

CONSULTATION RESPONSE

TO	Home Office
FROM	The Independent Police Complaints Commission (IPCC)
REGARDING	Schedule 7 Code of Practice

Summary

This submission is based on evidence identified during the course of our work, and focuses on the following issues:

- Training and use of powers.
- Purpose and exercise of examination powers.
- Screening questions.
- Examination period.
- Duties under examination.
- Searches.
- Property.
- Rights under examination.
- Records of examinations.
- Duties of the person being examined when under detention.
- Children and other vulnerable people.
- Strip search.
- Reviews of detention.
- Audio recording.
- Complaints.
- Notice of detention under Schedule 7 to the Terrorism Act 2000.
- Training and accreditation standards.
- Accreditation of review officers.

The Independent Police Complaints Commission (IPCC)

1. The IPCC's primary statutory purpose is to secure and maintain public confidence in the police complaints system in England and Wales. We are independent, and make decisions independently of the police, government and interest groups. We investigate the most serious complaints and incidents involving the police, as well as handling

certain appeals from people who are not satisfied with the way police have dealt with their complaint.

2. The IPCC was established by the Police Reform Act 2002 and became operational in April 2004. Since that time our remit has been extended to include:
 - Certain specialist police forces (including the British Transport Police and the Ministry of Defence Police).
 - Her Majesty's Revenue and Customs (HMRC).
 - Staff who carry out certain border and immigration functions who now work within the UK Border Force and the Home Office.
 - The National Crime Agency (NCA), and previously the Serious Organised Crime Agency (SOCA).
 - The London Mayor's Office for Policing and Crime and any Deputy Mayor for Policing and Crime.
 - Police and Crime Commissioners and their deputies.
3. The majority of complaints against the police are dealt with by the relevant police force (or other body) without direct IPCC involvement, unless cases are appealed to us. However, certain types of complaints and incidents must be referred by the police directly to the IPCC. These include where someone has died or been seriously injured following direct or indirect contact with police, as well as allegations of serious corruption, serious assault, and criminal offences or behaviour liable to lead to misconduct proceedings which are aggravated by discrimination. We then decide what level of involvement we should have in any investigation of the matter. We may choose to conduct our own independent investigation, manage or supervise a police investigation, or decide that the matter can be dealt with locally by the police without IPCC involvement.
4. In 2009 we launched a position statement, developed in partnership with stakeholders, setting out how we expect forces to use stop and search powers. In this we say that irrespective of the power being used we expect that powers should be used in a way that is fair, effective, and carries public confidence.

Our experience

5. In 2010 the IPCC became concerned about how police officers in England and Wales were using Schedule 7 powers after we were approached by a number of stakeholders who expressed concern that powers were being used in a way that was having a disproportionately negative impact on ethnic minorities, and in particular British Muslims, who were entering or leaving the UK.
6. Our contact with stakeholders has shown us that Schedule 7 impacts on public confidence in a similar way to other stop and search powers. Many of those stopped under Schedule 7 are likely to have been stopped under other powers by officers outside the port and border environment, and undoubtedly these experiences will shape their interactions with ports officers using Schedule 7. Similarly, experiences linked to Schedule 7 will also undoubtedly impact on future interactions with the police outside the port and border environment and will impact on public perceptions of counter-terrorist activity.
7. To identify whether improvements could be made to policy governing the use of the power, or practice on the ground, the IPCC decided to use its call-in power and ask

forces to refer all complaints and conduct matters arising from the use of the power with effect from 1 July 2011. A decision was then taken to supervise these matters to enable us to discharge our oversight responsibilities, and to date a total of 50 supervised investigations have been commenced.

8. In December 2012 the IPCC made a formal response to the Home Office consultation on the review of the operation of Schedule 7, a copy of which is available on our website.
9. Our response to this consultation is based on evidence drawn from our handling of related cases, visits to ports across England and Wales to find out more about how Schedule 7 powers are used, and engagement with other stakeholders.

