

**Submission to David Anderson QC–
Independent Reviewer of Counter-terrorism Legislation
Review of powers in 2011**

About StopWatch

StopWatch is an action group consisting of academics, lawyers, researchers, campaigners and community representative and young people seeking to work with police officers, ministers, MPs, policy makers and communities to ensure that the reforms to the police service are fair, inclusive and lead to better policing for all. More information can be found on our website at: www.stop-watch.org

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General

1. StopWatch welcomes this opportunity to feed into the independent review of the use of UK counter terrorism powers in 2011 and this submission relates specifically to the use of Schedule 7 of the Terrorism Act 2000. Since its founding in the Autumn 2010, StopWatch has become the leading voice in calling for stop and search powers to be used in ways that are more effective, transparent and proportionate to the threats we face.
2. Schedule 7 is the widest ranging stop and search power in the UK yet it is also the least transparent. Under this power, people can be detained at ports for up to 9 hours, undergo a detailed search and questioning as well as having their DNA and fingerprint samples taken even though they are not suspected of being involved in acts of terrorism or any other crime¹. This experience often leads to people missing their flights, ferries or trains without the right to compensation or alternative arrangements.
3. StopWatch welcomes the 23% reduction in the total number of Schedule 7 examination and detentions between April 2010 and March 2011 compared to the previous year². This shows the capacity to further reduce unnecessary stops at ports and there is no doubt that this move will go a long way towards restoring trust and proportionality in ports policing.
4. However, Schedule 7 remains the only significant counter terrorism power to have escaped the government's various security and counter terrorism reviews despite the Independent Reviewer of Counter Terrorism Powers,

1 The full extent of Schedule 7 powers can be viewed by following the link below:
<http://www.legislation.gov.uk/ukpga/2000/11/schedule/7>

2 See Annex A at the end of this document.

David Anderson QC, previously calling for a review of the power³ as well as politicians such as David Lammy MP⁴, Lord Nazir Ahmed and Humza Yousaf MSP and civic groups like StopWatch⁵.

Transparency

5. For the first time ever, the Home Office included statistics on Schedule 7 in its statistical bulletin of 13 October 2011 on the outcomes of the use of counter terrorism powers. We note, however, that no such data was include in the more recent bulletin of 22 March 2012. These bulletins are the only source of transparency and public accountability for this power and we believe that Schedule 7 data should always be included in every quarterly statistical bulletin.
6. We note that the Independent Police Complaints Commission (IPCC) has lowered their threshold for a referral to be made in relation to Schedule 7 such that it makes it easier for members of the public to complain about their experiences. This is a welcomed move towards promoting confidence in the complaints process by removing the duty of the police force responsible for the stop from handling the process.
7. **Schedule 7 data should always be included in each Home Office quarterly statistical bulletin on the use of counter terrorism powers as a way of ensuring transparency and increasing community confidence in policing.**
8. **Statistics on the number of complaints made against each police force and their outcomes should also be published to increase community confidence.**
9. **The IPCC handling of Schedule 7 complaints should continue and must be advertised more widely.**

Sensitive Data and Data-Sharing

10. This government has reduced the DNA & Fingerprint retention of people examined or detained under Schedule 7 from indefinitely to six months⁶. Whilst this reduction is a considerable move towards a more proportionate

3 Report on the Operation in 2010 of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006 by David Anderson QC. 18 July 2011.
http://terrorismlegislationreviewer.independent.gov.uk/publications/Terrorism_Act_2000_and_2006-annual_independent_review2010.pdf

4 http://www.davidlammy.co.uk/Statement_on_Schedule_7_of_the_Terrorism_Act_2000

5 The Guardian (2011). *Time for an Independent Review of the Terrorism Act's Schedule 7*. 26 May 2011.
<<http://www.guardian.co.uk/commentisfree/libertycentral/2011/may/26/terrorism-act-schedule-7>>

6 Written response in the House of Lords to Lord Nazir Ahmed. 26 April 2011.
<http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/110426w0003.htm#1104267001048>

use of the power, the retention of biodata from innocent people still fails to strike the right balance in treating innocent people with fairness. Their data is not only stored on the national DNA database but also on the counter terrorism database which is specifically dedicated to storing data on convicted terrorists.

