



Home Office

**CODE OF PRACTICE FOR EXAMINING OFFICERS
UNDER THE TERRORISM ACT 2000
Consultation Document**

INTRODUCTION

Section 53 of the Terrorism Act 2000 brought into effect Schedule 7 to the Terrorism Act. This Schedule provides a comprehensive control to be established under which anyone entering or leaving Great Britain or Northern Ireland [or whose presence at any place in Great Britain or Northern Ireland (whether within or outside Great Britain or Northern Ireland) may be examined.

The original Code of Practice was laid before Parliament and came into force on 19 February 2001. The Code of Practice applies to the exercise by examining officers of their functions under the Terrorism Act 2000 ("the Act").

The Code has been re-drafted in consultation with practitioners and will be subject to a period of consultation during which we invite comments from any organisations, groups or individuals who may have an interest in this matter.

SUMMARY

The Code of Practice is used by examining officers who exercise the use of Schedule 7 of the Terrorism Act 2000 powers at ports. In the context of Schedule 7 an examining officer is defined as; (i) a **constable**, (ii) an **immigration officer** and (iii) a **customs officer** who is designated for the purpose of the schedule by the Secretary of State and the Commissioners of Custom & Excise.

The exercise of these powers does not require reasonable grounds of suspicion. The examining officer does not have to have prior suspicion that a person is a terrorist or has terrorist connections. The exercise of these powers does not necessarily indicate any adverse view of the subject to their use.

The exercise of the powers by the police is an operational matter for each force. However, the Code of Practice issued to examining officers provides guidance on the application and interpretation of the powers. The Code explains that examining officers must use the powers proportionately and should make every reasonable effort to minimise causing embarrassment or offence to a person who has no terrorist connections. Anyone detained under Schedule 7 are governed by the provisions under Schedule 8 of the Act.

The revised Code of Practice for Examining Officers on which comments are now sought, provides further clarification and guidance for examining officers on the use of Schedule 7 powers to reflect a number of legislative and operational changes. The Code ensures the rights of those individuals examined or detained are upheld whilst maintaining the effectiveness of police powers to investigate terrorism.

The Code covers the following areas:-

- Definition of when an examination begins.
- A key change under paragraph 11 to ensure the individual is given an explanation of an examination under Schedule.
- Where consent is given, enabling examining officer to take fingerprints at a port using the Livescan system.
- Provides clear reasons why property can be retained.
- An explanation of how individuals can lodge a complaint regarding their treatment during examination/detention.
- General drafting amendments to reflect Schedules 7 and 8 accurately.
- Annexes.

The Code will apply to persons detained under the relevant provisions in England & Wales. Equivalent guidance will be produce for Northern Ireland by the Northern Ireland Office.

Schedule 7 – background

- Schedule 7 of the Terrorism Act 2000 (TACT) (as amended by the Anti-Terrorism Crime and Security Act 2001) sets out the basis for conducting port and border controls. It enables an examining officer to, examine and/or detain a person who is “at a port or in the border area, and [where] the examining officer believes that the person’s presence at the port or in the area is connected with his entering or leaving Great Britain or Northern Ireland or their travelling by air within Great Britain or within Northern Ireland” to determine whether they are someone who is or has been concerned in the commission, preparation or instigation of acts of terrorism.
- In the context of Schedule 7 an examining officer is defined as; (i) a **constable**, (ii) an **immigration officer** and (iii) a **customs officer** who is designated for the purpose of the schedule by the Secretary of State and the Commissioners of Custom & Excise.
- The exercise of these powers does not require reasonable grounds of suspicion. The examining officer does not have to have prior suspicion that a person is a terrorist or has terrorist connections. The exercise of these powers does not necessarily indicate any adverse view of the subject to their use. In the police service the powers are used exclusively by Special Branch officers because of the sensitive nature of much of the intelligence which informs their application.
- The exercise of the powers by the police is an operational matter for each force. However, the Code of Practice of Examining Officers under the Terrorism Act 2000 issued to examining officers provides guidance on the application and interpretation of the powers. The Code explains that examining officers must use the powers proportionately and should make every reasonable effort to minimise causing embarrassment or offence to a person who has no terrorist connections.

Practical application of Schedule 7

When deciding whether to question a person the examining officer should bear in mind that the reasons for doing so are to detect, deter and disrupt terrorist movements into and out of the UK.

When making a stop under Schedule 7, the examining officer must:

- Identify themselves (providing a warrant or collar number will suffice).
- Explain why the person has been stopped.

- Reassure the individual that the stop is part of counter-terrorist policing.
- Remain polite at all times and treat the person stopped with respect and dignity.

The examining officer may ask a person they have stopped and questioned to:

- Give any information they request.
- Produce their passport.
- To declare and provide any documents in their possession as specified by the officer.

The person stopped, must comply with any of these requests. A person commits a summary offence if they wilfully fail to comply with a duty imposed under Schedule 7 or wilfully obstructs, or seeks to frustrate a search or examination under Schedule. Officers must give the person concerned reasonable opportunity to produce the documents and should be mindful that passengers travelling to Northern Ireland or within the Common Travel Area (CTA) may not be carrying a passport.

Comments

If you have comments that you would like to make as part of the consultation, please send them to:

**Code of Practice for Examining Officers under the Terrorism Act 2000
Consultation
5th Floor, Peel Building
2 Marsham Street
London
SW1P 4DF**

Or email them to: COPforExaminingOfficers@homeoffice.gsi.gov.uk

The consultation period will end on **24th August 2007**.

A summary of the responses received will be published within 3 months of the closing date for this consultation, and will be available on the Home Office website.

Responses: Confidentiality & Disclaimer

The information you send us may be passed to colleagues within the Home Office, the Government or related agencies.

Furthermore, information provided in response to this consultation, including personal information may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Please ensure that your response is marked clearly if you wish your response and name to be kept confidential.

Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.

The Department will process your personal data in accordance with the DPA – in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

This consultation follows the Cabinet Office Code of Practice on Consultation – the criteria for which are set out below.

The six consultation criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation practice, including carrying out a Regulatory Impact Assessment if appropriate.

The full code of practice is available at:

www.cabinet-office.gov.uk/regulation/Consultation

Consultation Co-Ordinator

If you have any complaints or comments specifically about the consultation process only, you should contact the Home Office consultation co-ordinator Christopher Brain by email at:

Christopher.brain2@homeoffice.gsi.gov.uk

Alternatively you may wish to write to:

**Christopher Brain
Consultation Co-ordinator
Performance and Delivery Unit
Home Office, 3rd Floor Seacole
2 Marsham Street
London
SW1P 4DF**