



The Bar Council

Bar Council response to the Home Office consultation on Modifications to the Code of Practice for Schedule 7 to the Terrorism Act 2000

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Home Office consultation paper on Modifications to the Code of Practice for Schedule 7 to the Terrorism Act 2000.¹
2. The Bar Council represents approximately 17,000 barristers in England and Wales. It promotes the Bar's high-quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board (BSB).
4. The Code of Practice covers the practice of "port stops": counter-terrorism examinations, interviews and searches at ports and at the border between Northern Ireland and the Republic of Ireland.
5. The proposed modifications to the Code are required to reflect changes which it is anticipated will be made to Schedule 7 itself, as well as related provisions, under the Nationality and Borders Bill, which is presently passing through Parliament. Our consideration of the modifications to the Code proceeds on the basis that those changes –

¹ <https://www.gov.uk/government/consultations/code-of-practice-for-schedule-7-to-the-terrorism-act-2000/consultation-on-modifications-to-the-code-of-practice-for-schedule-7-to-the-terrorism-act-2000#:~:text=State%20for%20Security-Executive%20Summary,as%20defined%20in%20the%20Act.>

which are not themselves the subject of this consultation, and some of which are controversial – will indeed be made.

6. Against that background, we consider that the revised code appropriately clarifies the circumstances in which Schedule 7 powers can be exercised away from port or border areas, in a way which harmonises the code with the likely amendments to Schedule 7 itself. That is subject to one exception, which relates to para. 44 of the Code, which as presently drafted requires examining officers to avoid asking certain questions of individuals who are stopped away from port areas. The justification for this is suggested to be the privilege against self-incrimination.

7. In preparing this response, we have had the advantage of reading the response of Jonathan Hall QC, the Independent Reviewer of Terrorism Legislation. We have considered, and agree with, his observations in relation to para. 44. The privilege against self-incrimination (which represents one aspect of the Article 6 right to a fair trial) does not typically prevent questions being asked of a suspect, but rather focuses on the use that can be made of the answers. See for example R v K(A) [2009] EWCA Crim 1640 in which the CoA held that material obtained under compulsion in matrimonial proceedings could not be used in a subsequent trial for tax evasion. We agree therefore that there is no need to require officers to avoid asking such questions, merely to provide that any incriminating responses are not admissible in evidence in criminal proceedings.

8. Subject to that one issue, and on the assumption that the proposed amendments to Schedule 7 will indeed be made, we agree that the modifications to the Code are justified and desirable.

Bar Council²

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For further information please contact

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² Prepared by the Law Reform Committee