

Title: Terrorism stop and search powers (Section 44 of the Terrorism Act 2000) Lead department or agency: Home Office, Office for Security and Counter-Terrorism Other departments or agencies:	Impact Assessment (IA)
	IA No: HO0033
	Date: 18/01/11
	Stage: Development/Options
	Source of intervention: Domestic
	Type of measure: Primary legislation
Contact for enquiries:	

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

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 The review has now concluded that Section 44 should be repealed and replaced by a severely circumscribed version.

What are the policy objectives and the intended effects?

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 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.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The review considered two main options for changing section 44 powers – either repeal section 44 in its entirety or replace section 44 with a much more tightly circumscribed power. The review concluded that a power to stop and search individuals and vehicles without reasonable suspicion in exceptional circumstances would be justified by the operational need to have a ‘no suspicion’ stop and search power to respond to intelligence about an attack, and that the public would expect the police to have such a power in such circumstances (i.e. Option 2 was recommended). The review recommended significant changes to bring the power into compliance with ECHR rights and ensure that its previous misuse is not repeated. The review considered that the police should have a power to stop and search individuals with no suspicion in order to prevent a terrorist attack and that, subject to sufficient safeguards / limits, such a power would be lawful and the limited interference with individual's liberties would be necessary and proportionate.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** Month/Year

What is the basis for this review? Duty to review. **If applicable, set sunset clause date:** Month/Year

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

Yes

SELECT SIGNATORY Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis and Evidence

Policy Option 1

Description:

OPTION 1: REPEAL SECTION 44 WITH NO REPLACEMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	n/a	n/a	n/a
High	n/a	n/a	n/a
Best Estimate	-	-	-

Description and scale of key monetised costs by 'main affected groups'

This option is broadly cost-neutral as it would continue, on a permanent basis, the post-July 2010 position.

Other key non-monetised costs by 'main affected groups'

This option would mean that there was an operational gap in the police's ability to protect the public from terrorist threats.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	n/a	n/a	n/a
High	n/a	n/a	n/a
Best Estimate	-	-	-

Description and scale of key monetised benefits by 'main affected groups'

The police will no longer need to provide training on Section 44, though they will need to increase training on more complex powers (such as section 43) that require individual police officers to apply greater judgment.

Other key non-monetised benefits by 'main affected groups'

There is a benefit to society from the police having more proportionate powers and the privacy and liberty of members of the public will be infringed less.

Key assumptions/sensitivities/risks

Discount rate (%)

As set out under costs, this option would mean that the police would not be able to protect the public sufficiently.

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	No	OUT

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?		United Kingdom			
From what date will the policy be implemented?		n/a			
Which organisation(s) will enforce the policy?					
What is the annual change in enforcement cost (£m)?					
Does enforcement comply with Hampton principles?		Yes			
Does implementation go beyond minimum EU requirements?		No			
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded:		Non-traded:	
Does the proposal have an impact on competition?		No			
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?		Costs:		Benefits:	
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties¹ Statutory Equality Duties Impact Test guidance	Yes	n/a
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	n/a
Small firms Small Firms Impact Test guidance	No	n/a
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	n/a
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	n/a
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	n/a
Human rights Human Rights Impact Test guidance	Yes	n/a
Justice system Justice Impact Test guidance	No	n/a
Rural proofing Rural Proofing Impact Test guidance	No	n/a
Sustainable development Sustainable Development Impact Test guidance	No	n/a

¹ Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 2

Description:

OPTION 2: REPLACEMENT OF SECTION 44 WITH A SEVERELY CIRCUMSCRIBED VERSION

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	n/a	n/a	n/a
High	n/a	n/a	n/a
Best Estimate	0.05	0	0.05

Description and scale of key monetised costs by 'main affected groups'

The proposals are broadly cost-neutral. The police would need to amend their training package. Whilst the powers would be greater than the pre-July 2010 position, those forces that have used section 44 are likely to still want to have their officers trained ready to use the powers. The transitional cost is estimated to be £50k. The proposals are not assessed to result in any ongoing additional costs given the police already have to provide training and there continues to be an authorisation process.

