



Home Office

## Review of the Code of Practice for examining officers and review officers under Schedule 7 to the Terrorism Act 2000.

The Government Response.

## Overview of Consultation

Schedule 7 to the Terrorism Act 2000 ('Schedule 7') allows an examining officer to stop and question and, when necessary, detain and search, individuals travelling through ports, airports, international rail stations or the border area to determine whether that person appears to be someone who is or has been concerned in the commission, preparation or instigation of acts of terrorism.

Examining people at ports and the border area contributes daily to keeping the British public safe. Those engaged in terrorist-related activity travel to plan, finance, train for, and commit their attacks. Most major international terrorist plots have involved individuals travelling through international borders to plan and prepare their attacks. Schedule 7 is an important part of the UK's counter-terrorism strategy and key to the UK's border security arrangements.

The Anti-social Behaviour, Crime and Policing (ASBCP) Act, which received Royal Assent on 13 March 2014, made changes to Schedule 7 (and to Schedule 8, which contains provisions which apply in relation to persons detained under Schedule 7 powers). These changes were made following extensive public consultation<sup>1</sup> and are intended to reduce the potential scope for Schedule 7 powers to be operated in an unnecessary or disproportionate way that may interfere with individuals' rights, whilst still retaining their operational effectiveness.

All officers who exercise the functions in Schedule 7 are required under the Terrorism Act 2000 to abide by a Code of Practice concerning the exercise of those functions. **Therefore, the existing Code of Practice had to be revised in order to reflect the changes made to the powers by the ASBCP Act and to make specific provision on training and reviews.**

The consultation asked nine specific questions: How well, in your view, does the Code reflect:

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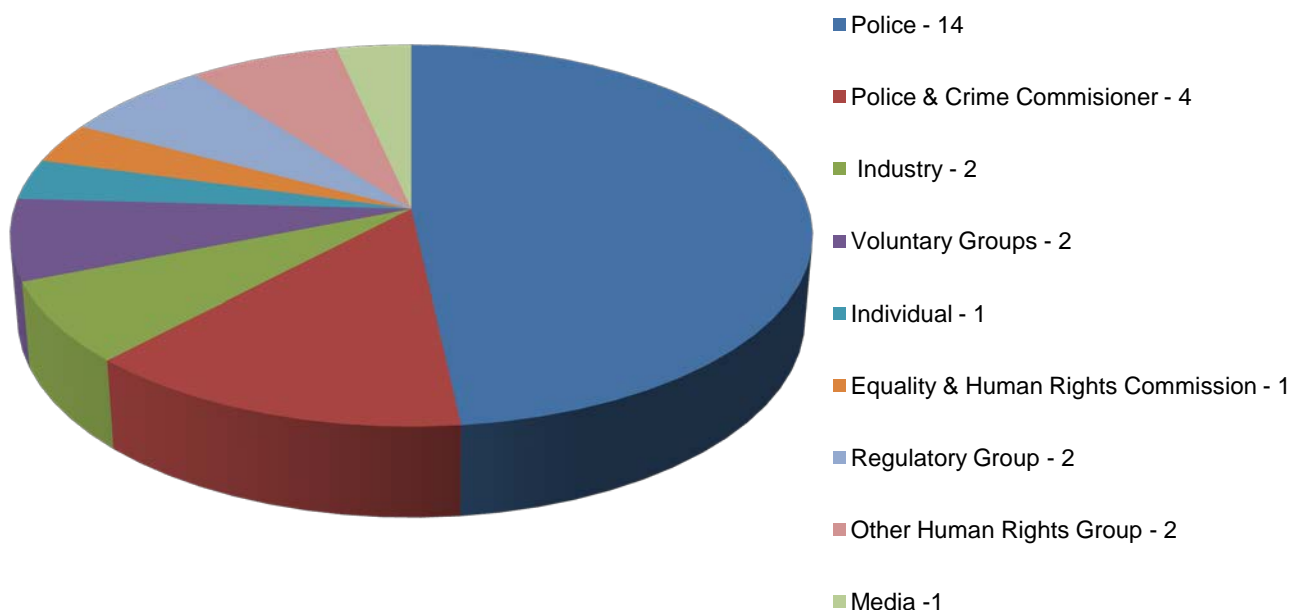
<sup>1</sup> In the autumn of 2012, we carried out a 12 week public consultation inviting views on potential changes to Schedule 7. We received 395 responses and published a summary of the responses on 11<sup>th</sup> July 2013. Please see: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/212548/WEB\\_-\\_2013\\_07\\_15\\_Review\\_of\\_the\\_operation\\_of\\_Schedule\\_7\\_A\\_Public\\_Consulta\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212548/WEB_-_2013_07_15_Review_of_the_operation_of_Schedule_7_A_Public_Consulta_.pdf)

