



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

## **Response to the Review of Guidance on Section 44 of the Terrorism Act 2000**

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights,<sup>1</sup> advising on legislative and other measures which ought to be taken to protect human rights,<sup>2</sup> advising on whether a Bill is compatible with human rights<sup>3</sup> and promoting understanding and awareness of the importance of human rights in Northern Ireland.<sup>4</sup> In all of that work the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding 'soft law' standards developed by the human rights bodies.
2. The Commission welcomes this opportunity to submit its views to the Home Office in response to the review of existing guidance for police officers on the exercise of stop and search powers under Section 44 of the Terrorism Act 2000 (Section 44). The Commission has a particular interest in the operation of UK Government anti-terrorism measures because of the experiences associated with the conflict in Northern Ireland and, in particular, the use of emergency legislation that applied in Northern Ireland for over 70 years.

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<sup>1</sup> Northern Ireland Act 1998, s.69 (1).

<sup>2</sup> *Ibid*, s.69 (3).

<sup>3</sup> *Ibid*, s.69(4).

<sup>4</sup> *Ibid*, s.69 (6).

3. The power to stop and search under Section 44 of the Terrorism Act 2000 is unique among most of the stop and search powers available to the police because it does not require reasonable suspicion. As such, the scheme of Section 44 dispenses with one of the most fundamental safeguards, 'reasonable suspicion', designed to protect the public against the arbitrary and subjective exercise of police powers. This raises serious concerns for the protection of human rights. While this type of search power remains in force, it must be subject to the most thorough monitoring and review. The Commission is of the view that the guidance for the use of Section 44 should be reviewed against international human rights standards.
4. The human rights standards that the Commission considers particularly relevant to inform the guidance for, and future monitoring of, Section 44 are:
  - The European Convention of Human Rights and Fundamental Freedoms (ECHR), in particular, Article 8 (right to private life), and Article 14 (non-discrimination).<sup>5</sup>
  - The International Covenant on Civil and Political Rights (ICCPR), in particular, Article 17 (right to privacy), Article 26 (non-discrimination).
  - The Convention on the Elimination of All Forms of Racial Discrimination (CERD), in particular, Article 1 (meaning of racial discrimination), and Article 2 (measures to eliminate racial discrimination).
  - The Framework Convention for the Protection of National Minorities (FCNM), in particular, Article 6 (the right to be protected from threats or acts of discrimination).
5. The Commission notes the stated purpose of the review "to ensure that the police exercise the stop and search power appropriately and proportionately". This is in line with the recommendations of the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM), which states that the UK Government must review stop and search powers to ensure they are exercised fairly and proportionately.<sup>6</sup> Therefore, the review of Section 44 guidance is to be welcomed as an attempt by the UK

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<sup>5</sup> Depending on the circumstances of the individual case, the use of stop and search powers under Section 44 of the Terrorism Act 2000 may also engage Article 5, ECHR and Article 9, ICCPR (Right to liberty).

<sup>6</sup> Advisory Committee on the Framework Convention for The Protection of National Minorities, Second Opinion on the United Kingdom, 6 June 2007, ACFC/OP/II(2007)003, p 26.

Government to exert more control over the use of the Section 44 stop and search power. However, the Advisory Committee on the FCNM also explicitly urged the UK Government to ensure "... that persons belonging to minority ethnic communities are not disproportionately stopped and searched".<sup>7</sup> The Commission is of the view that it would be useful if this was a specific aim of both the current review and the actual guidance for the exercise of the Section 44 stop and search power. For the purposes of this review, the Commission would reiterate the other recommendations made by the Advisory Committee to the UK Government including:<sup>8</sup>

- that there should be *additional* guidance for individual police officers on the circumstances in which stop and search powers are discriminatory [emphasis added]
  - that line managers should have enough resources to monitor the use of stop and search patterns of individual officers
  - there should be monitoring of the Home Secretary's authorisations under Section 44 to ensure that the powers are necessary and proportionate and to ensure that their renewal is not a purely administrative exercise.
6. The guidance states at page 10 that "as reasonable suspicion is not required, the power may be seen by the public and the media as controversial or extreme". However, the Commission notes that the concern is not only that the power may be perceived as controversial but that it engages fundamental human rights standards and that, without the constraint of 'reasonable suspicion', it has a heightened potential to impact disproportionately on certain members of the community. The Commission welcomes the fact that the guidance recognises the need to ensure against damaging community relations and also the statement that Section 44 "...must be used in accordance with the Human Rights Act 1998" (at page 14). However, it would be helpful if the guidance also contained a clear and unambiguous statement outlining (1) the relevant local and international human rights standards engaged by Section 44; and (2) the risks of discrimination associated with the exercise of such a wide stop and search power.
7. The guidance refers to the briefing given to police officers using the Section 44 stop and search power. This focuses on information, intelligence and providing officers with "a

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<sup>7</sup> *Ibid*, p 26

<sup>8</sup> *Ibid*, p 28.

thorough understanding of all the issues involved” in order to ensure proportionate and effective use of the power.<sup>9</sup> The Commission finds that at times this is somewhat vague, although it appreciates that more detailed information may be given to officers during the briefing. In order to ensure that officers are provided with the detail to give an understanding of the issues involved when using Section 44, the guidance should specify more clearly what kind of information is provided to officers to bring about proportionate use of the power. In particular, it should be made clear how the exercise of Section 44 can under certain circumstances result in discrimination.

