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Rt Hon Yvette Cooper MP
Chair, Home Affairs Committee
House of Commons
London
SW1A 0AA

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Dear Chair,

STATUTORY INSTRUMENT TO IMPLEMENT PROVISIONS IN THE COUNTER-TERRORISM AND BORDER SECURITY ACT 2019

I am writing to inform you of a statutory instrument - The Port Examination Codes of Practice and National Security Determinations Guidance Regulations 2020 - which the Government laid before Parliament earlier today.

In February last year, Parliament passed the Counter-Terrorism and Border Security Act 2019. This Act introduced a range of measures to close gaps in existing counter-terrorism legislation and to ensure that terrorist offending can be disrupted more rapidly. It also created new powers to strengthen the UK's defences against hostile state activity. The statutory instrument will, subject to Parliament's approval, bring into operation a revised Code of Practice for the counter-terrorism port examination powers under Schedule 7 to the Terrorism Act 2000; a similar Code of Practice for the new hostile state activity port examination powers under Schedule 3 to the 2019 Act; and revised guidance under the Protection of Freedoms Act 2012 relating to biometric retention provisions amended by the 2019 Act.

Schedule 7 and 3 Codes of Practice

Following passage of the Act, the Schedule 7 and 3 Codes of Practice were subject to public consultation. The Government is grateful to the individuals and organisations that responded to this consultation, including those working for public authorities, groups representing the media and oversight bodies. Having considered these representations, as well as further feedback from the Independent Reviewer of Terrorism Legislation, Jonathan Hall QC, who was not in post during the consultation period, we have made changes to these Codes and/or taken steps to:

- provide further clarity on the article retention process and timeframes under Schedule 3;
- strengthen protections for confidential material and provide additional safeguards for journalistic sources and information subject to legal privilege;

- mandate the timely provision of or access to relevant information and material relating to Schedule 7 or 3 powers to assist an examinee or their representatives;
- ensure appropriate complaints procedures are in place and accessible to any person who has been the subject of a Schedule 7 or 3 examination;
- provide further clarity on the training and accreditation standards for officers exercising these powers.

National Security Determinations

We have also laid proposed revisions to the guidance issued pursuant to section 22 of the Protection of Freedoms Act 2012 on the making or renewing of national security determinations (NSDs). This guidance provides direction to the police and to other relevant law enforcement authorities about the making or renewing of an NSD allowing the retention and use of biometric material for national security purposes. The current version of the guidance was issued in June 2013 and the proposed revisions primarily reflect amendments to the biometric retention provisions made by Schedule 2 to the Counter-Terrorism and Border Security Act 2019. The changes include:

- increasing the maximum length of an NSD from two to five years;
- allowing any Chief Officer of a police force in England and Wales to make an NSD in respect of biometric data taken by any police force in England and Wales;
- allowing multiple sets of fingerprints relating to the same individual to be retained under a single NSD;
- bringing the rules applying to the automatic retention of biometric data of persons arrested for qualifying terrorism offences under the Police and Criminal Evidence Act into line with those applying to persons arrested for the same offences under the Terrorism Act 2000; and
- making clear that in circumstances where an individual has been arrested but not convicted of a non-terrorist related offence, the biometric data can be further retained for a reasonable period to allow for an NSD to be considered if appropriate, and that if an NSD application is being considered a reasonable period may be up to six months.

In the course of revising the guidance we have consulted stakeholders, including the Biometrics Commissioner and the Lord Advocate. The revised guidance will improve the way in which the retention of biometric material supports the police in vital counter-terrorism investigations while also ensuring that it remains subject to appropriate independent oversight.

It is clear that the UK faces a sustained threat from hostile state activity and only recently, our citizens have been subject to further acts of terrorism by those intent on harming and dividing us. I am pleased that the provisions within this statutory instrument will support the police in their efforts to keep us safe from these threats, while ensuring that these important powers are subject to appropriate independent oversight. I look forward to discussing them in Parliament in due course.

The draft Schedule 3 Code, the draft revised Schedule 7 Code and revisions to the Guidance have been laid before the House and online versions will be made available on gov.uk. The full government response to the consultation on the codes of practice will also be made available online.

Yours sincerely,


Rt Hon James Brokenshire MP
Minister of State for Security