



**HOME OFFICE
FULL EQUALITY IMPACT ASSESSMENT
TEMPLATE**

Directorate	Office for Security and Counter-Terrorism
Unit	Pursue Policy and Strategy Unit
Date	January 2011

Name of Policy/Guidance/Operational activity
The review of the stop and search powers provided by Section 44 of the Terrorism Act 2000.

What are the aims, objectives & projected outcomes?
<p>The policy objectives were to ensure that the terrorism stop and search powers were necessary, proportionate and effective and that there are sufficient safeguards to prevent misuse of the power. The terrorism stop and search powers must be lawful (including compliance with the <i>Gillan</i> ECtHR judgment) whilst also ensuring that the police have the necessary powers to protect the public from the risk of terrorism.</p> <p>The intended effects are (a) to ensure that the police are able to protect the public effectively from the threat of terrorism; and (b) the powers are lawful (including in compliance with the ECtHR judgment); and (c) civil liberties are protected, including through robust safeguards in the legislation.</p>

1 SCOPE OF THE EIA (see *Module 5 of the EIA e-Learning*)

1.1 Scope of the EIA work
The Equality Impact Assessment has been developed by the terrorism legislation team in the Office for Security and Counter-Terrorism in the Home Office. It relates to the review of Section 44 powers and the proposed new power to replace Section 44.

1.2 Will there be a procurement exercise?
No.

2 COLLECTING DATA (see *Module 6*)

2.1 What relevant quantitative and qualitative data do you have?
This may include national research, surveys or reports, or research done by colleagues in similar areas of work. Please list any evidence in the boxes below (complaints, satisfaction surveys, focus groups, questionnaires, meetings, email, research interviews etc) of communities or groups having different needs, experiences or attitudes in relation to this

policy/guidance/operational area.

Race

Quantitative data

- 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. (In 2008/09, of those stopped and searched under section 44 in Great Britain the majority defined themselves as White (61%)). A further 15% defined themselves as being Asian or Asian British, 10% Black or Black British and 4% self-classified as being Chinese or other.
- 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 were only to be used on the basis of reasonable suspicion on an interim basis whilst the review considered the power.
- Northern Ireland Statistics and Research Branch Northern Ireland Statistics on the Operation of the Terrorism Act 2000: Annual Statistics Research and Statistical Bulletin. The published statistics show that the vast majority of individuals stopped and searched under Section 44 in Northern Ireland are white (for example, between 1 January 2010 and 31 March 2010, nearly 99% of individuals stopped and search under these powers were white).

Qualitative Data

- There is a perception in Asian communities that section 44 stop and search powers are used disproportionately against people of Asian origin.
- Previous reports by the independent reviewer of terrorism legislation (Lord Carlile of Berriew QC).
- Reports by civil liberty organisations (such as Liberty and Amnesty) and academics on the use of section

	<p>44. These reflect concerns about the necessity and proportionality of Section 44 powers.</p> <ul style="list-style-type: none"> • Parliamentary committee reports, in particular by the Joint Committee on Human Rights. • Whilst such polling is self-selecting (i.e. it does not reflect a random cross section of the population and therefore does not necessarily indicate the public's view), on the 'Your Freedom' website set up by the Deputy Prime Minister, repealing section 44 was in the top six most popular ideas on the civil liberties section. • Dstl report entitled '<i>What perceptions do the UK public have concerning the impact of counter-terrorism legislation implemented since 2000?</i>' was published in March 2010.
<p>Religion/ belief & non belief</p>	<p>Quantitative data</p> <ul style="list-style-type: none"> • 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 in Great Britain classified themselves as Muslim. <p>Qualitative data</p> <ul style="list-style-type: none"> • It is likely that the majority of those arrested under counter-terrorism legislation in Great Britain since 2005 would describe themselves as Muslims. Muslim communities have expressed concerns that Muslims generally (rather than individual suspects) are being targeted by counter-terrorism laws. The use of Section 44 in Great Britain has not, however, resulted in any terrorism-related prosecutions. • It is likely that there is a perception in Northern Ireland that counter-terrorism powers are used disproportionately against Catholic people. Most searches in Northern Ireland take place in areas where there are high levels of terrorist activity. It is a fact that republican terrorists (who represent the most significant current risk in Northern Ireland) have tended to come from the Catholic community almost exclusively (albeit a very small minority of the population). It is therefore understandable that a Catholic person may feel more likely to be searched than a Protestant person.
<p>Disability</p>	<p>No issues arise from the changes in policy in relation to disability.</p>

