



Home Office

Nationality and Borders Act 2022

Response to the Home Office
Consultation on modifications to the Code
of Practice for Schedule 7 to the
Terrorism Act 2000

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Introduction and contact details

This document is the post-consultation report for the consultation paper 'Consultation on modifications to the Code of Practice for Schedule 7 to the Terrorism Act 2000'.

It covers:

- the background to the consultation
- a summary of the consultation responses
- a detailed response to the specific questions raised in the consultation
- the next steps following this consultation

Further copies of this report, the consultation paper and revised draft of the Code of Practice to which this response relates can be obtained by contacting the Ports Powers Team at the following email address:

Email: Schedule3and7codes@homeoffice.gov.uk

Alternative format versions of this publication can be requested using the above email if required.

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Home Office at the above address.

Background

The consultation paper ‘Consultation on modifications to the Code of Practice for Schedule 7 to the Terrorism Act 2000’ was published on 15 March 2022. It invited comments on a draft revised Code of Practice for powers under Schedule 7 to the Terrorism Act 2000 which [was] modified by the Nationality and Borders Act 2022.

Under paragraph 7 of Schedule 14 to the Terrorism Act 2000, before laying a draft Schedule 7 Code of Practice (including a revised version of the code) before Parliament, the Secretary of State must publish a draft of the code, consider any representations made about the draft, and where appropriate, modify the draft in light of any such representations. The consultation intended to fulfil those requirements in respect of the Schedule 7 Code of Practice.

As part of the consultation, the Home Office invited comments on whether the revised Code of Practice is sufficiently clear to ensure the effective, fair and proportionate use of the powers. In particular, we wanted to know how well the:

- Revised code clarifies the circumstances in which Schedule 7 powers can be exercised away from port or border areas;
- Revised code clarifies the types of questions which officers are prevented from asking individuals who have arrived irregularly by sea in the UK;
- Other changes to the revised code make the document clearer and more accessible for those following the code in the exercise of their powers.

The consultation period closed on 12 April 2022 and this report summarises the responses, including how the consultation process influenced the further development of the Code of Practice.

Summary of responses

1. A total of three responses to the consultation paper were received, split between an organisation of legal professionals, individuals working for public authorities, and the Independent Reviewer of Terrorism Legislation, Jonathan Hall QC.
2. Responses were analysed for views on the clarity of circumstances under which Schedule 7 could be exercised away from port or border areas, alternative approaches to the questioning of those who have arrived in the UK illegally by sea, and the overall response to the other changes made in the draft revised code.
3. The responses either did not substantively comment upon or were broadly supportive of the majority of the changes made in the draft revised Code of Practice. Respondents noted that many of the changes in the code were introduced as a result of provisions contained within the Nationality and Borders Act, and therefore not the primary focus of the consultation.
4. However, changes and clarifications were suggested in two areas. Firstly, clarification was sought in relation to which types of facility would be included in order for an officer to comply with the criteria necessary to conduct a Schedule 7 examination away from a port. Secondly, respondents also suggested changes to the restriction on questioning those who had arrived irregularly by sea and who are therefore potentially subject to separate criminal proceedings. The two respondents who commented on this issue both agreed that the prohibition on questioning did not need to be included.
5. Both issues are discussed in more detail in the next section.

Responses to specific questions

6. As part of the consultation, we invited comments on whether the revised Schedule 7 Code of Practice is sufficiently clear to ensure the effective, fair and proportionate use of the powers, and in particular if:
- The revised code clarifies the circumstances in which Schedule 7 powers can be exercised away from port or border areas;
 - The revised code clarifies the types of questions which officers are prevented from asking individuals who have arrived irregularly by sea in the UK; and
 - Other changes to the revised code make the document clearer and more accessible for those following the code in the exercise of their powers.
7. Having given careful consideration to the representations received in response to these three areas, we intend to make some changes to the draft revised Schedule 7 Code of Practice. Further detail on the representations received and the subsequent changes are provided below.
8. Please note that references below to the draft revised code concern the draft published for consultation in March 2022. References to the “new” draft revised code concern the latest draft of the Schedule 7 Code of Practice laid alongside this response and which will be considered by Parliament in due course.

Clarifying the circumstances in which Schedule 7 powers can be exercised away from port or border areas

9. Two respondents addressed the broader changes made in the draft revised code, with one specifically commenting that the revisions appropriately clarified the circumstances in which Schedule 7 could be exercised away from port or border areas. Respondents did not suggest the need for further clarification or changes except in two areas: the restrictions on questioning of those examined subsequent to arriving irregularly by sea (which is dealt with under the next heading), and clarification around which locations would be included in order for an officer to comply with the criteria necessary to conduct a Schedule 7 examination away from a port.
10. One respondent specifically requested clarification around which facilities would be included under paragraph 28 of the draft revised code, where it states that ‘*the presence of the person in an immigration detention centre, police station or equivalent location...*’ in certain specified circumstances may support an officer’s belief that a Schedule 7 examination can be conducted.

