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The Terrorism Act 2000 Schedule 7 and its Implications for the Human Rights of Passengers Travelling through United Kingdom Airports

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Abstract

The UK Terrorism Act 2000 Schedule 7 empowers police, designated immigration officers and customs officers to stop and question passengers travelling through airports, no prior authority is needed and this power can be exercised without reasonable suspicion of the passenger being involved in terrorism. There is a lack of evidence of who does get stopped at airports and why. The recent high profile case of David Miranda’s lawful detention highlights the controversy of Schedule 7. This paper will consider the powers confirmed in the Terrorism Act 2000 Schedule 7. It will examine the similarities of Schedule 7 powers of stop and search for the purposes of preventing terrorism with the case of Gillan in which the European Court of Human Rights declared that the use of section 44 Terrorism Act 2000 stop and search powers were incompatible with Article 8, the right to respect for private and family life under the European Convention of Human Rights. The paper will look at attitudes to the practice of profiling passengers at United Kingdom airports for security purposes. This will be based on responses elicited from research into the attitudes conducted with students at Leeds Beckett University of their recent experience of air travel.

Key words: Aviation, Terrorism, Human Rights

Introduction to profiling, stop and search at UK airports and Schedule 7 TA 2000

Profiling

Security at airports has significantly increased since September 2001 and the attacks on the United States (US). In December 2001, Richard Reid, the “Shoe Bomber” attempted to detonate explosives packed into the shoes he was wearing, while on American Airlines Flight 63 from Paris to Miami, this resulted in many airports requiring shoes be removed and scanned. In 2006, there was a plot by a number of London based Muslims to detonate a number of liquid explosives on a passenger aircraft travelling to the US from the United Kingdom (UK). Operation Overt, a joint operation between the US and UK security services, foiled the attempt, but this plot resulted in liquids being restricted on flights throughout the world; the restriction is still in force. The introduction of body-scanners in a number of international airports was prompted in part by lone terrorist Umar Farouk Abdulmutallab boarding Northwest Airlines flight 253 in Amsterdam to Detroit on December 25, 2009 with explosive secreted in his underwear. These events and others have raised the issue of how to improve screening technology and the profiling of passengers who are either acting suspiciously or exhibiting unusual travel behaviour. Airport security is interested in controlling immigration, drugs, restricted items onto aircraft both arriving and departing airports, but when preventing aviation terrorism, passengers travelling with little or no luggage, large amounts of cash or very little money, unusual flight patterns or travelling to and back from areas known to train terrorists can raise suspicions. Profiling passengers is not restricted to observing passengers. It often requires stopping and asking passengers questions about such matters and evaluating passenger responses.
Many members of the public are helpful when asked questions about their travel arrangements, but questioning passengers can create hostility towards airport security staff if passengers do not know why they are being stopped. It is important that the public should be aware of the possibility they might be stopped and searched. If airport security staff are to overcome occasional passenger hostility then consistency and transparency are essential when carrying out stop and search of passengers. Profiling human behaviour is not unique to the UK. Many countries are increasingly concerned about what passengers are trying to bring through their boarders and ports, from plants and food, to animals and undeclared duties on goods. The UK, US and other countries that have supported coalition troops in the recent Gulf Wars and Afghanistan have further concerns, terrorism. Airport security staff can have pre-conceived ideas of the type of passenger profile they should pay more attention to because of the media coverage on terrorism. This type of profiling can be seen as a targeted approach based on the profiles of terrorists that have either carried out or attempted terrorist attacks post 9/11; ethnic minorities might see this type of profiling as discriminatory and running the risk of isolating their communities.

In October 2003, the US Transport Security Association (TSA) started a programme called Screening of Passengers by Observations Techniques (SPOT) with Behaviour Detection Officers (BDO) for the purpose of counter-terrorism. The US Government Accountability Office’s (GAO) report on the success of the SPOT program in 2010 suggested SPOT was carried out without any scientific basis, and questioned the programmes reliability. The TSA argued in its defence that no other programme of this nature had ever been scientifically assessed prior to implementation. The GEO acknowledged the difficulties in measuring the success of such a programme, because profiling passengers is not based on science but on the judgements of individual security staff which is can prove to be unreliable and create inconsistencies. No terrorist has been caught as a result of the SPOT programme, suggesting it was not successful but there is still the possibility that the SPOT programme may have deterred terrorist plots.

