**EXPLANATORY MEMORANDUM TO**

# THE TERRORISM ACT 2000 (CODE OF PRACTICE FOR EXAMINING OFFICERS AND REVIEW OFFICERS) ORDER 2022

**2022 No. 674**

## 1. Introduction

1.1 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 instrument brings into force a revised code of practice regarding functions carried out under Schedules 7 (port and border controls) and 8 (detention) to the Terrorism Act 2000 ("the 2000 Act"). The code of practice relates to powers exercisable at UK ports and the Northern Ireland border area to stop, question, search and detain persons to determine whether they are or have been engaged in terrorism.

## 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 territorial extent of this instrument is the whole of the United Kingdom.

4.2 The territorial application of this instrument is the whole of the United Kingdom.

## 5. European Convention on Human Rights

5.1 The Minister of State for Security, the Rt. Hon. Damian Hinds MP has made the following statement regarding Human Rights:

"In my view the provisions of the Terrorism Act 2000 (Code of Practice for Examining Officers and Review Officers) Order 2022 are compatible with the Convention rights."

## 6. Legislative Context

6.1 Under paragraph 6 of Schedule 14 to the 2000 Act, the Secretary of State shall issue, and may revise, codes of practice about the exercise by officers of functions conferred on them by virtue of that Act. A code of practice about the exercise by officers of functions exercised under Schedule 7 to the 2000 Act was last issued on 22 July 2020 and was brought into force by the Port Examination Codes of Practice and National Security Determinations Guidance Regulations 2020 (S.I. 795/2020). The instrument is bringing into force a revised version of that code, which is issued by the Secretary of State in accordance with paragraph 6(4) of Schedule 14 to the 2000 Act, following amendments made to the 2000 Act by the Nationality and Borders Act 2022.

## 7. Policy background

***What is being done and why?***

7.1 The powers under Schedule 7 to the 2000 Act allow an examining officer at UK ports and the Northern Ireland border area to stop, question, search and detain a person to determine whether they appear to be a person who is, or has been, involved in the commission, preparation or instigation of acts of terrorism.

7.2 Schedule 14 to the 2000 Act requires a code of practice to be issued about the exercise of the functions conferred by the 2000 Act in relation to the powers of examining and review officers under Schedules 7 and 8 to the 2000 Act.

7.3 There is an existing Code of Practice for Examining Officers and Review Officers under Schedule 7 to the Terrorism Act 2000 ("the Schedule 7 Code") which was brought into force in August 2020 which relates to the exercise by examining officers of their functions under Schedule 7; the exercise of review officers of their functions under Schedule 8 in relation to detentions under Schedule 7; the training and procedure for designation of examining officers; and the training of review officers.

7.4 The Schedule 7 Code acts as a guide to those police officers and members of law enforcement authorities able to exercise Schedule 7 powers by providing information on the processes and safeguards governing the use of those powers, including examples of best practice. For example, the Schedule 7 Code includes considerations an examining officer may make when deciding to select a person to examine and clarifies that selecting a person based on their protected characteristics alone is unlawful. It also provides examples of situations which may lead an examining officer to detain a person who has been examined.

7.5 The instrument brings into force a revised version of the Schedule 7 Code. The revisions are necessitated by amendments made to the 2000 Act by the Nationality and Borders Act 2022. These revisions serve to expand the scope of Schedule 7 so that examining officers will be able to examine and if necessary detain individuals under Schedule 7 away from port and Northern Ireland border areas provided that the following conditions are satisfied: the individual has either been detained under a provision of the Immigration Acts or is in custody following arrest under Paragraph 17(1) of Schedule 2 to the Immigration Act 1972; the period of 5 days beginning with the day after the day on which the individual was first apprehended has not yet expired; the examining officer believes that the individual has arrived in the UK from outside the UK by sea; and the examining officer believes the individual was apprehended within 24 hours of arrival on land in the UK.

7.6 The Nationality and Borders Act 2022 also contains separate and unrelated provisions to extend the possibility of prosecution for those who have arrived illegally in the UK. The revised Schedule 7 Code reflects this change in the context of questioning under Schedule 7 to ensure that the provisions of Schedule 7 remain compatible with Convention rights, and in particular Article 6 of the European Convention on Human Rights, by obliging officers to inform individuals that the examination is not for the purpose of obtaining evidence or information on any immigration offences. This change is in addition to existing safeguards regarding the use of information from Schedule 7 examinations as evidence in criminal proceedings.

7.7 There is an additional amendment to the revised Schedule 7 Code unrelated to the impact of the Nationality and Borders Act 2022. The revised Schedule 7 Code

clarifies that no procedure exists under Schedule 7 for examining officers to seek or receive authorisation to ask questions which, when answered, may disclose or confirm the identity of a source of journalistic information or disclose information subject to legal privilege. This is designed to confirm that there is no exception to the prohibition on such questioning.

## 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 A public consultation on the revised Schedule 7 Code was carried out between 15 March and 12 April 2022. The response to the consultation was published on 11 May 2022 and is available at https://www.gov.uk/government/consultations/code-of-practice-for-schedule-7-to-the-terrorism-act-2000/consultation-on-modifications-to-the-code-of-practice-for-schedule-7-to-the-terrorism-act-2000.

10.2 In total, there were 3 responses to the consultation. Of those, 1 was from an organisation for legal professionals, 1 was from a public authority, and 1 was from the Independent Reviewer of Terrorism Legislation, Jonathan Hall QC.

10.3 As a result of feedback received in response to the consultation some changes have been made to the draft revised Code of Practice. These changes are related to the issue of questioning under Schedule 7 of individuals who have arrived illegally in the UK as discussed in paragraph 7.6. Further detail on these changes are set out in the published consultation response.

## 11. Guidance

11.1 The revised version of the Schedule 7 Code brought into force by the instrument contains guidance itself, including about the effect of the code of practice as set out above.

## 12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

12.4 An Equality Impact Assessment has not been prepared for this instrument. However, an Equality Impact Assessment was completed for the changes made to Schedule 7 by the Nationality and Borders Act in line with the Home Office's obligations under the public sector equality duty. We do not consider the amendment to Schedule 7 (or the revised Code of Practice, which reflects those changes) to have a negative impact on individuals with any of the protected characteristics (either directly or indirectly) relative to the scale of the threat to national security that the relevant types of terrorism (as defined in section 1 of the Terrorism Act 2000) pose.

## 13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

## 14. Monitoring & review

14.1 Section 36 of the Terrorism Act 2006 requires the Independent Reviewer of Terrorism Legislation to provide the Home Secretary with an annual report on the exercise of Schedule 7 powers.

## 15. Contact

15.1 The Borders and Aviation Security Unit at the Home Office can answer any queries regarding the instrument and can be contacted at the Home Office, 5th Floor, Peel Building, 2 Marsham Street, London, SW1P 4DF, or by email: Schedule3and7codes@homeoffice.gov.uk

15.2 The Deputy Director for the Borders and Aviation Security Unit at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt. Hon. Damian Hinds MP, Minister of State for Security at the Home Office can confirm that this Explanatory Memorandum meets the required standard.