

**REVIEW OF COUNTER-TERRORISM AND SECURITY
POWERS**

EQUALITY IMPACT ASSESSMENT



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POWERS**

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Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty

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EQUALITY IMPACT ASSESSMENT FOR REVIEW OF COUNTER-TERRORISM AND SECURITY POWERS

METHODOLOGY AND OVERVIEW

As part of the review of counter-terrorism and security powers we have consulted a wide range of organisations including the police, the intelligence and security agencies, civil liberty and human rights organisations, community groups, local councils, organisations representing the legal profession, victim support groups and organisations with a special interest in particular aspects of the review (such as photography organisations). We have also consulted key individuals with an interest in counter-terrorism and security powers.

Consultation meetings on the review were held in Manchester, Birmingham, Edinburgh, London and Belfast. These meetings involved police, community representatives and local authorities. The Home Office also provided an e-mail and postal address for members of the public and organisations to contribute to the review.

Independent oversight of the review was provided by Lord Macdonald of River Glaven QC who also met interested organisations and individuals.

As a result of the consultation, the Home Office has received over 60 written contributions to the review.

The review received widespread support from all organisations and individuals who took part in the consultation. A summary of the responses received on the review has been published separately.

The terms of reference for the review gave a commitment to produce an equality impact assessment on the review's findings and from the outset consideration was given to the equality impact of possible review recommendations.

The review was limited to 6 key counter-terrorism and security powers. The review's consideration of some of these powers was wide-ranging, for others it was focused on addressing specific commitments given in the coalition agreement published in May 2010. The six powers covered by the review are:

- The detention of terrorist suspects before charge, including how the period of detention can be reduced below 28 days.
- Section 44 stop and search powers and the use of terrorism legislation in relation to photography.

- The use of the Regulation of Investigatory Powers Act 2000 (RIPA) by local authorities and access to communications data more generally.
- Measures to deal with organisations that promote hatred and violence.
- Extending the use of deportation with assurances in a manner that is consistent with our legal and human rights obligations.
- Control orders (including alternatives).

The United Kingdom's counter-terrorism and security powers are not aimed at a particular race, ethnic group, religion or any other section of society. They are aimed at terrorists and criminals, whatever their background. The Government is committed to working with all communities that are affected by terrorism and crime with the shared aim of tackling these issues. This includes trying to minimise the impact that particular powers may have on some communities, improving communication to minimise the perception that powers may be aimed at or targeted against specific communities and monitoring policies for their equality impact.

PRELIMINARY SCREENING

Policy aims, objectives and outcomes

The review of counter-terrorism and security powers will lead to changes in existing policy and the law.

As set out in the terms of reference for the review, its aim is to ensure that the powers covered by the review are necessary, effective and proportionate and that they meet the UK's international and domestic human rights obligations. The review was to ensure that the powers were consistent with protecting the public and where possible, to provide a correction in favour of liberty.

The recommendations of the review have been published separately. The main changes to existing policy and legislation recommended by the review are:

- Repeal control orders and replace them with a fairer and more focused regime.
- Reduce the maximum period of pre-charge detention from 28 to 14 days. Commence the powers to allow post-charge questioning.

- Repeal section 44 stop and search powers and replace with a no reasonable suspicion power that can only be used in very limited circumstances.
- Magistrates approval required for use of RIPA techniques by local authorities and directed surveillance to be used only for offences that attract a custodial sentence of 6 months or more.
- Groups that promote hatred or violence should be addressed by using existing legislation to maximum effect as well as dealing with these groups through our work to tackle extremism and promote integration and participation.
- Actively pursue new deportation with assurances arrangements and look at how we can increase the number of expert witnesses we provide in court. Consider an annual independent report on use of deportations with assurances and options for increasing follow up work on individuals post return. Engage more widely with interested parties in the UK and overseas.

