

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Tenth Delegated Legislation Committee

DRAFT COUNTER-TERRORISM AND BORDER  
SECURITY ACT 2019 (PORT EXAMINATION CODE  
OF PRACTICE) REGULATIONS 2023

DRAFT NATIONAL SECURITY ACT 2023 (VIDEO  
RECORDING WITH SOUND OF INTERVIEWS AND  
ASSOCIATED CODE OF PRACTICE)  
REGULATIONS 2023

DRAFT NATIONAL SECURITY ACT 2023  
(CONSEQUENTIAL AMENDMENTS OF PRIMARY  
LEGISLATION) REGULATIONS 2023

*Wednesday 29 November 2023*

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**Sunday 3 December 2023**

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

*Chair:* DEREK TWIGG

- |  |   |
|--|---|
| † Brereton, Jack ( <i>Stoke-on-Trent South</i> ) (Con)                     | † Nici, Lia ( <i>Great Grimsby</i> ) (Con)              |
| † Clarke-Smith, Brendan ( <i>Bassetlaw</i> ) (Con)                         | † Richardson, Angela ( <i>Guildford</i> ) (Con)         |
| † Coffey, Dr Thérèse ( <i>Suffolk Coastal</i> ) (Con)                      | † Skidmore, Chris ( <i>Kingswood</i> ) (Con)            |
| † Fletcher, Colleen ( <i>Coventry North East</i> ) (Lab)                   | † Strathern, Alistair ( <i>Mid Bedfordshire</i> ) (Lab) |
| Fletcher, Nick ( <i>Don Valley</i> ) (Con)                                 | † Sunderland, James ( <i>Bracknell</i> ) (Con)          |
| † Hillier, Dame Meg ( <i>Hackney South and Shoreditch</i> )<br>(Lab/Co-op) | † Thewliss, Alison ( <i>Glasgow Central</i> ) (SNP)     |
| † Hollern, Kate ( <i>Blackburn</i> ) (Lab)                                 | † Tugendhat, Tom ( <i>Minister for Security</i> )       |
| † Jarvis, Dan ( <i>Barnsley Central</i> ) (Lab)                            |   |
| † Jenkinson, Mark ( <i>Workington</i> ) (Con)                              | Chris Watson, <i>Committee Clerk</i>                    |
| Johnson, Dame Diana ( <i>Kingston upon Hull North</i> )<br>(Lab)           | † <b>attended the Committee</b>                         |

# Tenth Delegated Legislation Committee

Wednesday 29 November 2023

[DEREK TWIGG *in the Chair*]

## Draft Counter-terrorism and Border Security Act 2019 (Port Examination Code of Practice) Regulations 2023

2.30 pm

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

That the Committee has considered the draft Counter-Terrorism and Border Security Act 2019 (Port Examination Code of Practice) Regulations 2023.

**The Chair:** With this it will be convenient to consider the draft National Security Act 2023 (Video Recording with Sound of Interviews and Associated Code of Practice) Regulations 2023 and the draft National Security Act 2023 (Consequential Amendments of Primary Legislation) Regulations 2023.

**Tom Tugendhat:** It is a pleasure to serve under your extremely efficient chairmanship, Mr Twigg, and to see my very old friend, the hon. Member for Barnsley Central, who is scrutinising my work again in the way that only he can.

All three of these statutory instruments were laid before the House on 16 October, and relate to measures in the National Security Act, which received Royal Assent in July. It is the most significant piece of legislation for tackling the increase in state-based threats to our nation in a century. It brings together vital new measures to protect the British public, modernise counter-espionage laws and address the evolving threat to our national security. In essence, it provides our world-class law enforcement and intelligence agencies with new and updated tools to do their critical work. It is essential that we bring the powers in the Act into force to protect this country, and these instruments are an important part of making that happen. Once they are approved and come into force, we can also bring into force parts 1 to 3 of the Act. These statutory instruments support the powers created by the primary legislation, and do not create new powers or make changes to primary legislation that has already been agreed by Parliament. They ensure that the legislation can be implemented effectively and proportionately.

