

CODE OF PRACTICE FOR EXAMINING OFFICERS UNDER THE TERRORISM ACT 2000.**General**

1. This code of practice applies to the exercise by examining officers of their functions under the Terrorism Act 2000 (“the Act”).
2. The notes for guidance are not provisions of the code but are guidance to examining officers on its application and interpretation.
3. “Examining Officer” for the purpose of this code has the same meaning as in paragraph 1(1) of Schedule 7 to the Act (“the Schedule”), i.e. a constable, immigration officer or customs officer designated for the purpose of the Schedule by the Secretary of State and the Commissioners of Customs and Excise. The code only applies to immigration or designated customs officers when they are exercising their functions as examining officers under the Act and not in any other circumstances, for example where someone is examined under the Immigration Act 1971 or the Customs and Excise Management Act 1979.
4. For the purposes of this code:
 - “port” and “border area” have the same meaning as in the Schedule. A place in Northern Ireland is within the border area if it is no more than one mile from the border between Northern Ireland and the Republic of Ireland;
 - Common Travel Area (“CTA”) has the same meaning as in section 1(3) of the Immigration Act 1971;
 - A “juvenile” (in Scotland, a “child”) means anyone who appears to be under the age of 17 in the absence of clear evidence that he/she is older. In Scotland, a “child” means anyone under the age 16 except where that person is between 16 and 18 and is the subject of a supervision requirement of a Children’s hearing.
5. The code should be available at all police stations for consultation by the police and members of the public. It must also be available at police offices at ports or in the border area where the powers are, or are likely to be, used. The code should also form part of the published departmental instructions/guidance for immigration officers and customs officers.

Immigration and Customs officers

6. Only exceptionally should an immigration officer or customs officer exercise functions under the Act and only
 - when a police officer is not readily available; or

- If specifically requested to do so by a police officer of the rank of sergeant or above.

In all cases, where reasonably practicable, the authority of a Chief Immigration officer in the case of an immigration officer, or in the case of a customs officer, a Customs Officer Pay band 7, should be obtained for any action taken under the Act. Where it has not been practicable to achieve prior authorisation, the Chief Immigration officer or the Customs Officer Pay Band 7 should be notified of the action taken as soon as possible after the exercise of functions has begun.

Scope of the Examination

7. The power to examine someone under the Schedule applies to a person on a ship or aircraft which has arrived in Great Britain or Northern Ireland (see paragraph 2(3) of the Schedule). The power to examine someone under the Schedule also applies where the examining officer *believes* that a person's presence at the port or in the border area (in Northern Ireland) is connected with his entering or leaving Great Britain or Northern Ireland (see paragraph 2(2) of the schedule). "Belief" should be justifiable and much will depend on the individual circumstances. For example:

- the presence of a member of the public in a controlled, international or Common Travel Area arrivals or departure area or common departure lounge at a port: or
- where someone is waiting to be, is being, or has been checked in for a flight/ferry/train to or from Great Britain or Northern Ireland:
- Where someone is inside, or attending to, a vehicle which is in the process of disembarking or awaiting embarkation at a port from or to Great Britain or Northern Ireland, as the case may be,

may be indicators that a person can be examined under the Schedule.

8. These are examples for general guidance only. They are not intended as an exhaustive list. On the other hand it might well not be sufficient that someone is present in a public area at a train station, seaport or airport in the absence of other indications that they are or have been travelling.

Examination powers

9. The purpose of questioning and associated powers is to determine whether a person appears to be someone who is or has been concerned in the commission, preparation or instigation of acts of terrorism. The powers, which are additional to the powers of arrest under the Act, should not be used for any other purpose. Unless, therefore, the examining officer is arresting the person, he/she need not be cautioned.

10. An examining officer may question a person whether or not he suspects that the person is or has been concerned in the commission, preparation or instigation of

an act of terrorism and may stop that person for the purposes of doing so. Examining officers should therefore make every reasonable effort to exercise the power in such a way as to minimise causing embarrassment or offence to a person who has no terrorist connections. The powers to stop and question a person should not be exercised in a way which unfairly discriminates against a person on the grounds of race, colour, religion, creed, gender or sexual orientation. When deciding whether to question a person the examining officer should bear in mind that the primary reason for doing so is to maximise disruption of terrorist movements into and out of the United Kingdom.