Comments on the draft code of practice

10. Our comments on the draft code of practice mirror the structure of the code itself.

General

11. Paragraph 6 states that *“The code must be available at all police stations for consultation by the police and members of the public. It must also be available at police offices at ports or in the border area where the powers are, or are likely, to be, used.”* We would add to this that the person being examined should be given the right to access the code at any point during their examination and that the key elements of the code, particularly around a person’s rights and entitlements, should be included in any literature provided to an individual at either the start or the end of an examination. The code should also be referenced in all literature provided to the person being stopped, and should be readily accessible to members of the public on the websites of the relevant agencies, including the police, Home Office and the Association of Chief Police Officers, and should also be distributed to key stakeholders.

Training and use of powers: Police officers

12. Paragraph 8 states that *“Chief officers must reassess whether an officer should retain his or her accreditation on a biennial basis so that a high level of expertise is maintained.”* We would add that stakeholder feedback, and complaints, should also act as a trigger for review of an officer’s accreditation where evidence suggests that there may be performance issues which may need to be addressed.
13. In addition to the provisions outlined in paragraph 8 and 9 we would add that it is important that both examining officers and review officers receive refresher training at suitable intervals, to ensure that their skills are kept up to date.

Training and use of powers: Immigration and customs officers

14. We welcome the provisions in paragraphs 10 – 13 relating to the training, assessment and designation of immigration or customs officers before exercising powers under Schedule 7.
15. Since 1 July 2011 all police forces have been required to refer to us any complaint or conduct matter arising from the use of Schedule 7 for us to determine how they should be investigated.
16. In light of the proposed intention to enable immigration or customs officers to make use of the power with appropriate training, accreditation or designation the IPCC will formally

write to all relevant agencies falling within our jurisdiction to advise them also to refer any relevant cases to us.

Training and use of powers: Use of the power in emergencies

17. Paragraph 14 states “*The powers may also be used by any constable where a senior police officer believes that this is necessary due to an exceptional urgent operational need. The constable may be given temporary permission to act as an examining officer for the duration of the emergency and may do so without having obtained the necessary accreditation, whether or not they are awaiting accreditation. In such circumstances, officers must receive a briefing on the powers prior to deployment and their exercise of the powers must be supervised by an accredited examining officer.*” We suggest that where such an “exceptional urgent operational need” arises the relevant senior police officer should be required to clearly document their reasons for deploying non-accredited officers in this role in case this decision needs to be reviewed at a later date. Where non-accredited officers are used we also suggest that it would be preferable for the non-accredited officer to be “buddied” with an accredited officer.

Purpose and exercise of examination powers

18. Paragraph 17 states that “*An examining officer may stop and question a person whether or not the officer has grounds to suspect that the person is someone who appears to be a person who is or has been concerned in terrorism. Examining officers must make every reasonable effort to exercise the power in such a way as to minimise causing embarrassment or offence to a person who is being questioned. All persons being stopped and questioned by examining by examining officers must be treated in a respectful and courteous manner.*” One of the issues that complainants and members of the public raise with us most frequently is concern that when they are stopped under Schedule 7 they are only stopped because of their perceived ethnicity or religion, not because of any actual intelligence about their suspected involvement in terrorism. In order to address this perception we believe that it is important that officers should explain to the individuals why they have been stopped. We recognise that officers may not always be able to provide specific details of the intelligence available to them, but we consider that providing individuals with some sense of why they have been stopped would go some way in addressing the concerns which are most frequently brought to our attention. This explanation should also include information about the person’s rights or entitlements during the stop.
19. Paragraph 18 states “*Schedule 7 powers must be exercised in a manner which is proportionate and which does not discriminate against anyone on the grounds of age, race (including colour, nationality, ethnic or national origin), religion or belief, gender or sexual orientation*”. To help ensure that powers are used in way that is fair and effective we suggest that all forces need to ensure that information about stops made under Schedule 7 is properly recorded and analysed to enable them to identify any disproportionality or inappropriate use of the power. This is an issue which is particularly significant to a number of complaints who tell us that they are repeatedly stopped when leaving or entering the UK despite no action ever being taken against them.
20. In light of public concerns, we suggest that it would improve public confidence in the appropriate use of these powers if forces published local data on the use of Schedule 7 powers and engaged regularly with community groups and other interested stakeholders to provide information about how powers are being used and to seek feedback on their use. Through our visits to ports around England and Wales we have heard about some

of the activity that is currently undertaken, but it appears that there is no consistency or sharing of good practice across different force areas or ports.

