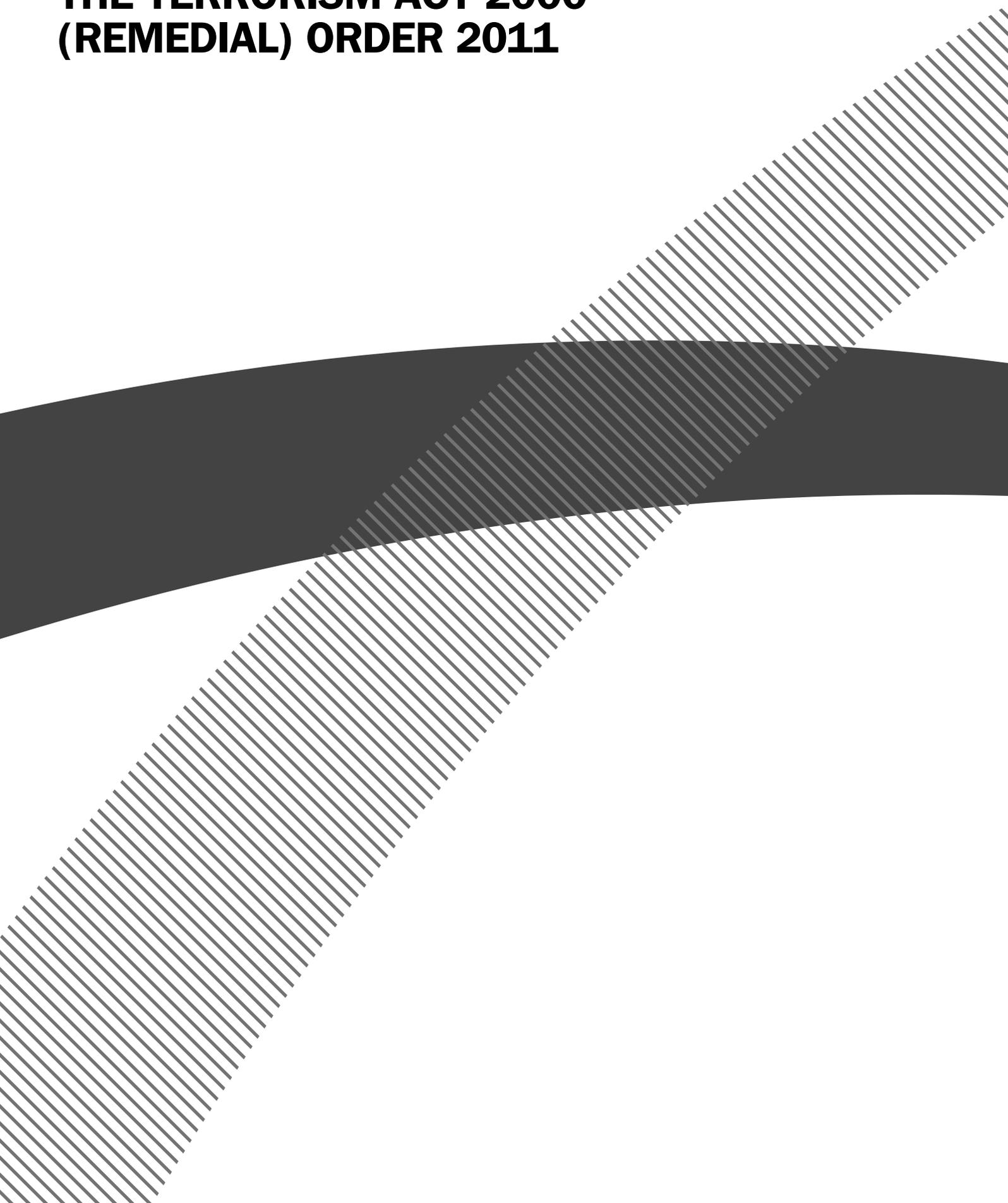


**STATEMENT BY THE  
HOME SECRETARY ON  
REPRESENTATIONS MADE ON  
THE TERRORISM ACT 2000  
(REMEDIAL) ORDER 2011**



Home Office



# **STATEMENT BY THE HOME SECRETARY ON REPRESENTATIONS MADE ON THE TERRORISM ACT 2000 (REMEDIAL) ORDER 2011**

Presented to Parliament pursuant to Paragraph 4(2) of  
Schedule 2 to the Human Rights Act 1998