Gender	Data on the gender of individuals stopped and searched under Section 44 by the police is not collected in Great Britain. It has been in Northern Ireland for some quarters (for example, between 1 Jan 2010 to 31 March 2010, 92% of those stopped and search under Section 44 were male. The difference in Great Britain is likely to be much less stark given the power was used, before July 2010, at a much greater volume and in a less targeted way. It is likely that the majority of those stopped and searched would be male on the basis that the majority of those arrested under counter-terrorism legislation are male. The proposed changes to the power to stop and search individuals and vehicles without suspicion are not assessed to have an impact on the proportion of men/women searched.
Gender Identity	No issues arise from the changes in policy in relation to gender identity.
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.
Welfare of Children [UKBA ONLY]	N/A
Socio-economic	The repeal of Section 44 and replacement with a severely circumscribed no suspicion terrorism stop and search power is not assessed to have a socio-economic impact.
Human Rights	The repeal of Section 44 and replacement with a severely circumscribed no suspicion terrorism stop and search power responds to the European Court of Human Rights' judgment in the case of <i>Gillan and Quinton</i> (as well as reflecting the Government's concerns about the power). The proposed new power is considered to be in compliance with our domestic and international human rights obligations, including in the light of the European Court judgment. See also the ECHR Memorandum for the Protection of Freedoms Bill.

2.2 What are the overall trends/patterns in this data?

The overall pattern in this data (which reflects the position prior to the Home Secretary's guidelines on 8 July 2010) are that:

- (a) The use of Section 44 had been declining (over 250,000 in 08/09 before falling to just over 100,000 in 09/10).
- (b) Whilst the number of individuals from ethnic minorities stopped and searched under this legislation had fallen, the proportion of those stopped and searched who are from ethnic minorities remained broadly the same and is still disproportionately high in Great Britain.
- (c) There was significant regional variation in the use of the power. Between April 2009 and March 2010, 79% of the Section 44 stop and searches in Great Britain were carried out by the Metropolitan Police Service. 17% were made by British Transport Police. This principally reflects the different levels of threat in the UK (in particular, London and the transport network faces a particularly high threat of terrorism).

The repeal of Section 44 and replacement with a severely circumscribed no suspicion terrorism stop and search power should have a positive equality impact as the total volume of no suspicion terrorism stop and searches should fall considerably (from the pre-July 2010 state) and the police will only be able to use the power in a much more limited and proportionate way.

2.3 Please list the specific equality issues and data gaps that may need to be addressed through consultation and/or further research?

Due to the significant concerns about the use of Section 44 and its impact on ethnic minorities and civil liberties more generally, there is a significant amount of qualitative information about stakeholders' views. In respect of quantitative data, the statistics for the police's use of stop and search powers provides a good data base (the Home Office and Northern Ireland Office produce regular statistical bulletins). Looking ahead, it will be important to maintain the monitoring of use and data collecting / reporting requirements on the police (this is reflected in the Action Plan).

3 INVOLVING AND CONSULTING STAKEHOLDERS

(see Module 7)

In this section, describe the data you have gathered through stakeholder involvement and engagement.