Screening questions

21. Paragraph 20 states *“Examining officers may conduct screening under common law powers and there is no compulsion upon the person to answer the screening questions”*. It may be useful for the code to clarify possible courses of action if an individual refuses to answer questions: for example, whether this would automatically lead to a more detailed examination, or arrest.
22. Paragraph 20 states that *“There is no requirement for examining officers to make a record of such an encounter should the officer decide not to conduct a Schedule 7 examination or exercise other powers.”* We recognise that keeping a record of initial screening would be impractical and would severely restrict the number of people that officers can speak to. If an individual makes a complaint about the screening process and this did not proceed to an examination we will therefore need to look for other forms of evidence as part of any investigation into the complaint.

Examination period

23. Paragraph 22 states *“At the start of the examination, the examining officer is required to explain to the person verbally or in writing, that they are being examined under Schedule 7 to the Terrorism Act 2000 and that the officer has the power to detain that person for the purpose of conducting the examination. . . . The examining officer must explain to the individual; their role; the fact that they are being examined under Schedule 7 to the Terrorism Act 2000, which is part of counter-terrorism policing at the port/UK border; that this does not mean that they are suspected of being involved in terrorism; that the reason for the examination is to determine whether or not they are concerned in the commission, preparation or instigation of acts of terrorism.”* After this information is provided, we suggest that the examining officer check to ensure that the individual has understood this information. Where the examination is being recorded, the examining officer should also ask the individual to confirm orally that they have understood.
24. Paragraph 22 also states that *“The examining officer will set out how the examination will be conducted and must provide a Schedule 7 public information leaflet.”* The practice advice on Schedule 7 issued by the National Policing Improvement Agency (NPIA) included suggested text for a leaflet which could be used nationally. We note that the code does not include any suggestions for similar literature. In light of the comments we have made in this response we would be keen to be involved in any work being carried out by the Home Office or the Association of Chief Police Officers to develop a replacement template for such a leaflet, which could then be used by forces in England and Wales. Such a leaflet should be easy to read and available in multiple languages and should refer to the key provisions of the code, including information about people’s rights and duties, and also clearly signpost the process for providing feedback or making complaints. Given that children or young people may also be examined or present when examinations are conducted, we also suggest that suitable information should also be provided in a form that meets their needs.
25. Paragraph 23 states *“Where Schedule 7 powers are exercised regularly, the duties and rights or a person subject to examination must be displayed prominently in a place where the person will be able to read them.”* Although we have seen similar posters displayed in the ports we have visited, we have noticed that this is not done consistently and that posters are not always visible in the places where the person is likely to be stopped or

questioned. Any posters should also provide clear information about how people can provide feedback or make complaints if they are unhappy with how they have been treated, and should also be provided in multiple languages where appropriate.

26. Paragraph 26 states *“The examining officer must consider the person’s welfare and make arrangements to ensure that they have the opportunity to have refreshments and breaks at regular intervals. Access to a healthcare professional should be provided if necessary, as determined by the examining officer. Where reasonably practicable, provision should be made to allow for the practice of religious observance.”* From our visits to ports we have seen a number of examples of good practice, where ports have stocked a range of pre-prepared foods to cater for a wide variety of dietary needs, have provided people with comfort packs including bottles of water, wet wipes, tissues and religious texts, and in some cases have created separate waiting areas for children and families with soft seating areas and toys. In a small number of cases we have also seen rooms which have seemed unsuitable for any period of detention, whether it lasts for 10 minutes, one hour or longer. In light of this experience we believe that it would be useful for ACPO or HMIC to review whether facilities in use at ports nationally are suitable for the purpose for which they are being used.