The UK contemplated a greater use of profiling passengers for stop and search following the liquid bomb attempt on aviation in 2006. In July 2009, Lord Carlile of Berriew Q.C. published his report. With reference to schedule 7 said “In the past I have suggested repeatedly that the number of random or intuitive stops could be reduced considerably”

**Schedule 7 of the Terrorism Act 2000**

In the UK, a police officer has to have reasonable suspicion to stop and search an individual in a public place and provide a record of the search to the suspect subsequently filing a record at the police station. Reasonable suspicion means suspicion based on facts, information, and or intelligence that can be objectively justified and which is relevant to the likelihood of finding an article of a certain kind. In cases of searches under section 43 of the Terrorism Act 2000 (TA) there must be likelihood that the person is a terrorist. Personal factors can never support reasonable suspicion, because of this requirement statistics are available of the number of persons stopped and searched, the regions, their age, and what ethnic background they are from.

Schedule 7 of the TA 2000 applies to seaports and airports. Examining officer can either be a constable, immigration officer, or a customs officer who has been is designated by the Secretary of State. The Examining officer can detain a passenger and ask questions for a maximum period of 9 hours and detain property up to 7 days to determine whether or not the passenger is a terrorist. However, there is no need for the examining officer to have reasonable suspicion or grounds for suspecting the passenger is a terrorist at the point the passenger is stopped. Passengers that wilfully fail to comply or wilfully obstruct the examining officer can be liable to a summary conviction of up to 3 month imprisonment.
Passengers travelling to and from the UK and Isle of the Islands can be asked to provide further information; this is known as ‘carding’. Passengers who are examined for more than 1 hour but not detained will be issued with TACT 1 notice.

Once detained, either because the suspect is non-co-operative or wants to leave during examination or the examining officer believes its necessary treatment of the suspect then detention is subject to the requirements of Schedule 8 TA 2000. The suspect will be given a notice of detention form called TACT 2. Schedule 8 can require the suspect to have a number checks, for example, fingerprints, intimate and non-intimate samples and determine the identification of the passenger. In addition, the suspect will be videoed and can be audio recorded but will be entitled to legal advice. Recent changes to Schedule 7 by Schedule 6 of the Anti-social Behaviour, Crime and Policing Act 2014 with see some rebalancing of these provisions in favour of the citizen when fully implemented and in force.

The National Accountability Board (NAB) set up to be a critical friend for Mr Donlon the then assistant chief constable on all operation matters linked with Schedule 7 first sat in March 2010. The membership of NAB was broad based made up of representatives from a number of key stakeholders that have an interest in reviewing how and whether Schedule 7 is being applied fairly. These stakeholders are concerned with transparency, effective investigation into complaints and the experience and relevance of questioning during interviews undertaken under Schedule 7.

David Anderson Q.C., the Independent Reviewer of Terrorism Legislation, in his 2011 report described Schedule 7 powers as:

Taken together, these powers are formidable indeed. They bear close comparison with the powers exercisable (against foreign nationals only, and with extensive limitations where EU nationals are concerned) under the Immigration Act 1971, Schedule 2. They are among the strongest of all police powers.

These comments taken with his executive summary which referred to Schedule 7 “I believe that a cautious rebalancing could be achieved without materially increasing the risk from terrorism” and previous reports are likely to have contributed to a public consultation to review the operation of Schedule 7 in September 2012.

The TA Schedule 14 requires a code of practice to be issued to examining officers. The code published in 2009 outlines who should perform Schedule 7 stops (police officers, save in exceptional circumstances). Selecting persons for stops should be based on the current threat or informed considerations and not solely based on perceived ethnic background or religion. The examination is deemed to begin only after screening questions have been asked, or a person has been directed to another place for examination. The new Code of Practice that was published July 2014 in response to the Anti-social Behaviour, Crime and Policing Act 2014 has made a number of changes to the old code. The most obvious differences are compulsory training of officers, in addition new processes for screening persons that later become examination and detention. There is clear attempt to reform good practice, rather than legal requirement, in what appears to be a drive to try and establish greater safeguards for suspects and some accountability for Officers carrying out Schedule 7 searches.

