2019(**a**) ("the 2019 Act"), paragraph 7(3) and (4) of Schedule 14 to the Terrorism Act 2000(**b**) ("the 2000 Act"), and section 22(6) of the Protection of Freedoms Act 2012(**c**) ("the 2012 Act").

The Secretary of State has:

(a) in accordance with paragraph 57(1)(a) of Schedule 3 to the 2019 Act published in draft a code of practice in connection with the exercise by examining officers and review officers of functions conferred on them by virtue of Schedule 3 to the 2019 Act ("the Schedule 3 Code");

(b) in accordance with paragraph 6(4) and paragraph 7(1)(a) of Schedule 14 to the 2000 Act(**d**) revised and published in draft a code of practice in connection with the exercise by examining officers and review officers of functions conferred on them by virtue of Schedule 7 to the 2000 Act(**e**) ("the revised Schedule 7 Code")(**f**);

(c) in accordance with section 22(1) of the 2012 Act proposed revisions to the guidance given about making or renewing national security determinations(**g**) ("the National Security Determinations Guidance");

(d) in accordance with paragraph 57(1)(b) and (c) of Schedule 3 to the 2019 Act and paragraph 7(1)(b) and (c) of Schedule 14 to the 2000 Act considered representations made about the Schedule 3 Code and the revised Schedule 7 Code, and as thought appropriate, modified the drafts accordingly;

(**a**) 2019 c. 3.
(**b**) 2000 c. 11.
(**c**) 2012 c. 9.
(**d**) Paragraph 6 of Schedule 14 to the Terrorism Act 2000 was amended by section 2(6) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) and by paragraph 13(a) of Schedule 5 to the Criminal Finances Act 2017 (c. 22).
(**e**) A revised Schedule 7 code of practice was last brought into operation on 25th March 2015 in accordance with S.I. 2015/906.
(**f**) The revised Schedule 7 code of practice applies to the exercise by examining officers of their powers under Schedule 7 to the Terrorism Act 2000 ("the 2000 Act") (the power to stop, question, search and detain a person at a port or border area in Northern Ireland for the purposes of determining whether the person appears to be someone who is, or has been, involved in the commission, preparation or instigation of acts of terrorism). The code of practice is issued under Schedule 14 to the 2000 Act, which makes provision for codes of practice in relation to the exercise of all powers by examining officers under the 2000 Act.
(**g**) The National Security Determinations Guidance was brought into force on 4th February 2014 in accordance with S.I. 2014/198.

(e) in accordance with section 22(4) of the 2012 Act consulted with the Commissioner for the Retention and Use of Biometric Material and the Lord Advocate in the course of preparing the proposed revisions to the National Security Determinations Guidance, and

(f) in accordance with paragraph 57(2) of Schedule 3 to the 2019 Act, paragraph 7(2) of Schedule 14 to the 2000 Act and section 22(5)(a) of the 2012 Act, laid drafts of the Schedule 3 Code, the revised Schedule 7 Code and the proposed revisions to the National Security Determinations Guidance before Parliament.

A draft of this instrument has been laid before Parliament under paragraph 57(6) of Schedule 3 to the 2019 Act, section 123(4)(m) of the 2000 Act and section 22(5) of the 2012 Act and has been approved by resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Port Examination Codes of Practice and National Security Determinations Guidance Regulations 2020 and come into force on the 22nd day after the day on which they are made.

Schedule 3 to the Counter-Terrorism and Border Security Act 2019 Code of Practice

2. The code of practice entitled "Examining Officers and Review Officers under Schedule 3 to the Counter-Terrorism and Border Security Act 2019" and laid before Parliament in draft on 8th June 2020 comes into operation on the day on which these Regulations come into force.

Schedule 7 to the Terrorism Act 2000 revised Code of Practice

3. The revised code of practice entitled "Examining Officers and Review Officers under Schedule 7 to the Terrorism Act 2000" and laid before Parliament in draft on 8th June 2020 comes into operation on the day on which these Regulations come into force.

Protection of Freedoms Act 2012 National Security Determinations Guidance

4. The proposed revisions to the guidance entitled "Protection of Freedoms Act 2012 Guidance on the making or renewing of national security determinations allowing the retention of biometric data" and laid before Parliament on 8th June 2020 come into force on the day on which these Regulations come into force.

James Brokenshire
Minister of State
Home Office

22nd July 2020

EXPLANATORY NOTE

(This note is not part of these Regulations)

Schedule 3 to the Counter-Terrorism and Border Security Act 2019 (c. 3) ("the 2019 Act") contains powers for examining and review officers to stop, question, search and detain a person at UK ports and the Northern Ireland border area for the purpose of determining whether the person appears to be a person who is, or has been, engaged in hostile activity. Regulation 2 brings into operation a code of practice for examining and review officers under Schedule 3 to the 2019 Act. Officers must perform the functions conferred by virtue of Schedule 3 in accordance with the code of practice.

The 2019 Act also makes amendments to Schedule 7 to the Terrorism Act 2000 (c. 11) ("the 2000 Act") which contains powers for examining officers to stop, question, search and detain a person

at UK ports and the Northern Ireland border area for the purpose of determining whether the person appears to be a person who is, or has been, concerned in the commission, preparation or instigation of acts of terrorism. Regulation 3 brings into operation a revised code of practice for examining officers under Schedule 7 to the 2000 Act, reflecting the amendments made by the 2019 Act to the 2000 Act. These amendments include the introduction of a statutory bar on the use in criminal proceedings of answers given in response to questions put under Schedule 7 and provisions for pausing the detention clock applicable to detainees under Schedule 7 whilst the person detained receives hospital treatment. Officers must perform the functions conferred by virtue of Schedule 7 to the 2000 Act in accordance with the revised code of practice.

The 2019 Act also amends a number of enactments which contain powers to retain biometric data where authorised under a "national security determination", to increase the maximum duration of retention under such a determination from 2 to 5 years. Regulation 4 brings into force proposed revisions to existing guidance about the making or renewing of national security determinations. Under section 22(2) of the Protection of Freedoms Act 2012 ("the 2012 Act"), any person authorised to make or renew a national security determination under the provisions mentioned in section 20(2)(a) of the 2012 Act must have regard to guidance issued under section 22 and revisions to it.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

A copy of the codes of practice and the revisions to the guidance referred to in this instrument can be found at www.gov.uk(**a**) and hard copies can be obtained by writing to the Home Office, 2 Marsham Street, London SW1P 4DF.

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(**a**) https://www.gov.uk/government/consultations/codes-of-practice-for-officers-detaining-individuals-at-ports
https://www.gov.uk/government/publications/national-security-determinations

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