3.1 Internal consultation and involvement: e.g. with Other Government Departments, Staff (including support groups), Agencies & NDPBs

The review of counter-terrorism and security powers was lead by the Home Office and involved significant internal (and external – see below) consultation and involvement. Stakeholders across Government (including within the Home Office and other Government Departments such as the Ministry of Justice) were engaged and consulted. Similarly stakeholders across the security and intelligence agencies were consulted. The key method for this engagement and consultation was the establishment of a Section 44 working group that comprised representatives of:

- Office for Security and Counter Terrorism, Home Office
- Crime and Policing Group, Home Office
- Olympics Security Directorate, Home Office
- Home Office Legal Advisors Branch
- Ministry of Justice
- National Policing Improvement Agency
- Security Service
- Association of Chief Police Officers
- Metropolitan Police Service
- Northern Ireland Office
- Police Service of Northern Ireland
- British Transport Police

In addition, the Crown Prosecution Service, Attorney General's Office and counterparts in the Devolved Administrations were consulted. The statutory Independent Reviewer of terrorism legislation, Lord Carlile, and the independent reviewer of the review, Lord MacDonald, were also consulted.

3.2 External consultation and involvement: strand specific organisations e.g. charities, local community groups, third sector

As part of the review of counter-terrorism and security powers we have consulted a wide range of external organisations including civil liberty and human rights organisations, community groups, local councils, organisations representing the legal profession, victims support groups and organisations which had 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.

The Home Office sought to ensure that different external stakeholder and community groups had access to the consultation by making different groups and the public in general aware of the review (in particular the Parliamentary statement by the Home Secretary announcing the review resulted in significant media coverage of the review) and by providing a variety of avenues for external groups / individuals to provide their views.

Consultation meetings on the review were held in Manchester, Birmingham, Edinburgh, London and Belfast. These meetings involved police, community representatives (the Research, Information and Communications Unit (RICU) based in the Home Office provided advice on local faith and community groups that were likely to have an interest) 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. As a result of the consultation, the Home Office has received over 50 written contributions 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 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.
- 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.

The Your Freedom website provided the public with an opportunity to suggest changes in laws and Government policies. Repealing section 44 was in the top six most popular ideas on the civil liberties section. Whilst such polling is self-selecting (i.e. it does not reflect a random cross section of the population and therefore does not necessarily indicate the public's view), the fact that repealing section 44 was in the top six most popular ideas on the civil liberties section shows that it is a significant civil liberty concern.

The fact that people of South Asian origin were 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. At least one contribution to review argued that even if use of the power was limited, it may not entirely address the possibility of ethnic profiling when deciding who should be stopped.

The Home Office will provide feedback to participants who engaged in the review by:

- (a) Publishing the findings from the review
- (b) Publishing a summary of the consultation
- (c) Continuing to engage with internal and external stakeholders in the development and implementation of the policy (see Action Plan).

4 ASSESSING IMPACT (see Module 8)

In this section please record your assessment and analysis of the evidence. This is a key element of the EIA process as it explains how you reached your conclusions, decided on priorities, identified actions and any necessary mitigation.

4.1 Assessment of the impact

In assessing and analysing impact of your proposals consider the following:

- *Does the result of this EIA work show a potential for differential impact? If yes, state whether impact is adverse or positive and in what equality areas.*
- *Do the proposals have the potential to cause unlawful discrimination? E.g. could the proposals exclude certain groups of people from obtaining services or limit their participation in any aspect of public life?*
- *How will you mitigate any negative impacts this proposal may have?*
- *How does the proposal promote equality of opportunity?*
- *How does the proposal promote good community relations?*
- *In the light of consultation and data gathering, what changes will you make to the policy?*
- *Are there any concerns from consultation and data gathering that have not been taken on board? (Please justify and explain the reason for your decision.)*

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 results of this Equality Impact Assessment suggests that:

- (a) Repealing section 44 and replacing it with a severely circumscribed terrorism no suspicion stop and search power should have a positive equality impact (in relation to race and human rights) by significantly reducing the total volume of no suspicion stop and searches and limiting officers' discretion in the use of the power when available. The total number of individuals whose human rights (in particular Article 8) are engaged will reduce.
- (b) The repeal of Section 44 is likely to promote good community relations as it was a widely discredited power, especially amongst Asian communities.
- (c) The curtailment of, and increased safeguards in, the new powers will mean that the power may only be used in far more limited circumstances and will be proportionate.

