

# ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 11: Policing etc**

#### **Independent Police Complaints Commission**

#### *Schedule 9: Port and border controls*

433. *Paragraph 1* of Schedule 9 amends paragraph 1 of Schedule 7 to the 2000 Act, subparagraph (1) of which defines an examining officer for the purpose of Schedule 7 to the 2000 Act, that is, persons who have the powers conferred by Schedule 7 to the 2000 Act to conduct examinations at ports. Paragraph 1(1) of that Schedule currently defines an examining officer as a constable, an immigration officer, or a customs officer designated for the purpose of the Schedule by the Secretary of State and the Commissioners of Revenue and Customs. Paragraph 1(2) amends paragraph 1(1)(b) of Schedule 7 to the 2000 Act so as to limit those immigration officers who may exercise the powers of an examining officer to those designated for the purpose of Schedule 7 by the Secretary of State. *Paragraph 1(3)* inserts new paragraph 1A into Schedule 7 to the 2000 Act which places a duty on the Secretary of State to issue a code of practice which will specify the details of the requisite training to be undertaken by officers who are to act as examining officers or exercise other functions under Schedule 7 and the procedure for making designations. The code of practice must be laid before Parliament and brought into force by an order subject to the affirmative resolution procedure.
434. *Paragraph 2* repeals paragraph 6(4) and inserts a new paragraph 6A into Schedule 7 to the 2000 Act so as to further restrict the maximum period of time a person may be examined under Schedule 7 and prevent questioning from going on for more than an hour unless the person is detained. At present paragraph 6(4) permits detention for up to nine hours from the time a person's examination begins. New paragraph 6A of Schedule 7 to the 2000 Act introduces a separate limit of one hour on the period during which a person may be examined without being detained and then introduces an overall limit of six hours on the period a person may be examined (including any period of detention). Detention of a person under these powers triggers the provisions of Part 1 of Schedule 8 to the 2000 Act which govern the treatment of persons detained under Schedule 7; amongst other things these provisions confer on a detainee the right to inform a person of his or her detention and to consult a solicitor in private.
435. *Paragraph 3* amends paragraph 8 of Schedule 7 to the 2000 Act which relates to the searching of persons examined under that Schedule. New paragraph 8(4) of Schedule 7 prohibits an intimate search of a person. An "intimate search" is defined in new paragraph 8(7) of Schedule 7. New paragraph 8(5) prevents a person from being strip searched (again as defined in new paragraph 8(7)) unless: the person has been detained; an examining officer has reasonable grounds to suspect that the person is concealing something which may be evidence that the person is concerned in the commission,

preparation or instigation of acts of terrorism; and a strip search has been authorised by a senior officer (as defined in new paragraph 8(6) of Schedule 7).

436. *Paragraph 4* inserts a new paragraph 11A into Schedule 7 to the 2000 Act. New paragraph 11A expressly provides a power to make and retain copies of anything obtained under paragraphs 5, 8 or 9 of Schedule 7 to the 2000 Act. The copy may be retained for as long as is necessary for the purpose of determining whether a person is involved in the commission, instigation or preparation of terrorism, or for use as evidence in criminal proceedings or in connection with deportation proceedings.
437. Information obtained in this way would be subject to the provisions of the Data Protection Act and the statutory Code of Practice on the Management of Police Information.<sup>1</sup>
438. *Paragraph 5* amends the provisions in Schedule 8 to the 2000 Act which relate to the rights of persons detained under Schedule 7. Currently the rights conferred by Schedule 8, for example the right to consult a solicitor, only apply to persons detained at a police station or places designated as such. Ports do not generally include areas designated as police stations. The amendments made to Schedule 8 by this paragraph extend certain rights conferred under that Schedule to persons detained at ports, airports or international rail stations under Schedule 7. The rights are: the right of a detained person in England and Wales or Northern Ireland to have a named person informed of the fact of his or her detention (paragraph 6 of Schedule 8); the right of a detained person in England and Wales or Northern Ireland to consult a solicitor in private (paragraph 7 of Schedule 8); and the right of a detained person in Scotland to have a solicitor or another person informed of the fact of his or her detention and to consult a solicitor in private (paragraph 16 of Schedule 8). These rights may be qualified by paragraphs 8 and 9 of Schedule 8 in relation to England and Wales and Northern Ireland, and paragraph 17 in relation to Scotland in that a police officer of at least the rank of superintendent may authorise a delay in the exercise of these rights or a non-private legal consultation in certain specified circumstances, for example where informing a person of the fact of someone's detention under Schedule 7 could lead to interference with or harm to evidence of a serious offence. *Paragraph 5* amends these paragraphs of Schedule 8 so that the power of a senior police officer to qualify the rights conferred by paragraphs 6, 7 and 16 of Schedule 8 applies where a person is detained at a port, airport or international rail station other than at a police station.
439. Further clarification and qualification of the right to consult a solicitor is provided by new paragraph 7A of Schedule 8, in respect of a detained person in England, Wales and Northern Ireland, and new paragraph 16A of Schedule 8, in respect of a detained person in Scotland. These are inserted by *paragraph 5(6)* and *(10)*. Where a person detained for examination requests to consult a solicitor, he or she may not be questioned until he or she has consulted a solicitor (or no longer wishes to do so). This right is qualified in that the examining officer may question the detained person if he believes that postponing questioning would prejudice the purpose of the examination (meaning the determination of matters in paragraphs 2 or 3 of Schedule 7). Similarly, the new paragraphs also clarify that a detained person is entitled to consult a solicitor in person, but not if the examining officer reasonably believes that the time that this would take would prejudice the purpose of the examination.
440. *Paragraph 6* amends paragraph 10 of Schedule 8 to the 2000 Act so as to remove the power to take an intimate sample from a person detained under Schedule 7.
441. *Paragraph 7* inserts a new Part 1A (comprising new paragraphs 20K, 20L, 20M and 20N) into Schedule 8 to the 2000 Act, providing for the review of detention under Schedule 7. New paragraph 20K provides that a person's detention under Schedule 7 must be reviewed periodically by a review officer no later than one hour after the start of detention and at subsequent intervals of no more than two hours. The review officer

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<sup>1</sup> <http://www.acpo.police.uk/documents/information/2010/201004INFMOP101.pdf>

*These notes refer to the Anti-Social Behaviour, Crime and Policing Act 2014 (c.12) which received Royal Assent on 13 March 2014*

may authorise continued detention only if satisfied that it remains necessary for the purposes of exercising a power conferred by paragraph 2 or 3 of Schedule 7 (questioning for the purpose of determining whether the person appears to be a person who is or was involved in the commission, preparation or instigation of acts of terrorism). If the review officer does not authorise continued detention then the person must be released. The other new paragraphs specify that the review officer must give a detained person or their solicitor an opportunity to make representations about their detention (20L), must ensure that the detained person is informed of their rights (20M) and must make a written record of the review and must inform the detained person if continued detention is authorised (20N).

442. *Paragraph 8* amends Schedule 14 to the 2000 Act to make provision for statutory codes of practice to be issued for certain functions under Schedules 7 and 8 to the 2000 Act, including the functions of reviewing officers.