Duties under examination

27. Paragraph 29 states *“The examining officer must inform the person being examined that Schedule 7 places them under a duty to answer questions and to give the officer any information in his or her possession which the officer requests for the purposes of the examination . . . The examining officer may, if appropriate, inform the person that wilfully failing to comply with a duty that is imposed on the person under Schedule 7, or wilfully contravening a prohibition contained in Schedule 7, or wilfully obstructing, or seeking to frustrate a search or examination under Schedule 7, is a criminal offence.”* As above, we would suggest that the examining officer could also ask the individual to confirm orally that they have understood the information that they have been given.

Searches

28. Paragraph 36 states *“When a search of a person is carried out the examining officer must, if not uniformed, show a warrant card or similar evidence of his or her authority, but need not give his or her name.”* In light of feedback from complainants, we believe that it is equally important that the officer’s identification is clearly visible during screening or examinations to enable the individual to clearly identify that they are being stopped by a police officer or immigration or customs officer. We have heard from complainants and members of the public that this is a particular issue if the officer is operating in plain clothes, and can often lead to people being confused or uncertain about who they are being stopped by.
29. Paragraph 37 states *“If requested, the examining officer must provide sufficient information to the person or his or her representative, such as an identification number and location, which would enable the officer to be identified in the event of any query or complaint.”* We believe that this provision should apply equally to all phases of the encounter, not just if a search is undertaken. A number of complainants have told us that when they have asked officers for this information they have refused to provide it.

Property

30. Paragraph 40 states that *“The examining officer may copy any information obtained under paragraph 5; searched or found on a search under paragraph 8; or anything examined under paragraph 9 including electronic data. The copies may be retained for*

so long as is necessary for the purpose of determining whether a person is concerned in the commission, preparation or instigation of acts of terrorism or while the officer believes that they may be needed for use as evidence in criminal proceedings or in connection with a decision by the Secretary of State whether to make a deportation order under the Immigration Act 1971. Copies of information obtained during an examination must be managed in compliance with the requirements of Management of Police Information guidance.” Complainants and members of the public have expressed concerns about how information copied by the police, which often includes photos and details of family members, is being used. We consider that, if an officer copies data from a device in the possession of someone who is stopped under Schedule 7, the individual should be notified that this data has been copied, and should be informed about how the data will be stored and retained. In order to ensure that data is not retained unnecessarily it would also be useful for the code of practice to include specific recommendations about a schedule for retention, and a process whereby the reviewing officer reviews, for example after 28 days, whether ongoing retention of the data is required. As part of this process, individuals should also be informed of any related mechanisms which allow them to complain or appeal about the retention of any related data where these exist: for example the option of recourse to the Information Commissioner or other appropriate body.

Rights under examination

31. Paragraph 41 states *“Should a person being examined at a port, who has not been detained, request to consult a solicitor, the examining officer may grant this at his or her discretion. Where reasonably practicable, a consultation should be allowed.”* We suggest that it would be useful for the code to clarify what other reasons beyond *“postponing the questioning would prejudice the purpose of the examination”* could apply.

Records of examinations

32. Paragraph 43 states that *“Records of all examinations and detentions must be kept for statistical or reference purposes in the event of a complaint.”* We welcome the inclusion of this provision. Although there is no requirement under paragraph 20 for the examining officer to keep a record of the initial screening we suggest that it would be useful for a record of this to be kept where screening progresses to an examination. All records of examinations should also include the reason for the examination and the details of the examining officer(s) involved.
33. Paragraph 44 states *“Records of the examination, including records of reviews of detention, will not be given to the individual or their solicitor but will be kept for police reference purposes.”* We are concerned about the blanket nature of this provision. Clearly, where information is sensitive or may prejudice future proceedings, it would be inappropriate to disclose it. We suggest that decisions on disclosure should be subject to the usual public interest immunity (PII) test, particularly where there is a complaint under investigation.
34. Irrespective of that, to enable the IPCC to effectively discharge its duties when supervising an investigation, conducting its own independent investigation or handling an appeal, it is essential that we are able to view all relevant records relating to the examination, detention or any related reviews.
35. The issue of forces sharing information with the IPCC is particularly significant for us at present, as we are currently pursuing legal action against the Metropolitan Police Service (MPS) for refusing to comply with the terms of reference that we have set for

investigations into complaints about the use of Schedule 7 powers, and failing to provide evidence that it has properly investigated these matters as we have required.