The concerns expressed about the disproportionate and/or unnecessary use of Section 44 has been the key driver (alongside the need to implement the European Court of Human Rights judgment) in making the proposed changes to the legislation.

The proposed new power to replace Section 44 is considered to be in

compliance with our domestic and international human rights obligations, including in the light of the *Gillan and Quinton* judgment.

Further safeguards will be introduced. We will:

- (a) Produce robust statutory Code of Practice and keep it under review.
- (b) Increase the level of scrutiny provided by the Home Office in considering authorisations.
- (c) Continue to keep the powers under review once/if they come into force. This will be informed by the independent reviewer of terrorism legislation.

Now complete the report and Action Plan.

5 REPORT, ACTION PLANNING AND SIGN OFF (see Module 9)

5.1 EIA Report

The EIA Report is a concise summary of the results of the full EIA. A template is provided at Annex A.

5.2 Sign-off

Now submit your EIA and related evidence for clearance

Date of completion of EIA	20 January 2011
Compiled by	Office for Security and Counter Terrorism
SCS sign-off	Office for Security and Counter Terrorism
<i>I have read the Equality Impact Assessment and I am satisfied that all available evidence has been accurately assessed for its impact on equality strands. Mitigations, where appropriate, have been identified and actioned accordingly.</i>	
Date of publication of EIA Report	11 February 2011
Review date	

5.2 Publication and Review (see Module 10)

Ensure that the EIA Report including the Action Plan are published alongside your policy/guidance/operational activity.

IMPORTANT - Review, revise and update annually!

Equality Impact Assessment Report

TITLE

The review of the stop and search powers provided by Section 44 of the Terrorism Act 2000.

BACKGROUND

In June 2010, the European Court of Human Rights (ECtHR) made final its decision in the case *Gillan and Quinton* which found that section 44 of the Terrorism Act 2000 to be in breach of Article 8 (the right to privacy and family life) of the European Convention on Human Rights (ECHR) because it was not “in accordance with the law”. The ECtHR found the legislation was too broadly expressed and the safeguards in place were not sufficient. The Home Secretary took immediate steps to bring the use of the powers into line with the judgment whilst the issue was considered by a review.

The policy objectives of the review were to ensure that the terrorism stop and search powers were necessary, proportionate and effective and that there are sufficient safeguards to prevent misuse of the power. The terrorism stop and search powers must be lawful (including compliance with the ECtHR judgment) whilst also ensuring that the police have the necessary powers to protect the public from the threat of terrorism.

The intended effects are:

- a) to ensure that the police are able to protect the public effectively from the threat of terrorism; and
- b) the powers are lawful (including in compliance with the ECtHR judgment); and
- c) civil liberties are protected, including through robust safeguards in the legislation.

The review has now concluded that Section 44 should be repealed and replaced by a severely circumscribed version.

SCOPING THE EIA

The Equality Impact Assessment has been developed by the terrorism legislation team in the Office for Security and Counter-Terrorism in the Home Office. It relates to the review of Section 44 powers and the proposed new power to replace Section 44.

COLLECTING DATA

The Home Office review of Section 44 (as part of the wider review of counter-terrorism and security powers) had a wide range of quantitative and qualitative data to consider. This included:

- 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. (In 2008/09, of those stopped and searched under section 44 in Great Britain the majority defined themselves as White (61%)). 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 were only to be used on the basis of reasonable suspicion on an interim basis whilst the review considered the power.