The first instrument, the draft National Security Act 2023 (Video Recording with Sound of Interviews and Associated Code of Practice) Regulations 2023, will create a new code of practice governing the video recording of individuals arrested under the Act. Schedule 6 of the Act requires that any interview by a constable of a person detained using the arrest powers in section 27 be video recorded with sound, and that video recording be carried out in accordance with the code of practice. That is the same requirement as for anyone interviewed following an arrest made under equivalent terrorism

legislation. The code of practice is based closely on the terrorism equivalent, and provides guidance on how interviews should be conducted, including on the sealing of video recordings, on taking breaks during interviews, and on conducting interviews with deaf people or those who do not understand English.

The second instrument, the draft Counter-terrorism and Border Security Act 2019 (Port Examination Code of Practice) Regulations 2023, updates the code of practice that governs the exercise of the port examination power in schedule 3 of the Act. That power allows accredited counter-terrorism police officers to stop and examine a person at a port or border area to determine whether they are, or have been, involved in malign activity on behalf of a state.

The amendments to the code of practice simply reflect a change made by the National Security Act. It requires a counter-terrorism police officer of at least the rank of superintendent to authorise the retention of copies of confidential business material, instead of the Investigatory Powers Commissioner. That change brings the process into line with the equivalent power in terrorism legislation, which has proven effective and avoids undue burdens on the system.

The Government carried out a statutory public consultation on the changes to this code and the creation of the video recordings code between 20 July and 31 August. The majority of consultees acknowledged that the codes were key to ensuring that police officers have clear guidance on their new powers, and that the powers are used in a way that is both fair and proportionate. However, where appropriate, we made further minor changes to meet the concerns of some consultees. For example, following feedback from Police Scotland on the video recording code, we made minor amendments to ensure that it is consistent with Scottish policing practice and procedure. The full response to the consultation can be found on gov.uk.

On the topic of codes of practice, there will be a debate tomorrow in which the Minister for Crime, Policing and Fire will discuss another instrument regarding six codes of practice under the Police and Criminal Evidence Act 1984 that are created or amended as a consequence of the powers in the National Security Act. I will not go into detail on those codes of practice—that is a matter for my right hon. Friend—but it is worth noting that they too went through a statutory consultation, which can be found on gov.uk.

Finally, the National Security Act 2023 (Consequential Amendments of Primary Legislation) Regulations 2023 makes consequential amendments to primary legislation using the power in section 95 of the National Security Act. While some consequential amendments are made through schedule 18 to the Act, the power in section 95 allows any further amendments to be made as a consequence of the provisions in the National Security Act. Consequential amendments are a customary part of any new legislation, and are required to ensure that existing legislation is up to date and reflects changes brought about by the National Security Act. They are not substantive amendments, but simply consequential to the creation of the National Security Act.

Several amendments concern the Official Secrets Acts 1911, 1920 and 1939, which the National Security Act replaces and repeals. References to those Acts in other legislation are updated to reference the relevant

provisions in the National Security Act or, where appropriate, are repealed entirely. This includes references to the prohibited places regime in the Official Secrets Act 1911 and the preparatory conduct offence under section 7 of the Official Secrets Act 1920, both of which have been updated and replaced by the National Security Act. Other amendments made through this instrument account for other powers and offences created in the National Security Act. For example, amendments to the Criminal Justice and Police Act 2001 account for search and seizure powers created by schedule 2 to the National Security Act.

I hope I have made it clear that these regulations are simply supportive of primary legislation that has already been agreed by Parliament, and passing them is an important step to bringing that primary legislation into force. I therefore commend the regulations to the Committee.

