

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT TERRORISM ACT 2000 (ALTERATIONS TO  
THE SEARCH POWERS CODE ENGLAND AND  
WALES AND SCOTLAND) ORDER 2022

*Wednesday 19 October 2022*

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**The Committee consisted of the following Members:**

*Chair:* JULIE ELLIOTT

Afriyie, Adam (*Windsor*) (Con)

† Baldwin, Harriett (*West Worcestershire*) (Con)

† Dines, Miss Sarah (*Lord Commissioner of His Majesty's Treasury*)

† Eastwood, Mark (*Dewsbury*) (Con)

† Elmore, Chris (*Ogmore*) (Lab)

Hardy, Emma (*Kingston upon Hull West and Hessle*) (Lab)

† Hayes, Sir John (*South Holland and The Deepings*) (Con)

† Lynch, Holly (*Halifax*) (Lab)

† McDonald, Stuart C. (*Cumbernauld, Kilsyth and Kirkintilloch East*) (SNP)

Pritchard, Mark (*The Wrekin*) (Con)

† Richards, Nicola (*West Bromwich East*) (Con)

† Smith, Cat (*Lancaster and Fleetwood*) (Lab)

† Spellar, John (*Warley*) (Lab)

† Stewart, Iain (*Milton Keynes South*) (Con)

† Throup, Maggie (*Erewash*) (Con)

† Tugendhat, Tom (*Minister for Security*)

Turner, Karl (*Kingston upon Hull East*) (Lab)

Ailish McAllister-Fisher, Guy Mathers,  
*Committee Clerks*

† **attended the Committee**

## Fourth Delegated Legislation Committee

Wednesday 19 October 2022

[JULIE ELLIOTT *in the Chair*]

### Draft Terrorism Act 2000 (Alterations to the Search Powers for England and Wales and Scotland) Order 2022

9.25 am

**The Minister for Security (Tom Tugendhat):** I beg to move,

That the Committee has considered the draft Terrorism Act 2000 (Alterations to the Search Powers for England and Wales and Scotland) Order 2022.

It is a great pleasure, Ms Elliott, to be here under your chairmanship.

The draft order was laid before Parliament on 18 July. Following the horrific terrorist attack at Fishmongers' Hall in November 2019, the then Home Secretary commissioned the Independent Reviewer of Terrorism Legislation, Jonathan Hall KC, to review the multi-agency public protection arrangements—commonly referred to as MAPPAs—used to supervise terrorist and terrorism-risk offenders on licence in the community.

The Police, Crime, Sentencing and Courts Act 2022—hereafter referred to as the 2022 Act—established three new powers for counter-terrorism policing: a personal search power; a premises search power; and a power of urgent arrest. Those powers were established in response to recommendations made by Jonathan Hall KC, following his review of MAPPAs. The draft order relates to the new power of personal search, the creation of which was also recommended by the tragedy at Fishmongers' Hall and its prevention of future deaths report.

The personal search power was inserted into the Terrorism Act 2000—new section 43C—by the 2022 Act. The new search power came into force on 28 June this year. As set out by the Government during the passage of the 2022 Act, the new personal search power applies across the United Kingdom, enabling the police to stop and search terrorist and terrorism-connected offenders released on licence who are required to submit to the search by their licence conditions, should the Parole Board determine that such a condition is necessary. The officer conducting the stop and search must be satisfied that it is necessary to exercise the power for purposes connected with protecting members of the public from a risk of terrorism.

Section 47AA of the Terrorism Act 2000 imposes a requirement on the Secretary of State to prepare a code of practice containing guidance about the exercise of search powers that are conferred by the Act. In June this year, Parliament approved regulations laid by the Government that amended section 47AA so that it extends to cover the new personal search power inserted into the Terrorism Act by the 2022 Act. This created a requirement for the Secretary of State to prepare a revised code of practice that includes guidance on the exercise of the power conferred by new section 43C. We

duly prepared a draft revised code of practice, and the draft order seeks Parliament's approval to bring into force the revisions we have made to the existing code.

I shall now set out the nature of the revisions that the Government have made. The primary update to the code of practice is the incorporation of the new stop-and-search power provided for by section 43C of the Terrorism Act 2000. The revised code sets out important parameters that govern the use of the section 43C power and provides clarity for officers on the power's scope. That includes providing guidance on the thresholds to be met before the section 43C power can be used, scenarios in which it might be appropriate for use, and the powers of seizure associated with the search power.

We have also set out clearly within the revised code the limitations on the clothing that someone can be required to remove when the section 43C power is exercised by the police. In keeping with existing stop-and-search powers, police officers exercising the section 43C power may not compel someone to remove any clothing in public except for an outer coat, a jacket or gloves, and an intimate search may not be authorised or carried out under the new power.

