



Home Office

# Terrorism Act 2000 (TACT) Code

Consultation Document

## Introduction

Section 23 of the Terrorism Act 2006 amends Schedule 8 to the Terrorism Act 2000 to extend the maximum period of time that terrorist suspects can be held before being charged, to 28 days.

During the passage of the Act through Parliament, the Government gave an undertaking to produce a dedicated Code of Practice under section 66 of the Police & Criminal Evidence Act 1984 to cover this type of detention, before bringing the 28 day provision into force.

The Code has been drafted in consultation with practitioners and will now be subject to a period of consultation, during which we invite comments from any organisations, groups or individuals who may have an interest in this matter.

## Summary

The Terrorism Act 2006 amends Schedule 8 to the Terrorism Act 2000 to extend the maximum amount of time an individual can be detained without charge, after being arrested under section 41 of the Terrorism Act 2000, from 14 days to 28 days.

Section 41 of the Terrorism Act 2000 gives a police constable the power to arrest a person whom he reasonably suspects to be a terrorist. The guidance which covers the detention of a terrorism suspect arrested under this section is currently found within the Code of Practice issued under the Police & Criminal Evidence Act 1984, on the detention, treatment and questioning of persons by police officers (known as PACE Code C). During the passage of the 2006 Act, the Government agreed that the power to detain individuals without charge for up to 28 days should be governed by a separate Code of Practice.

People who are arrested under section 41 are subsequently held under the provisions of Schedule 8 to the Act, which provides them with certain rights and covers various aspects of a person's detention while a police investigation continues.

In addition to the checks and balances within the Act itself, the new Code of Practice, on which comments are now sought, provides a guide for police officers and aims to ensure that the rights of individuals arrested on suspicion of being a terrorist are upheld, while maintaining the effectiveness of police powers to investigate terrorism.

The Code of Practice is based on the existing provisions of Code C, as many of the matters raised by pre-charge detention apply to any type of custody, regardless of whether a person is suspected of involvement in terrorism.

## The Code covers the following areas:

- General matters, such as the scope and applicability of the Code, and definitions of various terms.
- Custody Records
- Initial action when people are arrested and brought to a police station, including special consideration for juveniles, mentally vulnerable or other individuals who may require special attention.
- Detainees' property – finding out what a person has in their possession on arrest and deciding what to do with it.
- The detainee's right to tell another person that they have been arrested
- The right to legal advice
- The right for citizens of independent commonwealth countries and foreign nationals to confer with a representative of their country.
- Conditions of detention
- Care and treatment of detainees
- Cautions
- Interviews
- Access to interpreters
- Review and extension of detention, including procedures to apply for extension of detention up to 28 days, and transferring detainees to a prison.
- Annexes

The Code will apply to persons detained under the relevant provisions in England & Wales. Equivalent guidance will be produced for Northern Ireland by the Northern Ireland Office, and for Scotland by the Lord Advocate.

## Extension of Detention Background

Individuals who are arrested under section 41 of the 2000 Act can be held initially for up to 48 hours. If the police need to extend that period they, or a Crown Prosecutor must apply to a judicial authority for a warrant of further detention. These warrants will authorise detention for seven days, unless the person making the application or the judicial authority stipulate a shorter period.

These warrants can be extended by up to seven days at a time, up to a total period of 28 days. Every time the detention period needs to be extended an application must be made to a judicial authority, unless the extension applied for would take the total time a detainee has been in custody beyond 14 days. If an application for a warrant would take the total time a detainee has been in custody beyond 14 days, (the current maximum) it must be made to a High Court judge.

The judicial authority or High Court judge may authorise an extension of detention if there are reasonable grounds to believe that it is necessary to obtain or preserve relevant evidence, or while waiting for the results of an examination or analysis of relevant evidence or of any other thing, the analysis of which is being carried out with a view to obtaining relevant evidence. The judicial authority or High Court judge must also be satisfied that the investigation is being conducted “diligently and expeditiously”.

The power to detain for 28 days will not be used every time a person is arrested on suspicion of terrorism, in fact it is envisaged it will only be used in a few, exceptional cases.

## Transfer to Prison

One of the key changes included in the draft Code of Practice is for detainees to be transferred to a prison once a warrant has been obtained that would take the period of detention beyond 14 days.

This measure is to ensure that detainees have access to the facilities of an institution that is used to dealing with longer periods of detention.

## PACE Code C

As a consequence of producing a separate Code of Practice for detention of terrorist suspects, the references to detention under section 41 of and Schedule 8 to the Terrorism Act 2000 have been removed from PACE Code C.

A new revised version of PACE Code C will be published in conjunction with the terrorism detention Code, to ensure all practitioners have access to the relevant and updated Code of practice.

## Comments

If you have comments that you would like to make as part of the consultation, please send them to:

**Code of Practice (Detention of Terrorist Suspects) Consultation  
Room 5.45  
Home Office  
2 Marsham Street  
London  
SW1P 4DF**

Or email them to: **[TerrorismDetentionCode@homeoffice.gsi.gov.uk](mailto:TerrorismDetentionCode@homeoffice.gsi.gov.uk)**

The consultation period will end on 23 May 2006

A summary of the responses received will be published within 3 months of the closing date for this consultation, and will be made available on our website.

## Responses: Confidentiality & Disclaimer

The information you send us may be passed to colleagues within the Home Office, the Government or related agencies.

Furthermore, information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Please ensure that your response is marked clearly if you wish your response and name to be kept confidential.

Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.

The Department will process your personal data in accordance with the DPA - in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The Secretary of State has confirmed that due to the operational need to bring the legislative provisions into force with which the Code of Practice is concerned, this consultation will not be subject to Cabinet Office guidelines on public consultations.