The Public Consultation of Schedule 7

The Public consultation and review of Schedule 7 was necessary according to the Home Office because of growing concerns that it can operate unfairly and particularly on some Muslim communities. Despite the assurances from the statutory Code of Practice for examining officer’s and the National Policing Improvements Agency Practice Code that
individuals should not be selected for examination solely on their perceived ethnicity or religion. It would appear on occasions passengers are being selected on this basis and there have been suggestions that they should be, but the government is keen to point out that such searches are more likely due to particular travel routes these passengers take. On this basis, it comes as no surprise that the consultation process excluded the independent review’s recommendation to question the use of Schedule 7 without reasonable suspicion. The 2014 Code of Practice, whilst avoiding any reference to reasonable suspicion, outlines a number of factors that might influence an examining Officer’s decision to select and examine a passenger.

The Review of the Operation of Schedule 7 A Public Consultation may also have been influenced by the governments defeat in the case of Gillan in which the European Court of Human Rights declared that the use of section 44 (s44) TA 2000 stop and search powers were incompatible with Article 8, the right to respect for private and family life under the European Convention of Human Rights (ECHR).

Gillan was a student who came to London on September 9, 2003 to protest against an ‘Arms fair’ being held in East London. The Assistant Commissioner of the Metropolitan police had given authorisation under TA s44 (4) on August 13 2003 for the use of s44 covering all of the Metropolitan Police District for a period of 28 days. Gillan and Quinton (second party to the claim) were stopped and searched for less than 30 minutes while respectively demonstrating against and photographing the ‘Arms fair’. They were unsuccessful in their actions in the English Courts after an Appeal to the House of Lords (now the Supreme Court). The European Court of Human Rights held that the searches amounted to interference with their right to respect for their private lives, contrary to Article 8 of the ECHR, s 44-45 powers of stop and search were “neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse”. The matter of inadequate legal safeguards is relevant to the use of Schedule 7 and the ability to check the professionalism in screening passengers at ports, particularly airports. The use of Schedule 7 and Section 44 may differ when reviewing where the police are generally targeting suspects. Schedule 7 focuses on ports and border control of passengers. Section 44 has historically focused on demonstrators, photographers and passengers using the rail network following the July 7th 2005 attacks on the London transport system but both required no reasonable suspicion to stop and search suspects.

Since concerns have been raised about the use of Schedule 7 there has been a move to record Schedule 7 stop and search, but a lack of clarity when recording should begin. The 2014 Code of Practice indicates that there is no requirement to record screening questions until the time it becomes an examination under Schedule 7. The question is when does this begin, the Code of Practice appears to give a clear steer towards examining officer making quick decisions about whether persons should be selected for screening under Schedule 7 and recorded. The Code suggests when screening a person becomes protracted a note ‘should’ be taken when the screening started, the Code does not insist this must happen. The official statistics for all ports and international rail terminals, which incorporates in the region of 245 million passengers, suggests the use of Schedule 7 from 2009/10 to 2013/14 has continued to decrease by 23% of persons examined. There is a sharp drop from 2012/13 to 2013/14 of 46% indicating the likelihood of an operational change and training for officers who are involved in Schedule 7 stop and searches.
Statistics provided for the UK for the past 5 years to the Independent reviewer of Terrorism.

<table>
<thead>
<tr>
<th></th>
<th>2009/10</th>
<th>2010/11</th>
<th>2011/12</th>
<th>2012/13</th>
<th>2013/14</th>
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<tbody>
<tr>
<td>People examined</td>
<td>87,218</td>
<td>73,909</td>
<td>69,109</td>
<td>61,145</td>
<td>47,350</td>
</tr>
<tr>
<td>Examined &gt; 1 hour</td>
<td>2,695</td>
<td>2,291</td>
<td>2,254</td>
<td>2,277</td>
<td>1,889</td>
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<tr>
<td>Detained</td>
<td>468</td>
<td>915</td>
<td>681</td>
<td>670</td>
<td>517</td>
</tr>
<tr>
<td>Biometrics</td>
<td>Not available</td>
<td>769</td>
<td>592</td>
<td>547</td>
<td>353</td>
</tr>
</tbody>
</table>

Of those examined in 2011/12, 42 per cent defined themselves as White, 27 per cent as Asian, 18 per cent as Chinese or Other, eight per cent as Black and three per cent of Mixed ethnicity. The remaining two per cent did not state their ethnicity. These proportions were similar to those in the previous year, with a slightly higher proportion of White persons searched and a slightly lower proportion of Asian persons searched in 2011/12.

