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Response to Home Office consultation on Schedule 7 of Terrorism Act 2000

<http://www.homeoffice.gov.uk/publications/about-us/consultations/schedule-7-review>

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CAMPACC comments are shown in italics.

Question 1: Are you replying to this consultation as?

- An individual
- On behalf of an Organisation
- If an Organisation which one?

CAMPACC was set up in 2000 to oppose the entire Terrorism Act 2000 on grounds that it defined 'terrorism' in extremely broad, vague ways which would enable the special powers to target people for their political activities or views. Our original grounds for opposition have been vindicated by the systematically political use of those anti-terror powers, augmented by several additional laws since 2000.

CAMPACC has closely involved groups being targeted by such powers, especially migrant communities (e.g. Kurdish, Tamil, Baloch, Basque) and refugees from Muslim countries. They have all made important contributions to our campaign over the past decade. Many of those individuals have been 'examined' at ports under Schedule 7 powers. In addition we have spoken to community workers and activists who are in continuous contact with wider communities affected by Schedule 7 powers. We must say here that these formidable powers have caused great distress to the community workers including those doing charitable work and activists in these communities. Now we draw on that extensive knowledge for our response to the Home Office consultation.

Although the Home Office review of Schedule 7 powers is welcome, it is based on several misleading propositions. An example of this is the assertion that border-site examinations aim 'to determine whether that person is or has been involved in the commission, preparation or instigation of acts of terrorism'. This putative aim has been often contradicted in practice. Dozens of individuals have told us their experiences of being repeatedly detained to be asked various intrusive questions - about their personal lives, along lines which are already known to the authorities; about the political views and activities of their acquaintances or entire communities; and about whether they are willing to become MI5 informers. The questions asked only infrequently relate to 'terrorism' and very often include apparently random questions about someone's associates, family, or about the innocent activities of a particular community, community centre or a perfectly legal political or religious

organisation.

Question 2: Schedule 7 powers are important for border security but can impact on the individual examined. Please tell us if you have personal experience of Schedule 7.

- Yes
- No
- Prefer not to say

Question 3: If you answered yes, what was your experience?

- of being personally examined
- As a police officer using or overseeing the use of the power
- As a legal practitioner
- A friend or relative was examined
- Prefer not to say

It is a worrying oversight that the options do not mention community workers and activists who are in continual contact with communities over a long period and have talked to persons affected by Schedule 7. CAMPACC organised three delegations of community leaders (Kurdish, Tamil and Baloch) to speak David Anderson QC March to May this year. Their view were reflected in his report of 2012.

Question 4: Which statement best describes your views about Schedule 7?

Schedule 7 powers should be strengthened because the UK border controls are not strong enough

Schedule 7 helps to ensure that the UK Border is effectively policed to counter terrorism

Schedule 7 powers are unfair, too wide ranging and should be curtailed

PERIODS OF EXAMINATION

An examining officer should have sufficient time to conduct an examination which includes the care and treatment of the examinee e.g. to allow comfort breaks or religious observance. In some cases, the examination will be extended to carry out a search, take fingerprints and/or DNA samples or to allow an individual access to an interpreter or legal adviser. No period of examination, including detention, can last more than nine hours. Between 1 January 2009 and 31 March 2012 only 3% of examinations continued over one hour and only 1 in 2,000 examinations lasted more than 6 hours. Data on the length of examinations can be found at Annex A.

Question 5: Do you think that the maximum period of examination should be reduced or stay the same?

- Reduced
- Stay the same
- Don't know

Please explain your answer

On what basis was the decision for 9 hours was made when the legislation was

enacted. What was the rationale? Looking at it from everyday life, 8 hours is a working day. How can 9 hours be justified? Given that 99.2 % of examinations (2209-12 data) takes 0-3 hours, there is no justification to have a potential 9 hours examination. The maximum should be 1 hour whereupon a decision should be made to release or to detain. This would remove the potential for exercising the power to prolong detention arbitrarily by the Examining Officers.

POWER TO DETAIN

During an examination the examining officer may use the power of detention at any time and will supply a Notice of Detention called a TACT 2 form, which will inform the person of their duties and rights. A person may be detained if they refuse to co-operate and insist on leaving. Detention is different from examination. It gives the person being detained the right to free legal advice and the examiner officers the power to take biometrics.

Options for Change?

Suggestions on how the detention framework could be improved include:-

- Requiring a supervising officer to review whether the examination needs to continue. This could help to minimise the length of examinations and detentions.
- After a certain time (e.g. 1 hour) all examinations could automatically become detentions. This would ensure all individuals have the same rights to legal representation after a set period and make the distinction between examination and detention less arbitrary.

