

Anti-social Behaviour, Crime and Policing Bill Fact Sheet

Fact sheet: Port and border controls (clause 132)

Background

1. Schedule 7 to the Terrorism Act 2000 (“Schedule 7”) is a counter-terrorism port and border power. It enables an examining officer to stop, question, search and, when necessary, detain a person travelling through a port, airport, international railway station or the border area lying between Northern Ireland and the Republic of Ireland. Such an examination is for the purpose of determining whether the person appears to be someone who is, or has been, concerned with the commission, preparation or instigation of acts of terrorism. The examining officer may question a person whether or not he or she has grounds for suspecting that person is, or has been, so involved. Failure to comply with a duty under Schedule 7 is a criminal offence. Schedule 7 also provides for the search of property which a person has with him and of goods. That property can be retained for the purposes of examination for up to seven days or for longer while the police believe that it might be required as evidence in criminal proceedings or in connection with deportation proceedings.
2. Schedule 7 is a vital part of the UK’s security arrangements and a key tool in countering the threat from terrorism. It has led to a number of convictions of individuals for terrorist related offences and contributes daily to helping keep the British public safe. Some examples are at Annex A. Examining people at ports and borders is necessary to protect public safety. Individuals who engage in terror-related activity travel across borders to plan, finance, train for and commit attacks.
3. It is important to put the use made of Schedule 7 into context. Only around 3 in every 10,000 people who pass through ports, airports and railway stations are examined. Of those examinations, over 65 per cent are completed in less than 15 minutes and 96 per cent last no more than one hour.
4. The Independent Reviewer of Terrorism Legislation, David Anderson QC, has made recommendations to improve the use of these powers.¹ He has welcomed the reform² with its accompanying parliamentary scrutiny and the speed at which amendments have been taken forward following public consultation. Between September and December 2012 the Home Office undertook a consultation on the operation of Schedule 7, inviting views on proposals to amend the primary legislation. Almost 400 responses were received (361 responses to an online form and 35 written responses). The majority of respondents were supportive of the

¹ <http://www.independent.gov.uk/terrorism-legislation-reviewer>

² <https://terrorismlegislationreviewer.independent.gov.uk/the-terrorism-acts-in-2012/>

changes proposed. The Government's response³ was published on 11 July.⁴

5. The amendments to Schedule 7 will reduce the potential for the powers to be operated in a way that may interfere with individuals' rights unnecessarily or disproportionately, whilst still retaining the operational effectiveness of the provisions.
6. People are aware that without reasonable suspicion they are potentially subject to being searched by port security when intending to travel, to being examined by an immigration officer on arrival or to being examined by police under Schedule 7 when they enter a port with the intention of travel or on arrival.
7. The powers in Schedule 7 are considered necessary and proportionate given the current terrorist threat, in relation to which numerous terrorist plots have involved individuals undertaking, or planning to undertake, international travel to plan and prepare for acts of terrorism.
8. Schedule 7 powers are unusually wide ranging but the importance of protecting the UK borders from threats to our national security means that their use is both necessary and proportionate. In a recent High Court judgment, in the case of *Sylvie Beghal vs. The Director of Public Prosecutions* [2013] (EWHC 2573 Admin), the Court ruled that the provisions in Schedule 7 strike the right balance between individual rights and protecting the public from terrorism. In the same judgment, the Court welcomed the Government's inclusion of amendments to Schedule 7 in the Anti-social Behaviour, Crime and Policing Bill.
9. The specific amendments in Part 11 of the Bill are explained below.