11. In fact, compared to the other aspects of this power, nothing has caused greater discontent amongst people who have been examined or detained under Schedule 7. Not only has this made people feel criminalised^{7,8} but it has significantly undermined faith in counter-terrorism. The police have sufficient powers to take a person's biodata upon arrest of an individual and therefore there is no compelling reason why this policy should continue.
12. The essence of this problem is two-fold. First, the same power that governs the retention of the biodata of actual terrorist suspects and convicts (Schedule 8 of the same Act) simultaneously allows for the taking of this data of innocent people detained at ports. Second, whereas these powers were originally intended to be used in exceptional circumstances, it has now become 'standard practice' at ports and therefore lacks proportionality. Schedule 8 represents a fundamental flaw in the law which needs to be changed.
13. In addition, we are gravely concerned over the extent to which information gathered from the examination or detentions of innocent people under Schedule 7 is shared with other domestic security agencies or foreign governments and acted upon. Members of the StopWatch legal team have dealt with cases in the past where inaccurate and out-of-date information obtained from these encounters were not only shared with security and policing agencies but also acted upon. In addition, other members of StopWatch have come across cases of people complaining that they had been questioned about certain locations or questioned about the activities of law-abiding individuals from their local areas suggesting that this power is being used as a phishing exercise.
- 14. The law and the codes of practice relating to Schedule 8, which governs how biodata is taken in relation to counter terrorism powers, should be amended to cease the taking of such data from innocent people examined or detained at ports.**
- 15. A public statement should be made confirming the destruction of both the physical samples and database records of biodata taken from innocent people at ports so as to reassure those concerned.**

Impact on ethnic minorities

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- 7 The Independent Newspaper (2010). *They asked me where Bin Laden was, then they took my DNA*: 21 Sept 2010.
<http://www.independent.co.uk/news/uk/home-news/they-asked-me-where-bin-laden-was-then-they-took-my-dna-2084743.html>
 - 8 *Protecting the Innocent: The London Experience of DNA and the National DNA Database*. Report by the MPA Civil Liberties Panel. The Metropolitan Police Authority. June 2011.

16. We are gravely concerned over the disproportionate use of these powers against ethnic minorities (as illustrated in Annex A).

In summary, of those examined between April 2010 and March 2011:

- 40% defined themselves as White
- 29% defined themselves as Asian or Asian British
- 17% defined themselves as Chinese or other
- 9% defined themselves as Black or Black British
- 4% described themselves as mixed or did not state their ethnicity.

However, of those further examined or detained:

- 45% defined themselves as Asian or Asian British,
- 21% defined themselves as Black or Black British,
- 21% defined themselves as Chinese or other,
- 8% defined themselves as White
- 5% defined themselves as mixed or did not state their ethnicity.

17. The statistics above confirm that people from ethnic minorities, particularly those from Asian or Black backgrounds, are significantly more likely to be subjected to the more extreme elements of Schedule 7 powers and be detained for longer periods of time. Unsurprisingly, much research has found that Schedule 7 powers are the single greatest source of police-community tension amongst many communities⁹. Indeed such is the impact of this power that, as anecdotal evidence suggests, people are either deterred from travelling abroad or are travelling great distances across the UK to board at other ports in order to avoid facing a Schedule 7 examination or detention¹⁰.

18. We reiterate our calls for the government and police to adopt a more intelligence-led approach to policing which has, time and time again, shown to be more far more effective in preventing terrorism than simply profiling people at ports based on their perceived ethnic or religious background. In this regard, Behavioural Assessment Screening Systems (BASS) and Passenger Assessment Screening Systems (PASS) training could provide a key solution although more information is needed on how this is done and how its effectiveness is measured.

