

EXPLANATORY MEMORANDUM TO

THE COUNTER-TERRORISM AND SECURITY ACT 2015 (RISK OF BEING DRAWN INTO TERRORISM) (REVISED GUIDANCE) REGULATIONS 2023

2023 No. 1268

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 This instrument gives effect to the revised guidance issued on 7th September 2023 under section 29 Counter-Terrorism and Security Act 2015 (“CTSA 2015) to specified authorities in England and Wales in relation to their duty under section 26 CTSA 2015. To comply with that duty, specified authorities must, in the exercise of their functions, have due regard to the need to prevent people from being drawn into terrorism.
- 2.2 The revised guidance is annexed to this instrument and replaces previous guidance issued in 2015.

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 extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales and Scotland.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.
- 4.3 There is standalone statutory guidance for specified authorities in Scotland which will also be updated in due course.

5. European Convention on Human Rights

- 5.1 The Minister for Security has made the following statement regarding Human Rights: “In my view the provisions of the Counter-Terrorism and Security Act 2015 (Risk of Being Drawn into Terrorism) (Revised Guidance) Regulations 2023 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Section 26(1) CTSA 2015 provides that a specified authority must, in the exercise of its functions, have due regard to the need to prevent people from being drawn into terrorism. Schedule 6 CTSA 2015 lists the specified authorities, which include education, health, local authorities, police and criminal justice agencies (prisons,

probation and youth justice). Under section 29(1) CTSA 2015 the Secretary of State may issue guidance to specified authorities about the exercise of their duty.

- 6.2 Section 29(6) CTSA 2015 allows for the Secretary of State to revise ‘*from time to time*’ the statutory guidance issued under Section 29(1). The guidance takes effect on the date appointed in a statutory instrument subject to the draft affirmative procedure (section 29(4) and (7)).

7. Policy background

What is being done and why?

- 7.1 Prevent is one of the pillars of CONTEST, the United Kingdom’s counter-terrorism strategy. The aim of Prevent is to stop people from becoming terrorists or supporting terrorism. Prevent also extends to supporting the rehabilitation and disengagement of those already involved in terrorism. CTSA 2015 provided for a duty on specified authorities to “prevent people from being drawn into terrorism” in the exercise of their functions.
- 7.2 During the passage of the Counter Terrorism and Border Security Act 2019, the Government committed to carrying out an Independent Review of Prevent (“the IRP”). In January 2021, the Home Secretary appointed William Shawcross as the Independent Reviewer. The report of the IRP was published on 8th February 2023 and made 34 recommendations – all of which were accepted by the Home Secretary in the Government response.
- 7.3 Revising the statutory guidance responds to a number of the recommendations made in the IRP. Key changes to the statutory guidance include: amending the first Prevent objective to “tackle the ideological causes of terrorism”; updating terminology to reflect current best practice and terminology; communicating the need for genuine concern about an individual’s path to radicalisation and that ideology should be a critical consideration (to improve the quality of referrals); and outlining the new Security Threat Check (STC). The STC, which consists of three questions, will ensure that high level decision-making within Prevent is always informed by proper consideration of the terrorism threat picture.
- 7.4 The revised guidance is a public document and key tool in supporting specified authorities in fulfilling their statutory duty. It is intended for use by:
- a) senior leadership teams in any of the specified authorities listed in Schedule 6 CTSA 2015;
 - b) those with dedicated Prevent and / or safeguarding responsibilities;
 - c) people in specified authorities with responsibility for how resources and funding are used, and for external partnerships; and
 - d) those who are in a frontline role, who are likely to engage with people who may be susceptible to radicalisation.
- 7.5 The revised guidance replaces guidance that came into effect on 18th September 2015 for specified authorities in England and Wales by virtue of the Counter-Terrorism and Security Act 2015 (Risk of Being Drawn into Terrorism) (Guidance) Regulations 2015 (S.I. 2015/1697). That guidance was:
- a) “Revised Prevent Duty Guidance: for England and Wales”;

- b) “Prevent Duty Guidance: for further education institutions in England and Wales”;
and
- c) “Prevent Duty Guidance: for higher education institutions in England and Wales”.

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 This instrument does not consolidate any other instrument.

10. Consultation outcome

- 10.1 A public consultation was conducted in advance of the first Prevent Duty Guidance for England and Wales in 2015. It ran between 18th December 2014 and 30th January 2015. A summary of the responses to that consultation can be found here:

[Prevent duty consultation summary of responses \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

- 10.2 The revised guidance responds to a number of recommendations made in the IRP, for which there was a public call for evidence. An overview of the evidence gathering process can be found in Annex A of the Independent Review of Prevent:

[Independent Review of Prevent \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

- 10.3 As required by section 29(4) CTSA 2015, consultation on revisions to the guidance has been carried out with the Welsh Ministers. This was in addition to specified authorities (such as the Metropolitan Police Service) and such other government departments, bodies and experts as the Secretary of State considered appropriate. The process included consulting directly with front-line practitioners and others working in various capacities for the specified authorities; surveys and one-to-one interviews were conducted with various individuals who used previous guidance.

11. Guidance

- 11.1 No guidance is necessary in connection with this instrument.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies as a result of this instrument. The revision of guidance to specified authorities as to how to comply with their duty under section 29(1) CTSA 2015 does not confer any additional obligation or result in significant impact.

- 12.2 The impact of the duty under section 29(1) CTSA 2015 was described in the Impact Assessment prepared for that Act. That Impact Assessment can be found here: [The Counter-Terrorism and Security Act 2015 \(Risk of Being Drawn into Terrorism\) \(Amendment and Guidance\) Regulations 2015 - Impact Assessment \(legislation.gov.uk\)](https://legislation.gov.uk)

- 12.3 This instrument does not impose new legal obligations on a public authority. The guidance to which it gives effect advises specified authorities as to how they comply with their existing duty under section 26 of the Counter-Terrorism and Security Act

2015. It is not anticipated that the updated guidance will result in additional financial burden.

12.4 Accordingly, a full Impact Assessment has not been prepared for this instrument.

13. Regulating small business

13.1 A small business may constitute a specified authority subject to the duty at section 26(1) CTSA 2015. This instrument and the revised guidance to which it relates do not impose any additional obligations on such businesses.

14. Monitoring & review

14.1 The instrument does not include a statutory review clause.

14.2 The effect of this instrument and the revised guidance will be monitored through ongoing engagement with specified authorities and others by the Home Office.

15. Contact

15.1 Enquiries about the content of this memorandum or the instrument can be made to Becky Sullivan at the Home Office, 5th Floor Peel Building, 2 Marsham Street, London, SW1P 4DF or via email to PreventDutyGuidance1@homeoffice.gov.uk.

15.2 Cathryn Ellsmore, Deputy Director for Prevent, at the Home Office, 5th Floor Peel Building, 2 Marsham Street, London, SW1P 4DF can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister for Security at the Home Office can confirm that this Explanatory Memorandum meets the required standard.