

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT PORT EXAMINATION CODES OF PRACTICE
AND NATIONAL SECURITY DETERMINATIONS
GUIDANCE REGULATIONS 2020

Wednesday 8 July 2020

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Sunday 12 July 2020

© Parliamentary Copyright House of Commons 2020

This publication may be reproduced under the terms of the Open Parliament licence, which is published at www.parliament.uk/site-information/copyright/.

The Committee consisted of the following Members:

Chair: MARK PRITCHARD

- | | |
|---|--|
| † Drummond, Mrs Flick (<i>Meon Valley</i>) (Con) | Owatemi, Taiwo (<i>Coventry North West</i>) (Lab) |
| † Edwards, Ruth (<i>Rushcliffe</i>) (Con) | † Philp, Chris (<i>Parliamentary Under-Secretary of State for the Home Department</i>) |
| Grady, Patrick (<i>Glasgow North</i>) (SNP) | † Pursglove, Tom (<i>Corby</i>) (Con) |
| † Grundy, James (<i>Leigh</i>) (Con) | Ribeiro-Addy, Bell (<i>Streatham</i>) (Lab) |
| Johnson, Dame Diana (<i>Kingston upon Hull North</i>) (Lab) | † Smith, Jeff (<i>Manchester, Withington</i>) (Lab) |
| Jones, Andrew (<i>Harrogate and Knaresborough</i>) (Con) | † Watling, Giles (<i>Clacton</i>) (Con) |
| † Lewer, Andrew (<i>Northampton South</i>) (Con) | Williams, Craig (<i>Montgomeryshire</i>) (Con) |
| † McGinn, Conor (<i>St Helens North</i>) (Lab) | Dominic Stockbridge, <i>Committee Clerk</i> |
| Morris, Grahame (<i>Easington</i>) (Lab) | |
| † Morrissey, Joy (<i>Beaconsfield</i>) (Con) | † attended the Committee |

Sixth Delegated Legislation Committee

Wednesday 8 July 2020

[MARK PRITCHARD *in the Chair*]

Draft Port Examination Codes of Practice and National Security Determinations Guidance Regulations 2020

2 pm

The Parliamentary Under-Secretary of State for the Home Department (Chris Philp): I beg to move,

That the Committee has considered the draft Port Examination Codes of Practice and National Security Determinations Guidance Regulations 2020.

As always, it is a pleasure to serve under your chairmanship, Mr Pritchard. Approval of this statutory instrument is required before changes to the counter-terrorism port examination and biometric retention powers made by the Counter-Terrorism and Border Security Act 2019 can come into effect, as well as new counter-hostile state activity port examination powers under the same Act. These regulations will bring into force a revised code of practice regarding functions carried out under schedules 7 and 8 to the Terrorism Act 2000, a code of practice regarding those functions under schedule 3 to the 2019 Act and revised guidance issued under the Protection of Freedoms Act 2012 and concerning the retention of biometric data for national security purposes.

Counter-terrorism officers who currently use schedule 7 port examination powers must do so in accordance with the relevant code of practice. Although the code largely reflects the primary legislation, it also includes further procedural guidelines for those exercising the powers and additional safeguards for those who are subject to them.

Amendments to the powers through the 2019 Act necessitated consequential changes to the code, which we are now making. This reflects new provisions to pause the detention clock where a detained person requires medical treatment during the examination, to prohibit oral answers given by an examinee in response to questioning under compulsion being used as evidence in a criminal trial and to require an examinee in detention to choose a different solicitor where there are concerns with their chosen solicitor.

A similar code was produced for the schedule 3 powers, but with two key differences: first, to reflect that schedule 3 is targeted towards detecting those engaged in hostile activity—potentially hostile state activity—as opposed to terrorism; and, secondly, to provide additional detail relating to the new property seizure and retention powers exclusive to schedule 3 that require an examining officer to seek the authorisation of the Investigatory Powers Commissioner to retain and use a person's property or copies of that property.