Note for guidance on paragraph 10

The selection of people stopped and examined under the port and border area powers should, as far as is practicable given the circumstances at the port or in the area, reflect an objective assessment of the threat posed by various terrorist groups active in and outside the United Kingdom. Examining officers should take particular care not to discriminate unfairly against minority ethnic groups in the exercise of these powers. When exercising the powers examining officers should consider such factors as

- *known and suspected sources of terrorism*
- *any information on the origins and/or possible location of terrorist groups*
- *the possible nature of any current or future terrorist activity*
- *the means of travel (and documentation) which a group of individuals could use*
- *Local circumstances, such as movements, trends at individual ports or parts of the border area.*

11. **The examining officer should explain to the person concerned either verbally or in writing, that they are being examined under Schedule 7 of the Terrorism Act 2000 and that he has the power to detain them should they choose to leave.** The examining officer should keep the length of examination to the minimum that is practicable. **An examination begins as soon as a person or vehicle has been stopped and screening questions have been asked (see note).** Once an examination lasts for one hour, an explanatory notice of examination (**TACT 1 form**) must be served by the examining officer on the person as set out in the Annex to this code. The contents of the TACT 1 form should be explained to the person by the examining officer. Where a person's examination is protracted or where it is thought likely to be protracted, the examining officer should make arrangements to ensure that the person has the opportunity to have refreshments at regular intervals.

Note for guidance on paragraph 11

Initial screening questions, used to identify the individual and their travel patterns, constitute an examination. The examination begins at the point at which any of the following occurs:

- ***More than brief screening questions are asked***
- ***The person or vehicle is directed to another place for examination***
- ***The person, or anything which s/he has with him/her or belongs to him/her, is searched.***

Neither examination or detention (nor any combination of examination/detention) can exceed nine hours.

12. Where a person is being questioned by an examining officer who is not a police officer and it appears necessary to continue the examination, the examining officer should refer him/her to a police officer at the port or, in the border area, a police station at the earliest opportunity. The examining officer should agree the time and date of the referral with the police officer receiving the person and both should keep a record of that time and date.

Records of Examinations

13. The examining officer should record in a centrally held record at the port or at a specified police station all examinations which last for more than an hour. The record should include the name of the person examined; the total duration of the examination from the start until completion; whether the person was detained and if so when detention began. The examining officer should also keep a record at the port or, in the border area, at a police station, of all examinations under an hour. (See note).

Note for guidance on paragraph 13

Records of examination that last over an hour should be kept centrally for statistical purposes. Records of examination that last under an hour, however, should also be kept at a port or at a police station in the border area for reference purposes in the event of a complaint or query

14. The examining officer should keep a record of any examination of someone believed to be an unaccompanied juvenile (or in Scotland, a child). The record should include the name and age (if known) of the juvenile/child.

If any of these records are kept by an examining officer who is not also a police officer, the details should be passed to a police officer who has been, is or is to be involved in the examination of the person, as soon as practicable

Juveniles (children) and other vulnerable people

15. Special care should be taken when considering whether to question someone, where it is evident that the person is a juvenile/child. A juvenile/child travelling

with a parent or guardian or responsible person over 18 (for example a teacher, social worker, or group leader where the juvenile is part of an organised party) should be examined in their presence.

16. A juvenile/child aged under 16 travelling alone should not normally be examined in detail unless an adult is present. Where such a juvenile/child is travelling with a friend or relative who is 18 or over, the examining officer should consider allowing that person to be present during any routine examinations unless that person is thought to be exerting influence or pressure which could be detrimental to the juvenile/child's interest. If a more detailed examination is considered necessary it should only take place in the presence of a parent, a guardian, or (if the juvenile/child is in care) a representative of the care authority or voluntary organisation, a social worker, or an adult who is not a police officer or employed by the police and who has been appointed to represent the juvenile/child's interests. The term 'in care' is used in this code to cover all cases in which a juvenile/child is 'looked after' by a local authority under the terms of the Children Act 1989, the Children (Northern Ireland) Order 1995 or is subject to a supervision order under the Children (Scotland) Act 1995.
17. Examining officers should bear in mind that young children can be easily intimidated when examined especially if they are travelling alone but, equally, that they can be vulnerable to exploitation by adults wishing to further terrorist aims. Examining officers are not therefore precluded from examining young children but should do so sparingly, for example where it is believed that the child may be caught up in some way, wittingly or otherwise, in the commission, preparation or instigation of an act of terrorism and the examining officer believes it is necessary in the child's best interests to speak to him/her.
18. These principles apply to other vulnerable people such as those who are mentally disordered or mentally handicapped. 'Mental disorder' is a generic term which has the meaning given to it in Section 1(2) of the Mental Health Act 1983, that is, mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind' and which includes reference to 'mental handicap' as defined in Article 3(1) of the mental Health (NI) Order 1986 as 'a state of arrested or incomplete development of mind which includes significant impairment and social functioning'.