Will these changes have an impact on people nationally or locally ? **Yes**

Are particular communities or groups of people likely to have different needs, experiences and/or attitudes in relation to the changes in policy ? **Yes – for some aspects of the review only. It is likely that the proposed changes in policy will have a greater impact on Muslim communities than those of other religion and belief groups. The review does not propose changes in relation to measures to deal with groups that promote hatred. The changes to the use of RIPA by local authorities will not impact on particular communities. The changes recommended in relation to the use of counter-terrorism powers against photographers are covered by the recommended changes to section 44 stop and search powers.**

Are there any aspects in changes to policies that could contribute to equality or inequality ? **Yes. The proposed changes in policy on section 44 stop and search are likely to be welcomed by Muslim and Asian/Asian British communities who feel that the current power is used unequally against them as a group.**

Could the aims of the revised policy be in conflict with equal opportunity, elimination of discrimination, promotion of good relations ? **No.**

Was the original policy impact assessed ? **Partially. Equality impact assessments were produced in relation to control orders, section 44 stop and search powers, the detention of terrorist suspects before charge and use of the Regulation of Investigatory Powers Act. In relation to groups that promote hatred, an equality impact assessment was produced in relation to the proscription of terrorist organisations and the incitement of racial and religious hatred. The policy on deportations with assurance has been in place for a considerable period of time and has been considered extensively by the courts.**

As a result of this preliminary screening it is assessed that a fuller impact assessment is needed in relation to 3 aspects of the review's recommendations which will result in a significant change of policy – on the replacement for control orders, the use of section 44 stop and search powers and the detention of terrorist suspects before charge.

Because this review does not recommend a change in policy towards groups that promote hatred or violence, it is assessed that no further impact assessment is needed in this area.

Whilst changes have been recommended to make the policy of deportation with assurances more effective, the existing policy remains largely unchanged. No further impact assessment is required – we seek to deport terrorists of all nationalities, and even when we have a DWA arrangement there are cases when we might not deport. The policy does not discriminate against people from those countries where we have a DWA arrangement (or against other nationalities), does not contribute to inequality for people of particular nationalities and does not undermine good relations with particular communities. For these reasons it is assessed that a full impact assessment is not required.

The addition of magistrates approval for use of RIPA by local authorities will help safeguard against inappropriate use of the powers. This and other changes proposed on the use of RIPA by local authorities will not impact on any particular group in society and has no implications for equality or discrimination and it is therefore assessed that no further impact assessment is required on this change in policy.

FULL IMPACT ASSESSMENT

STATISTICS AND RESEARCH

What relevant quantitative and qualitative data do you have in relation to the proposed changes in policy ?

Race, nationality and ethnic origin	<p><u>Quantitative Data</u></p> <p>The Home Office statistical bulletin published on 28 October 2010 covers the operation of police counter-terrorism powers in Great Britain during 2009/10. This records that of the 101,248 stops and searches carried out under section 44 of the Terrorism Act 2000 during the period, 59% were against people who defined themselves as white, 17% against people who defined themselves as of Asian or Asian British origin and 10% against people who defined themselves as of black or black British origin. These percentages are in line with section 44 stops and searches in earlier years. These statistics reflect the way that section 44 was used before the Home Secretary's statement in July 2010. This statement announced that the use of section 44 without any suspicion was to cease and that the stop and search powers in Part V of the Terrorism Act 2000 would be used on the basis of reasonable suspicion on an interim basis whilst the review considered the power.</p> <p>41% of those arrested under counter-terrorism legislation (and therefore subject to the arrangements for the</p>
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	<p>detention of terrorist suspects before charge) since 1 April 2005, have been of Asian ethnic appearance.</p> <p>Of the 48 individuals who have been subject to a control order, 20 have been British nationals and 28 foreign nationals. As a matter of policy the Government does not discriminate in the operation of control orders. Furthermore, individual control orders are reviewed by the High Court and judges would not uphold an order that was considered to be discriminatory including on grounds of race, nationality or ethnic origin. None has ever been quashed by the courts on the basis that it discriminated. The replacement for control orders will be subject to an equivalent level of scrutiny.</p> <p><u>Qualitative Data</u></p> <p>There is a perception in Asian communities that section 44 stop and search powers are used disproportionately against people of Asian origin.</p>
Disability	No issues arise from the changes in policy in relation to disability.
Gender	<p><u>Quantitative data</u></p> <p>94% of those arrested under counter-terrorism legislation (and therefore detained before charge) since 1 April 2005 have been male.</p> <p><u>Qualitative data</u></p> <p>Although data is not published on the gender of those stopped and searched</p>

