



Briefing: Schedule 7 to the Terrorism Act 2000

Schedule 7 is the widest ranging stop and search power in the United Kingdom. Recent legislative changes have introduced some procedural safeguards for those examined or detained under the power but it also increased police powers in some respects¹. This briefing outlines the powers now available to officers at ports under Schedule 7, a summary of the data on use and also the impact that existing research has shown that the power is having on communities across the UK.

Current powers

Schedule 7 is a highly intrusive power which operates outside of the regulatory framework that covers other police powers to stop and search. Police officers at ports and airports may examine and detain travellers for up to a total of 6 hours without requiring any suspicion to believe that they are involved in terrorism.² During the encounter, officers may examine or detain a person and do a number of the following:

- a) Conduct an **examination** for up to an hour by
 - questioning the individual or asking for identification
 - search them and their property and any associated vehicle(s)

- b) Subject the person to a **detention** for up to an additional 5 hours by
 - questioning the person and conducting a more extensive search of their belongings and any associated vehicle(s)
 - take samples of their DNA and fingerprints regardless of the outcome of the encounter
 - strip and search them if they are believed to be concealing any items
 - scan and download information from electrical property such as mobile phones, laptops and tablet PCs
 - retain their property for up to 7 days for further analysis or longer for any criminal proceedings

Travelers stopped under the power are not under arrest but are obliged to cooperate or face an arrest, a period of imprisonment and/or fine. Detainees now have a right to consult a lawyer in private before the start of the examination or detention and they can now also request the presence of their legal representative during the questioning; this can be facilitated by phone if it will take too long for them to arrive. There is no right to

1 Anti-Social Behaviour, Crime and Police Act (2014). For more information see:

<http://www.legislation.gov.uk/ukpga/2014/12/contents/enacted>

2 An individual can be 'examined' for up to an hour and then detained for up to a further 5 hours. No combination of an examination and detention can last beyond the maximum legal period of 6 hours from the start of the encounter and a periodic review of the person's detention must take place no later than every two hours during the detention.

compensation or assistance in rearranging any flights or other means of transportation missed as a result of a Schedule 7 examination or detention.

Data on use

In 2012–13, **56,257** examinations were carried out under Schedule 7, of which **2,265** lasted over an hour (4%) and **667** resulted in a detention (just over 1%); this represents a 12% reduction in overall use compared to the previous year. Data on the number of terrorism convictions arising from a schedule 7 examination or detention is not made public due to concerns over national security but the appendix at the end of this briefing provides a more detailed breakdown of this data.

This official data shows that, similar to other powers to stop and search, people from white backgrounds represent the single largest ethnic group stopped under Schedule 7 accounting for 37% of total examinations in 2012/13. Asians accounted for 24% (but make up 7.5% of the national population³), those from other backgrounds⁴ accounted for 10% of stops (3.3% of the population) and people from mixed backgrounds accounted for 4% of stops (2.2% of the population). However, as illustrated in the table below, when the length of examinations and detentions are taken into account, the data shows that people from white backgrounds tend to be stopped for shorter periods of time whilst those from black and minority ethnic (BME) groups are examined or detained for much longer periods and therefore subjected to the more extreme aspects of the power. This is consistent throughout the years.

	Percentage of examinations above an hour					Percentage of total detentions				
	White	Black	Asian	Mixed	Other	White	Black	Asian	Mixed	Other
2010/11	14	15	46	4	20	8	22	46	2	21
2011/12	13	16	41	4	26	9	25	38	4	25
2012/13	16	15	37	4	28	10	26	36	3	25

Table showing the percentage of examinations and detentions by self-defined ethnicity for each year since 2010/11; percentages excludes both examinations and detentions where the ethnicity was recorded as 'not stated'.

As can be seen from the table, above, people from Asian backgrounds are the single largest group examined for longer periods of time and detained compared to any other but a substantial number of blacks and those from other backgrounds also feature highly within these two encounters. It is within these longer examination periods and detentions that the more extreme elements of the power are applied including intensive questioning, a more thorough search of the person and their belongings and the taking of their biometric data.