Detention

19. An examining officer may detain a person in order to examine him/her for the purpose set out in paragraph 9 above. **Neither examination or detention (nor any combination of examination/detention) can exceed nine hours.** The examining officer should exercise the power to detain a person and arrange for that person to be taken to a police station for further examination as soon as is practicable if:
 - Examination cannot, for any reason, proceed or continue at the port or, in the case of the border area, that location

- or because it is considered necessary to take the person's fingerprints or other action to identify him/her **and the required consent has not been obtained. (See note)**

Where a person is detained under the Schedule at a place other than a police station, the examining officer should inform the detained person that he/she is not under arrest or caution but that he/she is being detained under the provisions of Schedule 7 to the Act. The examining officer should explain that this in itself does not necessarily mean that the examining officer suspects the detained person to be concerned in the commission, preparation or instigation of acts of terrorism, and that the purpose of the questioning is to enable the examining officer to determine whether the detained person appears to be such a person. The examining officer should advise the detained person that, under paragraph 5 of Schedule 7 to the Act he/she has a duty to give the officer all the information in his/her possession which the officer requests in connection with his determining whether the person appears to be, or have been, concerned in the commission preparation or instigation of acts of terrorism. The detained person should be reminded also of the duty to comply, under paragraph 18(1) of Schedule 7 to the Act.

Note for guidance on paragraph 19

Examination under the Schedule and detention are not synonymous. A person being examined is not necessarily detained and it is envisaged that most examinations will be conducted without the need to detain the person. Conversely, there may also be occasions when it becomes necessary to detain someone, usually because he/she refuses to co-operate and insists on leaving. In such circumstances, it may not always be necessary to take the person to a police station: detention may be short lived, for example to complete an examination.

Where consent has been obtained from an individual, fingerprints may be taken at the port of entry. However, where consent has been refused a person should be taken to a police station (because of the greater security offered).

Production of information

20. The examining officer should specify, in accordance with paragraph 5 of the Schedule, the kind of information which he expects the person concerned to produce for examination/inspection **(see note)**.

Note for guidance on paragraph 20

“Information” requested by an examining officer includes electronic devices and data and passwords to access that data. Where the information is located elsewhere, for example on another server, and is accessed via a mobile ‘phone or internet connection, further warrantry or other authority would be required.

21. The examining officer should give the person concerned a reasonable opportunity to produce information, documents or evidence of identity before conducting a search (see paras 23 to 32 below); and should bear in mind that people travelling to and from Northern Ireland and within the Common Travel Area may not be carrying a passport. An examining officer may nonetheless inspect a passport if one is carried by the person concerned. **An examining officer may use electronic equipment in order to identify persons and property.**

22. If the person concerned does not appear to understand what is being said, or if the examining officer doubts the person's ability to understand English, every reasonable effort should be made to communicate with him/her so as to ensure that the person comprehends what is required of him/her, where practicable using someone who can act as an interpreter.

Property

23. Under Paragraph 11 of Schedule 7 an examining officer may seize and retain for examination anything produced during an examination or found during a search for a period of up to seven days. If anything is found which in the opinion of the examining officer may be needed for use in criminal proceedings or which he believes may be needed in connection with a decision by the Secretary of State whether to make a deportation order under the Immigration Act 1971, it may be detained for as long as is necessary.