Other key non-monetised costs by 'main affected groups'

The police will no longer be able to stop and search individuals without any level of suspicion other than in very limited circumstances. It is arguable that there will no longer be a deterrent impact from the high volumes of stop and searches. That said, the evidence for Section 44 to having successfully disrupted terrorists is limited. Section 44 may, though, have more successfully deterred other non-terrorist crime given the greater frequency with which items such as drugs/knives were found.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	n/a	n/a	n/a
High	n/a	n/a	n/a
Best Estimate	0	0	0

Description and scale of key monetised benefits by 'main affected groups'

The extent of police training related to terrorism stop and search powers could be marginally reduced as the police will not be able to use Section 43B in the same high-volume way as they did for Section 44. Training will, though, still be required and it will be important that it is of high quality. It is assessed to be broadly cost neutral.

Other key non-monetised benefits by 'main affected groups'

There is a benefit to society from the police having more proportionate powers and the privacy and liberty of members of the public will be infringed less.

Key assumptions/sensitivities/risks

Discount rate (%)

We have assumed that the threat environment will remain broadly the same. However, the volume of the power's use will be less than that for Section 44 because the power will be more targeted.

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	Yes	IN/OUT

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?		United Kingdom			
From what date will the policy be implemented?		01/01/2012			
Which organisation(s) will enforce the policy?					
What is the annual change in enforcement cost (£m)?					
Does enforcement comply with Hampton principles?		Yes			
Does implementation go beyond minimum EU requirements?		No			
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded:		Non-traded:	
Does the proposal have an impact on competition?		No			
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?		Costs:		Benefits:	
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No

Specific Impact Tests: Checklist

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Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	Yes	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

¹ Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

No.	Legislation or publication
1	<u>Terrorism Act 2000</u>
2	European Court of Human Rights judgment in Gillan and Quinton, January 2010
3	Review of Section 44 terrorism stop and search powers
4	Summary of consultation to inform review of CT and Security Powers
5	Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes and stops & searches Great Britain 2009/10 published 28 October 2010
6	Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes and stops & searches Great Britain 2008/09 published 26 November 2009
7	Northern Ireland Statistics and Research Branch Northern Ireland Statistics on the Operation of the Terrorism Act 2000: Annual Statistics Research and Statistical Bulletin

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	0.05	0	0	0	0	0	0	0	0	0
Annual recurring cost	-	-	-	-	-	-	-	-	-	-
Total annual costs	0.05	-	-	-	-	-	-	-	-	-
Transition benefits	-	-	-	-	-	-	-	-	-	-
Annual recurring benefits	-	-	-	-	-	-	-	-	-	-
Total annual benefits	-	-	-	-	-	-	-	-	-	-

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

There is discretion for departments and regulators as to how to set out the evidence base. However, it is desirable that the following points are covered:

- Problem under consideration;
- Rationale for intervention;
- Policy objective;
- Description of options considered (including do nothing);
- Costs and benefits of each option (including administrative burden);
- Risks and assumptions;
- Direct costs and benefits to business calculations (following OIOO methodology);
- Wider impacts;
- Summary and preferred option with description of implementation plan.

A. Strategic Overview

A.1 Background

Sections 44 to 46 of the Terrorism Act 2000 (referred to frequently as “section 44”) enable a police constable to stop and search pedestrians or vehicles within an authorised area for the purposes of searching for articles of a kind which could be used in connection with terrorism, whether or not he or she suspects the presence of such articles. The power can only be used in a place and during a time where an authorisation is in place. An authorisation may be made by a senior police officer but must be confirmed by the Secretary of State if it is to last more than 48 hours.

In June 2010, the European Court of Human Rights (ECtHR) made final its decision in the case *Gillan and Quinton* which found the legislation 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 this review. This was the announcement on 8 July 2010 that the powers would not be exercised without reasonable suspicion.

A.2 Groups Affected

In principle, anyone could be affected by the use of Section 44 powers. The powers are available to all police forces, though some police forces have never sought a Section 44 authorisations whilst some, notably the Metropolitan Police Service and British Transport Police have used Section 44 extremely intensively. Because of its broad use, section 44 is probably the one counter terrorism power which the public are most likely to have direct experience of. As a result, grievances about section 44 are some of the most widely cited in respect of counter-terrorism legislation.