In total, 680 persons were detained after a Schedule 7 examination in 2011/12, down from 913 in the previous year (a fall of just over a quarter). Eight per cent of persons did not self-define their ethnicity when detained in 2011/12. Of those that did self-define, nine per cent were White (up one percentage point on 2010/11), 38 per cent were Asian or Asian British (down eight percentage points), 25 per cent were Black or Black British (up three percentage points), 25 per cent were Chinese or Other (also up three percentage points) and four per cent were Mixed (up two percentage points).

A total of 55,037 persons were stopped at ports in Great Britain under Schedule 7 of TACT in the year ending 30 June 2013, a fall of 10% on the previous year. In total, 650 persons were detained after a Schedule 7 examination in the year ending 30 June 2013.

The Government Consultation sought views from a broad range of individuals and groups or organisations. The consultation was available online and it received a large number of responses to the following areas of Schedule 7.

- **Reducing the maximum legal period of examination.** Between 1 January 2009 and 31 March 2012 only 3% of examinations continued for over one hour. Only 1 in 2000 examinations last more than 6 hours.

- **Requiring a supervising officer to review at regular intervals whether the examination or detention needs to be continued.** This may help to minimise the length of examinations and detentions.

- **Requiring examining officers to be trained and accredited to use Schedule 7 powers.** The majority of examining officers are trained to use Schedule 7. However if examining police officers were required to undertake mandatory accredited training before they used Schedule 7 it would ensure that the power was operated to consistently high standards.

- **Giving individuals examined at ports the same rights to publically funded legal advice as those transferred to police stations.** Practical difficulties may mean that detentions can be prolonged by the time taken for a solicitor to enter the restricted security area at a port. However it is important for an individual to have the right to consult a legal adviser even by telephone.
• Amending the basis for undertaking strip searches to require suspicion and a supervising officer’s authority. Strip searches are extremely rare, but data on numbers is not currently available. The power to perform strip searches is necessary as individuals may carry a concealed weapon, device or document.

• Repealing the power to take intimate DNA samples from persons detained during a Schedule 7 examination. The power to take intimate samples could be removed without compromising the operational effectiveness of Schedule 7.

The Courts and Schedule 7

In R (K) v SSHD CO 10027/2011, an application for leave for judicial review was sought for the purposes of seeking a declaration of incompatibility under s 4 of the Human Rights Act 1998 of Schedule 7 insofar as it affected ECHR rights. The Applicant K had been questioned about irregularities in his passport and as a result had missed his flight. Collins J refused permission for leave for judicial review based upon it was ‘necessary for a democratic society’ for a state to protect its citizens from terrorism. In the circumstances of the case the refusal to grant leave for judicial review appears justified, given that there was evidence of irregularities in the applicant’s passport. To allow the application for judicial review to proceed would have questioned the basis and ability of stopping and examining passengers at ports which has been in existence in one form or another in the UK since 1974. Would the judgment be any different if there had been no irregularities in the passport, apparently not Collins J said in his reasoning for refusal for judicial review. Collins J confirmed the approval of the use of Schedule 7 stop and search without reasonable suspicion. The European Court of Human Rights may have a different view, if in fact they found themselves reviewing this case, but the right of the state, who has been subject to terrorist attacks, to protect its boarders and its citizens is a delicate matter when considering whether an individual’s right has been infringed.

There appears some justification in challenging the use of schedule 7, based upon the principals set out in Gillan and “intuitive stops”, to determine whether a suspect is involved in terrorism. In the case of Schedule 7 this can involve both screening and detaining the suspect for a relatively a long period of time, the question is, are there sufficient safeguards to protect the suspects convention rights.