- Northern Ireland Statistics and Research Branch Northern Ireland Statistics on the Operation of the Terrorism Act 2000: Annual Statistics Research and Statistical Bulletin
- Previous reports by the independent reviewer of terrorism legislation (Lord Carlile of Berriew QC).
- Reports by civil liberty organisations (such as Liberty and Amnesty) and academics on the use of section 44. These reflect concerns about the necessity and proportionality of Section 44 powers.
- Parliamentary committee reports, in particular by the Joint Committee on Human Rights.
- Whilst such polling is self-selecting (i.e. it does not reflect a random cross section of the population and therefore does not necessarily indicate the public's view), on the 'Your Freedom' website set up by the Deputy Prime Minister, repealing section 44 was in the top six most popular ideas on the civil liberties section.
- Dstl report entitled '*What perceptions do the UK public have concerning the impact of counter-terrorism legislation implemented since 2000?*' was published in March 2010.
- Significant consultation with internal and external stakeholders (see below).

INVOLVING AND CONSULTING STAKEHOLDERS

The review was conducted by the Home Office with the full involvement of other government departments, the police, prosecutors and the intelligence and security agencies.

The terms of reference for the review, published by the Home Secretary in July 2010, made it clear that the review should consider a wide range of views,

including those of civil liberty organisations and community groups. To meet this commitment, the Home Office wrote to key organisations including civil liberty and human rights organisations, organisations and those representing the legal profession to make them aware of the review and offering to provide further advice on how they could contribute. The Home Office met with a number of these organisations, including the main human rights organisations to discuss the review.

Consultation meetings were also held in Edinburgh, Belfast, Manchester, Birmingham and London. Over 190 organisations were invited to the consultation meetings. This included community groups (including representatives of all the major religions and beliefs), local police forces, probation and prosecutors, local councils, academics, youth organisations, equality groups and representatives of the legal profession.

A dedicated Home Office e-mail and postal address was also provided for those who wanted further information on the review or who wanted to submit contributions to the review.

The Home Office sought to ensure that different external stakeholder and community groups had access to the consultation by making different groups and the public in general aware of the review (in particular the Parliamentary statement by the Home Secretary announcing the review resulted in significant media coverage of the review) and by providing a variety of avenues for external groups / individuals to provide their views.

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

The Home Office will provide feedback to participants who engaged in the review by:

- (d) Publishing the findings from the review
- (e) Publishing a list of those who contributed to the review and summary of the contributions received.
- (f) Continue to engage with internal and external stakeholders in the development and implementation of the policy (see Action Plan).

ASSESSING IMPACT

There has been significant public, NGO and parliamentary concern over the breadth of section 44 and its misuse by the police. The independent reviewer of terrorism legislation, Lord Carlile, has repeatedly highlighted inconsistencies in the use of section 44 across police forces and concluded that the power is overused and that the authorised areas are too large and not directly related to threat intelligence (although forces – particularly the Metropolitan Police Service – made significant changes to reduce the geographic extent of their authorisations and their use of the powers in 2009 and early 2010 until the Home Secretary's guidelines in July 2010).

Critics often note that there is no evidence of a single individual being convicted with a terrorist offence after being stopped and searched under section 44 or even being arrested on terrorism grounds in Great Britain. While it may be the case that a high visibility section 44 operation around for instance, an Underground station, made it a less attractive target for terrorists, the lack of an outcome of that kind in Great Britain from those types of operation is a stark statistic. In addition, the increase in use (from around 42,000 in 06/07 to just over 250,000 in 08/09 before falling to just over 100,000 in 09/10)¹ and high-profile examples of apparently inappropriate use (for example, against a 90 year old man attending the Labour Party conference) led to accusations of abuse and concern that there are no effective constraints on the police's use of the powers.