	under section 44, it is understood that the majority are male.
Gender identity	No issues arise from the changes in policy in relation to gender identity.
Religion and belief	<p><u>Quantitative data</u></p> <p>No statistics are available on the religious or other beliefs on those stopped and searched under section 44, arrested under counter-terrorism legislation or on control orders. However, at 31 March 2010, 87% of terrorist prisoners classified themselves as Muslim.</p> <p><u>Qualitative data</u></p> <p>All those who have been subject to a control order would be likely to describe themselves as Muslim. It is likely that the majority of those arrested under counter-terrorism legislation since 2005 would describe themselves as Muslims. Muslim communities have expressed concerns that Muslims generally are being targeted by counter-terrorism laws rather than individual suspects.</p> <p>Although counter-terrorism legislation, including control orders, is only directed against those involved in terrorism related activity and – as a matter of Government policy, and as a matter of fact in the light of court judgments - does not discriminate against any particular nationality, race or religion, some have suggested that control orders are discriminatory against Muslims.</p>

Sexual orientation	No issues arise from the changes in policy in relation to sexual orientation.
Age	No issues arise from the changes in policy in relation to age.
Social background	No issues arise from the changes in policy in relation to social background.
Stakeholders	<ul style="list-style-type: none"> Faith groups Community groups Civil liberty organisations Police Security and intelligence agencies Judiciary Crown Prosecution Service Victim groups Devolved administrations Legal organisations Local government

Quantitative and qualitative data from consultation

Quantitative data

There has been limited research on public perceptions on the impact of counter-terrorism legislation. A rapid evidence assessment on public perceptions of counter-terrorism legislation independently undertaken by the Defence Scientific and Technical Laboratory for the Home Office, was published in March 2010. This noted a divergence of opinion between the general population which mainly supported counter-terrorism legislation, including control orders, and select samples of Muslim individuals surveyed, which did not. The report makes clear that these samples of Muslim individuals may not be representative of all Muslims in the UK. Nonetheless the report highlights concerns about counter-terrorism legislation felt by some parts of the community.

Recent YouGov surveys – not directly connected to the Review - have indicated broad public support for the continuation of control orders or similar powers. These include a survey for the Sunday Times conducted on 6 and 7 January 2011 which described the control order powers and found that 73% of respondents supported the Government having such powers against 15% who opposed. A poll conducted on 30 November and 1 December 2010 for The Sun

asked the same question with identical results. The Sunday Times poll also asked whether respondents would support a compromise whereby terror suspects had greater freedom and were subject only to restrictions on travel and association; a narrow majority of 38% felt such a compromise would unacceptably weaken the powers, against 31% who felt it would be acceptable. A further YouGov poll conducted for Liberty on 4 and 5 January 2011 asked whether respondents would prefer suspected terrorists to be placed under control order style restrictions (40%) or intensive surveillance with a view to gathering evidence for a prosecution (46%).

As part of their contribution to the review, the Equality and Human Rights Commission included interim findings from research they had undertaken (by Tufyal Choudhury from the University of Durham) into the impact of counter-terrorism measures on Muslim communities. This suggested that:

- The impact of counter-terrorism law and policies are experienced and felt more acutely and directly amongst Muslims than non-Muslims. Non-Muslims were less likely to have direct or indirect experiences of any measures and were generally more supportive of the measures that were being taken as necessary.
- Amongst Muslims concern focused on those measures that it was felt were targeted against or applied to Muslims as a group or community compared to measures that were seen as targeted against individual suspects. In relation to the measures covered by the review, this concern was focused on the use of section 44 stop and search powers rather than on pre-charge detention and control orders.
- Most Muslims had direct experience of being stopped and searched, had close friends or family who had been stopped and searched or had witnessed stops in their local area. This covered all stop and search powers (including non-terrorism powers and ports and border powers) not just section 44 powers.