The new section 43C stop-and-search power has been created specifically to manage the risk posed by terrorist offenders on licence who are assessed to be high or very high risk to the public. The Government plan to collect data from police forces on the use of this targeted power, as we routinely do for other stop-and-search powers, and to make such data publicly available through future statistical publications.

Given that the existing version of the code was brought into force in 2012, the Government have also made other minor changes to ensure that it accurately reflects current practice, legislation terminology and organisational responsibilities. The updated code reflects the creation of police and crime commissioners and structural changes to other policing authorities, including the creation of authorities overseeing combined police areas. We have also updated organisational names. For example, we have replaced previous references to the Association of Chief Police Officers' Counter Terrorism Coordination Centre with up-to-date references to the Counter Terrorism Policing National Operations Centre.

The revised code also includes a new paragraph that references the Children Act 2004, and its Scottish equivalent, to highlight the need for the police to ensure that, in the discharge of their functions, they recognise the need to safeguard and promote the welfare of all persons under the age of 18. Although it is not new policy, when revising the code the Government considered it important for such safeguarding duties to be made explicit. We have made other minor but necessary amendments, such as updating links and contact details within the code. Those include refreshing the web address where the most up-to-date version of the Government's counter-terrorism strategy—known as Contest—can be found.

In the course of revising the code, the Home Office has consulted the Lord Advocate and other appropriate persons and organisations, including the Independent Reviewer of Terrorism Legislation, Counter Terrorism Policing and Police Scotland, all of whom are supportive of the approach. The revised code promotes the fundamental principles to be observed by the police, and helps to preserve the effectiveness of—and public confidence in—the use of police powers to stop and search under the Terrorism Act 2000.

9.32 am

**Holly Lynch** (Halifax) (Lab): As always, Ms Elliott, it is a pleasure to serve with you in the Chair. I thank the Minister for setting out the merits of the proposals.

In June, we met to discuss the proposed changes brought about by the Police, Crime, Sentencing and Courts Act 2022, which allow for those released on licence for terror or terrorism-related offences to be stopped and searched in order to protect public safety. I made it clear that we felt the measures—which were recommendations made by the independent reviewer of terrorism legislation, Jonathan Hall KC, following his review of the multi-agency public protection arrangements—were both proportionate and necessary.

That legislation committed the Minister to returning to Parliament with a refined code of practice containing guidance about the exercise of that new power, and I am glad that the Minister has been able to set that out today. The explanatory memorandum—the Minister knows that I am a big fan of them—outlines that the code has been amended to reflect other changes that have come into effect since it was last amended in 2012.

Those changes include the creation of police and crime commissioners, the establishment of the College of Policing and the latest version of Contest, as the Minister explained. I also welcome the emphasis on the need to ensure that appropriate safeguarding checks are in place to protect those under 18. By ensuring that the code offers sufficient guidance for law enforcement, we know that both children and law enforcement officials are better protected when undertaking that incredibly important work.

On that basis, we support the proposed changes. However, as the Minister knows from our exchanges on the National Security Bill, I find the work of the independent reviewer of terrorism legislation invaluable. With any extension of powers there can be unintended consequences, but equally missed opportunities, so I will follow closely Jonathan Hall's assessment of the efficacy of these powers once they come into effect. We

are satisfied that the changes are both proportionate to the security challenges we face and necessary if we are to reduce the risk of future attacks. We support the measures in the national interest.

9.33 am

**Stuart C. McDonald** (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): Very unusually for stop and search powers, we are all on the same page today, so I will be brief. I think these are sensible, carefully limited measures that bring clarity for the police. Like the shadow Minister, I welcome the changes to recognise the interests of children and to safeguard them. As the Minister said, the Lord Advocate, Police Scotland and the Scottish Government have been consulted and are supportive. On that basis, we support the measures as well.

9.34 am

**Tom Tugendhat**: I am grateful for the cross-party support for these important measures.

**Sir John Hayes** (South Holland and The Deepings) (Con): Given the cross-party support that the Minister was just celebrating, would it be useful for the Home Secretary to write to chief constables to remind them of the importance of the new powers, and to ensure that they are up to date on how they might be applied? It could be helpful, in the circumstances, to reflect the general consensus.

**Tom Tugendhat**: I will definitely take that back to the Home Secretary; I am sure that she will be delighted to do that. I am sure chief constables will be aware that the measures have cross-party support, and therefore the support of the whole country.

*Question put and agreed to.*

9.35 am

*Committee rose.*