In Sylvia Beghal v DPP Counsel for the claimant suggested that the reasoning of Gillan applied in the present case in that there was no distinction to be drawn between s.44 TA 2000 and the provisions of Schedule 7. The court disagreed, putting aside their obligation to follow Gillan (HL) based on Kay v Lambeth LBC [2006] 2 AC 465 and not Gillan (Strasbourg) if the cases were indeed indistinguishable, the court made the following distinctions. The Code of practice (here), post-dates the statutory Code relating to the exercise of s 44 considered in Gillan (Strasbourg). The Code (here) had a restrictive use of statutory powers and ‘elucidate the basis on which Schedule 7 powers are to be exercised not simply how they are to be exercised.’ The court went on to say that the distinction was one of substance suggesting that border controls such as stop and search at ports are very different from power to stop and search exercisable anywhere in the jurisdiction. The references to Schedule 7 in Gillan HL at para [9] and [28] and Gillan Strasbourg (at 64) had not distinguished Schedule 7 with s44 TA 2000 but had pointed to ‘a significant contextual difference’ between the two. The court suggested that the Strasbourg court would likely accord a wide margin of appreciation for individual states in respect of ports and boarders based on reasoning in McVeigh and the importance placed on protecting boarders at para 192. Lord Bingham at Gillan HL [28] suggested “an ordinary superficial search of the person and an opening of bags, of a kind to which passengers uncomplainingly submit at airports…”
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could scarcely be said to reach the requisite level of seriousness for Art 8 to be engaged. The recent legal challenges referring to Schedule 7 are not based on ordinary superficial searches, indeed most passengers would not only expect a level of security that involved screening but accept additional stop and search powers when travelling through airports. The question is one of transparency and proportionality of stop and search powers at airports and ports as the NPIA Practice Advice for Schedule 7 outlines.

In McVeigh the suspects had been detained under the Prevention of Terrorism (Temporary Provisions) Act 1976 for 45 hours at Liverpool port. The Act was introduced in 1974 in an attempt to deal with the ‘Troubles’ in Northern Ireland and was continuously amended in 1976, 1984 and 1989 where under Schedule 5 reasonable suspicion was no longer required at ports and boarders to stop, search and detain suspected terrorists. The court held no finding of a breach of Art 5, Art 8 and Art 10 of the ECHR, the dissenting opinion of Mr Trechsel in relation to Art 5 outlined “I find it dangerous to extend the permission to arrest and detain to other limited circumstances of a pressing nature’ and on the matter of ‘further examination’ he could only see a justification of detention ‘at best a few hours’. There were a further 4 dissenting opinions in relation to matters involving Art 8 insofar that the suspects could not see their wives during the prolonged detention. In Sylvia Beghal v DPP the High Court dismissed the appeal against conviction for wilfully failing to comply with the duty imposed under Schedule 7 and finding that there had been no infringement of Art 5 and Art 8. The Court did however suggest a legislative amendment to prevent evidence of admissions being used from interviews carried out under Schedule 7.

In CC v Commissioner of Police of the Metropolis it was held that the police used Schedule 7 to obtain other information rather than to determine that the suspect was a terrorist, the police already believed he was. The police had used Schedule 7 for the wrong purposes. Intelligence to provoke Schedule 7 into operation could be as basic as flight patterns to and from countries that are known to be involved with terrorist training. Nevertheless, Collins J in CC v Commissioner confirmed the right of profiling passengers based on no prior information under Schedule 7 is acceptable. However in R (Elosta) v MPC the refusal to wait for a solicitor specifically named by the suspect before questioning him under Schedule 7 was unlawful, suggests a high level of procedural conformity linked to Schedule 7.