The increase in use of Section 44 (from around 42,000 individual stops in 06/07 to just over 250,000 in 08/09 before falling to just over 100,000 in 09/10)¹ and the nature of its use, has led to concern that there are no effective constraints on the use of the powers. The perception of disproportionate use against people from Asian communities may also

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

fuel perceptions that the police employ racial profiling techniques and that terrorism legislation is not being applied equally across all sections of society. The last available statistics show that of the stops and searches conducted in Great Britain (the vast majority – 79% - of which were carried out by the Metropolitan Police Service) between April 2009 and March 2010, 59% of individuals stopped were white, 10% were black and 17% Asian.

A.3 Consultation

Within Government

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.

Public Consultation

The terms of reference for the review 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.

A list of those who contributed to the review and summary of the contributions received was published alongside the outcome of the review.

B. Rationale

The rationale for the review of Section 44 powers is:

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 MPS – made significant changes to reduce the geographic extent of their authorisations and their use of the powers over the last 12 months until they stopped using the power 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, makes it a less attractive target for terrorists, the lack of an outcome of that kind from those types of operation is a stark statistic. This has resulted in questions over the necessity of the powers. It should be noted,

however, that the powers have resulted in terrorism arrests and charges in Northern Ireland.

The increase in use of Section 44 in Great Britain (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)² and high-profile examples of apparently inappropriate use (for example, against a 90 year old man attending the Labour Party conference) have 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.³

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 are 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 NPIA⁴.

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.

Due to concerns from communities and Lord Carlile, the Metropolitan Police (the main users of the power) from 20 July 2009 introduced refined tactics across their police force area (the so-called 'patchwork' model). Section 44 authorisations were thereafter only made in relation to significant locations, such as iconic sites and crowded places (where the authorisation continued to be renewed on a rolling 28 day basis), or in relation to specific events such as the Notting Hill Carnival or New Year's Eve. This new strategy led to a decrease in the Metropolitan Police's use of section 44 by over 40%.

On 9 September 2003, Kevin Gillan and Pennie Quinton were stopped separately by the Metropolitan Police while on their way to a demonstration at the Defence Systems & Equipment International arms fair at the ExCel Centre in London's Docklands. Their bags and external clothes were searched by police officers. The police explained to the individuals that they were being searched under anti-terrorism laws and gave each a stop and search form recording that the police had been exercising powers under the Terrorism Act 2000. Nothing incriminating was found. The applicants challenged the actions of the police and the legislation on the basis that the section 44 powers were in breach of their rights under Articles 5, 8, 9, 10 and 11 of the ECHR.

² Home Office Statistical Bulletin, '*Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes and stop & searches*'.

³ Statistics on Race and the Criminal Justice System 2007/08, Ministry of Justice, 2009

⁴ Practice Advice on Stop & Search in Relation to Terrorism, NPIA, 2008.

Gillan and Quinton lost on all challenges in both the Divisional Court and Court of Appeal. They also lost in the House of Lords (judgment was handed down on 8 March 2006). They subsequently took their case to the ECtHR. The ECtHR ruled in January 2010 that the applicants' rights under Article 8 (right to private/family life) of the ECHR had been violated. It found that the powers were too broadly expressed, both at the initial authorisation stage and when the powers are actually exercised, and contain insufficient safeguards to remedy mistakes or abuse – and thus the powers are not 'in accordance with the law'. Having ruled on Article 8, the Court did not consider it necessary to consider the interference with rights under the other Articles of the ECHR, however they made observations that indicated that, had they done so, they would have been likely to also find the powers violated article 5 (the right to liberty). The previous Government applied for a referral of the case to the Grand Chamber of the ECtHR (essentially, applying for an appeal against the decision).

On 28 June 2010 the panel of 5 judges of the Grand Chamber of the ECtHR refused the Government's request for the judgment to be referred to the Grand Chamber. This meant that the ECtHR's judgment of January 2010 became final on 28 June. As a result of the judgment becoming final, the Government is under an international obligation to implement the judgment by either repealing the section 44 powers or amending them to bring them into line with the ECHR as interpreted in *Gillan*.

As a result of the judgment, the Government's long standing concerns in Opposition about the use of section 44 powers and the need to provide operational clarity to the police, the Home Secretary made a statement to Parliament on 8 July stating that the police would no longer make, and she would no longer confirm, section 44 authorisations in respect of stops and searches of individuals (pedestrians). Pedestrians could only be stopped and searched under terrorism powers by virtue of section 43 of the Terrorism Act 2000 (which requires reasonable suspicion that the person is a terrorist). The Home Secretary indicated that police could continue to make, and she would continue to consider confirming, authorisations made in respect of vehicles (as section 43 does not cover the searching of vehicles), but only where they were necessary for the prevention of acts of terrorism, and only where the powers were exercised on the ground on the basis of reasonable suspicion.