Question 6: Do you think that a supervisor should review the need to continue the examination?

- Yes
- No

If yes, please describe what an examining officer should provide to make a good case to continue the examination.

The supervisor reviewing the decision of the examining officer establishes a basic check. However there should be clear criteria for deciding to continue the examination, in order to reduce arbitrary decisions or driven by prejudice. The reasons for any extension should be recorded, the detained person should be informed of the decision and it should be checked whether the detainee fully understands the situation. This would be analogous to the provisions of PACE.

8 For example one model is that the examining officer would need to make a case to a supervising officer to demonstrate why the examination should be further prolonged. The detention would be kept under supervision and review. However the time taken to prepare the case for review could itself lengthen the period of the examination.

Question 7: Should any examination which needs to exceed a set time limit require the person to be formally detained with the rights that go with that?

- Yes

· No

This should be brought in line with PACE. The review should be formalised and once the time limit has expired full rights should be provided and again checked that it is understood.

Question 8: What do you think should be the maximum time an examination should last before the person is formally detained?

1 Hour

3 Hours

6 Hours

Should be the decision of the examining officer based on specific circumstances

Other

With such a limit, the examining officer would have an incentive to exercise time-management and would have a disincentive to extend the examination arbitrarily.

SCHEDULE 7 AND LEGAL RIGHTS

Formal detention brings the right to legal advice and assistance that may be publicly funded⁹. Under the Terrorism Act 2000, this right only applies to detention at a police station but the Code of Practice indicates that access to legal advice should be given to all individuals who are detained.

Examinations may be extended because of the time taken for solicitors to enter the security area at the port, although their advice may more easily be provided by telephone.

All Schedule 7 examinations of people detained at a police station have to be video, or under certain circumstances, audio recorded. Those undertaken at a port do not need to be recorded as it may not be practical to install equipment to all locations. Examinations may be delayed if people have to be transferred to an interview room where recording facilities are available.

Options for Change?

Amend the Terrorism Act 2000 to give people examined at ports the same rights as those transferred to police stations.

Question 9: Do you think that people who are detained under Schedule 7 should have access to legal advice (which may be publicly funded) when they are detained at a port, even if it extends the period of examination (within the legal time frame)?

· Yes

This right must be publicly funded and should not depend on the financial position of the person detained. They are detained as a preventative measure by the authorities and to expect them to find financial resources at very short notice is effectively a denial of fundamental rights.

Question 10: Should all questioning of those detained be recorded even if, due to practical considerations, this extends the period of examination?

- Yes
- No

Since the authorities anticipate that a proportion of persons are likely to be detained at any port of entry, the examining officers must have resources at hand to record the interview. There are simple, inexpensive up-to-date machines available to carry out recording. There is no excuse for such equipment to be unavailable at ports, nor any excuse for routine recording to delay the examination period. With compulsory recording, the examination officer would have an incentive to act in a way that is defensible in the questions asked and language used.

Question 11: If waiting for legal advice or securing recording facilities will delay the examination do you think that the maximum period of detention should be extended?

- Yes
- No

As above, there is no excuse for recording to delay the examination. The provision of legal advice should be paramount. It should be made clear to the detained person why the delay is happening and whether he/she consents to the delay, as the basis to await the arrival of a legal advisor.

TRAINING OF EXAMINING OFFICERS

Schedule 7 powers are available to be used by any police officer, immigration officer or designated customs official (based at the border) but they are almost exclusively used by Special Branch officers. There are a number of specific training and induction courses that ports police officers are expected to undergo to ensure that Schedule 7 powers are operated professionally and with awareness of potential community impacts. The vast majority of ports police officers have undergone these courses.

Options for Change?

Schedule 7 could be considered to be a wide ranging without suspicion power. If examining officers could not use the power unless they had successfully completed mandatory accredited training it may help ensure that the power was operated to consistently high standards.

Question 12: Do you think that Schedule 7 powers should normally only be used by officers trained to use them?

- Yes
- No

Question 13: Do you think that officers who have not been fully trained to use Schedule 7 should be able to use the powers under supervision of a trained officer in exceptional circumstances, such as after a terrorist attack or when there is intelligence to indicate an imminent terrorist attack?

- Yes
- No

In the planning process, adequate provision should be made to train back-up examination officers whose services could be drawn upon when necessary. There is no reason why such reserve capacity could not be built up. This would also meet the needs when examination officers are on leave due to illness.

SEARCHES

The ability to examine a person as they are travelling is a good opportunity to identify those involved in terrorist activity, as they will often carry information that will be of evidential use. Many of the cases highlighted at Annex B involve individuals found to be in possession of documents and other materials connected to the preparation of terrorist acts.