The recent High Court challenge of David Miranda against the use of Schedule 7 attracted a high level of press interest. The detainment at Heathrow airport had been requested because material had been stolen from the National Security Agency and passed on by Mr Edward Snowdon to journalists working for the Guardian newspaper, one of which was the suspect’s spouse. The court rejected the grounds on which the suspect challenged the use of Schedule 7 suggesting that Schedule 7 had been used proportionately in the circumstances. The matter of legal certainty and whether Schedule 7 in this case can be prescribed by law allowing freedom of expression was raised by claimant’s coalition of Interveners. Referring to the Sunday Times Case (1996) 22 EHRR 1234): 49… [A] norm cannot be regarded as a ‘law’ unless it is formulated with sufficient precision to enable the citizen to regulate his conduct…”. All of the interveners relied on the case of Gillan as did the court from the reasoning in Beghal v DPP outlined above to suggest there was sufficient legal certainty in stop and searches at port and boarders under Schedule 7. The case of Beghal was not concerned with the public interest of press freedom and therefore the matter of effective safeguards to protect Journalists under Article 10 was raised and supported by a number of Strasbourg judgments in favour of such protection. It was submitted and accepted that the Strasbourg court has yet to develop “an absolute rule of prior judicial scrutiny for cases involving State interferences with journalistic freedoms”. The court in this case suggested that the principle of proportionality is one of the foremost safeguards and the
different approaches State can and do take illustrate the importance of the doctrine of the
margin of appreciation. The Miranda case did highlight Schedule 7 which was relatively
unknown to the general public at the time. There were a number of political responses to the
judgment which suggests some political leverage in the recent amendments to Schedule 7.

There is likely to be further clarification of the use of Schedule 7 by the Strasbourg
court in Sabure Malik v UK in which the European Court of Human Rights has declared the
case admissible. The case refers to an individual who was detained at Heathrow airport for
several hours and claims to have suffered violations of his Article 5 and 8 rights.

The proposed changes to Schedule 7 following the Public consultation

The changes to Schedule 7 are contained in the Anti-social Behaviour, Crime and
Policing Act 2014 which gave effect to the Government’s proposed changes following the
public consultation issued in July 2013 and agreed in the Public Bill Committee in the same
month. They are:

• Only designated officers will be able to exercise Schedule 7 powers, and a code of
practice will set out the training they require;

• If it is necessary to question a person for longer than one hour, they must be taken
into detention; and all detained persons must be released after six hours;

• New controls on strip searches and intimate searches will be introduced;

• Individuals examined at ports will be given new rights to have someone informed
and to consult a solicitor;

• The power to take intimate biometric samples is removed and applies only to
persons detained under s41 TA 2000 (it will still be possible to fingerprints and non-
intimate samples);

• There will be new rules for reviewing detention under Schedule 7 but which largely
refer to schedule 8; and

• An examining officer who is a constable will have the power to make and retain
copies of any property obtained under Schedule 7 for as long as is necessary for the
purpose of determining whether a person has been involved in terrorism, or for use in
criminal proceedings, or in connection with a decision to make a deportation order
under the Immigration Act 1971.

The rebalancing of Schedule 7 through the Anti-social Behaviour, Crime and Policing
Act 2014 and the new code of practice will be determined in due course through public
opinion and judicial consideration. The new Code of Practice issued in July 2014 does make
some important changes in the way screening and recording of passengers should be carried
out under Schedule 7. The emphasis here is the accountability between initial screening and
the point when the matter becomes an examination and then a detention under Schedule 7.
There is clear steer to undertake examinations within a short period of time rather than
suggest screening could take place for 30 minutes or more. Examinations should be able to
ascertain with the hour whether or not it will be necessary to detain a person. Detention must
now be exercised before the first hour of the examination has been completed. The
operational application of Schedule 7 in a manner envisaged by governmental and security
mandarins outlined in the 2014 Code of Practice can only be realised by professional
development and continues professional development of those who are charged with applying
the Code. There has to be some latitude and autonomy of the application of a system that is
difficult to audit and reliant on professionalism of security offices, particularly at the
screening stage when screening becomes an examination. The triggers to detain a person for
examination range from the obvious obstructive person who is uncooperative being screened
to the officer’s intuition or ‘gut reaction’ as the list of examples in the Code is not exhaustive.
For those persons who progress to the examination stage are told they are not under arrest or
cautions but, he or she, is being detained under paragraph 6 of Schedule 7 to the Terrorism Act
2000.

Schedule 7 still remains a powerful tool to stop, search and detain passengers, without
any need for reasonable suspicion but with a view to determine whether or not they are
terrorists. Tensions between ethnic communities are likely to continue particularly in light of
British Muslim Nationals travelling to Syria to fight with the risk of them returning to the
UK. The Code of Practice does not allow ethnicity to be the only reason for stopping
someone but once stopped a person can be questioned about their religious beliefs and
activities within their religious community. The relatively high number of persons stopped
from certain ethnic backgrounds is evidence to suggest that the new Codes of Practice will be
challenged to provide a fair system and application of Schedule 7.

