

**EXPLANATORY MEMORANDUM TO
THE COUNTER – TERRORISM AND SECURITY ACT 2015 (CODE OF
PRACTICE FOR OFFICERS EXERCISING FUNCTIONS UNDER
SCHEDULE 1) REGULATIONS 2015**

2015 No. 217

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 This instrument brings into operation a code of practice in relation to the exercise of powers under Schedule 1 to the Counter-Terrorism and Security Act 2015.

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

- 3.1 Consent has been obtained from the Law Officers to commence the provisions of Schedule 1 to the Counter-Terrorism and Security Act 2015 prior to the expiry of a period of two months following Royal Assent. The provisions of Schedule 1 will commence on the day after the day of Royal Assent. This instrument is made and laid before Parliament, with the draft code of practice which it will bring into operation, on the day of Royal Assent. This is in order to bring the code of practice into operation on the following day simultaneously with the commencement of the provisions of Schedule 1. Reliance is placed upon section 13(b) of the Interpretation Act 1978 for this purpose of making and laying the instrument and code of practice before paragraphs 18 or 19 are commenced.

4. **Legislative Context**

- 4.1 Paragraphs 18 and 19 of Schedule 1 to the Counter-Terrorism and Security Act 2015 require the Secretary of State to:

- a. issue a draft code of practice with regard to the exercise of functions under Schedule 1 to the Act (paragraph 18);
 - b. publish the code of practice in draft; consider representations made about the draft and modify the draft, as appropriate (paragraph 19 (1) (a), (b) and (c));
 - c. lay the draft code before Parliament (paragraph 19 (2)).

4.2 Paragraph 18 (1) of Schedule 1 to the Counter-Terrorism and Security Act 2015 requires the Secretary of State to issue a code of practice with regard to the exercise of functions by officers under Schedule 1 to the Act. The code of practice satisfies the duty to make particular provision in relation to the following matters:

- a. the procedure for making designations under paragraphs 1(4) and 17;
- b. training to be undertaken by persons who are to exercise powers under this schedule;
- c. the exercise by constables, immigration officers and customs officials of functions conferred on them by virtue of this schedule;
- d. information to be given to a person in whose case a power under this schedule is exercised;
- e. how and when that information is to be given;
- f. reviews under paragraph 6.

4.3 A constable, immigration officer or customs official must perform functions under Schedule 1 in accordance with any relevant provisions included in the code of practice (Paragraph 18 (3)).

4.4 This instrument will bring the code of practice into operation on the day of commencement of the provisions of Schedule 1 to the Counter-Terrorism and Security Act 2015.

4.5 Paragraph 19 of Schedule 1 to the Counter-Terrorism and Security Act 2015 requires the Secretary of State to publish a draft code of practice; consider any representations made about that draft and, if considered appropriate, modify that draft. A six week consultation for the code of practice for officers exercising functions under Schedule 1 to the Counter-Terrorism and Security Act 2015 in connection with seizing and retaining travel documents ended on 30 January 2015. We received 4 responses and following consideration of those responses minor modifications have been made to the draft code.

4.6 Once the code has been laid before Parliament the Secretary of State may bring it into operation by regulations made by statutory instrument (paragraph 19 (4)). These Regulations will cease to have effect at the end of a period of 40 days beginning on the day the Regulations are made, unless a resolution approving the Regulations is passed by each House before the end of the 40 days. The 40 day period will commence on the day of Royal Assent when the instrument will be made and laid before Parliament along with the code of practice.

4.7 If the Regulations cease to have effect the code of practice will cease to have effect but will not affect anything previously done, or the power to make new regulations or to issue a new code (paragraph 19 (7) (a) and (b)).

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Home Secretary has made the following statement regarding Human Rights:

In my view the provisions of the Counter-Terrorism and Security Act 2015 (Code of Practice for Officers exercising functions under Schedule 1) Regulations 2015 are compatible with the Convention rights.

7. Policy background

7.1 The power under Schedule 1 to the Counter-Terrorism and Security Act 2015 enables the police to seize and retain a person's travel documents (including their passport and travel tickets) at a port when there is reasonable suspicion that the person is travelling outside the United Kingdom for the purpose of involvement in terrorism-related activity. It is a significant addition to the wide range of powers to disrupt terrorism-related activity, and in particular enables the police to take immediate action against people leaving the UK to engage in terrorism overseas.

