

Equality Impact Assessment on the use of security scanners at UK airports.

Introduction

1. It is public knowledge that the attempted attack on Northwest flight 253 to Detroit on Christmas Day 2009 involved the use of a device which had been constructed with the aim of making detection by existing screening methods extremely difficult. Following a review of aviation security the Government regulated for the use of security scanners and security scanners were deployed as of 1 February 2010 and are now sited at Heathrow, Gatwick and Manchester airports. The Government was aware of potential concerns about this new technology and so launched a public consultation on the use of security scanners in March 2010.

2. The public consultation "*on the interim code of practice for the use of security scanners*" received over 6,000 responses. In light of those responses the Department for Transport (DfT) has conducted a full Equality Impact Assessment (EqIA) proforma (attached). This document seeks to analyse the equality issues that have emerged from the public consultation and other engagement activities. It also outlines the actions that DfT will take to address those concerns.

3. In considering the equality impacts of the use of security scanners at UK airports the DfT aims to meet its obligations under the Equality Act 2010:

"A public authority must in the exercise of its functions have due regard to the need to

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act*
- (b) advance equality of opportunity between persons who share a relevant characteristic and persons who do not share it*
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it*

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Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, involves having due regard in particular to the need to –

- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;*
- (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;*

- (c) *encourage persons who share a relevant characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.”*

Analysis following consultation and engagement.

4. The vast majority of responses to the consultation raised concerns and opinions in relation to the viewing of images created by security scanners and the selection of passengers for screening by security scanner. The main concerns expressed were connected with modesty of the human body, linked to religious beliefs, particularly for women. A small number of concerns were raised about women being deliberately selected for scanning.

5. The DfT has considered the equality impacts in relation to Age, Disability, Gender Reassignment, Race, Religion or Belief, Sex and Sexual Orientation. The DfT considers that Sex includes the equality categories of Marriage & Civil Partnership and Pregnancy & Maternity. It is clear from the responses to the consultation that there may be adverse impacts in respect of: *sex, race, religion or belief, gender reassignment and disability.*

6. The DfT has considered the responses to the public consultation and has had correspondence and engagement with a number of bodies representing minorities groups, as have some airport operators. These groups include, but are not limited to, religious groups, children's groups, a transgender group, human rights groups and the data protection office.

7. The DfT considers that its policy on the use of security scanners might have a negative impact on equality of opportunity as follows:

- a) Muslims might in particular be discouraged from flying so as to avoid the risk of having their body image captured for analysis by a human screener, which some feel is inconsistent with their religious beliefs.
- b) Muslims might in particular be discouraged from flying as they feel that they may be deliberately or disproportionately selected for security scanning. The same risk might also arise in regard to passengers who, because of their race, might be incorrectly be assumed to be Muslim.
- c) Women might be discouraged from flying so as to avoid the risk of being deliberately selected for security scanning by unscrupulous male screeners.
- d) Persons with medical implants or prosthesis, some of whom may have a disability, might be discouraged from flying so as to avoid the risk of having to explain to security staff intimate details of their condition.
- e) Transgender persons might be discouraged from flying so as to avoid the risk of having to explain to security staff intimate details about their body image or make potentially awkward decisions about the gender of the image viewing officer.

8. It is also possible that, without appropriate safeguards, the policy could potentially give rise to unlawful discrimination in respect of these groups. The risk (or perception) that passengers could be selected for scanning on the basis of their race (see head (b) above) could also have a negative impact on good relations between groups.

Policy options

9. The DfT has identified four policy options for resolving or mitigating the above impacts:

Option 1: Ceasing all use of security scanners at UK airports. This could remove any negative impacts on equality of opportunity, unlawful discrimination and the fostering of good relations. Removing security scanners would remove a potential barrier for some disabled passengers as they may be less likely to need to discuss their disability with security staff.

However, the DfT believes that removing scanners would unacceptably weaken the protective security controls at our airports, resulting in a higher risk to the safety of air travellers, staff and people on the ground.

Option 2: Adjust the policy to obtain a better equality outcome by allowing people to choose a 'pat-down' hand search as an alternative method of security screening. The availability of a pat-down hand search alternative, which was the option most suggested in responses to the consultation and other correspondence and engagement, may go some way to mitigating the negative impacts on equality of opportunity for Muslims, women, persons with a disability and transgender persons. This would mean that passengers have the option of not having a scanned image created. This option might also address the concerns of some disabled passengers about the potential need to discuss their disability with security staff.

This option on its own would do little to eliminate the perception of unlawful discrimination in the selection of passengers for security scanning, nor would it do much to promote good relations as passengers might still assume they were being disproportionately selected. To address these points the existing controls around the selection of passengers should be strengthened to make it clear that passengers must not be selected for scanning on the basis of any of the statutory all current equalities groups. The DfT therefore plans to amend the public code of practice (which is annexed to the Secretary of State's directions on security scanners) providing greater detail on the criteria for selection for scanning. Furthermore, the DfT aims to ensure that airports move as soon as reasonably practical to a position where all selection of passengers is done by automated (computer generated) means.

Details of the detection capabilities of various security methods cannot be made public as it would provide would-be terrorists with valuable information. However, the DfT has assessed that a 'pat down' or hand-search does not offer the same security outcome as that achieved by a security scan and, thus, would not satisfactorily mitigate the security risk.