Impact on communities and areas of contention

A number of communities in the UK are affected by the use of Schedule 7 although most of the existing research highlight a particular impact upon people from Asian and Muslim backgrounds. For example, a study for the Equality and Human Rights Commission (EHRC) found that Schedule 7 was having *“the single most negative impact”* on Muslim communities and also reported that:

3 Based upon 2011 census data produced by the Office of National Statistics.

4 The 'other' ethnic group includes people from Chinese and Middle Eastern/North African backgrounds

“for some Muslims, these stops have become a routine part of their travel experience” and that the power “is silently eroding Muslim communities’ trust and confidence in policing.”⁵

Another study with British Muslims revealed that they regularly faced being examined or detained by counter-terrorism officers at ports and not only did this undermine their faith and perceptions of fairness in counter-terrorism measures but, the authors argued, that despite research participants having a strong British identity these experiences had also undermined their British identity and made them feel excluded from society.^{6 7 8}

In particular, the taking of people's DNA and fingerprint information has caused some of the greatest discontent amongst travellers, most of whom were not suspected of any wrongdoing. As has been reported by a number of media outlets, not only have people felt criminalised but it has significantly undermined their faith in counter-terrorism.^{9 10}

The detention of David Miranda under Schedule 7 at Heathrow Airport in 2011 forced this little known power into the public eye and ignited an intense debate relating to the use of the power and whether counter-terrorism officers were over-stepping its purpose by using it as a 'catch-all' power to question and search people for a much wider purpose than the legislation had originally intended. The nature of the detention was widely condemned by various Members of Parliament yet similar concerns had already been raised many years prior to that incident by politicians such as David Lammy MP, Lord Nazir Ahmed and Humza Yousaf MSP and groups like StopWatch. The United Nation's Human Rights Committee also expressed *“grave concerns”* over the UK's use of counter-terrorism measures with a particular concern over what they judged to be religious and ethnic profiling in the use of these powers.¹¹ In a review of the utility of the Schedule 7, David Anderson QC, the UK's terrorism watchdog, concluded that:

“It is fair to say that the majority of examinations which have led to convictions were intelligence-led rather than based simply on risk factors, intuition or the ‘copper’s nose’. Indeed, despite having made the necessary enquiries, I have not been able to identify from the police any case of a

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- 5 Choudhury, T. & Fenwick, H. (2011) *The Impact of Counter-Terrorism Measures on Muslim Communities*. London: The Equalities and Human Rights Commission.
 - 6 Hopkins, N. (2011) Dual Identities and Their Recognition: Minority Group Members' Perspectives. *Political Psychology* 32(2) pp.181–367.
 - 7 Blackwood, L., Hopkins, N. & Reicher, S. (2012): I Know Who I Am, But Who Do They Think I Am? Muslim perspectives on Encounters with Airport Authorities, *Ethnic and Racial Studies*. Published online at [DOI:10.1080/01419870.2011.645845](https://doi.org/10.1080/01419870.2011.645845)
 - 8 Blackwood, L. M., Hopkins, N. & Reicher, S. D. (2012) *Divided by a Common Language? Conceptualizing Identity, Discrimination, and Alienation* in Jonas, K. J. and Morton, T. A. [eds] *Restoring Civil Societies: The Psychology of Intervention and Engagement Following Crisis*. West Sussex: John Wiley & Sons, Inc
 - 9 Verkaik, R. (2010) *They asked me where Bin Laden was, then they took my DNA!*. The Independent Newspaper. [21 Sept 2010]. Available at: <http://www.independent.co.uk/news/uk/home-news/they-asked-me-where-bin-laden-was-then-they-took-my-dna-2084743.html>
 - 10 MPA (2011) *Protecting the Innocent: The London Experience of DNA and the National DNA Database*. Report by the MPA Civil Liberties Panel. London: The Metropolitan Police Authority. June 2011.
 - 11 See: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Highlights24May2012am.aspx>

Schedule 7 examination leading directly to arrest followed by conviction in which the initial stop was not prompted by intelligence of some kind.”¹²

Despite the essential role of intelligence in successfully apprehending terrorists, the use of Schedule 7 is still called to question particularly since so many people not involved in terrorism are being examined or detained, particularly those from Asian and Muslim backgrounds who are still subjected to the more extreme aspects of the power.

