EXPLANATORY MEMORANDUM TO

THE PROTECTION OF FREEDOMS ACT 2012 (CODE OF PRACTICE FOR SURVEILLANCE CAMERA SYSTEMS AND SPECIFICATION OF RELEVANT AUTHORITIES) ORDER 2013

2013 No. 1961

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 The Order brings into force a code of practice (the Code) containing guidance about surveillance camera systems, which the Secretary of State is required to prepare, pursuant to section 29(1) of the Protection of Freedoms Act 2012 (the 2012 Act). The purpose of this Code is to set out guidance about the use of surveillance camera systems, and the use of images or information obtained by virtue of such systems.

2.2 Relevant authorities, as defined in section 33(5) of the 2012 Act, will be under a statutory duty to have regard to this Code when exercising any functions to which this Code relates. Article 3 of this Order adds various specified persons to the list of relevant authorities that will be obliged to have regard to the Code.

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

3.1 None.

4. Legislative Context

4.1 Chapter 1 of Part 2 of the Protection of Freedoms Act 2012 makes provision for the further regulation of Closed Circuit Television (CCTV), Automatic Number Plate Recognition (ANPR) and other surveillance camera technology. The provisions require the Secretary of State to publish a Code about surveillance camera systems, which must contain guidance about the development and use of surveillance camera systems, and about the use or processing of images or other information obtained by virtue of such systems. The provisions also require the Secretary of State to appoint a person as the Surveillance Camera Commissioner.

4.2 Section 30 of the 2012 Act sets out the procedural requirements for issuing the Code. These require the Secretary of State to lay before Parliament the Code and a draft Order providing for the Code to come into force. The Order must then be made if it approved by a resolution of each House of Parliament.

4.3 Relevant authorities, as defined in section 33(5) of the 2012 Act, will be under a statutory duty to have regard to this Code when exercising any functions to which this Code relates. Section 33(5) of the 2012 Act specifies

relevant authorities and in section 33(5)(k) gives the Secretary of State a power to specify further relevant authorities in a draft Order. This is the first time that this power has been used. The Order must then be made if it approved by a resolution of each House of Parliament.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Lords Minister and Minister for Criminal Information (Lord Taylor of Holbeach) has made the following statement regarding Human Rights:

In my view the provisions of the Protection of Freedoms Act 2012 (Code of Practice for Surveillance Camera Systems and Specification of Relevant Authorities) Order 2013 are compatible with the Convention rights.

7. Policy background

7.1 Recent years have seen a dynamic growth in both the volume and capability of surveillance camera technology of all types. This has had a significant impact on all parts of society in terms of the way it interacts and conducts its affairs. Such developments are frequently beneficial, for example in keeping the public safe and to protect people and property. There are also potential disadvantages to such developments, including the extent to which private lives are exposed to ever greater scrutiny by other individuals, organisations or the State, leading in some instances to a potential exposure to criminality, or more generally, to an erosion of personal privacy.

7.2 The Programme for Government (section 3: civil liberties) states that the Government "*will further regulate CCTV*". This specific action follows a belief that the British state has become too authoritarian, and that over the past decade it has abused and eroded fundamental human freedoms and historic civil liberties, and is intended to help restore the rights of individuals in the face of encroaching state power, in keeping with Britain's tradition of freedom and fairness. Powers for the enactment of the further regulation of CCTV, ANPR and other surveillance camera technology operated by the police and local authorities are set out in Chapter 1 of Part 2 of the Protection of Freedoms Act 2012.

7.3 The processing of personal data captured by surveillance camera systems (including images or other information identifying individuals) is governed by the Data Protection Act 1998. Furthermore, the covert use of surveillance camera systems is subject to the provisions of the Regulation of Investigatory Powers Act 2000. There are, however, no bespoke regulatory arrangements for surveillance camera systems which bring all relevant legal obligations and relevant guidance together in one place for the benefit of system operators and the public. Statutory regulation under the Protection of Freedoms Act 2012 is intended to address this weakness in the regulatory

framework and thus reassure the public that an appropriate balance is being struck between public protection and civil liberties.

7.4 The Government fully supports the use of covert surveillance camera systems in a public place when it is in pursuit of a legitimate aim; necessary to meet a pressing need; and proportionate, effective, and compliant with any relevant legal obligations.

7.5 The Government also recognises that any surveillance camera system has the potential to interfere with an individual's civil liberties, particularly their right to respect for private and family life as set out in Article 8 of the European Convention on Human Rights.