The perception of disproportionate use of the power against people from Asian Communities may adversely impact on *Prevent* work by fuelling the perception that the police employ racial profiling techniques and that terrorism legislation is not being applied equally across all sections of society. 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.²

Conversely, operations which are based on entirely random stops and searches attract criticism that the powers are not being used in an "intelligence-led" way, and that individuals from a wide variety of backgrounds are stopped and searched in an attempt to "even out" the figures. Lord Carlile has also criticised the use of the powers against individuals who he said were clearly not suspected terrorists. This has created confusion about the way in which the powers were meant to be applied. Attempts to address this have been made in a number of guidance documents, including the Police and Criminal Evidence (PACE) Codes of Practice, and comprehensive, dedicated terrorism stop and search guidance issued by the National Policing Improvement Agency (NPIA)³.

The increasing use of the powers since their implementation and criticism of the consistency, effectiveness and proportionality of use contributed to a sense that counter terrorism powers were being misused. During the "42 days" pre-charge detention debates during the passage of the Counter Terrorism Act 2008, a commitment was made to review the impact of all counter-terrorism legislation on our communities. The report '*What perceptions do the UK public have concerning the impact of counter-terrorism legislation implemented since 2000?*'

¹ Home Office Statistical Bulletin, '*Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes and stop & searches*'.

² Statistics on Race and the Criminal Justice System 2007/08, Ministry of Justice, 2009

³ Practice Advice on Stop & Search in Relation to Terrorism, NPIA, 2008.

was published in March 2010.⁴ This considered existing research on public perceptions and found that:

- Although it was acknowledged that 'no suspicion' stop and searches are a necessary procedure to ensure public safety⁵ there are perceptions that the process is discriminatory based on stereotypes and racial profiling.⁶
- Most objections to section 44 stem from acknowledgements of disproportionality in the demographics of those subject to search procedures. (See ETHNOS Research).
- However, there is also evidence that shows acceptance of the need for measures to be prioritised towards demographics that are more likely to be involved in terrorism. An opinion poll, carried out by ICM Research for the BBC in April 2004, indicated 69 per cent of the respondents, representative of the UK population, supported police powers to stop and search anyone at anytime. It appears that the contention with section 44 is not necessarily linked to the measure itself, but with the way it was implemented.⁷

Concerns voiced in the evidence assessed by the rapid evidence assessment of existing research suggested two key perceptions towards the implementation of section 44 that fuelled negative perceptions.

- (a) Lack of justification by the authorities, or valid logic as to why the procedures are carried out. (See CML Market Research footnote)
- (b) The manner in which searches are conducted: disrespectful; intimidating; impolite; brusque; and rude. (See CML Market Research footnote)

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.

⁴ The Dstl report entitled 'What perceptions do the UK public have concerning the impact of counter-terrorism legislation implemented since 2000?' was published in March 2010. It is available at <http://rds.homeoffice.gov.uk/rds/pdfs10/occ88.pdf>

⁵ ETHNOS Research & Consultancy for Communities and Local Government. *The Drivers of Black and Asian people's perceptions of racial discrimination by Public Services*. 2008

⁶ El-Wafi, L. (2006). *British Arab Muslims and the 'War on Terror': Perceptions of Citizenship, Identity and Human Rights*. Unpublished manuscript. http://www.naba.org.uk/content/articles/2006/BrArabs/61010_BrArMus_AIWafiL.pdf. 19 Nov 2009.

⁷ CML Market Research for Communications Strategy and Insight Unit; Home Office. Communications Directorate, UK 2008

- 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.
- 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.

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 noted 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. At least one contribution to review argued that even if use of the power was limited, it may not entirely address the possibility of ethnic profiling when deciding who should be stopped.

The repeal of Section 44 and replacement with a severely circumscribed no suspicion terrorism stop and search power responds to the ECtHR judgment in the case of *Gillan and Quinton* and reflects the Government's concerns about the power. The proposed new power is considered to be in compliance with our domestic and international human rights obligations, including in the light of the European judgment.