Last year, the Supreme Court recently expressed concerns over the possibility for “*serious invasions of personal liberty*” owing to what they felt was a lack of controls of Schedule 7 powers¹³. David Anderson QC recommended the introduction of the following three additional safeguards to protect against some of the more serious invasions: introducing a threshold of ‘reasonable grounds’ before the power is used to detain a person beyond the first stage; downloading and retaining data from people's electronic items only where reasonable suspicion exists that the person may be involved in terrorism; and making it much clearer to examinees and detainees that their answers to questions under compulsion cannot be used against them in any future criminal proceedings that may arise as a result of the encounter.¹⁴ The Houses of Parliament's Joint Committee on Human Rights (JCHR) also scrutinised the recent legislative changes to Schedule 7 and concluded that a distinction should be made between the general power to question and search people under Schedule 7 and the more intrusive powers to detain them for up to 6 hours, take their biometric data and scan and retain information from their electronic items. So whilst it endorsed all of Anderson's recommendations it disagreed on the threshold for suspicion by going further to argue that the absolute minimum basis to detain a person beyond the first hour- the point at which the more intrusive powers can now be used- should be individualised reasonable suspicion rather than the broader threshold of reasonable grounds.¹⁵ Despite these three high-level interventions, none of these points were addressed in the Anti-Social Behaviour, Crime and Police Act 2014 and will therefore remain key areas of on-going concern in addition to on-going community concerns over the taking of people's biometric data and the questioning of people's social and religious views.

12 Anderson, D (2011) *Report on the Operation in 2010 of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006*. London: The Stationary Office. 18 July 2011.

13 R v Gul (Appellant). Michaelmas Term [2013] UKSC 64. See paragraph 64 from: http://supremecourt.uk/decided-cases/docs/UKSC_2012_0124_Judgment.pdf

14 Home Affairs Select Committee (2013) *Recommendations of The Independent Reviewer on Schedule 7 To The Terrorism Act 2000*. See: <http://www.parliament.uk/documents/commons-committees/home-affairs/CT%2011a%20David%20Anderson%20QC%20supplementary.pdf>

15 Human Rights Joint Committee (2013). *Fourth Report legislative Scrutiny Anti-social Behaviour, Crime and Policing Bill*. See: <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news/publication-of-fourth-report/>

Appendix – Examinations made under Schedule 7 of the Terrorism Act 2000

<u>Year and ethnicity</u>	<u>Under the hour examinations</u>	<u>Over the hour examinations</u>	<u>Total Schedule 7 examinations</u>	<u>Number of detentions</u>	<u>Number of DNA & fingerprints taken</u>
2009/10	82,870	2,687	85,557	..	
2010/11	63,396	2,288	65,684	913	769
<i>of which:</i>					
White	26,121	325	26,446	75	
Mixed	1,874	95	1,969	21	
Black or Black British	5,636	338	5,974	194	
Asian or Asian British	18,342	1,032	19,374	407	
Chinese or Other	10,772	461	11,233	188	
Not stated	651	37	688	28	
2011/12	61,662	2,240	63,902	680	592
<i>of which:</i>					
White	26,491	266	26,757	55	
Mixed	2,004	70	2,074	23	
Black or Black British	5,068	321	5,389	157	
Asian or Asian British	16,444	810	17,254	237	
Chinese or Other	10,663	527	11,190	155	
Not stated	992	246	1,238	53	
2012/13	53,992	2,265	56,257	667	440
<i>of which:</i>					
White	20,618	314	20,932	58	
Mixed	4,773	308	5,081	149	
Black or Black British	12,500	741	13,241	211	
Asian or Asian British	1,854	82	1,936	20	
Chinese or Other	9,701	569	10,270	145	
Not Stated	4,546	251	4,797	84	

Sources: Home Office (2013) Operation of police powers under the Terrorism Act 2000; Association of Chief Police Officers.