Searches

24. An examining officer may search a person who is being questioned for the purpose set out in paragraph 9 above, and their belongings, including baggage. He may also under paragraph 10(1) authorise another person to carry out a search on his behalf (see note). As under paragraph 10 above every reasonable effort should be made to reduce to a minimum the potential embarrassment or offence that may be caused to a person being searched. A baggage search does not have to be carried out by someone of the same sex, but should be if there is an objection. If it is not practicable to do so, the examining officer should note the objection in the officer's official notebook but may proceed with the search. (See note)

Note for guidance on paragraph 23

Section 114(2) of the Act confers on a "constable" the specific power to use reasonable force, if necessary, for the purpose of exercising a power under the Act (apart from the power to question someone under paragraphs 2 and 3 of the Schedule). Section 114(2) does not, however, confer on an immigration officer or customs officer the power to use reasonable force.

A person authorised under this paragraph shall be treated as an examining officer for the purposes of paragraphs 9(4) and 11 of Schedule 7 and paragraphs 2 and 3 of Schedule 14.

25. A personal search should only be carried out by someone of the same sex. This is a requirement under paragraph 8(3) of the Schedule.

26. The examining officer should bear in mind that the power must not be used for any other purpose than to determine whether the person appears to be someone who is, or has been, concerned in the commission, preparation or instigation of acts of terrorism. This does not, however, necessarily preclude a search being carried out under other powers (for example where the examining officer is a constable and has other powers by virtue of common law or another statute).

27. When a search of a person is carried out the examining officer should, if not uniformed, show a warrant card or similar evidence of his/her authority but need not give his/her name.

28. If requested, the examining officer should nonetheless provide sufficient information to the person (or his/her representative), such as an identification number and location which would enable the officer to be identified in the event of any query or complaint.

Strip Search

29. A strip search is a search involving the removal of more than outer clothing. A strip search should usually only be considered necessary where the individual is in **legal** custody as a result of detention under the Schedule.

30. A strip search at a port may, however, take place where an examining officer has reasonable grounds to suspect that a person has concealed something which may be evidence that he is a person who appears to be, or to have been, concerned in the commission, preparation or instigation of acts of terrorism, or where it is suspected the article itself may have been used for such purposes. Strip searches should not be undertaken routinely.

31. The following procedures should be observed when strip searches are conducted:

(a) an officer carrying out a strip search must be of the same sex as the person searched;

(b) the search should take place in an area where the person being searched cannot be seen by anyone who does not need to be present, nor by a member of the opposite sex (except an appropriate adult whose presence has been specifically requested by the person being searched);

(c) except in cases of urgency, where there is a risk of serious harm to the person being searched or to others, whenever a strip search involves exposure of intimate parts of the body, there should be at least two people present other than the person being searched, and if the search is of a juvenile or a mentally disordered or mentally handicapped person, one of the people should be an appropriate adult. Except in urgent cases as above, a search of a juvenile may take place in the absence of the appropriate adult only if the juvenile signifies, in the presence of the appropriate adult, that he / she prefers the search to be done in the appropriate adult's absence and the appropriate adult agrees. A record should be made of the juvenile's decision and

signed by the appropriate adult. The presence of more than two people, other than an appropriate adult, should be permitted only in the most exceptional circumstances;

(d) The search should be conducted with the proper regard to the sensitivity and vulnerability of the person concerned in these circumstances and, every reasonable effort should be made to secure the person's co-operation and minimise embarrassment. Persons who are searched should not normally be required to have all their clothes removed at the same time, for example, a man should be allowed to put on his shirt before removing his trousers and a woman should be allowed to put on her blouse and upper garments before further clothing is removed:

(e) Where necessary to assist the search, the person may be required to hold his/her arms in the air or to stand with his/her legs apart and to bend forward so that a visual examination may be made of the genital and anal areas, provided that no physical contact is made with any body orifice;

(f) If, during the search, articles are found, the person should be asked to hand them over;

(g) A strip search should be conducted as quickly as possible and the person allowed to dress as soon as the procedure is complete.

32. A record should be made of a strip search, including the reason why it was considered necessary to undertake it, those present and the outcome of the search.

33. The above provisions also apply to any person authorised under paragraph 10(1) of the Schedule by an examining officer to carry out a search on the officer's behalf.

Landing/Embarkation Cards

34. Paragraph 34 applies only if an order under paragraph 16 of the Schedule is in force requiring a person (on request by an examining officer) to complete or hand to the officer a landing or embarkation card.