During an examination an officer can search for and examine any items that may help him to decide whether the person may be involved in terrorism. The item can be kept for up to 7 days to allow for it to be examined and kept for longer if it is required as evidence.

Strip Searches: Schedule 7 allows for an individual to be strip searched. The police think that strip searches are rare, but do not keep a central record of numbers. Strip searches can be necessary as people may carry a concealed weapon, device or document through ports. There is no requirement for such searches to be authorised by a supervising officer.

The Code of Practice advises that, before an officer undertakes a strip search, he should have reasonable grounds to suspect that a person may have concealed evidence that they are involved in terrorist activity.

However there is currently no reference to strip searches in the Terrorism Act itself.
Options for Change?

- Due to the intrusive nature of strip searches the law could be changed to limit their use to when there is a reasonable suspicion that the individual is involved in terrorism. This would be in line with other similar strip search practices.
- The authorisation of a supervising officer could be required before an officer is able to carry out a strip search. This would give better oversight.

Question 14: Do you think that the Terrorism Act should be changed so that the examining officer should suspect the person is carrying something that will prove or disprove their involvement in terrorism or concealing an item which may be used to harm themselves or another before being strip searched?

- Yes

- No
- Don't know

By analogy to PACE, the power to strip search a person which is degrading and humiliating should only be used where there is a clear suspicion that they are concealing items that are connected with possible terrorism offences or where they are concealing something that may be used to harm themselves or others.

Question 15: Do you think that a supervisor should have to authorise the use of strip searches?

- Yes
- No
- Don't know

This should be analogous to the authorisation of custody sergeant in PACE.

THE TAKING OF BIOMETRICS

A person detained under Schedule 7 can have their biometrics¹¹ taken. The taking of fingerprints or DNA samples may be necessary to establish whether the person is involved in the commission, preparation or instigation of acts of terrorism. Fingerprints can also be taken to assist in confirming identity.

The Protection of Freedoms Act 2012 includes a requirement that the biometrics collected must be deleted after 6 months unless an independent reviewer agrees that it is necessary to keep them longer.

Three types of biometrics may be taken:-

- Fingerprints
- A non-intimate DNA sample (e.g. a hair sample or mouth swab)
- An intimate DNA sample (e.g. blood, semen, urine or pubic hair), but only at a police station with the person's consent and authority of a superintendent.

If a person provides written consent, most biometrics can be taken at a port. However, if they decline to give consent, biometrics can only be taken at a police station with the authority of a superintendent.

Options for Change?

- Biometrics (non-intimate) could be taken at port without consent with the authority of a Superintendent so that the period of the examination is not extended by having to transfer a person to a police station.
- Intimate biometric samples provide few advantages over other samples. They are particularly intrusive and the police have no evidence of such samples being needed. The Home Office believes that the power to take intimate samples could be removed from Schedule 7 without compromising operational effectiveness.

Question 16: If a person declines to provide consent should a Superintendent be able to authorise the taking of biometrics (non intimate) at a port? Please

explain your answer.

- Yes
- No
- Don't know

There is no power in PACE code D for the use of force to take fingerprints on the street using a mobile device. By analogy therefore examining officers should not have the power to take fingerprints without consent unless the person has been taken to a police station.

Question 17: Do you agree or disagree that the power to acquire intimate biometric samples should be removed? Please explain your answer.

- Agree
- Disagree
- Don't know

10 The Protection of Freedoms Act 2012 will restrict the circumstances when fingerprints and DNA data can be retained

11 The term biometrics may include photographs, fingerprints or DNA samples. *Again unless arrested and charged a person should not have force used to take intimate samples and further there is no power to take intimate samples except whilst in a police station and therefore it should not be allowed unless a person is arrested and charged.*

CONCLUSION

These are the main areas where we think the way in which Schedule 7 operates could be changed to provide a better balance between security and civil liberties. However, we are keen to identify any other aspects of the power which could be improved. Please let us know what areas of the Schedule 7 powers and their use you feel need to change.

Question 18: Do you think that the examination process could be improved in any other way?

- Yes
- No
- Don't know

If yes, please detail how?

18.1 RIGHT TO INFORM NEXT OF KIN

TACT 1 and TACT 2 lay out the duties of the detained. They should clearly state the right of the detained.

Both TACT 1 AND TACT 2 give this right but make it discretionary- this element should be removed. The examination officer should be obliged to do his/her best to carry out this duty.

18.2 RIGHT TO COMPLAIN

In both TACT 1 and TACT 2, the information on complaint and the options are limited. When people are questioned and detained, they are vulnerable and to expect them to complaint to the Chief Constable is unrealistic. Many people would want to reflect on their experience and complaint after they have left the port of entry and talked to their friends and family.