- 1) The reduction of the maximum period of examination from nine to six hours;
- 2) The extension to individuals detained at a port of the statutory rights to have a person informed of their detention and to consult a solicitor privately;
- 3) The clarification that the right to consult a solicitor includes consultation in person;
- 4) Ensuring access to legal advice for all individuals examined for more than one hour;
- 5) The introducing of a statutory review of the need for continued detention;
- 6) The introduction of a statutory requirement for training of examining and reviewing officers;
- 7) The establishment of a statutory basis for undertaking strip searches to require suspicion that the person is concealing something which may be evidence that the person is involved in terrorism and a supervising officer's authority;
- 8) The repeal of the power to seek intimate samples (e.g. blood, semen); and
- 9) The express provision that an examining officer may make and retain a copy of information obtained or found in the course of an examination

The consultation also included an open-ended question:

- 10) Do you have any other comments on the revised code?

The public consultation was live between 15 April and 13 May 2014. 29 responses were received to the consultation. The chart below shows the background of respondents.



This document provides a summary of the responses we received.



## Summary of Consultation Responses

### Overall

The majority of respondents stated that the draft Code of Practice clearly reflects the legislative changes made in the ASBCP Act.

*“The SWCTIU welcomes the new Code of Practice. It is more comprehensive and detailed than the current one. The new Code of Practice not only reflects the legislation changes but also gives increased guidance around other aspects of examination and detention”*

– South West Counter Terrorism Intelligence Unit

*“It is commendable that the Codes address the repeated concerns regarding discrimination and acting in accordance with the Equality Act 2010, including its obligation to take steps to foster good relations between persons who share a protected characteristic and people who do not share it. It is also important that the draft includes concern about minimising embarrassment and offence”*

– Voluntary Group

### 1) The reduction of the maximum period of examination from nine to six hours

Nearly all respondents stated that this change was clearly reflected in the draft Code of Practice:

*“This is a welcomed clarity now on the difference between an examination, which can only last a maximum of one hour after which the examinee must be released or detained, and a detention which can proceed for anything up to the sixth hour from the start of the examination”*

– Voluntary Group

Many respondents used the opportunity to commend the reduction, whilst a number of police officers expressed concern that the reduced period for examination might impact on operational effectiveness.

Following a suggestion by a number of respondents, we have made the reduction in the maximum detention time more prominent by referencing it in the Notice of Detention under Schedule 7 to the Terrorism Act 2000.

## **2) The extension to individuals detained at a port of the statutory rights to have a person informed of their detention and to consult a solicitor privately**

The majority of respondents stated that this change was clearly reflected in the draft Code of Practice, but a small number of respondents requested that the circumstances in which a Superintendent may delay the statutory right of an individual to have a person informed of their detention at a port be clarified. Consequently, the revised draft Code will now include, within paragraph 50b, further details on the type of circumstance which could delay this right. This could be when a Superintendent has reasonable grounds for believing that informing that person may lead to alerting a person, making it more difficult to prevent an act of terrorism.

## **3) The clarification that the right to consult a solicitor includes consultation in person**

The majority of respondents stated this change was reflected clearly in the draft Code of Practice:

*“This right is well communicated in general”*  
– Human Rights Group

Some police respondents, whilst confirming that the change was clearly reflected in the draft Code, raised concerns about the potential impact of the change on the time available for questioning.

A small number of respondents raised logistical issues regarding availability of suitable accommodation and confidential access to solicitors. We have recommended that the Association of Chief Police Officers (ACPO) consider these issues as part of their current review on ports policing.

## **4) Ensuring access to legal advice for all individuals examined for more than one hour**

Most respondents stated this change was reflected clearly in the draft Code of Practice.

A small number of respondents suggested that access to Legal Aid for non-UK nationals be clarified. In response we have revised the draft Code of Practice, at paragraph 50a, to specify that non-UK Nationals can consult a solicitor privately (whether in person or by telephone) at any time if he or she so requests, which may be at public expense, should the detained person qualify.