Qualitative data

The review of counter-terrorism and security powers was welcomed by everyone who contributed to the review. The possibility of repealing the section 44 powers or severely limiting their usage was seen as a positive move which would have a favourable impact on Muslim and Asian community perceptions that the powers had been used disproportionately against them. The fact that people of South Asian origin are more likely to be stopped under section 44 was made by a

number of contributors to the review ('Many young Muslim men in particular feel that they are stopped and searched simply because they fit a general stereotype held by the police' – Liberty). The Equality and Human Rights Commission raised concerns about the use of racial profiling and the adverse impact this could have on race relations to the extent that it was considering enforcement action against particular police forces under the race equality duty.

The possibility of a reduction in the maximum amount of time suspects can be held before charge was also seen as a positive step as there was a perception that the majority of those arrested under terrorism powers were Muslims. Some contributors to the review suggested that extended periods of pre-charge detention might undermine the willingness of Muslim communities to co-operate with the police.

Changes to, or a replacement of, the control order regime arising from the review that lessened their impact on controlled individuals and – some argued – wider Muslim communities, were seen as welcome by many respondents to the consultation. The Equality and Human Rights Commission in their contribution to the review raised concerns about the impact of control orders on good relations and pointed out that the Joint Committee on Human Rights had previously raised concerns about the impact of control orders on controlees, their families and communities and that the UN Special Rapporteur had drawn attention to the adverse impact of control orders on third parties, particularly female family members. A number of other respondents to the consultation were also concerned that the existing system of control orders is perceived as discriminating against Muslims (whether or not it does in fact do so) and that in doing so it impacted on community relations.

Specific equality issues

The existing policies on section 44 stop and search, the detention of terrorist suspects before charge and control orders raise issues in terms of promotion of good relations (because certain communities feel that the powers are being used against them as a group) rather than equal opportunity or discrimination (the existing policies are not intended to discriminate against any particular group and are not applied in a way which unlawfully discriminates). It is the case that those subject to the powers over the past five years have been proportionately more likely to be stopped if they 1) would describe themselves as Muslims than any other religion or belief group 2) would describe themselves as of Asian or Asian British origin than any other ethnic group and 3) are male.

The recommended changes to the existing polices would all have a beneficial impact on the promotion of good relations. In particular, the changes recommended to the section 44 stop and search powers and to pre-charge detention will have a positive impact on the perception of counter-terrorism powers in Muslim communities.

A number of contributors to the review expressed the view that a wider review of all counter-terrorism powers was required to assess the impact of the whole range of powers on equality and good relations.

THE CONSULTATION PROCESS

The existence of the review was brought to the attention of a wide range of organisations including victim groups, civil liberty and human rights organisations, organisations with a particular interest in certain aspects of the review, groups representing the legal profession and community groups. Meetings to discuss the review were held with Liberty, Amnesty, Human Rights Watch, Justice, the Equality and Human Rights Commission and other interested organisations and individuals.

Consultation meetings on the review were held in Belfast, Edinburgh, Birmingham, Manchester and London. Invitations to the meetings were sent to over 190 organisations including groups representing all major faiths and beliefs, interfaith organisations and organisations representing particular communities.

A dedicated e-mail address was provided for any individual or group which wanted to contribute to the review. Over 60 written submissions to the review were received.

A summary of the consultation process including points raised and who was consulted is being published separately.

ASSESSMENT AND ANALYSIS

Do the changes in policy have the potential to cause unlawful direct or indirect discrimination ? Does the revised policy have the potential to exclude certain groups of people from obtaining services or limit their participation in any aspect of public life ?

Pre-charge detention of terrorist suspects

No. The change in policy would reduce the potential for indirect discrimination against Muslim and Asian groups. There is no impact on excluding certain groups from obtaining services or participating in public life.