The option to make a written complaint means that the detained has all the required means to draft a letter, post it. Here there should be email address to complaint to and a phone number as well.

The option to complain to the IPCC should also be clearly stated giving the relevant postal address and emails.

The training should go beyond cultural awareness– there should be focus on anti-racism given that anti-Muslim racism is prevalent in our society and examination officers are exposed to newspapers which stereotype Muslims and (most importantly) that the anti-terror powers are being systematically to intimidate the Muslim community which has become a suspect community as a whole.

Question 19: Do you have any other comments that you would like to make about the use of Schedule 7?

19.1 This is a very limited review, especially the potential changes mentioned. It does not cover the range of concerns that were picked up in the two reports by the David Anderson QC. As a part of their in-service training, all examination officers should be made aware of the concerns expressed by migrant communities and described in those reports.

19.2 The law should be amended to require reasonable suspicion as grounds for examination officers to stop an individual. That individual should have recourse to a simple judicial procedure requiring retrospective disclosure of the grounds.

19.3 The law should be amended to remove the criminal offence of declining to answer any question. Otherwise the current power will continue to be used for terrorising individuals with the threat of criminalisation.

19.4 Our contacts with the Kurdish, Tamil, and Baloch communities show that some people are repeatedly stopped. Such persistent harassment

should be stopped. In particular, Kurds feel that they are targeted for belonging to the community from which the (banned) PKK derives its support, and that the targeting involves close links between MI5 and its Turkish counterpart. According to research done by the Islamic Human Rights Commission

(see <http://www.ihrc.org.uk/publications/briefings/9897-schedule-7-new-figures-released-by-home-office-for-2010-11-overview>), many Muslims are repeatedly stopped for questioning on successive journeys, and suspect that they are being placed on a database for continuous watching, despite never being charged with any offence nor even behaving suspiciously. This repeated questioning appears to be associated with information-gathering on particular countries, communities here or mosques here. There is highly intrusive questioning of individuals about their private lives and associates, with strong pressure to respond, even if they have no information about actual or potential crimes - which anyway seem not the focus of most questions.

19.5 There should be clear accountability procedures for the examining officers; they should be disciplined if they deviate from the required standards. Every complaint should be investigated; any abuse of power should result in disciplinary action. Their work should be inspected on an ongoing basis.

Additional comments

The content of interviews at ports under Schedule 7 should be limited to investigating whether an individual actually is engaged in terrorism-related activity. It should not be an occasion for threatening travellers, whether in a direct or implied way, about what might happen to them at their destination or when they return to this country. Nor should it be used in conjunction with requests to inform on other members of their community. We know individuals who were detained for questioning at UK borders in ways that were clearly linked to demands that they become informers, and where interview questions conveyed a threat about what would happen to them in future if they did not accept the request. As examples we cite the following press accounts:

Camden New Journal 28.11.2012; see

<http://www.camdennewjournal.com/news/2012/nov/family-claim-mahdi-being-held>

Independent 21.5.2009

See <http://www.independent.co.uk/news/uk/home-news/exclusive-how-mi5-blackmails-british-muslims-1688618.html>

In response to the above news item, in September 2009 CAMPACC organised a public meeting to discuss the concerns of the Somalis being targeted. A report of the meeting is on our web site at

We think it is unacceptable that refusal to answer ANY questions during a section 7 interview should be a criminal offence. The power to prosecute someone who refuses to ‘cooperate’ gives officers a unique opportunity to fish for information about anything about a traveller’s associates, community knowledge, activities etc and thus to pressurise the individual to provide information about legal political or religious activities, the friendship circle of an associate or colleague, etc. She or he may be obliged to do this in the knowledge that such information may be misinterpreted, or traced to the ‘informant’ who is being interviewed in ways that would harm him or her, or used to prejudice non-violent activities such as publication or peaceful protest. Nowhere else does UK law give such an opportunity to threaten and question people who are not under caution.

We also think it is unacceptable that people should have no right to compensation if they miss flights or suffer serious financial consequences as a result of being detained. There should be provision for compensation to be awarded after successful complaints.

We think there should be limits on the range of property that can be seized in the course of a Schedule 7 process and more restrictive limits on the time for which it can be held; 7 days is too long and unjustified. Apart from dangerous items (weapons, suspected ingredients for explosives or unidentifiable chemicals), other items - personal papers, personal luggage, computers, phones and money - should be returned intact after inspection within 3 hours, unless there is written justification authorised by a superintendent and made available to the person being stopped.

Contact person for CAMPACC submission

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