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## Home Office

**Rt Hon Baroness Neville-Jones DCMG**  
**MINISTER OF STATE FOR SECURITY AND COUNTER-TERRORISM**  
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Dr Hywell Francis  
Chair of the Joint Committee on Human Rights  
House of Commons  
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Dear Dr Francis,

### **TERRORISM STOP AND SEARCH POWERS**

As you will be aware, the Government's recent review of counter terrorism and security powers recommended the replacement of Sections 44 to 47 of the Terrorism Act 2000 with a severely circumscribed stop and search power exercisable without reasonable suspicion which was much more targeted and compliant with Convention rights in the light of the European Court of Human Rights' judgment in *Gillan and Quinton*. That recommendation is reflected in the clauses on stop and search included in the Protection of Freedoms Bill which was introduced on 11 February.

In order to fill the current operational gap in 'no suspicion' stop and search terrorism powers, the review also recommended that consideration be given to whether the replacement provisions could be implemented more quickly than would be the case through the Protection of Freedoms Bill.

We have been considering this issue in the light of the current threat environment. The Prime Minister made clear in his New Year address that the threat from terrorism was as serious as it ever has been. This remains the case. The clear police advice is that there is an operational gap in respect of their ability to use "no suspicion" stop and search powers in exceptional circumstances where they suspect that an act of terrorism will take place and reasonable suspicion powers are not sufficient to address that threat. The police are concerned that waiting for the provisions in the Protection of Freedoms Bill to be commenced will mean that they are not able to effectively protect the public from the risk of terrorism in the meantime.

When I gave evidence to your Committee on 8 February, I was asked whether the Government intended to make a legislative change to Section 44 by way of a remedial order. At the time I said that I expected the Government would make a decision extremely shortly. We have considered how best to close the operational gap and consider that there are compelling reasons for proceeding under section 10 of the Human Rights Act 1998 to make a Remedial Order to make immediate changes to the primary legislation. The Home Secretary informed the House of this decision yesterday in her opening speech in the 2<sup>nd</sup> Reading of the Protection of Freedoms Bill.

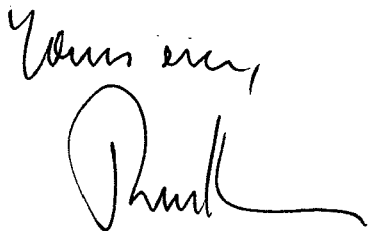
Such an order would be temporary however, and the provisions concerning these powers would remain in the Protection of Freedoms Bill to ensure that Parliament has the opportunity to fully scrutinise them by means of primary legislation. The remedial order would then be repealed on commencement of the Protection of Freedoms Bill.

A remedial order that replaces sections 44 to 47 with Convention-compatible powers would remove the incompatibility of the Terrorism Act 2000 with Convention rights. Whilst the Home Secretary's statement of 8 July put an end to the possibility of these powers being used in a manner which is

incompatible with Convention rights, sections 44 to 47 remain on the statute book. The Home Secretary's guidelines on 8 July do not therefore represent an implementation of the *Gillan* judgment which can only be accomplished by amending the primary legislation.

Given the operational urgency, we intend to use the urgency procedure provided by the Human Rights Act to make the remedial order. The police assess that they need the powers to be available now. Home Office Ministers have concluded on the basis of advice that the availability of these powers (on a revised basis) as soon as possible is in the interests of national security, in particular the protection of the public from terrorism. In taking this decision, we recognise that there are different interpretations of the legislation as to what factors can have a bearing on the Secretary of State's view that the 'urgency of the matter' requires the order to be made without advance Parliamentary approval and the other procedural requirements normally attached to making a remedial order.

I am aware that previous JCHR's have expressed the view that the urgency can only relate to the need to stop individuals' Convention rights being infringed. While we accept that this is a key factor, 'urgency' arises in this instance because the absence of legally certain 'no suspicion' powers undermines the police's ability to protect the public in situations where they suspect that an act of terrorism will arise.

A handwritten signature in black ink, appearing to read 'Baroness Neville-Jones', with a large, stylized initial 'N' and a long horizontal flourish extending to the right.

**The Rt Hon Baroness Neville-Jones DCMG PC**