7.6 This Code has been prepared as an important step in an incremental approach to regulation which will help reassure the public that their civil liberties are being respected by those who operate surveillance camera systems in public places, to enable the public to challenge a system operator wherever they have concerns, and also to drive the wider adoption of good practice where surveillance is necessary and proportionate. The Code is intended to provide bespoke guidance for surveillance camera system operators, drawing together existing regulatory requirements, promoting regular review to ensure that surveillance remains justified, encouraging greater transparency, and encouraging certification against relevant approved operational, technical and competency standards relevant to a system and its purpose.

7.7 Whilst relevant authorities defined in section 33(5) of the 2012 Act will be under a statutory duty to have regard to this Code, other system operators will be encouraged to adopt the code on a voluntary basis and to make a public commitment to doing so.

7.8 The Code is structured upon a set of 12 guiding principles. Following these principles should enable a system operator to reach informed and appropriate decisions when considering either the development or use of surveillance camera systems or the use or processing of images or other information obtained by virtue of such systems.

8. Consultation outcome

8.1 In the course of preparing this Code the Secretary of State is required to undertake statutory consultation. A six week consultation was launched on 7th February 2012 and sought views on a draft Code from statutory consultees along with: local authorities; police forces; police and crime commissioners; civil liberties organisations; the CCTV and surveillance camera industry; and, the public. It also sought views on the position of the non territorial police forces and the Serious Organised Crime Agency (SOCA) in relation to the Code.

8.2 A government response to statutory consultation was published on 4th June 2013. This summarises comments from respondents (the majority of whom were supportive of the Code and its implementation), sets out where the

draft Code had been amended following consultation, providing further clarification over the intent and scope of the Code. In the light of public concerns over the excessive use of surveillance camera systems for civil enforcement of parking and moving traffic contraventions, the Government response clarifies the relationship of this Code with existing relevant legislation. It also makes clear the importance of considering the necessity and proportionality of any CCTV conditions which might be attached to licences or certificates granted for any licensable activities.

8.3 The Government response also confirmed the Government intention in the light of consultation to place the non territorial police forces and SOCA under a statutory duty to have regard to the Code. It should be noted that under the provisions of Part 1 of the Crime and Courts Act 2013, the National Crime Agency (NCA) is to be formed and SOCA will be abolished. At such time as those provisions are implemented, any duty to have regard to the Code placed upon SOCA will be deemed to apply to the NCA.

9. Guidance

9.1 This Code introduces a set of 12 guiding principles for the use of surveillance camera systems. It is not prescriptive about how a relevant authority must comply with these guiding principles and leaves a wide discretion which acknowledges the fact that the circumstances and purpose associated with a surveillance camera system may vary.

9.2 The Surveillance Camera Commissioner is charged with providing advice under section 34(2)(c) of the 2012 Act, and this Code is specific about particular areas of advice which the Commissioner is expected to provide to complement the guiding principles and enable a system operator to make informed decisions about how best to work within them. The Commissioner has established a non-statutory advisory council and a non-statutory standards group to support him in developing guidance which will be made widely available.

10. Impact

10.1 There is no impact on businesses, charities or voluntary bodies.

10.2 An impact assessment has been prepared with details of the anticipated costs and benefits associated with bringing this Code into force. It necessarily focuses on the implications for relevant authorities as specified in section 33(5) of the 2012 Act who will be placed under a duty to have regard to the Code. That Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 This legislation does not apply to small businesses.

12. Monitoring & review

12.1 A set of ten success criteria has been developed by the Government, and published as part of statutory consultation over the draft Code. These will form the basis for evaluating the operation and impact of the Code after it comes into force, and include ensuring that system operators are transparent and proportionate in balancing privacy and security considerations, there is regular review of whether a system meets its stated purpose and remains justified, and improved effectiveness of CCTV and other surveillance camera systems in providing better quality and more accessible images for use in the criminal justice system.

12.2 The Surveillance Camera Commissioner will use these ten criteria when fulfilling his statutory function of reviewing the operation of the code. His annual report must report on how he has exercised his functions. That report must be given to the Secretary of State, who in turn must lay it before Parliament, and be published by the Commissioner.

12.3 Informed by advice from the Commissioner, including that in his Annual Reports, the Government will review the impact of regulation and specifically the extent of voluntary adoption of this Code, and consult as necessary over the specification of further persons as relevant authorities.

13. Contact

13.1 Alastair Thomas, Home Office Police Transparency Unit, alastair.thomas@homeoffice.gsi.gov.uk (020 7035 0581) can answer any queries regarding the instrument.