8. The Commission would wish to highlight the purposive wording of Article 2, CERD, which states that “State Parties condemn racial discrimination ...” The Commission welcomes the statement on page 12 that, “it is not appropriate to stereotype people of a certain faith or ethnicity as terrorists ...” in that it recognises this ‘stereotyping’ as a form of racial discrimination. We would urge the inclusion of further statements outlining the broad range of actions that would constitute racial discrimination during the use of the Section 44 power.
9. At page 14, the guidance usefully outlines the type of information that must be given to persons who are stopped and searched under the Section 44 power. However, there is no specific provision for situations involving children or young people or those with learning difficulties who may find it more difficult to appreciate the information provided. There is also no guidance for police officers on how they should provide information where the person to be stopped and searched uses a language other than English. In addition, the guidance does not refer to the fact that a Section 44 search must be carried out by an officer of the same sex. This is an important safeguard provided for in the legislation and it should be strongly reaffirmed by the guidance.
10. The Commission considers that paragraph 2.5, providing for the provision of data to local communities on the use of Section 44, is a positive and constructive mechanism to monitor the use of this power. The Commission agrees that this will give a sense of the use of Section 44 “...in context rather than as a national picture.”<sup>10</sup> Indeed, in terms of the

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<sup>9</sup> National Policing Improvement Agency (2007) *Practice Advice on Stop and Search in Relation to the Terrorism Act*, NPIA, London, p 11.

<sup>10</sup> *Ibid*, p 15.

Northern Ireland context, the statistics show an increase in the use of the stop and search under Section 44 from April to December 2007.<sup>11</sup> The Commission also notes the most recent human rights report for the Northern Ireland Policing Board showing “some disproportionality in the number of stop/searches of the Irish Traveller community” during the use of stop and search powers under the Police and Criminal Evidence (NI) Order 1989 and the now repealed Part VII of the Terrorism Act 2000.<sup>12</sup> It is important to continue to monitor this type of information for the use of Section 44.

11. Although it is essential to provide detailed information on the use of Section 44 in the local context, this should not detract from the continued importance of gathering evidence on the use of Section 44 nationally. This is crucial for accurate and consistent monitoring of the use of the Section 44 stop and search power across the UK. The Commission is of the view that in order to gather comparable and meaningful data, it would be helpful if the guidance indicated more clearly what type of data should be recorded by police officers when exercising the Section 44 power.
12. For instance, the type of data recorded at present does not appear to include the age or religion of persons stopped and searched under Section 44. Moreover, the data that is publicly available does not give a clear indication of how the Section 44 power is used. For example, it does not show multiple stop and searches, which would reveal the extent to which people are repeatedly stopped and searched. It is also not apparent from current data what happens during a stop and search under Section 44. The Commission notes that Section 44 includes a power to request removal of outer clothing including footwear. An encounter involving a superficial search may be quite different from a search requiring removal of an outer coat, headgear, and shoes. It would be helpful if this type of information could be recorded for Section 44 stop and searches.

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<sup>11</sup> This is the most recent information available on the use of Section 44 in Northern Ireland. It shows 124 persons were stopped and searched from 1 April to 30 June 2007; 1,112 from 1 July to 30 September 2007; and 722 from 1 October to 31 December 2007 (Police Service Northern Ireland, *Quarterly Report: Stop and Search Statistics 1 October 2007 to 31 December 2007*, PSNI, Lisnasharragh, Belfast, 2008).

<sup>12</sup> Northern Ireland Policing Board, *Monitoring the Compliance of the Police Service Northern Ireland with the Human Rights Act 1998, Annual Report 2007*, NIPB, Belfast, 2007, p 63.

13. While the statistics on Section 44 do not provide information on the context of the actual stop and search, the data that is available suggests a disproportionate use of this stop and search power. This shows an overall 34% increase in the use of Section 44 in England and Wales in 2005/06 from 2004/05. The greatest increase is for Asian people at 84% (3,697 to 6,805), followed by Black people at 51% (2,744 to 4,155). Searches of white people increased by 24% (24,782 to 30,837).<sup>13</sup> The Commission notes that these figures relate to England and Wales and not to Northern Ireland. Nevertheless, as stated in our submission to the Advisory Committee on the FCNM, in so far as the majority of Muslims in the UK are also of Asian origin, figures such as these can "... impact on the Muslim minority within Northern Ireland by signalling a trend in the treatment of Muslim Asians in the UK as a whole".<sup>14</sup>
14. The Commission supports the provision in Section 3 of the guidance to consult with the community and to ensure that those who may be more directly affected by a Section 44 authorisation are not excluded from this type of consultation. The Commission would urge that there is an adequate mechanism to ensure that due cognisance is taken of the views reflected during community consultations and that there is a process to feedback any views and concerns received. In addition, the Commission would wish to highlight the fact that community consultations that take place outside the context of Section 44 may also be important for informing the operation of the Section 44 stop and search power. For instance, the Commission notes the views expressed by a number of organisations in response to the UK Government's Counter terrorism Bill that members of the Black and ethnic minority communities and, in particular the Muslim community, feel disproportionately targeted by anti-terrorism measures introduced in the UK since 2001.<sup>15</sup>

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<sup>13</sup> Ministry of Justice, *Statistics on Race and the Criminal Justice System – 2006, A Ministry of Justice Publication under Section 95 of the Criminal Justice Act 1991*, MOJ, 2007, p 26.

<sup>14</sup> Northern Ireland Human Rights Commission, *Submission to the Advisory Committee on the Framework Convention for the Protection of National Minorities*, NIHRC, May 2007.

<sup>15</sup> Muslim Council of Britain, *Response to Proposed Counter Terrorism Bill*, MCB, 2007, available at: [http://www.mcb.org.uk/article\\_detail.php?article=features-124](http://www.mcb.org.uk/article_detail.php?article=features-124); See also: Equality and Human Rights Commission, *Counter Terrorism Bill Parliamentary Briefing House of Commons Second Reading 1<sup>st</sup> April 2008*, EHRC, London, 2008.

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