ACTION PLAN

Repealing section 44 and replacing it with a severely circumscribed terrorism no suspicion stop and search power should have a positive equality impact by:

- (a) Significantly reducing the total volume of no suspicion stop and searches. The total number of individuals whose human rights (in particular, in relation to Article) are engaged will reduce.
- (d) The repeal of Section 44 is likely to promote good community relations as it was a widely discredited power, especially amongst Asian communities.
- (e) The curtailment of, and increased safeguards in, the new powers will mean that the power is available in far more limited circumstances and is proportionate.

The concerns expressed about the disproportionate and/or unnecessary use of Section 44 has been the key driver (alongside the need to implement the ECtHR judgment) in making the proposed changes to the legislation.

The proposed new power to replace Section 44 is considered to be in compliance with our domestic and international human rights obligations, including in the light of the *Gillan and Quinton* judgment.

Further safeguards will be introduced. We will:

- (a) Produce robust statutory Code of Practice and keep it under review.
- (b) Increase the level of scrutiny provided by the Home Office in considering authorisations.
- (c) Continue to keep the powers under review once/if they come into force. This will be informed by the independent reviewer of terrorism legislation.

An action plan is attached. The Home Office and the police will continue to assess the equality impact of the new powers and consult with internal and external stakeholders to inform that assessment. The independent reviewer of terrorism legislation will have an important role in continuing to report on the operation of terrorism powers – including the new terrorism no suspicion stop and search powers.

ANNEX B - Action Plan for use with Home Office Equality Impact Assessments

Terrorism stop and search powers

ACTION / ACTIVITY	OWNER AND INTERESTED STAKEHOLDERS	DEPENDENCIES / RISKS / CONSTRAINTS	COMPLETION DATE	PROGRESS UPDATE
<p>Ensure that the police continue to collect and report data of their usage of terrorism stop and search powers, including the new proposed no suspicion stop and search 43B power.</p>	<p>Home Office (owner) Parliament Northern Ireland Office Scottish Government Independent Reviewer of Terrorism legislation National Policing Improvement Agency Association of Chief Police Officers Individual Police Forces Crown Prosecution Service</p>	<p>The Government is committed to reducing the bureaucratic burden on the police. There may, therefore, be pressure to reduce the reporting requirements on the police.</p>	<p>The statutory Code of Practice will include a requirement for the police to collect and report data on their usage of terrorism stop and search powers.</p> <p>The Codes will also require the police to monitor the use of the power.</p> <p>The Code of Practice should be completed by June 2012.</p>	<p>Monitoring will be provided by the Terrorism legislation team in the Home Office.</p>
<p>Publish the findings from the review of Section 44 and a summary of the consultation.</p>	<p>Home Office (owner) Parliament Northern Ireland Office Scottish Government Independent Reviewer of Terrorism legislation National Policing Improvement</p>	<p>The findings from the review and the summary of consultation should be published alongside a report by Lord MacDonald, the reviewer of the review.</p>	<p>January 2011</p>	<p>The findings from the review will be published shortly.</p>

	<p>Agency Association of Chief Police Officers Individual Police Forces Crown Prosecution Service Civil liberty organisations Victims groups Faith organisations Local authorities Academics</p>			
<p>Continue to engage with internal and external stakeholders in the development and implementation of the new no suspicion terrorism stop and search powers.</p>	<p>Home Office (owner) Parliament Northern Ireland Office Scottish Government Independent Reviewer of Terrorism legislation National Policing Improvement Agency Association of Chief Police Officers Individual Police Forces Crown Prosecution Service Civil liberty organisations Victims groups Faith organisations Local authorities Academics</p>	<p>The passage of the Protection of Freedoms Bill, which will include the new no suspicion stop and search terrorism powers, should provide significant opportunity to engage with internal and external stakeholders. This will include consultation on the draft Statutory Code of Practice.</p> <p>The risk to this action is the capacity of the Home Office team responsible for the new powers to engage with the broad range of stakeholders. We will seek to mitigate this by seeking to consult in a resource-efficient manner (i.e. consult stakeholders at the same time on changes to the Codes of Practice).</p>	Ongoing.	On track.