Passenger perceptions of profiling

New students at Leeds Beckett Law School have answered a survey relating to their
security experience travelling to and from UK airports. The survey commenced in October
2011 and has been repeated annually since then. They were asked to reflect on their security
experiences on up to 8 flights travelling either from or to UK airports. To date this has
produced a total of 3178 security experiences from 711 respondents. The respondents were
of mixed ethnic origin with 58% describing themselves as white British. There were 62% female, 38% male and 93% were aged between 16 and 25. The most frequently used airport
was Manchester International with 50%. Manchester airport is situated around 88 kilometres to the west of the law school and has only one fifth of the travellers that pass through London
Heathrow, the largest airport in the UK. Taking account of respondents using Leeds
Bradford Airport over the 4 year period of this study these 2 regional airports accounted for
64% of the total respondents.

The survey asked a number of questions relating to their security experience but one
question relating to the respondents opinions of security officers profiling passengers for the
purpose of stop and search. The question gave respondents the choice of 4 statements
relating to profiling, and respondents were asked to mark the statement they mostly agreed
with, but could mark an additional statement if they so wished. Therefore the data should be
read accordingly. The statements were designed to gain an insight of whether passengers
agreed with the principal of profiling passengers as a security measure or viewed the process
of profiling as a means of discrimination and harassment of a particular ethnic group of
passengers. The following percentages are based on an average 4 year period from 2011.
The first statement was “Profiling is a good idea because it obvious who are likely
terrorists”. 21% of the respondents agreed with this statement. These respondents are not
saying they could spot a likely terrorist, but it does suggest they have in mind a particular
profile of who should be stopped and searched.

The second statement respondents were asked to consider was whether or not they agreed “Profiling gives an opportunity to target those acting suspiciously”. Not surprising,
75% of the passengers agreed with this statement but this does suggest that the respondents
are in agreement that there should be some suspicion before stopping and screening of a
passenger. 14% agreed with the statement “Profiling gives an opportunity for security to harass ethnic minorities’ and 17% Profiling allows an unrestricted right to harass any
traveller”. The data reveals pre-conceived ideas about profiling passengers with the majority of the respondents fully supporting a proactive approach to targeting a particular passenger profile for stop and search. A small, but significant number to raise concern believed that profiling allows opportunities to discriminate and harass passengers.

The survey asked additional questions relating to whether any of the respondents had been stopped and searched for any reason and whether they believed that stop and search was justified and was carried out professionally. Only 5% of respondents of the 44% who had been stopped and searched returning to the UK believed that they had been dealt with unprofessionally, 75% of which had described themselves as British Asian, suggesting the officer had been rude rather than discriminatory. In 2014 interviews were carried out in the same law school with male foreign nationals or British Asians based on their experience of entering and exiting the UK. Ten interviews were carried out and 5 respondents suggested they had been detained by immigration officers for a longer period than expected with 1 suspect detained under Schedule 7 requiring him to return to a police station for further questioning. He had been travelling to Pakistan with his mother and was questioned about which Mosque he attended, his friends, interests and whether he had read any extremist material on terrorism. Although there is a significant difference in the sample sizes of these 2 sets of data there was evidence to suggest more attention is paid to non-white British respondents and foreign Nationals.

Conclusions

The recent changes to Schedule 7 are intended to provide passengers with additional safeguards whilst at the same time setting out clear procedures for designated officers. It is suggested this will be achieved by the recent legislative changes and an update of the codes of practice. Compulsory training will become a requirement for designated officers on the application of Schedule 7. It will be difficult to assess the success of the training for designated officers’ use of Schedule 7 particularly with continuation of no requirement of reasonable suspicion to stop and screen passengers or make records for the first hour. The question of how to scientifically test such a programme is another challenge as it was proved in the US with the attempt to evaluate their SPOT programme. Designated officers will still have significant powers at ports to stop and screen passengers for up to one hour without having to explain to the passenger why they are being stopped. This may continue to protract the stream of complaints and accusations of racism from passengers that suffer as a result of both professional and unprofessional behaviours which cannot be monitored, proved or disproved. The data indicates that persons being stopped under Schedule 7 have declined over recent years, however the statistics only relate to those persons who have been stopped and being subject to an examination. They do not account for persons who may have been screened for a period up to 1 hour. The new Code of Practice in 2014, whilst recognising this delay in stopping and screening a passenger to operationalizing Schedule 7 does not answer all questions. Some Airports have already made improvements to transparency of information by designating particular areas of the arrivals zone with signage outlining the rights for officers to question passengers to determine whether or not they are involved with terrorism. This change of practice will at least afford officers with visual authority to act rather than previous practices of stopping passengers with no explanation of their legal authority to do so.