35. The examining officer may require a person to complete a landing/embarkation card whether or not the officer suspects the person is or has been concerned in the commission, preparation or instigation of acts of terrorism (**see note**). The examining officer should bear in mind that, as with questioning, embarrassment or offence can easily be caused to people who have no terrorist connections and who may feel victimised. The principles referred to in paragraph 10 above therefore also apply when an examining officer requires the completion and handing over of a card.

Note for guidance on paragraph 35

The cards referred to under paragraph 16 of Schedule 7 shall be produced and paid for by the police not the aviation/maritime industry.

Notice of Duties and Rights

36. The duties and rights of a person subject to examination as set out in the Annex must be displayed prominently in a place where the person will be able to read them. If the examining officer doubts the person's ability to understand English, every reasonable effort shall be made to communicate the relevant information, where practicable using someone who can act as an interpreter.

Complaints

37. Complaints about the conduct of officers or treatment of an individual during examination/detention should be directed to the Chief Constable of the force responsible for the port/airport where the person has been examined/detained.

DRAFT

The Terrorism Act 2000

General

This notice is to inform you that you are being questioned under the provisions of Schedule 7 to the Terrorism Act 2000 as someone [whose presence at the port of [...] **or in the area**, is believed to be connected with entering or leaving Great Britain or Northern Ireland] [whose presence at any place in Great Britain or Northern Ireland (whether within or outside Great Britain or Northern Ireland)]. This in itself does not necessarily mean that the examining officer who is questioning you suspects that you are a person who is, or has been, concerned in the commission, preparation or instigation of acts of terrorism. The purpose of the questioning is to enable him to determine whether you appear to be such a person.

Your duties

You have a duty to be truthful and to give an examining officer all the information in your possession which the officer requests. You must also give to him, if he so requests, a valid passport, or other document which establishes your identity. You must also declare whether you have with you any documents of a kind specified by the officer and, if he so requests, give them to him. The examining officer may also search your luggage **and vehicle**.

The examining officer may, for the purpose of examination, detain any document which you have given to him, or anything found during a search of your luggage, for a period not exceeding 7 days (beginning with the day on which the detention commenced).

You may also be asked, or have been asked, to complete and hand to the officer an arrival or embarkation card. If so, you have a duty to comply with that request.

If you deliberately fail to comply with any of these duties, you could be prosecuted under paragraph 18(1) of Schedule 7 to the Terrorism Act 2000.

Your rights

You may, if you so request, have someone close to you, or known to you or likely to take an interest in your welfare, informed that you are being questioned and where you are. You can do this at public expense. You may also consult a solicitor, either in person, in writing or by telephone. **Examination will not be suspended pending the arrival of a solicitor.** If you wish to have someone informed that you are being questioned, or to consult a solicitor, you should tell the examining officer who will make the necessary arrangements. If you do not wish to make a request now you can still do so later at any time.

Detention

The examining officer also has the authority to detain you, if necessary, for up to 9 hours from the time your examination began.

Complaints

Complaints about the conduct of officers or your treatment during your examination/detention should be directed to the Chief Constable of the force responsible for the port/airport where you have been examined/detained.

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THE TERRORISM ACT 2000

Notice of Detention

To.....

You have been detained under the provisions of Schedule 7 paragraph 6 of the Terrorism Act 2000, so that an Examining Officer may exercise his power under paragraph 2 to determine if you are a person who has been involved in the commission, preparation or instigation of acts of terrorism.

Do you want someone informed?

You may, if you wish at public expense, have a friend, a relative, a person who is known to you, or is likely to take an interest in your welfare, informed that you are being detained here. *Under the provisions of Schedule 8, para 8 of the Terrorism Act 2000 or Schedule 8, para 16 in Scotland, an officer of at least the rank of Superintendent may delay this right for up to 48 hours.*

Do you want to contact a solicitor?

You may consult either in person, in writing or on the telephone, privately with a solicitor. If you do not wish to do so now, you may do so later and at any time while you are detained. *Under the provisions of Schedule 8, para 8 of the Terrorism Act 2000 or Schedule 8, para 16 in Scotland, an officer of at least the rank of Superintendent may delay this right for up to 48 hours.*

Execution of Service.

Served on (day) (date) at hours

By:

Signature:

Signature of
Detained person:

Witnessed by:

Signature: