



**Submission to the Joint Committee on Human Rights Legislative Scrutiny 2013
– 2014**

Anti-Social Behaviour, Crime and Policing Bill

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Stop and Search (Amendments to Schedule 7 Terrorism Act 2000)**Introduction**

The Equality and Human Rights Commission (the Commission) has identified stop and search, including Schedule 7 stop and search, as a priority area because of the equality and human rights implications of its use. The Commission has undertaken extensive work on stop and search under Section 1 (s.1) of the Police and Criminal Evidence Act 1994 (PACE), Section 44 (s.44) of the Terrorism Act 2000, s.60 of the Criminal Justice and Public Order Act 1994 and more recently Schedule 7, including responding to the Government's consultation on aspects of its implementation.

The Commission's analysis suggests that a power to stop, detain and question an individual about their political and religious beliefs and activities, as well as those of others in their community and family, without requiring prior suspicion or other limitations, is unlawful. It is a breach of the requirement that such an interference be '*prescribed by law / in accordance with the law*' pursuant to European Convention of Human Rights ("the ECHR") Articles 5 and/or 8.

According to the statistics provided at Annex A of the Home Office consultation document, between 70-90,000 people have been stopped under Schedule 7 each year between 2009-2012.¹ The Commission's research into the impact of counter-terrorism measures on the Muslim community noted that: '*There was widespread concern about the use of Schedule 7 of the Terrorism Act, stop and search, without suspicion at airports, as it affected a cross section of the Muslim population and involved questioning individuals about their religious beliefs and practices*'.²

Summary

The Commission notes the proposal in the Bill for a code of practice to be issued, which will specify details of the requisite training to be undertaken by officers who are to act as examining officers or exercise other functions under Schedule 7. The Commission would welcome the opportunity to assist in the development of this code of practice.

However, the Commission's analysis is that, while the amendments to Schedule 7 of the Terrorism Act 2000 in this Bill go some way towards meeting equality and human rights obligations, they have not gone far enough.

¹ Home Office (2012) Review of the Operation of Schedule 7: A Public Consultation

² Choudhury, T. and Fenwick, H. (2011) The impact of counter-terrorism measures on Muslim communities. EHRC Research Report no. 72. Manchester: Equality and Human Rights Commission. http://www.equalityhumanrights.com/uploaded_files/research/counter-terrorism_research_report_72.pdf

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The amendments impose some restrictions on the broad power in Schedule 7 to question and detain, and extend certain safeguards to those who are detained in ports and airports. The maximum period of examination is reduced from nine hours to six, but the Commission's analysis, as set out in its response to the consultation, is that three hours would be more compatible with human rights obligations without jeopardising operational effectiveness.

As amended, Schedule 7 powers still lack the necessary fundamental procedural protections such as a requirement of reasonable suspicion, which would enable the powers to meet the requirement to be '*prescribed by the law*' and '*in accordance with the law*' pursuant to Articles 5 and 8 of the ECHR.

Equality and human rights issues raised by the proposals are outlined in more detail below.

Outstanding Issues not dealt with in the Bill

Permitting individuals to be stopped and detained and subject to potentially highly intrusive questions about their political and religious beliefs and activities, as well as those of others in their community and family, *without any prior suspicion* remains unchanged.

The Commission's analysis suggests that a reduction of the maximum period of examination to 3 hours (rather than the 6 hours proposed) would better meet human rights obligations without affecting operational effectiveness. At present only 0.66% of examinations last longer than 3 hours.

The power to take non-intimate biometric data remains unchanged. Collection and retention of this data raise article 8 privacy implications, particularly when an individual has not been charged with an offence.

Schedule 7 powers can only be lawfully used to determine if the particular individual being examined themselves appear to be '*concerned in the commission, preparation or instigation of acts of terrorism*'. It should be made clear to examining officers in the applicable code of practice and to those who are examined, that it is unlawful to ask questions whose primary purpose is not to make that determination, but instead to gather information generally about the terrorist threat facing the UK or to obtain intelligence about activities within certain mosques or student organisations.

The power to compel people to answer questions, backed by the threat of criminal punishment and up to 51 weeks imprisonment, is an unusually extensive power. In line with relevant provisions of the criminal law, it should be stated in the statute and made clear to examining officers in the code of practice that they cannot compel a person whom they suspect of involvement in terrorism to answer questions. They must cease questioning pursuant to Schedule 7 if they form the suspicion of criminal activity. The person can be arrested and questioned with the protection provided by

the criminal process but cannot legally be compelled to answer questions pursuant to Schedule 7.

The Commission's legal analysis is that statements made by individuals during Schedule 7 stops cannot lawfully be relied upon in Control Order/Terrorism Prevention and Investigation Measures ("TPIM") proceedings nor in asset freezing proceedings because it is not the statutory purpose of Schedule 7 to gather information to inform such actions. That should be made clear in the Terrorism Act 2000. This has not been addressed in the Bill. We think that it should be made clear in the code of practice that Schedule 7 powers should not be used where the dominant purpose is to gather evidence for the Security Services or others to use in legal proceedings, and not so that the examining officer can determine for him or herself whether a person appears to be '*concerned in the commission, preparation or instigation of acts of terrorism*'.

Those questioned under Schedule 7, but not formally '*detained*', are not entitled to legal advice or accorded other rights. An individual being questioned cannot, in reality, leave as they are committing a criminal offence if they refuse to answer questions. A further difficulty is that if an individual requests a lawyer, there is no obligation on the examining officers to await the lawyer's arrival before starting to question. Where, however, there are no grounds of urgency or other imperative reasons for limiting access to a lawyer, it should be possible for questioning to await the arrival of a lawyer if one has been called and is en route.

Background

Schedule 7 of the Terrorism Act 2000 ('Schedule 7') is a national security port and border power. It enables an examining officer to stop, search, question and detain a person travelling through a port/airport or the border area. This is to determine whether that person is or has been involved in the commission, preparation or instigation of acts of terrorism. Stopping an individual does not necessarily mean that the officer believes the person is a terrorist.

An examining officer may require a person to answer questions or provide certain documents. If a person refuses to cooperate with the examination, they can be detained by the examining officer for a maximum of 9 hours. The Home Office Review of Schedule 7 public consultation³ document states that:

"Most examinations, over 97%, last under an hour. Fewer than 3 people in every 10,000 are examined as they pass through UK borders

³ Home Office Review of the Operation of Schedule 7: A Public Consultation
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/157896/consultation-document.pdf

An examining officer may also search a person or anything they have with them. A failure to comply with requests made by the examining officer may be considered an offence under the Act.”

What is proposed in the Bill?

Clause 124 and **Schedule 6** of the Bill would make a number of changes to these powers (and associated powers contained in Schedule 8 of the Terrorism Act 2000).

Paragraph 1(2) of Schedule 6 provides that immigration officers will only be able to exercise the powers in Schedule 7 if they are designated for this purpose by the Secretary of State. This limits the scope of the powers slightly, and brings the powers of immigration officers under the Schedule into line with those of customs officers.

Paragraph 1(3) inserts new paragraph 1A into Schedule 7 to the Terrorism Act 2000 which places a duty on the Secretary of State to issue a code of practice which will specify the details of the requisite training to be undertaken by officers who are to act as examining officers or exercise other functions under Schedule 7 and the procedure for making designations. The code of practice must be laid before Parliament and brought into force by an order subject to the affirmative resolution procedure.

Paragraph 2 removes the current nine hour maximum time for questioning under Schedule 7. Paragraph 2(3) provides that a person may be questioned for up to one hour under paragraphs 2 and 3 of Schedule 7. If the examining officer wants to question them for more than one hour, the person will have to be detained under paragraph 6 of Schedule 7, which triggers the safeguards contained in Schedule 8 to the Terrorism Act 2000. The Bill provides that persons cannot be detained under paragraph 6 for more than 6 hours.

Paragraph 3 amends paragraph 8 of Schedule 7 to the Terrorism Act 2000 which relates to the searching of persons examined under that Schedule. New paragraph 8(4) of Schedule 7 prohibits an intimate search of a person and such a search is defined in new paragraph 8(7) of Schedule 7. New paragraph 8(5) prevents a person from being stripped searched (again as defined in new paragraph 8(7)) unless: the person has been detained; an examining officer has reasonable grounds to suspect that the person is concealing something which may be evidence that the person is concerned in the commission, preparation or instigation of acts of terrorism; and a strip search has been authorised by a senior officer (as defined in new paragraph 8(6) of Schedule 7).

Currently the right conferred by Schedule 8 to consult a solicitor only applies to persons detained at a police station or places designated as such. The amendments

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made to Schedule 8 by paragraph 4 extend this right to persons detained at ports or airports under Schedule 7.

Paragraph 5 amends paragraph 10 of Schedule 8 to the Terrorism Act 2000 so as to remove the power to take an intimate sample from a person detained under Schedule 7.

Paragraph 6 inserts a new paragraph into Schedule 8 to the Terrorism Act 2000 which provides that a person's detention under Schedule 7 must be periodically reviewed by review officers at such intervals as may be specified in a code of practice which the Secretary of State must issue. The review officer may only authorise continued detention only if satisfied that it remains necessary for the purposes of exercising a power conferred by Paragraphs 2 or 3 (questioning for the purpose of determining whether the person appears to be a person who is or was involved in the commission, preparation or instigation of acts of terrorism). If the review officer does not authorise continued detention then the person must be released.

It is proposed to amend the Examining Officers under the Terrorism Act 2000: Code of Practice in order to update it in the light of the above changes.

About the Equality and Human Rights Commission

The Equality and Human Rights Commission is an independent statutory body established under the Equality Act 2006. The Commission works to reduce inequality, eliminate discrimination, strengthen good relations, and promote and protect human rights. As such, the Commission is the designated independent body required by European Union Equality Directives to promote equal treatment without discrimination⁴.

The Commission has also achieved 'A' status accreditation as a National Human Rights Institution, enabling us to participate in the United Nations Human Rights Council, and to undertake monitoring of the UK's human rights obligations⁵.

www.equalityhumanrights.com

⁴ Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, article 13 and Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), article 20.

⁵ 'Principles relating to the status and functioning of national institutions for protection and promotion of human rights' (the Paris Principles).