Both these new codes were subject to public consultation last year. In response to the feedback that we received, we have strengthened safeguards for confidential material,

making it clear that such material should not be accessed by frontline officers without prior judicial authorisation. We have extended these safeguards to cover material that may disclose a source of journalistic information. We have also provided further clarity on the practical operation of new schedule 3 retention powers.

In addition, the regulations bring into force updated guidance, issued under the 2012 Act, on the making or renewing of national security determinations. NSDs allow the biometrics—fingerprints and DNA profiles—of unconvicted individuals of national security interest to be retained after initial statutory retention periods have expired. That is obviously to strengthen our ability to fight terrorism and other threats. The changes include increasing the maximum length of an NSD from two to five years, which operational experience shows is important. NSDs are an important national security capability. Biometric material retained using NSDs is known in the last year to have led to the identification of individuals thought to have travelled to take part in the conflict in Syria and Iraq, has provided evidence of potential terrorism offences and has been matched to potential visa and asylum applications, resulting in the subject individuals being refused entry to the United Kingdom.

In revising the biometrics guidance, we have undertaken significant consultation with key stakeholders, including the police, the devolved Administrations, the Lord Advocate and the independent Biometrics Commissioner. I urge the Committee to consider the draft codes and the revised guidance favourably, and I therefore commend these regulations to the Committee.

2.4 pm

Conor McGinn (St Helens North) (Lab): It is a pleasure to serve under your chairmanship, Mr Pritchard, and it is always good to see the Minister. I do not think familiarity breeds contempt in his case, because I have seen plenty of him and I am only growing fonder of him. I thank him and the Minister for Security, the right hon. Member for Old Bexley and Sidcup (James Brokenshire), who briefed me in advance on the SI, which was useful. It is in that spirit that I want to work constructively with the Government to ensure that we have robust national security policies firmly in place.

Although the regulations are, on the face of it, technical, they are an important aid in that task. As the Minister said, they bring into force revised codes of practice pertaining to port examination powers under schedule 7 to the Terrorism Act 2000—[*Interruption.*]—and also pertaining to those exercised as outlined in schedule 3 to the Counter-Terrorism and Border Security Act 2019 in relation to hostile state activity; I hope that that is not the cause of the noise outside.

In addition, the regulations contain proposed revisions to guidance on biometric data, as set out in section 22 of the Protection of Freedoms Act 2012—notably pertaining to conditions on when biometric data can be retained, such as when national security determinations are authorised, as the Minister said.

Our first responsibility, of course, is to protect the public, and there is little question that intercepting terrorist and hostile state actors is vital to that. The attempted assassination of Sergei and Yulia Skripal in March 2018, which led to the poisoning of Detective Sergeant Nick Bailey and Charlie Rowley, and of Dawn

Sturgess, who sadly died, made it clear to what depths those who want to harm our values, communities, country and citizens will stoop in order to achieve their ends. Those events and the evolving nature of risks and security threats highlight the need to improve our lines of defence and fill gaps in the legislation. The 2019 Act and the regulations are an attempt to do that.

Our skilled counter-terrorism and border officers at UK ports are often the first line of defence against malign actors, and we need those threats to be intercepted at quick pace. That means that appropriate powers and training must be provided to those dedicated men and women, and their operational partners, so that they can stop, question, search and detain individuals they believe to be dangerous.

That requires updated codes of practice on rights and duties, and we welcome the further clarity in the draft guidance on the scope of an accredited officer's engagement, as well as clarity on the rights and obligations of the individual being examined, including safeguards on timeframes, communication of information and robust complaints procedures.

Clear guidance not only ensures proportionate and fair use of the powers, but makes their operation as efficient as possible. The Opposition want that, because it keeps our country safe and secure. We welcome the clarification in the guidance of what "hostile activity" comprises. As set out in annex C to the draft schedule 3 code, that is now to include various types of actions, among them espionage, sabotage, assassination and subversion.