2.37 pm

**Dan Jarvis** (Barnsley Central) (Lab): It is a pleasure to serve under your particularly efficient chairship, Mr Twigg. The Minister has had a busy few days, so it is particularly good to see him. I thank him for the clarity with which he made his opening remarks. He spoke about three statutory instruments, two relating to the National Security Act 2023 and one relating to the Counter-Terrorism and Border Security Act 2019. If I may, I will touch on the National Security Act 2023 (Consequential Amendments of Primary Legislation) Regulations 2023 first, before turning very briefly to the other two statutory instruments.

The regulations will amend several pieces of legislation, including the Nationality and Borders Act 2022, to disqualify potential victims of modern slavery and human trafficking from protection if there are

“reasonable grounds to suspect that the person is or has been involved in foreign power threat activity”.

Those under this classification will be on the same legal footing as persons who are on reasonable grounds suspected of terrorism-related activity. We support this, of course, but I would be grateful if the Minister could explain whether it will mean a change to statutory and non-statutory guidance under section 49 of the Modern Slavery Act 2015. I appreciate that the Minister might not be able to answer that question today, in which case I would be grateful if he would write to me. I would also be most grateful if he could write to me with the answers to the questions I asked in the Delegated Legislation Committee on 14 November. I know he will not have forgotten about them, but he has had a lot on his plate.

Moving on to the National Security Act 2023 (Video Recording with Sound of Interviews and Associated Code of Practice) Regulations 2023, the updated code of practice for video recording with sound of interviews for persons detained under section 27 of the National Security Act 2023 is needed to meet operational requirements. Finally, the Counter-terrorism and Border Security Act 2019 (Port Examination Code of Practice) Regulations 2023 are needed to meet operational requirements; the regulations are closely modelled on schedule 7 to the Terrorism Act 2000. Again, we support

them. As I have said to the Minister previously, we Opposition Members will continue to work constructively with him and the Government on matters relating to national security, including on forthcoming legislation. I will not detain the Committee any longer.

2.39 pm

**Alison Thewliss** (Glasgow Central) (SNP): Briefly, I welcome and support the consultation with Police Scotland and, from what the Minister said, the acknowledgment of what it asked for. I appreciate that one of the statutory instruments did not have a consultation because it is minor, but is there anything more that the Minister could say about the consultation processes for the other two?

2.41 pm

**Tom Tugendhat**: I am grateful to the hon. Member for Barnsley Central and the hon. Member for Glasgow Central for their comments. On the Modern Slavery Act, the amendments are consequential to the primary legislation, so they are entirely in keeping with what was voted through in Parliament. I know the hon. Member for Barnsley Central is aware of that, but I will write to him on the statutory guidance to make the changes clear. I am grateful for his kind words on what I have been up to recently; I will chase up that letter on the last Delegated Legislation Committee, and will make sure that he gets it as soon as possible.

The consultations were carried out in the usual way. There is an open process: we announce that we are looking at an issue, and Members from devolved Administrations, local authorities, policing authorities or whatever bodies are relevant to the consultation are invited to comment. Others can comment as they see fit. Consultation began on 20 July and closed on 31 August. We did not have a huge number of comments, but we had some welcome interactions with Police Scotland and policing authorities in Scotland, which were useful in ensuring that we got the answers right.

*Question put and agreed to.*

**DRAFT NATIONAL SECURITY ACT 2023  
(VIDEO RECORDING WITH SOUND OF  
INTERVIEWS AND ASSOCIATED CODE OF  
PRACTICE) REGULATIONS 2023**

*Resolved,*

That the Committee has considered the draft National Security Act 2023 (Video Recording with Sound of Interviews and Associated Code of Practice) Regulations 2023.—(*Tom Tugendhat.*)

**DRAFT NATIONAL SECURITY ACT 2023  
(CONSEQUENTIAL AMENDMENTS OF  
PRIMARY LEGISLATION) REGULATIONS 2023**

*Resolved,*

That the Committee has considered the draft National Security Act 2023 (Consequential Amendments of Primary Legislation) Regulations 2023.—(*Tom Tugendhat.*)

2.42 pm

*Committee rose.*





