EXPLANATORY MEMORANDUM TO

THE SENTENCING ACT 2020 (SERIOUS VIOLENCE REDUCTION ORDERS: RETENTION AND DISPOSAL OF SEIZED ITEMS) REGULATIONS 2022

2022 No. 1071

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 Section 342E (4) of the Sentencing Code (as inserted by section 165 of the Police, Crime, Sentencing and Courts (PCSC) Act 2022) allows police officers to seize and retain, in accordance with these regulations, items found in the course of searches under section 342E of the Sentencing Code, which they reasonably suspect to be a bladed article or an offensive weapon.

2.2 These regulations make provision for the retention, safe-keeping, disposal and destruction of items seized under Section 342E of the Sentencing Code.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Serious Violence Reduction Orders (SVROs) were inserted into Part 11 of the Sentencing Code by section 165 of PCSC Act 2022.

6.2 Section 342E of the Sentencing Code provides the police with the power to search a person subject to an SVRO, to ascertain if they have a bladed article or offensive weapon with them and to detain them for the purpose of carrying out that search, provided that person is in a public place.

6.3 Under section 342E(4) of the Sentencing Code, police officers may seize and retain items found in the course of a search which they reasonably suspect to be a bladed article or an offensive weapon.

7. Policy background

What is being done and why

7.1 SVROs implement a Government Manifesto commitment and are a new civil order that can be made by the Court in respect of adults (aged 18 and over), convicted of an offence where a bladed article or offensive weapon was used or was present. The Order provides the police with the power to stop and search a person subject to an SVRO to ascertain if they have a bladed article or offensive weapon with them and to detain them for the purpose of carrying out that search.

7.2 The orders aim to reduce serious violence by deterring the carrying of weapons by individuals through increasing the risk of detection of such weapon carrying.

7.3 Section 342E of the Sentencing Code gives the police a legal power to stop someone subject to an SVRO and to search them to see if they are unlawfully carrying a bladed article or an offensive weapon.

7.4 Under section 342E(4) of the Sentencing Code police officers may seize and retain items found in the course of a search which they reasonably suspect to be a bladed article or an offensive weapon.

7.5 These regulations set out powers in relation to the retention, safe-keeping, disposal and destruction of items seized under these powers. They do not apply to items to which the Police (Property) Regulations 1997 (S.I. 1997/1908) ("the 1997 Regulations") apply. The 1997 Regulations apply to property that is in the possession of the police in connection with their investigation of a suspected offence and in respect of which the owner has not been ascertained and no court order has been made. The 1997 Regulations also apply to items in the possession of the police by virtue of a deprivation order made under section 153 of the Sentencing Code and in respect of which no application by a claimant has been made within six months of the making of the order or no such application has succeeded. Items that are within scope of the 1997 Regulations are excluded from the scope of these regulations because the 1997 Regulations already provide a framework for the retention and disposal of such items.

7.6 In particular, the regulations specify the six month period for which items must be retained, makes provision to enable the owner of an item to make an application to have that item released to them and makes provision for the retention and disposal of items after the expiration of the six month period or after an unsuccessful application by the owner.

7.7 Similar regulations exist under The Police (Retention and Disposal of Items Seized) Regulations 2002, which provide for the retention and disposal of items seized under Section 60A of the Criminal Justice and Public Order Act 1994. These regulations follow similar guidelines as the Police (Retention and Disposal of Items Seized) Regulations 2002.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 Not applicable.

10. Consultation outcome

10.1 The Home Office ran a public consultation on the wider policy design of SVROs from 14 September to 8 November 2020. Further information on the responses to the consultation can be found in the Government consultation response. Serious Violence Reduction Orders - GOV.UK (www.gov.uk).

10.2 The Government has engaged with relevant police stakeholders in relation to the technical detail of this statutory instrument.

11. Guidance

11.1 The Home Office is working with relevant stakeholders and has developed further statutory guidance in relation to SVROs. The guidance includes information relating to these regulations. A draft of the statutory guidance can be found at Serious Violence Reduction Orders: draft statutory guidance (publishing.service.gov.uk).

12. Impact

12.1 There is no impact on business, charities or voluntary bodies.

12.2 These regulations will have some impact on police forces across England and Wales. Whilst during the pilot SVROs will only be able to be issued in four police force areas (West Midlands, Sussex, Merseyside and Thames Valley), the stop and search power will be available to police constables across England and Wales in respect of individuals subject to an SVRO and therefore the retention, safe-keeping, disposal and destruction of items seized under these powers apply across England and Wales.

12.3 An Impact Assessment was conducted as part of the Police, Crime, Sentencing and Courts Act 2022 which introduced SVROs. (See Police, Crime, Sentencing and Courts Act 2022: overarching documents - GOV.UK (www.gov.uk)).

13. Regulating small business

13.1 The legislation does not apply to small businesses.

14. Monitoring & review

14.1 SVROs will be piloted in Thames Valley, West Midlands, Merseyside and Sussex Police forces. An evaluation of the pilot will be conducted by an independent evaluator and a report on the pilot will be laid in Parliament.

15. Contact

15.1 Courtney DuCille-Smith at the Home Office; email: courtney.ducille-smith@homeoffice.gov.uk, 07776 512 248 can be contacted with any queries regarding the instrument.

15.2 Laura Baynton, Head of Serious Violence Unit at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Jeremy Quin, Minister for Crime and Policing at the Home Office can confirm that this Explanatory Memorandum meets the required standard.