Section 44 stop and search powers

No. The new policy would reduce the potential for direct or indirect discrimination against Muslim and Asian groups because of the severe reduction in the volume of stops and searches and the more tightly defined circumstances in which the powers may be exercised, including statutory guidance providing that the power must not be used against individuals on the basis of their race or religion. There is no impact on excluding certain groups from obtaining services or participating in public life.

Repeal and replacement of control orders

No. As a matter of policy the Government does not discriminate in the operation of the control orders system, and the High Court - which reviews individual control orders - has never quashed an order on the grounds that it was discriminatory. The change in policy would further reduce the theoretical potential for indirect discrimination against Muslim ethnic groups. There is no impact on excluding certain groups from obtaining services or participating in public life. Although for those suspected terrorists (of any nationality, ethnicity or religion) subject to the replacement regime there may be some such impact, where it occurs this will be lawful, necessary and proportionate.

How do the revised policies promote equality of opportunity ?

Pre-charge detention of terrorist suspects

The change in policy will not impact on the promotion of equality of opportunity.

Section 44 stop and search powers

The new policy will not impact on the promotion of equality of opportunity.

Repeal and replacement of control orders

The change in policy will not impact on the promotion of equality of opportunity.

How do the revised policies promote good relations ? How do the policies make it possible for different groups to work together, build bridges between communities, or remove barriers that isolate groups and individuals from engaging in civic society more generally ?

Pre-charge detention of terrorist suspects

The revised policy is likely to be welcomed by Muslim communities and this could help to promote good relations between the Government and those communities.

Section 44 stop and search powers

The new policy is likely to help considerably to promote good relations with Muslim and Asian ethnic communities who feel that the existing stop and search policy has been unfairly targeted at them as a groups. This is likely to help promote good relations between those communities and the police.

Repeal and replacement of control orders

The proposed policy may be welcomed by Muslim communities and, more broadly, those critical of the existing control orders regime on civil liberties grounds, as the changes include measures to end the use of control orders and introduce greater safeguards. It may therefore help to improve community relations with the police and authorities.

On a case-by-case basis, the impact of control orders on communities is already assessed and this will continue under the new policy. Additionally, most controlled individuals, including all current controlled individuals, are the subject of court-imposed anonymity orders (so the media cannot identify them) and this helps reduce the impact on local communities. It is anticipated that those subject to the replacement regime will also be subject to anonymity orders.

How can the policies be revised, or additional measures taken, in order for the policy to achieve its aims without risking any adverse impact ?

Pre-charge detention of terrorist suspects

The policy could not be further revised without having an adverse impact on tackling terrorism.

Section 44 stop and search powers

The policy could not be further revised without having an adverse impact on tackling terrorism.

Replacement of control orders

The policy could not be further revised without having an adverse impact on national security and the tackling of terrorism.

ENSURING ACCESS TO INFORMATION**How can you ensure that information used in this EIA is made available and will be readily available in future ?**

Copies of the Equality Impact Assessment have been made available to Parliament and will be made available on the Home Office website.

How will you ensure that stakeholders continue to be involved in shaping the development and delivery of the revised policies ?

Some of the changes proposed by the review will require legislation and there will be continued involvement with stakeholders as the legislation is developed and taken through Parliament. Any new police codes of practice (or changes to existing codes) arising out of the changes to policies will be subject to statutory consultation. The police, the CPS and the security and intelligence agencies are fully involved in the delivery of all counter-terrorism policies where appropriate.

How will you monitor the revised policies to ensure they deliver the equality commitments required ?

The new policies on stop and search, pre-charge detention and the replacement of control orders will be subject to annual review by the independent reviewer of terrorism legislation. The revised policies require changes to legislation. The new legislation will be subject to post legislative scrutiny by Parliament. The Home Office publishes statistics on the use of stop and search powers and the detention of terrorist suspects annually, and on the use of control orders quarterly. Quarterly reporting will also apply to the control order replacement regime.



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