## **5) The introducing of a statutory review of the need for continued detention**

The majority of respondents stated this change was reflected clearly in the draft Code of Practice and commended the change:

*“The requirement for detention to be reviewed at regular intervals has been laid out clearly in the revisions. There are no concerns regarding this process, and the guidance as to the timings of the review is considered to be fair and practical”*  
– Police and Crime Commissioner

At the request of a small number of respondents, we have further clarified, in paragraph 61, exactly what duties and rights the review officer must consider under Schedule 8, and the degree to which any rights requested must be satisfied.

Paragraph 64, which details the written record of the outcome of the review that the review officer must carry out, also now includes clarity on duties and rights.

## **6) The introduction of a statutory requirement for training of examining and reviewing officers**

The majority of respondents agreed that this change was clearly reflected in the draft Code of Practice, and welcomed the change:

*“We welcome the provisions in paragraphs 10-13 relating to the training, assessment and designation of immigration or customs officers before exercising powers under Schedule 7”*  
– Independent Police Complaints Commission.

*“The introduction of a statutory required training program for examining officers is welcomed as it is considered to be a positive step in monitoring the high standards of border policing”*  
– Police and Crime Commissioner

A small number of respondents questioned how community organisations, independent scrutiny groups and the public will be involved in developing the training of Schedule 7 examining and review officers.

ACPO has recently created a national challenge panel, the remit of which will include Ports Policing. Regional challenge panels are also going to be created, and these will feed issues into the national group. The regional panels are likely to include Independent Advisory Group members from the community, Police and Crime Commissioner’s and local Counter-Terrorism policing leads. Additionally, all consultation respondents who asked to be involved in the development of the training package will be directly contacted by ACPO.

A very small number of respondents raised the issues of repeat stops. The new police ports computer system will enable officers to quickly identify that people have been stopped previously and should help to reduce the duration of the repeat stops.

In response to those respondents who requested for more guidance on the use of Schedule 7 by unaccredited constables in an emergency, the revised draft Code of Practice (at paragraph 14) now provides examples. This Code also now specifies that the relevant authorising senior ranked ACPO officer must document the reasons for deploying non-accredited police officers.

**7) The establishment of a statutory basis for undertaking strip searches to require suspicion that the person is concealing something which may be evidence that the person is involved in terrorism and a supervising officer's authority**

Nearly all respondents stated that this change was clearly reflected in the draft Code of Practice.

Many responses welcomed the additional guidance that strip searches “must not be undertaken routinely” and the list of procedures (paragraph 57), which had to be observed and recorded should a strip search take place

**8) The repeal of the power to seek intimate samples (e.g. blood, semen)**

The majority of respondents stated that this change was clearly reflected in the draft Code of Practice and welcomed the change:

*“The step to repeal this power and the remaining options for identifying a detained person through non-intimate samples are evident in the document, it is thought to be a reasonable change which is unlikely to have a negative effect on the effectiveness of examinations, given that other powers and methods for identifying individuals remain in place”*

– Police and Crime Commissioner

A very small number of respondents took the opportunity to suggest the repeal of this power should have gone further by removing non-intimate samples.

Biometrics are only taken in a minority of Schedule 7 examinations, however, a small but significant number of samples have provided links to counter-terrorism investigations and identified individuals using alias details. The Government considers it important therefore to retain this power.



**9) The express provision that an examining officer may make and retain a copy of information obtained or found in the course of an examination.**

Most respondents stated that this change was clearly reflected in the draft Code of Practice.

Whilst most respondents were supportive of the provision, a small number of respondents expressed concern about the potential invasion of privacy. This provision is required to ensure that the law keeps abreast of technological advances. All of us, including individuals knowingly or unknowingly involved in terrorism, carry around more information than was the case in the past, and largely in electronic rather than paper format. As the Independent Reviewer of Terrorism Legislation noted in his June 2012 Annual Report, schedule 7 examinations, including the contents of mobile phones, laptops and pen drives, have been instrumental in securing evidence which assists in the conviction of terrorists. He stated that *“it is of vital importance that the copying and retention of data from mobile phones and other devices should be provided for by a law that is clear, accessible and foreseeable”*.

Paragraph 39 of the draft Code of Practice stipulates that Schedule 7 does not give the examining officer powers to access information that is stored remotely and that if the examining officer needs to access such material they should seek authority to use alternative statutory powers. One respondent questioned what alternative statutory powers could be used and how such use would be monitored. Most commonly, access would be under the Regulation of Investigatory Powers Act 2000, which has its own monitoring framework.

ACPO is producing internal guidance for examining officers, regarding the downloading and the storage of electronic information. This will include compliance with the Data Protection Act and the security of such material.