7.2 The power may be exercised at any port within the United Kingdom or in the border area between Northern Ireland and the Republic of Ireland. In all circumstances, authorisation to retain the travel document must be provided by a senior police officer.

7.3 Travel documents should be returned no later than 14 days (beginning with the day after they are seized). If more time is required to retain travel documents as consideration is still being given to further disruptive action judicial authority must be granted by a District Judge (England and Wales), the Sheriff (Scotland) or a County Court Judge or District Judge (Northern Ireland) to extend the retention period up to 30 days. No further extension will be allowed beyond 30 days

7.4 These Regulations do not amend any existing instrument.

8. Consultation outcome

8.1 We carried out a 6 week public consultation on the code of practice beginning on 18 December 2014 and ending on 30 January 2015, inviting views on 10 key areas of the code. Our questions asked how appropriately the code:

- describes who is subject to the new power;
- describes who can exercise the power;
- describes the designation and training process;
- described the test for exercising the new power;
- describes how the exercise of the power is authorized;
- describes the power to retain travel documents for up to 14 days or up to 30 days, if approved by a court;
- describes how information is provided to people subject to the exercise of the power;
- describes the new criminal offence related to this power;
- describes the judicial oversight provisions;
- describes the safeguards against repeated use of the power;

8.2 Inviting views on these specific areas was aligned to paragraph 18 (2) of Schedule 1 which sets out the scope of what the code of practice must deal with. In addition, we provided free text boxes for each section and one for any general comments.

8.3 The 6 week consultation period, rather than a 12 week period, reflected the expedited nature of the Bill. To raise awareness of the consultation we notified police forces, legal organisations, industry groups and a range of community and faith groups, by email that the consultation had begun. Before and during the consultation we engaged with key stakeholders including the National Counter Terrorism Policing HQ, the College of Policing, Border Force, HMPO, and UKVI.

8.4 We received 4 responses to the consultation, all from the police. Responses were broadly positive, concerning the extent to which the code appropriately describes who is subject to the new power, who can exercise the power, the test for exercising the power, how information is provided to people subject to the power, and the safeguards against repeated use of the power. Additional comments covered issues such as the authorisation process and the time it might take, providing clarity of the availability of legal aid and whether the specified police ranks for the authorisation and review functions are set too high.

8.5 We agreed with a number of respondents on issues such as specifying the availability of legal aid and clarifying whether family members may access temporary support arrangements, if required. In addition, we have considered further points raised during the Parliamentary passage of the Bill, and from reports on the Bill as a whole, such as the Joint Committee on Human Rights report on the Bill. We have updated the code accordingly and will publish our consultation response shortly.

9. Guidance

9.1 The Home Office are working closely with the National Counter Terrorism Policing HQ Border Force to implement Schedule 1 to the Counter-Terrorism and Security Act 2015.

10. Impact

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

10.2 The impact on the public sector is deemed low.

10.3 An Impact Assessment was completed in respect of the powers in Schedule 1 to the Counter-Terrorism and Security Bill (to which this Code relates) and accompanies this Explanatory Memorandum.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The decision to retain travel documents under this power is subject to a police review at 72 hours. This must be undertaken by a senior police officer of at least the rank of Chief Superintendent, or of at least the same rank as the officer who authorized the retention of the travel documents.

12.2 Complaints about the conduct of examining officers or treatment of an individual during the seizure and retention of travel documents must be directed to either the police or the Border Force, depending on which officer seized and retained the travel documents. If the person who seized the travel document was a police officer, complaints should be sent to the Chief Officer of the force responsible for the port/airport where the officer is a police officer, or to the relevant independent police complaint body, e.g. Independent Police Complaints Commission for England and Wales, the Police Investigations and Review Commissioner for Scotland, or the Police Ombudsman for Northern Ireland.

12.3 The police are required to monitor the use of the power and consider in particular whether there is any evidence that it is being exercised on the basis of stereotyped images or inappropriate generalizations.

12.4 The operation of this power will be subject to review by the Independent Reviewer of Terrorism Legislation, as specified in the Act. The Home Office will report annually on the use of the power.

13. Contact

13.1 The Temporary Seizure of Travel Documents team at the Home Office can be contacted on: 020 7035 1223 or 0207 035 6990 or email:

TPSconsultationresponses@homeoffice.x.gsi.gov.uk