Duties of the person being examined when under detention

36. Paragraph 49 states *“The examining officer must inform the person that wilfully failing to comply with a duty imposed by Schedule 7, or wilfully contravening a prohibition contained in Schedule 7, or wilfully obstructing, or seeking to frustrate a search or examination under Schedule 7, is a criminal offence under paragraph 18 of Schedule 7 to the Terrorism Act 2000.”* We suggest that in order for this provision to be effective the individual needs to be advised of their duties and rights orally at the start of the examination.
37. In addition to the issues raised under paragraph 50, we suggest that the code should also make clear what support or provision officers should make when they become aware that examination may negatively affect a person’s ongoing travel arrangements. This issue has been particularly significant for a number of complainants who have been travelling with their families or part of a larger group and have become separated from their travelling companions or missed connecting flights as a result of the examination.

Children and other vulnerable people

38. Paragraphs 51 – 54 focus on the treatment of a young person who is subject to examination, but we believe this section should also include provision for young people who are not directly subjected to examination but who are travelling with someone who is. This is a scenario which we have seen in a number of cases, and is particularly relevant where that individual is the only adult who is accompanying them.
39. Paragraph 53 states *“A child travelling alone must not be examined in the absence of a responsible adult (for example a parent, guardian, teacher or social worker) unless there are exceptional reasons for conducting the examination without a responsible adult present. If there are such reasons, the examining officer must record these in writing.”* If an examining officer decides that it is appropriate to examine a child in the absence of a responsible adult, we suggest that this decision should be reviewed by the reviewing officer to help ensure the young person’s rights and wellbeing are properly safeguarded.
40. If a young person is examined, the examination should be carried out by an officer who has been specially trained to interview children and young people.
41. Paragraph 53 states *“A child travelling with a responsible adult over 18, must be examined in the presence of that responsible adult unless that person is thought to be exerting influence or pressure which could be detrimental to the child’s interest or is obstructive to the achievement of the purpose of the examination.”* We consider that it would also be useful for this paragraph to allow the young person to object to the presence of this individual if they wish to do so. It should also clarify that an adult present during the interview should be able to seek legal advice on the young person’s behalf if they feel that this is appropriate in order to safeguard their interests.

Strip search

42. In addition to the provisions in paragraph 57, officers carrying out a strip search should be mindful of any relevant religious issues, for example the sensitivities around strip searching someone during Hajj.

43. Paragraph 53 states *“Except in urgent cases . . . a search of a child may take place in the absence of the responsible adult only if the child signifies in the presence of responsible adult that he or she prefers the search to be done in the responsible adult’s absence and the responsible adult agrees.”* In addition to this provision, we also consider that the child should be asked if they would prefer another adult to be present.

Reviews of detention

44. Paragraph 62 states *“A review may be carried out in person or remotely at the discretion of the review officer. The review officer must give the detained person or their solicitor an opportunity to make representations. The review officer is required to inform the detained person of the result of the review.”* We suggest that the code should specify that even where a review is undertaken remotely it is important the reviewing officer makes direct contact with the individual or their solicitor and takes all reasonable steps to ensure that examining officers have complied with the code, including making the individual aware of their rights and duties under examination.

Audio recording

45. Paragraph 67 states *“Where a person is detained at a port, and suitable audio recording facilities are readily available, the examining officer must record the questioning, unless the person willingly expresses a wish not to have it recorded.”* We recognise that in some circumstances an individual may wish to provide the examining officer with information or intelligence of a sensitive nature which they may not wish to be recorded. In order to safeguard the integrity of the evidence gathering process, and to avoid any allegations of wrongdoing, we consider that the examination should either be partially recorded up to the point where the individual requests that recording cease (and then be restarted as appropriate) or the individual should be asked to sign a written record to confirm that they have asked for the questioning not to be recorded.

