

Know Your Rights

When Questioned by Police in Scotland

- ◆ Except as set out below, you do not have to answer any questions put to you by police.
- ◆ If police **suspect you of a crime** or think you have **witnessed a crime**, you are legally obliged to give them your name and address if asked.
- ◆ **Section 38b of the Terrorism Act 2000** makes it a criminal offence to fail to disclose information that you believe might be of material assistance in preventing the commission of an **act of terrorism** by another person, or in securing the apprehension, prosecution or conviction of another person, in the UK, for an offence involving the commission, preparation or instigation of an act of terrorism. The definition of an "act of terrorism" in UK law is very wide, but it does **not** include every offence under UK terrorism laws. For example, membership or support for a proscribed organisation is a terrorism offence but is not in itself an "act of terrorism". If in doubt, consult a solicitor.
- ◆ **The Terrorism Act 2000** requires you to inform police if you know or suspect that another person has committed a terrorist financing offence based on information which came to you in the course of a trade, profession or employment. If in doubt, consult a solicitor.
- ◆ If you are **stopped at an airport or other port** under **Schedule 7 of the Terrorism Act 2000**, you are obliged to answer questions put to you by police in order to determine whether you are a terrorist. You could be found guilty of an imprisonable offence if you don't answer.
 - Questions about the activities of other people will in most circumstances not fall within the terms of Schedule 7. If you wish to refuse to answer questions that you think you are not legally required to answer, you should ask to consult a solicitor.
 - During their initial examination (which may last up to 1 hour), officers may refuse your request to contact a solicitor. If they detain you for further questioning (which may be for up to 6 hours) they cannot refuse.
 - We recommend that you make your answers as brief and as straightforward as possible.
 - Police may ask you to agree to meet them at a later date. This is most likely an attempt to recruit you as an informer. You are not obliged to agree to meet them. If you do agree, you are free to contact them later and say you have changed your mind and you do not wish to meet them. We recommend that you ask a solicitor to do this on your behalf.
- ◆ If you are **detained or arrested by police** in Scotland:
 - **You are legally required** to give your name, address, date and place of birth and nationality.
 - **You do not have to answer any other questions** eg give details about your occupation, nor do you have to explain anything found in your possession.
 - **You have a right to have a solicitor informed** of your detention, but you don't have the right to make the telephone call personally; the police may do this for you.
 - **You have a right to a private consultation** with a solicitor before any questioning begins, and at any time during questioning. We advise you not to answer any questions, except for your name and address etc, until you have held a private consultation with your solicitor.
 - Generally we advise you **not to answer questions** (except for name, address etc) but your solicitor may advise you differently, depending on the particular circumstances. Discuss this carefully with your solicitor.
 - If you waive your right of access to a solicitor (we advise against this) you have the right to change your mind at any time.
 - **If you need an interpreter**, police must provide one. The interpreter will help with your discussions with your solicitor as well as helping you with police questions. Police must also provide translations of documents if you need them. If the police decide that you don't need an interpreter or translations of documents and you disagree, you can request a review of the police's decision. We advise you not to answer questions (except for name & address etc) unless you are satisfied that, with the help of the interpreter, you are able to communicate well with both your solicitor and police.

Being detained or arrested are slightly different things in Scots law, but in both situations you have the rights set out above. If you are detained and the police believe they have sufficient evidence that you have committed an offence, they will then arrest you. In due course you will either be released without charge or charged with an offence.
- ◆ If you **attend a police station voluntarily** for questioning on suspicion of having committed an offence, you have the same rights to consult a solicitor and to be provided with an interpreter and with translations of documents as if you were detained or arrested.
- ◆ **You don't have to answer** any questions put to you by MI5 officers. If you wish to answer (though we advise against it), you should consult a solicitor and ensure your solicitor is present at any discussion with the officer.

Nothing in this briefing should be taken as legal advice. If in doubt, consult a lawyer.