Government response

11. Having considered the responses, we agree that the wording of '*an immigration detention centre, police station or equivalent location*' could be considered broad. However, for the code to exhaustively categorise or list the various locations Schedule 7 powers could be exercised away from a port or border area would risk excluding some relevant locations or facilities simply because they were not explicitly included. This is particularly relevant where some facilities are operationalised or closed at short notice, for example due to Covid-19.
12. In addition, we are confident that when the criteria for exercising Schedule 7 away from a port or border area are considered together with the presence of a person at a particular location, it provides sufficient clarity as to whether an examination is justifiable in practice. We will therefore make no further changes to paragraph 28 in order to provide operational flexibility to officers to examine individuals in a variety of locations, provided the criteria for exercising the powers away from port and border areas are met.

Clarifying the types of questions which officers are prevented from asking individuals who have arrived irregularly by sea in the UK

13. As noted above, two respondents suggested that paragraph 44 of the draft revised code should be changed. Paragraph 44 contains a prohibition on questioning those who have arrived irregularly by sea about the form of transport during a Schedule 7 examination. This is to mitigate the risk of a breach of Article 6 of the European Convention on Human Rights (the right to a fair trial) through self-incrimination (i.e. a person examined under Schedule 7 has no right to remain silent, and questions around method of entry into the UK could provide evidence of a separate immigration offence).
14. In his response¹, the Independent Reviewer of Terrorism Legislation, Jonathan Hall QC, argued that the prohibition on certain types of questioning could restrict officers from asking questions which could help determine a person's involvement in terrorism. He also noted that Article 6 rights would not necessarily be breached by questioning relevant to a separate offence in a Schedule 7 examination, a view reiterated by a second respondent. Instead, it was recommended that officers should specifically tell examinees that the purpose of the examination was not to gather information or evidence of immigration offences (in addition to the existing requirements for officers to inform the examinee of the nature and purpose of the examination under paragraph 34 of the current code). Another respondent highlighted that a primary consideration in Article 6 was not whether questions could be asked, but to what use answers to those questions would be put (i.e. their admissibility as evidence in criminal proceedings).
15. Although outside the scope of the Code of Practice, Mr Hall also recommended that consideration should be given to training Counter-Terrorism Police Officers to deal with individuals who have arrived in the UK irregularly and therefore may need special welfare considerations, as well as ensuring that examination locations are open to inspection under Article 4 of the Optional Protocol to the Convention against Torture

¹ The Independent Reviewer published his response to the consultation at <https://terrorismlegislationreviewer.independent.gov.uk/response-to-schedule-7-code-consultation/>

and Other Cruel, Inhuman or Degrading Treatment or Punishment as further safeguards against any breach of Article 6.

Government response

16. Having considered the responses above, we agree that a prohibition on questioning those who have arrived in the UK irregularly about their mode of travel is unnecessary, and such a prohibition could restrict officers from asking questions which may help determine a person's involvement in terrorism. We also agree that, in line with changes already made in the draft revised code, examining officers should inform examinees who have arrived irregularly by sea that the purpose of the examination is not to obtain information or evidence of any immigration offences. We have made these changes in the new draft revised code.
17. We will consider the other recommendations made by Mr Hall accordingly, noting the responsibility of the College of Policing and Counter-Terrorism Policing in establishing training and guidance relevant to the exercise of Schedule 7 powers.

If other changes to the revised code make the document clearer and more accessible for those following the code in the exercise of their powers

18. As noted above, responses either did not substantively comment upon or were supportive of the changes made in the draft revised Code of Practice (save for the two areas already mentioned). We therefore consider the draft revised code sufficiently clear and accessible (again, except for the changes noted above) and will not make any further amendments to the draft revised code on that basis.
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Public Sector Equality Duty

Equality Impact Assessment

In developing this change to Schedule 7 to the Terrorism Act 2000 the Home Office has complied with the public sector equality duty, which requires the department to have due regard to the need to achieve the objectives set out under s149 of the Equality Act 2010 to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

An Equality Impact Assessment has not been completed for the draft revised Code of Practice. However, an Equality Impact Assessment has been completed for the changes to Schedule 7. We do not consider these changes, reflected in the new draft revised Code of Practice, to have a negative impact on individuals with any of the protected characteristics (either directly or indirectly) relative to the scale of the threat to national security that the relevant types of terrorism (as defined in section 1 of the Terrorism Act 2000) pose.

Conclusion and next steps

The responses to this consultation have resulted in changes to the new draft revised Code of Practice. The new draft revised code will be laid before Parliament for approval. The code will only come into force once it has been debated in both Houses of Parliament and each House has expressly approved it.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf

This consultation complied with all aspects of the Cabinet Office consultation principles.

Annex A – Table of respondents

Type of respondents	Number of responses
Public authorities	1
Legal groups	1
Oversight bodies	1



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