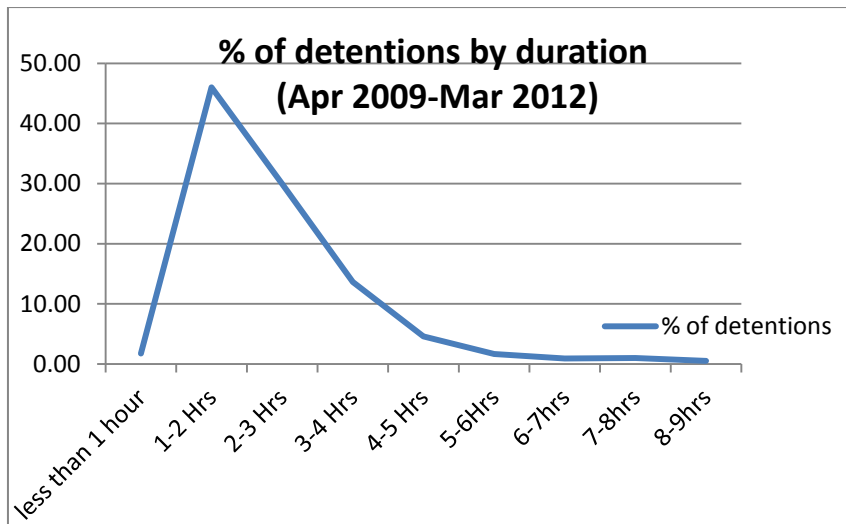
Reducing the maximum period of examination

10. The Bill reduces the maximum period of examination from nine to six hours. Between April 2009 and March 2012, just 1 in 2,000 examinations (that is, the examination of 125 people) lasted more than six hours.⁵

³ <https://www.gov.uk/government/consultations/review-of-the-operation-of-schedule-7>

⁴ David Anderson, exercising his role to provide independent scrutiny of the manner in which Schedule 7 is operated, has said he will be investigating and reporting on the examination and detention at Heathrow Airport of Mr David Miranda under Schedule 7 on 18 August 2013 – in view of the public interest in that case. Mr Anderson has said his investigation will involve consideration of whether the powers were lawfully, appropriately and humanely used, of the processes that were applied in order to ensure that this was the case and of any alternatives that were or might have been considered.

⁵ Data supplied by Association of Chief Police Officers, Terrorism and Allied Matters (ACPO TAM).



11. Reducing the maximum time for examination and detention would not reduce the operational effectiveness of examinations, but it would address the risk of unnecessarily lengthy detention. This proposal was strongly supported in the consultation. David Anderson, in his 2010 report, described the ability to detain for 9 hours as one of “the more extreme manifestations of the power”.

12. Requirements for an examination to extend beyond an hour can include language or interpretation issues, either unforthcoming or very detailed responses, inconsistencies in the information provided requiring clarification, and the need to examine property.

The rights to have a person informed of detention and to consult a solicitor privately

13. Currently a person formally detained under Schedule 7 *at a police station* has the right to have a named person informed of their detention and the right to consult a solicitor privately, at public expense. In July 2011 a new Home Office Circular provided guidance to police that all detainees, irrespective of location, should be offered access to private legal advice at public expense. The Bill amends the legislation so that a person detained *at a port* will also have the right to have a person informed of their detention and the right to consult privately with a solicitor. There was overwhelming support for this proposal from respondents to consultation.

Examinations beyond one hour will require formal detention, ensuring access to legal advice

14. Introducing a requirement for formal detention after one hour of examination will ensure that all individuals examined for more than one hour have a right to consult with a solicitor, and will make the process

of detention more consistent. More than 96 per cent of all examinations are completed within one hour. Introducing a statutory limit on examination without detention was supported by the majority of consultation respondents.

Review of the need for continued examination

15. Currently there is no statutory requirement for review of the conduct of examinations in progress. The majority of consultation respondents supported the introduction of a review process, giving added protection to the individual by increasing the scrutiny of examining officers' decision making. The Bill amends the legislation so that detention under Schedule 7 must be periodically reviewed by a review officer. The detail as to the timing of reviews and how they should be conducted will be provided in the statutory Code of Practice.

Training of examining and review officers

16. The Secretary of State will be required to make provision in the statutory Code of Practice about the training to be undertaken by persons who are to act as examining or review officers. The Code of Practice will also make provision about the process for designating immigration and customs officers as examining officers under Schedule 7.