Respondent passengers at Leeds Beckett Law School have indicated that passengers who act suspiciously should be profiled for further examination; however there is also evidence that a small percentage of those respondents are suspicious of why passengers are stopped and believe that race forms the bases stopping some passengers. Inevitably when the
strategy of profiling passengers focuses on particular flight paths and destinations then there is a real likelihood that more ethnic minorities will be targeted with the result of isolating communities. The recent troubles in Syria will undoubtedly raise suspicions and a higher level of stop and search for young Muslims returning to the UK from Turkey over the next few years.

To date, Schedule 7 has received considerable support by the UK Courts in its application on passengers at ports. The case of Beghal v DPP sets out how the court wishes to deal with applicants who seek to rely on the case of Gillan (Strasbourg) when suggesting their convention rights have been infringed under Schedule 7. The David Miranda case is an example of the courts willingness to rely on the dictum outlined in Beghal v DPP in response to those who wish to suggest that Schedule 7 should be treated the same as s44 TA 2000 in the case Gillan. Schedule 7 unlike s44 TA 2000 has not been subject to consideration by the European Court of Human Rights in Strasbourg. In the case of Sabure Malik v UK on 28th May 2013 the Strasbourg Chamber rejected the UK governments contention that the Applicant had not exhausted all domestic remedies, furthermore, they had not explained how the present case can be distinguished from Gillan and Quinton, consequently, allowing the case to be admissible for a full hearing, raises at least the possibility that Schedule 7 (as it was then) may have infringed convention rights.

The amended Schedule 7 via the Anti-social Behaviour, Crime and Policing Act 2014 is still likely to draw criticism because the amendments were largely moderate in providing safeguards to persons subject to it. Schedule 7 in its new form is still open to abuse from designated officers due to it in part being directed operationally through the Code of Practice 2014 rather than statutory requirement and the continuation of no reasonable suspicion to stop, screen and detain persons to determine whether or not they are connected to terrorism. Government mandarins are resistant to a more far-reaching approach to replace Schedule 7, similar to those that did replace s44 of the TA 2000 in the light of the case of Gillan. The Protection of Freedoms Act 2012 replaced s44 of the TA 2000 with s47A of Schedule 6B of the TA 2000. S47A allows senior police officers to give authorisation to stop and search individuals without reasonable suspicion, but s47A is only available in more circumscribed circumstances and subject to stronger safeguards. There is an accompanying Code of Practice for s47A which outlines to senior officers whether the power should be used and the requirements that must be met before it can be used, this differs significantly from those requirements under the previous s46(2) of the TA 2000. Like s46 (2), s47A once operational, is subject to a specific area and duration, but for 14 days rather than the previous 28 days. It is difficult to suggest that s47A would be an ideal replacement to Schedule 7 because of the high threshold that is required before it can be triggered, evidenced by its lack of use, however, s47A applies equally to ports and boarders. The recent review of Schedule 7 can be seen as a lost opportunity to impose robust safeguards for persons detained 15 minutes or more, which in my opinion would appear to strike a balance between flexibility and requiring officers to have reasonable suspicion to detain persons for longer than 15 minutes. Data suggests that most passengers travelling are detained for no more than a few minutes. There appears to be some logic and a need for a flexible approach to stopping passengers and all passengers are stopped for a number of standard checks. Security Officers that cannot articulate to passengers why they are being detained for 15 minutes or more should forfeit any further right to detain passengers for it is difficult to grasp at this point why any further detention would be necessary without reasonable suspicion (my emphasis). Striking balances between security and civil liberties within a backdrop of aviation attacks and attempts is about risk assessment. However, identifying particular profile indicators for examination, such as flight routes need to be balanced with the fact most passengers pose no risk to aviation security.
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