September 2011

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# Statement by the Home Secretary on Representations Made on the Terrorism Act 2000 (Remedial) Order 2011

On 16 March, I made a remedial order under the powers conferred on me by section 10(2) and paragraph 1(1) of Schedule 2 to the Human Rights Act 1998. That order replaced stop and search powers previously available to the police under sections 44 to 47 of the Terrorism Act 2000, with a significantly circumscribed set of powers, and provisions for an associated Code of Practice.

This statement is made in accordance with the requirements of paragraph 4(2) of Schedule 2 to the Human Rights Act.

I have received one representation during that period, from the Joint Committee of Human Rights. Their report, entitled “Terrorism Act 2000 (Remedial) Order 2011: Stop and Search without Reasonable Suspicion”, is available in full in the House Library.

I am grateful to the JCHR for their detailed and considered report, and I have reproduced their overall recommendations, and my response to each, below:

**We accept the necessity of introducing a replacement stop and search power which is exercisable without reasonable suspicion but only available in tightly circumscribed circumstances (paragraph 100 of the JCHR report).**

I welcome the Committee’s conclusion that it agrees with the Government that this power is required.

**We agree with the Government that there are compelling reasons for using the remedial order procedure to introduce the replacement power to stop and search without reasonable suspicion (paragraph 101).**

I welcome the Committee’s conclusion that the Government was correct to use a remedial order to repeal and replace the powers under section 44 to 47 of the Terrorism Act 2000

**However, we recommend that the Government provide Parliament with more detailed evidence of the sorts of circumstances in which the police have experienced the existence of an operational gap in the absence of a power to stop and search without reasonable suspicion since that power was suspended. In the absence of detailed scrutiny of such evidence, it is difficult both for us and for Parliament to reach a view as to the appropriateness of proceeding by urgent remedial order, rather than by the normal procedure (paragraph 102).**

**If such evidence exists, and is provided, to the satisfaction of both Houses, we are satisfied that although this is an unusual exercise of the power to make an urgent remedial order, it is appropriate and justifiable to do so in the circumstances (paragraph 103).**

I appreciate that as much information should be made available to Parliament as possible in order for it to form a view on whether the urgency procedure was appropriately used. The Government has, as a result, already provided a full explanation of why it considered that a remedial order was necessary and appropriate (these documents were published alongside the remedial order). The Government’s decision was made on the basis that if the powers were considered necessary, then the circumstances in which they might be authorised meant that it was appropriate for them to be made available immediately. The powers may only be authorised where a chief police officer has reasonable suspicion that an act of terrorism will take place and that the powers are necessary to prevent it. This is an extremely high threshold and one which could only be met in very serious circumstances. If such circumstances had arisen (or arise in the near future), and I had not used the urgency procedure available to me, these powers could not be used. That is not a risk I was willing to take and I believe it was entirely right for me to use the urgency procedure.

**However, we recommend that the Order be replaced with a new Order modifying the provisions of the original Order in the ways specified in this Report, because the Order in its current form does not go far enough to remove the incompatibility identified by the European Court of Human Rights in Gillan and therefore risks giving rise to further breaches of Convention rights. We recommend, in particular, that the Order should be modified so as to:**

**Require the authorising officer to have a reasonable basis for his belief as to the necessity of the authorisation and to provide an explanation of those reasons (paragraph 104).**

I believe that this is already inherent in the drafting of the legislation and a change to the remedial order is not required. For an officer to authorise the powers under new section 47A(1) of the Terrorism Act 2000, he must reasonably suspect that an act of terrorism will take place and that the powers are necessary to prevent it. Section 3 of the Code of Practice sets out detailed requirements about what the authorising officer must provide to the Secretary of State by way of justification, including information about why other powers are not sufficient to meet the threat and how the powers will be used.