Grounds and authorisation for strip searches

17. The Bill amends the legislation so that a police officer will need reasonable grounds to suspect that an individual is concealing something connected to the commission, preparation or instigation of terrorism and seek authority from a more senior officer before undertaking a strip search. Currently the need for prior reasonable suspicion is outlined as best practice in the Code of Practice but not in primary legislation. Both elements were strongly supported by respondents to the consultation. The police's ability to undertake a strip search is important and has not been compromised, however, the requirements for reasonable suspicion and for the authority of a senior officer place important safeguards on the exercise of this intrusive power.

Repealing the power to seek intimate samples (e.g. blood, semen)

18. Schedule 7 allows an examining officer to take an intimate sample. There is no known instance of this power being used and the Bill will repeal the power. This received strong support from respondents to the consultation and will address concerns about the breadth of Schedule

7 powers. Examining officers will retain the power to take non-intimate samples, such as finger prints and DNA.

Making and retaining copies of information

19. The Bill makes express provision for making and retaining copies of anything obtained in an examination. The copy may be retained for as long as is necessary for the purpose of determining whether a person is involved in the commission, instigation or preparation of terrorism, or for use as evidence in criminal proceedings or in connection with deportation proceedings. Information obtained in this way would be subject to the provisions of the Data Protection Act and the statutory Code of Practice on the Management of Police Information.

20. This amendment to Schedule 7 reflects the fact that all of us, including individuals concerned in terrorism, carry around more information than was the case in the past. Information is now largely stored electronically rather than on paper as it would have been in even the recent past. Without the power to examine a phone or laptop, the police would be severely curtailed in their ability to determine whether or not a person appears to be, or has been, involved in terrorism.

Code of Practice

21. The Bill requires the Secretary of State to issue a Code of Practice. The revised Code of Practice will underpin the changes to primary legislation by underlining best practice, giving guidance in the use of the power and providing detail on how the reviews of examination, provision of legal advice and training of officers will be expected to operate in practice. A separate consultation on the Code of Practice will be carried out in the summer of 2014. Subject to the passage of the Bill, Parliament will be asked to approve the Code in spring 2015. A draft Code of Practice is published alongside this fact sheet.

Home Office
October 2013

Annex A

Examples are given below of significant individuals convicted for terrorist offences in England and Wales following an examination under Schedule 7 at a port.

Christian Emde and Robert Baum, German nationals from Solingen, were arrested in July 2011 entering the UK at Dover port. A search of their rucksacks revealed a large quantity of extremist literature stored on a hard drive and a laptop computer. They were charged with having material which could be of use in terrorism on a computer and a hard drive.

The men pleaded guilty to a total of five offences under the Terrorism Act 2000. Emde was jailed for 16 months, whilst Baum was jailed for 12 months. Both were deported from the UK at the end of their sentence.

Ishaq Kanmi used an internet based pro-jihadi discussion forum in January 2008 to claim that he had established and assumed leadership of Al-Qaeda Great Britain (AQ-GB). Through the use of the forum (using a pseudonym) Kanmi outlined the strategic direction and objective of AQ-GB, which included large scale attacks against Western interests, attacks on political figures and the execution of all those who oppose the Mujahideen.

Kanmi was arrested on 14 August 2008 at Manchester International Airport where he was due to fly out to Finland. Searches revealed extensive material connected to jihad and terrorism. He pleaded guilty to four offences under the Terrorism Act and received a total sentence of five years' imprisonment in June 2010.

Two further members of the group were subsequently identified by the police, Abbas and Ilyas Iqbal. They were tried and convicted of offences under the Terrorism Act and sentenced to 3 years' and 18 months' imprisonment respectively.

Aabid Khan was examined at Manchester Airport on 6 June 2006 after arriving from Pakistan. His luggage was searched, and police found two computer hard drives, 16 CDs and a quantity of documents. The contents of this material showed Khan to be a significant figure in promoting the cause of violent jihad, not just in the UK but via the internet in the English speaking world, and inciting others to participate. He was a recruiter of others and evidence showed he also facilitated trips to Pakistan. The material in his possession included handwritten documents that showed his intention to take part in acts of murder and terrorism.

He was convicted of 3 offences under the Terrorism Act 2000. He was sentenced in September 2008 to a total of 12 years' imprisonment.