C. Objectives

The policy objectives are to ensure that the terrorism no suspicion stop and search powers are 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.

D. Options

The review considered two main options for changing section 44 powers – either OPTION 1: repeal section 44 in its entirety or OPTION 2 replace section 44 with a much more tightly circumscribed power.

OPTION 1

Repeal would be the most straightforward option in terms of guaranteeing the powers were no longer misused, and would provide an unassailable means of implementing the ECtHR judgment. The key question as to whether the power should be repealed outright was whether it would lead to an increase in risk. The absence of any terrorism convictions under the Terrorism Act 2000 in Great Britain (where there has been the highest volume of section 44 use) after hundreds of thousands of stop and searches cannot be ignored in relation to the assessment of its effectiveness (though there have been terrorism arrests). The use of Section 44 has, however, resulted in terrorism-related convictions in Northern Ireland and the Police Service of Northern Ireland (PSNI) assess that the use of Section 44 powers has thwarted potential terrorist attacks there.

There are, of course, other powers available to the police. These include the stop and search power under section 43 of the Terrorism Act 2000 (though this only relates to people rather than vehicles and vessels), the stop and search power under section 1 of PACE, a common law ability for the police to stop individuals and ask them to account for themselves; powers to establish terrorist cordons; anti-terrorist road orders; and various non-terrorist powers. There are also some specific Northern Ireland offences that allow the police to stop and search individuals for munitions (though the intention is to amend this in line with the proposed changes to Section 44). In addition, the police can use high visibility patrols to replicate some of the deterrence effect of section 44.

The review considered whether these powers sufficiently address the gap left by repealing section 44. The review found that whilst they help, they still left a number of operational gaps. They are also not all counter-terrorism powers and the police should not use intentionally use powers designed to deal with road traffic offences for a purpose that they were not designed or intended for (i.e. to disrupt or deter terrorists) - road traffic powers should be used for road traffic purposes rather than deterring terrorists. Not having any form of 'no suspicion' terrorism stop and search power would lead to an increase in the levels of risk. The review did not, therefore, recommend that section 44 should be repealed without replacement.

OPTION 2

The review also considered whether, and how, to create a circumscribed power that could be used in more tightly defined circumstances, so significantly reducing the number of stops and searches and the scope for the powers to be used inappropriately. The review also considered the public's expectation that the police could have access to no suspicion powers in the face of a credible threat of terrorist attack.

The review considered how a limited 'no suspicion' terrorism stop and search power could be formulated that did not fall foul of the ECtHR's judgment; was operationally useful; and was not vulnerable to misuse. The review recognised that there was a tension between having an operationally flexible and useful power without running the risk of the power being misused or falling foul of our human rights' obligations. On balance, it was concluded that the authorisation could only be made where there was reasonable suspicion that an act of terrorism will take place and that the powers are considered necessary to prevent it.

The use of a section 44-type power around particular sites and events was also considered. Some contributors to the review suggested that a more tightly circumscribed section 44-type power should be available in limited circumstances to protect individual sites or events because of their potentially vulnerable nature. The Olympic Games was a particularly relevant factor in this consideration. The review concluded that a high risk assessment alone, without information about a potential threat, this would be too similar to the way in which section 44 was previously used and would fall foul of the ECtHR's judgment. Only where there is reasonable ground to suspect an act of terrorism will take place could a section 44 type power be used. The formulation of such a power should,

however, allow the powers to be used around sites or events (such as the Olympics), if there is reasonable suspicion that an act of terrorism will take place and the powers are considered necessary to prevent such an act.

E. Appraisal (Costs and Benefits)

General assumptions and data

All costs and benefits are compared with the pre-July 2010 position (i.e. before the Home Secretary's statement on 8 July 2010). We have not, though, included a 'Do Nothing' option given this was not legally or politically an option. The costs of ignoring the ECtHR judgment would be very high:

- (a) Significant international reputational damage from ignoring our international human rights obligations.
- (b) Significant legal risk, including in compensation, given the powers had been found to be "not in accordance with the law".
- (c) The European Court of Human Rights has the power to fine countries that do not implement their judgments.
- (d) The unlawful and disproportionate interference of individuals and vehicles stopped and searched under the power.

