

Lord Rosser
House of Lords
London
SW1A 0PW

1 November 2018

Dear Richard,

COUNTER-TERRORISM AND BORDER SECURITY BILL: DRAFT SCHEDULE 3 CODE OF PRACTICE

You will recall that I undertook at Second Reading to ensure that a draft of the Code of Practice governing the exercise of the port and border powers under Schedule 3 to the Bill was available to Peers in advance of the Committee stage debate on these provisions. I am pleased to attach a copy of the draft Code which has also been published on the Bill page of the Gov.UK website. This draft Code is modelled on the equivalent for Schedule 7 to the Terrorism Act 2000 for counter-terrorism purposes and provides further guidance on how ports officers should exercise the powers under Schedule 3 that have been introduced to harden this country's defences against hostile state activity.

A key difference between this Code and its Schedule 7 equivalent is section 3, which covers the new powers of retention under paragraph 11 and 14 of Schedule 3 and the subsequent processes in paragraph 12, 13 and 15. The Code provides further detail on the retention process, including the associated timescales, level of information provided to the person whose property has been retained and role of the Investigatory Powers Commissioner. It will also clarify how material subject to greater protections (defined in the Bill as 'confidential material') is to be handled.

The draft Code has been prepared on the assumption that the amendments to Schedule 3 which the Government has tabled for Committee stage will be incorporated into the Bill; this is, of course, without prejudice to the House's consideration of those amendments.

The Code also addresses concerns highlighted in the JUSTICE report on the possibility of ports officers switching between their Schedule 7 and 3 powers to potentially double the period of examination. Section 3 makes clear that in such a situation, a person will not be examined any longer than the 6-hour maximum period, whether through use of one power or a combination of both. A parallel change will be made to the Schedule 7 Code.

Finally, sections 2 and 4 of the draft Code will be of interest to those who have queried the selection of persons for examination and the rights of detainees (particularly the right the legal counsel) through recent parliamentary debates on Schedule 3.

In accordance with the provisions in paragraph 50 of Schedule 3 a further draft of the Code will be published once the Bill is enacted (subject to parliamentary approval) to afford a further opportunity for interested parties to make representations. Following our consideration of these, a final draft of the Code will be laid before Parliament; it must then be debated and approved by both Houses before it can take effect.

I am copying this letter to all Peers who spoke at Second Reading, to Lord Hope of Craighead, Lord Carlile, Lord Evans of Weardale, Lord Judge, Lord Attlee, Baroness Taylor of Bolton (Chair of the Constitution Committee), Harriet Harman (Chair, Joint Committee on Human Rights), Nick-Thomas Symonds and Gavin Newlands; I am also placing a copy of this letter and the draft Code of Practice in the library of the House.

A handwritten signature in cursive script, appearing to read 'Susan', written in black ink.

Baroness Williams of Trafford