**Prevent the renewal of authorisations other than on the basis of new or additional information or a fresh assessment of the original intelligence that the threat remains immediate and credible (paragraph 104).**

I understand the Committee's concern over this issue, as the "rolling renewal" of authorisations under section 44 was one of the practices which led to those powers becoming widely discredited. However, I believe that this matter is also already covered by the order, which states that a "new authorisation" may be given upon the expiry or cancellation of an old one, under paragraph 11 of new Schedule 6B to the Terrorism Act 2000. For a new authorisation to be given, the same threshold must be met again, meaning that an authorisation cannot be made based on a general, ongoing threat as the authorising

officer would not be able to show that he reasonably suspected that an act of terrorism would take place. Section 3.3 of the Code of Practice makes it clear that an authorising officer must have either new intelligence, or have conducted a fresh assessment of the existing intelligence and be satisfied that it still relates to an act of terrorism that will take place. In addition, the statutory Code of Practice is very clear that "rolling authorisations", as made under section 44, cannot be made under the new powers.

**Require prior judicial authorisation of the availability of the power to stop and search without reasonable suspicion (paragraph 104).**

The Government considered this issue in its wider review of counter-terrorism and security powers and rejected it because it would not be appropriate, nor helpful, to blur the lines between the executive and the judiciary in this way. The Home Secretary is the most appropriate person to take responsibility for approving authorisations given his/her responsibility for national security and proximity to intelligence and information about investigations and threats.

**Require authorisations to be publicly notified once they have expired (paragraph 104).**

Information about the use of the powers under section 47A will be provided as part of the quarterly Home Office Statistical Bulletin. Previously this only provided the volume of stops and searches for each police force but not the number of authorisations or any other details of the actual authorisations. I share the Committee's desire to provide the public with as much information as possible on these powers, whilst keeping in mind that we must not increase the bureaucratic burdens on the police. I will, therefore, carefully consider whether the statistical bulletin could also include further detail with regard to authorisations.

I do not consider it possible, however, for the Government to release information about the duration and extent of an authorisation based on sensitive intelligence immediately after the expiry of an authorisation given this could reveal potentially sensitive information.

**We recommend that the Code of Practice should contain stronger recording requirements in order to facilitate monitoring and supervision of the use of the replacement power to stop and search without suspicion (paragraph 105, detail at paragraph 90).**

The recording requirements allow for the monitoring of various factors, including the volume of stop and search and the ethnicity of those who have been stopped and searched. It would be disproportionate and potentially intrusive to require individuals to provide other personal details, especially in respect of a power that can be exercised in individual cases without reasonable suspicion. The Code of Practice makes it clear that officers should explain to individuals, that while they are not required to provide their name, it may make it more difficult to investigate a complaint or any other matter concerning the conduct of the stop and search, should they need to do so in future.

**We also recommend that the authorising officer should be obliged to comply with the Code of Practice, as well as individual officers exercising the power to stop and search (paragraph 105, detail at paragraph 85).**

The remedial order makes it clear that the Code of Practice applies to officers making an authorisation. New section 47B(1)(a) of the Terrorism Act 2000, inserted by the remedial order, sets out that the Secretary of State must issue a Code of Practice containing guidance about “the exercise of powers to give an authorisation under section 47A(2) or (3)”, and new section 47C(1) states that “a constable must have regard to the search powers code when exercising any powers to which the code relates”.

**We recommend that the Independent Reviewer of Terrorism Legislation should have the power to report to Parliament on the exercise of this power on an ad hoc basis, and not be confined to reporting annually as part of his report on counter-terrorism powers generally (paragraph 105, detail at paragraph 95).**

The Independent Reviewer already has the power to issue ad hoc reports. He has already done so in relation to Operation GIRD arrests (which took place before the Papal visit last year), and has made clear that he would undertake an ad hoc review of these stop and search powers should he consider it necessary to do so.

The Committee also noted a defect in the drafting of the Order. Paragraph 2 of Schedule 2 to the Order provides that “the Code of Practice issued under section 66 of the Police and Criminal Evidence Act 1984 known as Code A is to have effect as if paragraphs 2.18 to 2.26 of the code were revoked”. The reference to paragraph 2.18 should read “2.18A” as paragraph 2.18 refers to different stop and search powers and should not have been included. I have made arrangements for this to be corrected by way of a correction slip.