We have assumed that the threat environment will remain broadly the same but that the volume of the power's use will be less than for Section 44 prior to the 8 July 2010 statement.

Option 1 – Repeal section 44 with no replacement

COSTS

The cost of repealing Section 44 with no replacement is assessed to be minimal. ACPO and Chief Constables have already informed police officers of the Home Secretary's decision on 8 July 2010 that the use of Section 44 as a 'no suspicion' power would cease whilst it was subject to review.

The cost of suspending the power in July of 2010 involved the 'sending out' of fast time updates to all MPS units (all officers and supervising staff) to stop using section 44 other than in the limited circumstances allowed in the 8 July 2010 statement. This was achieved by utilising the 'in-house' briefing systems. The costs are minimal and part of the daily officer briefing. The cost of informing police officers/forces of the change would, therefore, be very limited.

In the event that Section 44 was repealed, then we would expect that other existing police powers and approaches would be used more to provide some of the 'effect' of Section 44. This assessment is based on what occurred after the Home Secretary's statement of 8 July. This cost should be broadly neutral given officers that were deployed on Section 44 stop and searches could undertake high visibility patrols, for example, at the same cost.

Whilst training in Section 44 would no longer be necessary, there is likely to be an increased demand for Section 43 training. It is assessed that the use of Section 43 stop and searches would increase as a result of the repeal of Section 44. Given Section 43 requires the police officer on the ground providing a personal justification or 'grounds' for the stop and search increases the need for training. Permanently removing section 44 from the available police powers in favour of 'ground bearing' powers increases the need

to ensure officers are able to justify their actions. Proper supervisor briefings are key to delivery of any power which are delivered regularly and always up to date.

The non-financial costs of repealing Section 44 with no replacement is that the public could potentially be placed at greater risk (see above under Section D for further explanation).

BENEFITS

There would be potential cost savings from police forces no longer having to provide training to police officers on the use of Section 44 powers. Due to the significant public and Parliamentary concern about the police's misuse of the powers, police forces and the NPIA have developed training and guidance to help minimise the risk of the powers being used unlawfully or inappropriately. This guidance and training would no longer be necessary.

There are also potential cost savings from the police no longer having to investigate or defend claims for damages (or to pay some damages) as a result of alleged police misuse of Section 44 powers. This is likely to be negligible, however, as claims against the police due to Section 44 use were infrequent and small scale (i.e. on average £150).

Given Section 43 does not have any authorisation process, there would be savings for the police in not having to manage authorisations. There are also potential cost benefits for the Home Office of no longer having to consider and confirm police authorisations.

Given Section 44 stop and searches have been a very inefficient mechanism in Great Britain to find articles that provide a basis for the police to arrest an individual – be it for terrorism (which for Section 44 is the purpose) or for non-terrorist offences – there is likely to be a benefit from a more efficient allocation of police resources. In Great Britain, a total of 506 arrests resulted from stops and searches, which were made under the powers of Section 44 in 2009/10 (RDS Statistical Bulletin). This represents 0.5 per cent of Section 44 stops and searches, and compares with 10 per cent of stops and searches made under section 1 of the Police and Criminal Evidence Act (PACE) 1984 resulting in an arrest in 2008/09. No arrests under Section 44 were identified as being terrorism related.

There is a benefit to society from the police having more proportionate powers and the privacy and liberty of members of the public will be infringed less. Given the European Court found the powers to not be in accordance with the law and that they violated individual's right to privacy / family life (Article 8 of the ECHR), and given the large number of people affected by the powers, this is a significant benefit.

Option 2 – Replace section 44 with a severely circumscribed version

COSTS

There could be marginal potential cost savings from police forces needing to provide less training to police officers on the use of Section 44 powers given the new powers (Section 43B) would be used far less than the pre-July 2010 position. This is assessed to be marginal, however, given training and guidance on terrorism stop and search powers will still be necessary.