Will the Minister confirm whether the list will continue to be reviewed regularly so that activities could prospectively be added if a national security interest deemed it necessary? Clarity in response to evolving threats will help officers on the frontline to do their job and help to keep people safe.

We support the regulations in principle, and we simply seek some clarification and assurances, which I know the Minister is always happy to provide. We acknowledge the safeguards provided in relation to journalists and sensitive information, and I am sure we can agree that in a democracy such as ours, confidential material should be subject to higher legal protections. Investigatory Powers Commissioner oversight is therefore welcome, as are safeguards on retaining confidential material in secure ways. On that first point, will the Minister outline the timeframes that we can expect for independent authorisation—particularly for urgent cases? Will he also outline the systems and processes in place for secure storage?

On biometric retention, we accept the operational case for making changes and the need for the guidance to reflect that. The changes are on issues that include, as the Minister said, extending the length of NSDs from two to five years, allowing a chief officer of a police force in England and Wales to make an NSD in relation to data held by any force in those two countries, and giving the police greater opportunities in specified circumstances to prepare and consider an application before the data is deleted.

Those are, rightly, resilient measures, but we must remind ourselves that they apply to individuals who have not yet been convicted of any crime. It is therefore

vital—this is similar to our discussion of terrorism prevention and investigation measures in the Counter-Terrorism and Sentencing Bill Committee yesterday—to have strong protections.

I understand that the Biometrics Commissioner suggested, as stated in the guidance, that officers should make an NSD for less than the new maximum statutory period of five years if they think that that would be proportionate. Again, I trust officers implicitly to make that call based on the evidence in front of them. Can the Minister confirm that further oversight and support would be provided in such scenarios, so that resources are allocated accordingly if the full period is genuinely needed? I am sure he will agree that it would be undesirable for the length of the measures to be influenced by local resource considerations rather than underlying security concerns. Conversely, if an individual's risk profile changes and they no longer pose a threat, will the Minister clarify whether data retention could also be changed, based on that judgment? A sense of flexibility and review is important for such measures.

The Biometrics Commissioner recommended that data be deleted within a reasonable period in circumstances where an individual has been arrested but not convicted of a non-terrorism offence. The guidance states that a reasonable period is up to six months. Can the Minister tell us what evidence led to the designation of that timeframe? Was it suggested by the commissioner?

As I said at the outset, national security is of the utmost importance to the official Opposition, the Government and all members of the Committee. In that context and that spirit, we support the action that the Government are taking.

2.11 pm

Chris Philp: Let me briefly reply to some of the points that the shadow Minister made. I echo his comments about what a pleasure it is to appear opposite each other once again—this is becoming quite a double act, and one that I hope will continue for many months and years to come. I promise that I did not organise the honking of horns on the river that occurred, very rudely, during his speech a few moments ago.

On the ongoing review of how these provisions operate, the Minister for Security and the Investigatory Powers Commissioner will be taking a close, ongoing interest in how they operate, to ensure they are operating as intended. If the threat changes or an evaluation is made that further changes need to be made to the codes of practice that we are debating, I am sure that the Investigatory Powers Commissioner will suggest them or the Minister for Security will move them forward if he or she considers them to be necessary.

On the processes for storage, I do not want to go into the technical or operational details, but suffice it to say that there is a high level of assurance that the systems being used to retain this information are extremely secure. We are conscious that the material concerned is personal and confidential to the person to whom it relates, and that it is often of some national security importance.

In relation to the shadow Minister's question about the time of retention, we will expect officers who exercise these powers to do so proportionately. If the threat is

[Chris Philp]

such that the full period of time is not required, we would expect them not to use it. If, as the shadow Minister said, the nature of the threat changes, we would expect that to be reflected in any ongoing retention decisions. Those are clearly day-to-day operational decisions, and we have to rely on the officers on the ground to

make those decisions within the confines of the law and the confines of the codes of practice that we are debating. On that basis, I commend the regulations to the Committee.

Question put and agreed to.

2.13 pm

Committee rose.