Complaints

46. How Schedule 7 powers are used is an area of concern for a significant number of people. The complaints process provides a valuable mechanism for the people who are most affected by the use of the power to voice their concerns about their experience. The code of practice should reinforce that forces should see complaints as a positive opportunity for learning and should underline the fact that robust handling of complaints helps to improve public confidence by helping the police to improve practice in this area.
47. Complainants and members of the public have repeatedly told us that more information needs to be provided about how people can complain about how Schedule 7 powers are used. In light of this we suggest that the code should include a requirement for information about the complaints process to be clearly visible in all areas where powers are likely to be used, including areas where stops are carried out and where examinations are conducted, and should be made readily available to any individual who is stopped for examination, irrespective of whether or not they have indicated that they wish to make a complaint.
48. As the majority of complaints relating to Schedule 7 are not made directly to the IPCC, it is vital that each port and force has established procedures for recording complaints, referring them to the relevant oversight body where appropriate, locally resolving or investigating cases where appropriate, acting on any emerging lessons, and monitoring complaints for evidence of any misuse or disproportionality. To help with this we suggest that all forces should appoint a named officer at each port whose job is to oversee the

way that complaints are handled and analysed to ensure that any learning is fed into training and practice and ultimately leads to improvement in service delivery.

49. When we visited ports, we heard anecdotally about the non-recording of cases which were resolved locally with either an apology or another form of quick resolution. To help improve transparency and enable greater monitoring, we consider that the code should ensure that all complaints are formally recorded.
50. Paragraph 73 rightly states that individuals can complain about the conduct of examining officers or their treatment during examination either direct to the forces concerned or via the IPCC. This section should be amended to reflect that the IPCC's remit also extends to immigration or customs officers in England and Wales.
51. It would also be useful for this section to clarify that it is the IPCC's expectation that all relevant agencies falling under our jurisdiction refer to us any complaints or conduct matters arising from the use of powers under Schedule 7 for us to determine how they should be investigated.
52. Since 2011 the IPCC has made a number of visits to ports across England and Wales to understand more about how Schedule 7 powers are used. In light of this experience we believe that it would be useful for the code to include a requirement for all forces to proactively raise awareness of the process for providing feedback or making complaints about the use of Schedule 7 powers, and to make these processes accessible to those who may wish to complain. Such activity could include:
 - provision of multi-lingual information posters or leaflets in the areas where screening or examinations are conducted.
 - inclusion of relevant information on force websites or in any multi-lingual literature given to people who are stopped, examined or detained.

Notice of detention under Schedule 7 to the Terrorism Act 2000

53. The code should clarify whether the intention is to provide the person stopped with the notice detailed in Annex A at the start or end of the examination.

Training and accreditation standards

54. Annex B states "*Training standards will be set by the Association of Chief Police Officers (ACPO) (or their successors) and the training programme will be accredited by the College of Policing.*" In light of our experience the IPCC would be keen to feed into the work being undertaken by either ACPO or the College.
55. We believe that it is vital that training enhances the cultural intelligence and awareness of officers using Schedule 7 powers, so that they understand how to best to engage with individuals from the communities who are most likely to be affected by the use of these powers.
56. Given the significant level of community interest in the use of Schedule 7, we suggest that ACPO and the College would also find it beneficial to involve community representatives and other interested stakeholders in the development, and even the delivery, of training.

Accreditation of review officers

57. Our assumption would be that the training for examining officers and review officers would be broadly similar, but would contain additional content for review officers which reflects their additional duties. The difference between the two packages is not clear, and it would be useful for the code to clarify this.

Other comments

58. As the code implies, examining officers are also able to draw on a variety of other powers in the performance of their duties. We consider that it would be useful for the code or material provided to those who are stopped or examined to include reference to the most common powers that are likely to be used by examining officers: for example those relating to cash seizure, which has proved to be an issue which is of particular concern for complainants and members of the public more generally.

Independent Police Complaints Commission (IPCC)

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