How Terrorism Investigations put People at Risk

- ◆ Terrorism investigations are often very wide-ranging and target large numbers of people. Innocent links between people may give rise to suspicions of terrorist activity. When you are questioned by police, you do not know what information - accurate or inaccurate - they already hold about you. You do not know how information that you provide may be used.
- ◆ The definition of terrorism in British law is very wide and is open to varying interpretations. Activities previously regarded as legitimate or as minor offences may now be labelled as terrorist, with important consequences for the way they are investigated and for the likely penalties. For some offences, terrorism legislation partially sets aside the principle of innocent until proven guilty and in effect makes it necessary for a defendant to establish their innocence.
- ◆ People who have been approached by MI5 officers are often subjected to repeated and problematic attention from MI5, whether or not they initially provided the information requested.
- ◆ People who are not British citizens are particularly vulnerable to pressure that might lead to unfair treatment and serious abuses of their rights.
- ◆ An ill-considered comment to a police or intelligence officer can have serious consequences that can be very hard to reverse. It can put you at risk of eventual prosecution, and it can add fuel to an ill-founded investigation.

What we Think

- ◆ Ordinary political activities should be no concern of the police or intelligence services. We urge people not to discuss such activities with the police or intelligence services.
- ◆ We wish the police every success in tackling real crime, especially crimes of violence and hate crime.
- ◆ We call for the repeal of Britain's terrorism laws. We believe that these laws promote miscarriages of justice, promote a culture of suspicion, divide communities and create conditions that could foster terrorism. We think it would be better for terrorism-related criminality to be investigated and prosecuted under the ordinary criminal law, with all the usual safeguards for people who come under suspicion.

Police Investigations and You

If police or intelligence officers question you, be careful - especially if they question you about matters connected to terrorism. The law on terrorism is very vague and wide-ranging, and you may find yourself in unexpected difficulties if you talk to police without taking advice from a lawyer.

Anyone, however law-abiding, can find themselves in this situation. Do not assume that if you have done nothing wrong you have nothing to worry about. Don't panic. Know your rights and exercise them. They are there to protect you and to protect society at large.

Our Advice

- ◆ Obtain advice from a solicitor (preferably one experienced in terrorism cases) before answering any questions on these matters from police or MI5 officers.
- ◆ Do this even if you have not been detained or told that you are under suspicion, but have just been asked to provide information. You should tell the officers concerned that you will be doing this, and you should obtain their names and telephone numbers. Do not be drawn into any further discussion with the officers.
- ◆ Do not be dissuaded from this by any threats or promises that police or MI5 officers may make.
- ◆ Many people do not obtain legal advice because they think that the situation is 'simple', or that consulting a solicitor will 'make things worse'. This is not the case. On many occasions the presence of a solicitor may clear matters up quickly and ensure that the police behave appropriately.
- ◆ You should always feel free to ask police whether you have to answer questions; whether you have to consent to your property being searched; and whether you are under arrest or are free to leave. This is because on some occasions the police may detain you or search you in circumstances where they know they are not entitled to do so but on the basis that you have never raised an objection. However, they may not reveal that to you, unless you ask. In some situations if you say calmly you would rather not answer questions, or rather not have your premises searched, the police may not be able to do so.
- ◆ Remain calm; be courteous. If you become agitated you may be charged with breach of the peace.
- ◆ Police are often overtly present at community events in Scotland and will generally appear helpful and supportive. Any information you give them may nevertheless be used in investigations and could create future difficulties for yourself or others. Be careful what you say to police officers. Try not to allow a personal relationship to develop with individual officers.

This SACC briefing reflects the position as we currently understand it. It should not be relied upon for legal purposes. It is essential that anyone concerned over these issues should consult an experienced lawyer.

More information

For additional notes and links to other sources of information see the web version of this briefing at:

www.sacc.org.uk/rights

To arrange a SACC speaker, for general enquiries, or to seek advice, contact SACC via:

enquiries@sacc.org.uk

07518947204 or 07786630764