There will be a one-off cost of providing new guidance and training for the new powers. The Home Office is producing the statutory Code of Practice in consultation with the police and other stakeholders as part of the Protection of Freedoms Bill. Scotland will have to produce some form of statutory guidance as well – this should, though, be largely based on that for England, Wales and Northern Ireland. The cost of producing the guidance is assessed to be marginal as it will be partially based on existing guidance and principally drafted by Home Office officials as part of their normal duties. These transitional costs are

estimated to come to £50k based on the development of new statutory guidance and a police training package.

The authorisation process for the new power will be more intensive. This is because the threshold for the senior police officer's authorisation is much higher. The senior police officer is likely to have to consider more information (probably of high classification) to come to a decision. The senior police officer should, though, be aware of much of the justification given s/he should be aware of a developing terrorist plot in or connected to his/her police force area. The Home Office's and Northern Ireland Office's consideration of each authorisation is also likely to be more resource intensive given there should be more detailed justification. The new powers, however, have a significantly higher threshold and it will be no longer possible for police forces to use them routinely or on a rolling basis. Whilst the cost of each authorisation may increase, the number of them is likely to reduce considerably so the change in the cost of authorisations should be broadly neutral.

BENEFITS

There are also potential cost savings from the police having to investigate or defend fewer claims for damages (or having to pay some damages) as a result of alleged police misuse of Section 44 powers (as they were used before July 2010). This would arise because the new powers are on a much stronger legal footing and the volume of use should be significantly lower than the historical use of Section 44. This would be marginal, though, given (a) claims against the police due to Section 44 use were infrequent and small scale; and (b) there will still be scope for legal challenge given different interpretations of the ECtHR judgment.

There is a benefit to society from the police having more proportionate powers and the privacy and liberty of members of the public will be infringed less. Given the European Court found the powers to not be in accordance with the law and that they violated individual's right to privacy / family life (Article 8 of the ECHR), and given the large number of people effected by the powers, this is a significant benefit.

F. Risks

The key risk of repealing Section 44 without any replacement is that the police would not be able to sufficiently protect the public from a risk of terrorism. For the reasons set out earlier, the review considered that section 44 should be replaced with a severely circumscribed version.

G. Enforcement

The powers will be subject to annual review by the statutory reviewer of terrorism legislation.

The use of the powers will be subject to statutory Code of Practice that is developed and issued by the Secretary of State. The Code of Practice will be developed in consultation with the police and other stakeholders.

H. Summary and Recommendations

The table below outlines the costs and benefits of the proposed changes.

Table H.1 Costs and Benefits		
Option	Costs	Benefits

1	£0/year	£0/year
	Cost to the public from the police not having the necessary powers to protect them from the risk of terrorism. (not quantified)	Benefits to the public from the police having a more proportionate power. (not quantified)
2	£0/year	£0/year
	Transitional cost of producing new training and guidance for the police (estimated at £50k).	Benefits to the public from the police having a more proportionate power. Benefit to the public from the police having a (proportionate) counter-terrorism power that is necessary to protect them from a risk of terrorism. (not quantified)
Source:		

Option 2, replacing Section 44 with a severely circumscribed version, is the recommended option on the basis that brings the power into compliance with the ECHR whilst providing the police with a police that is considered necessary to protect the public from a risk of terrorism.

I. Implementation

The Government plans to implement these changes in full within 6 months of Royal Assent of the Bill.

J. Monitoring and Evaluation

The effectiveness of the new regime would be monitored by a variety of means:

- Regular engagement with the police and intelligence agencies on the utility of the powers.
- Assessment of the regular statistics on the use of the powers.

The Government's evaluation of the effectiveness and fairness of the powers will also be informed by the independent reviewer of terrorism legislation's report.

The statutory Code of Practice will place a duty on the police to monitor the use of the powers.

K. Feedback

We will undertake post-legislative scrutiny of the powers.

The independent reviewer of terrorism legislation produces an annual report on the Terrorism Act 2000 and actively seeks views from the public and others on the necessity and proportionality of counter-terrorism powers.

Statistics on the use of terrorism powers, including stop and search ones, are published regularly by the Home Office and Northern Ireland Office.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review, or there could be a political commitment to review (PIR)];</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]</p>
<p>Reasons for not planning a review: [If there is no plan to do a PIR please provide reasons here]</p>

Annex 2. Specific Impact Tests

Statutory Equality Duties

Equality Impact Assessment

Full EIA prepared and published

Social Impacts

Human Rights

Refer to the ECHR Memorandum prepared for the Protection of Freedoms Bill