19. The profiling of passengers based upon their perceived ethnic or religious background must cease and officers found to be consistently in breach of this should be disciplined and retrained accordingly.

20. An assessment to identify the extent of the disproportionate use of Schedule 7 on minority ethnic communities and the impact on community relations should be undertaken.

9 Choudhury, T. & Fenwick, H. (2011) *The Impact of Counter-Terrorism Measures on Muslim Communities*. The Equalities and Human Rights Commission.

10 Scottish TV (STV) *Ethnic minority representatives invited to airport security open day*. 1 June 2011. <http://news.stv.tv/scotland/west-central/253622-ethnic-minority-representatives-invited-to-airport-security-open-day/>

- 21. Ports policing should be intelligence led and details surrounding BASS and PASS training should be made public. An independent evaluation of the two systems should be undertaken and the results made public.**

Review of Schedule 7 powers

22. Schedule 7 remains the only significant counter terrorism power to have escaped the government's various security and counter terrorism reviews despite the previous independent review into the use of counter terrorism powers in 2010 recommending that this be undertaken. As yet, it remains unclear when the review will take place, what the terms of reference will be and who will be responsible for this review.
23. A review into Schedule 7 has never been so urgent. In fact, the results of the United Nation's recent Universal Periodic Review into the human rights record of the United Kingdom saw a number of UN Member States raise grave concerns over the use of counter terrorism powers in the UK and call for a review of these powers¹¹, with particular concerns expressed over religious and ethnic profiling. This serves as a political embarrassment for policing in the UK and, as previously mentioned, although a review of counter terrorism powers has been completed, a review of Schedule 7 remains unseen.
- 24. In light of all of the above, an independent review into Schedule 7 should be undertaken as a matter of urgency. The parameters set out in the previous independent review into counter-terrorism powers should be adopted with a view to implementing the following recommendations:**
- **The introduction of a minimum threshold of suspicion on which individuals can be stopped based upon objective facts, information, and/or intelligence, so as to minimize the risk of arbitrary and/or discriminatory application of stop and search powers.**
 - **Amend the legislation and police codes of practice to ensure that DNA and fingerprint samples are only taken from people who have been *arrested* rather than examined or detained at UK ports under Schedule 7.**
 - **Extend the PACE Codes to cover stop and searches conducted under Schedule 7 of the Terrorism Act 2000, requiring that these stops be monitored under the same recording framework as all other stop and search powers and ensure that this data is shared with community monitoring groups.**
 - **Tighten the codes of practice covering the conduct of officers under Schedule 7 to ensure the standardised treatment for those detained across different ports and airports. Key**

¹¹ See: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Highlights24May2012am.aspx>

recommendations include delaying questioning and searches until lawyers arrive when requested and providing assistance to people in rebooking flights, ferries, trains or other means of transport when they have been missed due to a Schedule 7 stop.

- Support the decision of the Independent Police Complaints Commission (IPPC) to handle all complaints made in relation to Schedule 7 rather than the police force responsible for the stop, examination or detention.
- Ensure that all people examined or detained under Schedule 7 are allowed access to a lawyer where requested.

Annex A - Examinations made under Schedule 7 of the Terrorism Act 2000 (April 2010- March 2011)

				England and Wales
Number of persons searched				
Number of searches and resultant detentions by ethnicity	Under the hour examinations	Over the hour examinations	Total Schedule 7 examinations ¹	Number of detentions ²
<u>Number of searches</u>				
2009/10	82,870	2,687	85,557	..
2010/11	63,396	2,288	65,684	913
<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

1. Does not include examinations of unaccompanied freight.
2. In 2009/10 reliable data on those detained were not recorded separately; estimated data are included in the total of over the hour examinations.

Source:

Home Office Statistical Bulletin HOSB 15/11: Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes and stops and searches. 13 October 2011.

<Available at: <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/counter-terrorism-statistics/hosb1511/hosb1511?view=Binary>>