Option 3: Adjust the policy to obtain a better equality outcome by allowing people to choose a private search (a more rigorous hand search undertaken in private requiring the loosening or removal of clothing) as an alternative method of security screening. Based on publically stated concerns about the images created by security scanners, the DfT concludes that the availability of a more rigorous hand search (known as a 'private search') in place of a security scan may go some way towards mitigating some of the negative impacts on equality of opportunity for some Muslims, women, persons with a disability and transgender persons. The DfT assesses that this option might also help to address the concerns of some disabled passengers about the potential need to discuss their disability with security staff.

A 'private search' should be conducted in non-public areas (separate rooms or walled-off areas) as they can require the loosening or removal of clothing and a detailed physical search of the person. Like a 'pat-down' hand search it would mean that passengers have the option of not having a scanned image of their body created.

The DfT assesses that such searches can have the nearest equivalent security efficacy to a security scanner. This option on its own would need to be combined with the mitigations set out under option 2 above in order to aim to eliminate unlawful discrimination and promote good relations with regard to the selection of passengers for scanning.

However, the DfT is aware from the past experience at airports that some passengers are likely to consider private searches to be more intrusive than a security scan and such searches may not be any more consistent with the beliefs of some Muslims to remain modest about their bodies. The DfT assesses that private searches would place a significant operational burden on airport operators as they would need to make available additional personnel and facilities to operate both security scanners and private searches. Private searches take much longer to complete (typically 5 -10 per hour as against 100+ per hour for security scanning). If significant use of private searches were to be made, there would be a risk of greatly slowing down the security process, long queues and frustrated travellers.

Option 4: Continue with the current policy, but with strengthened controls on privacy and the selection of passengers. Concerns about privacy, data protection and discrimination were raised in the responses to the consultation and other correspondence and engagement. The DfT assesses that more can be done to strengthen

the existing controls on privacy, data protection and discrimination to mitigate the negative impacts on equality of opportunity for Muslims, women, transgender persons and disabled persons. More can also be done to reduce the scope for unlawful discrimination against persons perceived by their race to be Muslim, thereby helping to promote better relations. In particular, the following areas of the Interim Code have been addressed with equalities issues in mind:

Privacy

- Although the Government accepts that security scanners could be regarded by some people as a breach of their privacy, the Government believes the use of security scanners is proportionate and justified on grounds of national security. The threat from terrorism to the aviation industry remains significant, and the Government is responsible for ensuring that effective aviation security measures are put in place to mitigate that threat.
- The Government is nonetheless doing all it can to ensure that the scanning process is designed with privacy in mind. The code of practice makes clear that the viewing of images must be done in a closed room, and that viewers must not be able to see the passengers being scanned, and vice versa. Passengers also have the right to request a screen viewer of the same gender.
- A significant improvement in privacy standards will be achieved with the introduction of a new generation of scanners with automatic threat recognition (ATR) software, which does not generate images to be viewed by a human screener. As soon as this technology is approved for use, the Government will require it to be purchased for all new scanner installations. The existing scanners will be replaced with ATR systems when they are life expired.
- Many respondents asked for a 'pat down' hand search to be offered as an alternative. The Government does not believe that a 'pat down' search offers an acceptable alternative to scanning in security terms and has therefore decided not to permit it in place of a security scan.
- The Government has considered carefully whether there are other screening methods which might deliver equivalent levels of security to a security scan. A full private search – involving the loosening and/or removal of clothing in the presence of security staff in a private room – would deliver a reasonable level of assurance. However, the Government believes that, for most people, this is likely to represent a greater intrusion of privacy than a security scan, and that nearly all passengers, if they fully understand the procedures, would be unlikely to opt for this alternative.
- The Government has also considered carefully the likely impact that providing a private search alternative would have on airport operators

and other passengers. Such searches are time consuming and require the presence of at least two trained staff. Airport operators would either have to provide such staff at a significant additional cost, or divert them from the main security search area, thus lengthening the queues for the vast majority of passengers who are content to pass through security in the normal way. Balancing these factors, the Government believes that the operational and cost impact on airports and passengers would be disproportionate.

- Given these considerations, the Government has decided to retain the current policy whereby no alternative screening method will be offered. However, the Government will do all that it can to facilitate the introduction of less intrusive scanning equipment as soon as possible.

Data Protection

- Because the safeguards in the interim code of practice provide a high level of protection, the Government sees no need for major changes to be made. However, because we recognise that it is very important to ensure that personal data continues to be protected the Government has decided to require airports to undertake twice yearly checks of scanner equipment to ensure that data (including any images) cannot be saved, copied or transmitted.

Health and Safety

- Because we believe that the existing safeguards are sufficient to protect the health and safety of passengers and staff, the Government sees no need to make any changes in this area.

Training

We believe that it is important to ensure that staff training programmes are appropriate and effective. In addition to their employer's own training requirements, airport security operatives must pass DfT-mandated security training which will include training on how to appropriately deal with passengers sensitively.

Selection criteria

- Because we believe that it is important that everyone is fully aware of all forms of potential discrimination, the Government intends to amend the code of practice to make it clear that passengers should not be selected for security scanning on the basis of the following personal characteristics: disability, sex, gender reassignment, age, race, religion or belief or sexual orientation.

Protocol

- Because we believe that it is important that passengers can make themselves aware of the relevant legislation regarding the use of security scanners at UK airports, the Government has redrafted the legislation such that more information about selection for scanning and the scanning process is in the public domain. This information is published on the DfT web site.

Action to be taken by DfT.

10. The DfT assesses that Option 4 strikes the most appropriate balance of achieving better security, safeguarding passenger rights, minimising burdens on airports and passengers and keeping queues down.

The DfT will implement all parts of Option 4.