One respondent requested that the code include an explicit safeguard concerning legally professional privilege material. In response, in paragraph 40, we have specified that examining officers and review officers should take care not to copy material that is, or may be, subject to legal professional privilege.

One respondent requested protection for journalistic material. This issue was raised in the judicial review of the exercise of the powers under Schedule 7 in the examination of David Miranda at Heathrow Airport in August 2013. In this case, the High Court concluded that Mr Miranda’s examination was used for a lawful and proper purpose and was a proportionate measure in the circumstances.

## 10) Any other issues on the revised code

### *Screening Questions*

The most common issue raised by respondents under this general question was concern about the reference to common law powers in paragraph 20 on screening questions. Respondents were concerned that this reference created a false impression that police officers had an additional port and border security power.

In response, we have clarified the wording of this paragraph to make it clear that officers may approach any person and ask screening questions but that the individual is under no compulsion to answer questions or otherwise engage with the police in this process. Screening questions and the inspection of travel documents may be useful to enable the officer to determine whether or not to select a person for examination under Schedule 7, but the individual's participation is always voluntary. We have specified in the same paragraph that the screening process will, in most cases, last only a few minutes but if this period is significantly longer and the person is subsequently selected for examination, the examining officer should record the time screening began and the reason for the extended screening period.

### *A 'Saunders' assurance*

One respondent suggested that although the draft Code of Practice is correct, a 'Saunders' assurance<sup>2</sup> could be incorporated, informing an examinee that, other than in a charge for wilfully failing to answer questions and perjury, the answers given in the examination cannot be used in evidence against the person for the purposes of bringing criminal proceedings.

The Government's view is that this is unnecessary as there is already a legal safeguard concerning admissions in any subsequent criminal trial. Courts still have the discretion to exclude such evidence under section 78 of the Police and Criminal Evidence Act 1984, if the Court believes that, having regard to all the circumstances (including the circumstances in which it was obtained), admitting the evidence would have such an adverse effect on the fairness of proceedings that it should not be admitted.

### *Audio Recording*

A small number of respondents expressed concern about the introduction of audio recording.

Audio recording was introduced following broad public support in the extensive consultation<sup>3</sup> on Schedule 7 that was carried out in Autumn 2012. The draft Code of

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<sup>2</sup> In line with the ruling in *Saunders v United Kingdom* (1996) 23 EHRR 313.

<sup>3</sup> In the autumn of 2012, we carried out a 12 week public consultation inviting views on potential changes to Schedule 7. We received 395 responses and published a summary of the responses on 11<sup>th</sup> July 2013. Please see: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/212548/WEB\\_-\\_2013\\_07\\_15\\_Review\\_of\\_the\\_operation\\_of\\_Schedule\\_7\\_A\\_Public\\_Consulta\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212548/WEB_-_2013_07_15_Review_of_the_operation_of_Schedule_7_A_Public_Consulta_.pdf)

Practice (paragraph 67) specifies that if an individual willingly expresses a wish not to have the examination recorded, it need not be.

#### *Public Information Leaflet*

A small number of respondents requested to be involved in the work that is being taken forward by ACPO regarding the replacement template for the Public Information Leaflet. ACPO will contact these respondents directly to ensure that they are.

The new leaflet will outline the purpose and provisions of Schedule 7, obligations under Schedule 7, key points of the Code of Practice including an individual's rights and relevant contact details (including those needed to provide feedback or make a complaint). Additionally, it will be available in multiple languages and given to an individual at the start of any examination.

#### *Statistics*

Some respondents felt that Schedule 7 could be more transparent through the collection and release of further statistics, including local force data.

Extensive statistics about the operation of police powers under the Terrorism Act 2000, including Schedule 7 are already available and published online at: [www.gov.uk/government/collections/operation-of-police-powers-under-the-terrorism-act-2000](http://www.gov.uk/government/collections/operation-of-police-powers-under-the-terrorism-act-2000) (covering the period April 2010 to March 2013); and <http://webarchive.nationalarchives.gov.uk/20110218135832/http://rds.homeoffice.gov.uk/rds/terrorism.html> (covering the period September 2001 to March 2010)

The police are opposed to the release of force-by-force data as they indicate that this could interfere with port activity and might enable potential terrorists to identify ports where they believe they might be less likely to be stopped and questioned under Schedule 7. The Home Office will explore with ACPO what further data on the use of Schedule 7 can be collected and published at a national level.