

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

Introduction

This document is an updated Equality Impact Assessment that reflects changes to security scanner policy made in November 2013. The key change to the policy is that passengers can now request an alternative 'enhanced hand search in private' if selected to be screened by a security scanner. This was one of the options considered previously in the original EQIA (attached for reference at Annex A).

Background

Security scanners were initially deployed at several UK airports as part of a package of measures introduced after the attempted attack on Northwest Flight 253 to Detroit on Christmas Day 2009. The device used in that attack had been constructed with the aim of making detection by existing screening methods extremely difficult. Security scanners give airport security staff a much better chance of detecting non-metallic threat items hidden on a passenger's body than traditional search methods (such as walkthrough metal detectors and hand search).

Following a review of aviation security after this attempted attack, the initial deployment of security scanners was announced in Parliament in February 2010 along with a plan for future roll-out of security scanners to further UK airports. An interim Code of Practice was also announced, pending the public consultation on the Code of Practice on the use of security scanners.

In November 2011, a further statement was made to Parliament about the results of the public consultation and plans for the further deployment of security scanners. This statement acknowledged that, although the vast majority of passengers accepted the use of security scanners and found the process quick and convenient, some passengers remained concerned about the use of security scanners, largely regarding health and privacy. It was explained that an alternative screening method would not be offered to passengers who refused to be screened by a security scanner if selected. This decision was taken on security and operational grounds. It was explained that Automatic Threat Recognition ("ATR") technology would be deployed once it became available, addressing the privacy concerns of some passengers. ATR ensures that passengers' privacy is respected, and no image of the passenger's body is created or stored. ATR replaces the need for a human reviewer, and means that the data from the scan is not used to create an image; instead, the ATR software uses the scan data to identify areas which should be checked with a targeted hand-search, and highlights these areas on a generic, anonymous 'mannequin' figure. All processing is done electronically, with no intervention by a human screener, and safeguards are in place to make it impossible to save, copy, or transfer data.

On 21 November 2013, the Government announced further deployment of scanners to additional airports.

The Government believes the use of security scanners is proportionate and justified on grounds of national security.

Code of Practice and safeguards

The Code of Practice for the use of security scanners was designed to safeguard passengers, and address passengers' concerns. The two main areas of concern have been related to health and privacy.

When security scanners were first deployed, the Government was aware of the public's potential concerns about the technology, and mandated a Code of Practice for the deployment of security scanners. The Code of Practice required that airports operating security scanners put in place a number of safeguards for areas including health, privacy, and data protection.

There was a public consultation "*on the interim code of practice for the use of security scanners*", which received over 6,000 responses. The original Equality Impact Assessment was produced in light of those responses, and sought to analyse the equality issues which have emerged from the public consultation and other engagement activities. It also outlined the actions that DfT would take to address those concerns.

Policy change

In November 2013, a policy change regarding the use of security scanners in UK airports was announced to Parliament. As well as announcing the further deployment of security scanners to 11 further airports, it was announced that an alternative screening method would be offered to passengers who opt out from being screened by a security scanner when selected. The alternative announced was a process involving at least an 'enhanced hand search in private'. Although at the time that security scanners were originally deployed at UK airports it was considered that a private search would offer broadly similar security assurance to a scan, it was decided that offering this as an alternative was very likely to be disproportionately disruptive to airport operations and to other passengers because of the high volumes of private searches that would be required. However, experience of operating security scanners for several years has shown that providing passengers with an alternative to being scanned may now be operationally viable as the vast majority of passengers are content to be screened by a security scanner if selected; consequently, the number of passengers refusing to be scanned is very low. It was announced that the revised policy will be kept under review to ensure that high levels of security are maintained whilst avoiding disproportionate impacts on airports and passengers.

Equality Act 2010

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

.....
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.”

This document updates the analysis reflecting the current policy.

The concerns raised in the public consultation largely focussed around three areas: health, privacy, and data protection. The steps taken by the Department in addressing these concerns has led to this new Equality Impact Assessment.

Analysis underpinning decision

As a result of the consultation, the DfT originally identified four policy options for resolving or mitigating the above impacts.

The DfT has decided to implement Option 3: **Adjust the policy to obtain a better equality outcome by allowing people to choose an alternative screening method, to include at least an ‘enhanced hand search in private’ (a more rigorous hand search undertaken in private requiring the loosening or removal of clothing).**

The four policy options initially identified were as follows:

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 considers that removing scanners would unacceptably weaken the protective security controls at UK 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 hand search as an alternative method of security screening.

The availability of a hand search alternative – the most common option 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 groups such as Muslims, transgender persons, and persons with a disability. This would mean that passengers have the option of not being screened by a security scanner. 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 equalities groups.

The DfT therefore amended the public Code of Practice (which is annexed to the Secretary of State's Directions to airports on security scanners) providing greater detail on the criteria for selection for scanning. Furthermore, all security scanners deployed at UK airports must use ATR technology, meaning that no image of a passenger is created or stored.

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 considers that a hand search does not offer the same security outcome as that achieved by a security scan and therefore would not satisfactorily mitigate the security risk.

Option 3: Adjust the policy to obtain a better equality outcome by allowing people to choose an alternative screening method which includes at least an 'enhanced hand search in private' (a more rigorous hand search undertaken in private requiring the loosening or removal of clothing).

The DfT considers that 'enhanced hand searches in private' provide comparable security assurance to a security scanner. This option 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.

This 'enhanced hand search in private' 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 hand search it would mean that passengers have the option of not being screened by a security scanner. 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.

Airports' experience of deploying security scanners has demonstrated that offering an alternative screening method to passengers who refuse to be screened by a security scanner when selected may be operationally feasible. Current refusal rates for scanners are so low that a private search alternative is unlikely to be the operational burden on industry it was once thought to be. Although the Government believes that sufficient safeguards are in place to

address any residual privacy and health concerns that passengers may hold about security scanners, a small minority may still prefer to request an alternative procedure for a variety of reasons.

Option 4: Continue with the ‘No Scan, No Fly’ 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 has taken steps to strengthen the previous controls on privacy, data protection and discrimination to mitigate any potential negative impacts on equality of opportunity for certain groups, such as Muslims, transgender persons, and persons with a disability. The DfT has also aimed to reduce the scope for unlawful discrimination against persons perceived by their race to be Muslim, thereby helping to promote better relations.

Public consultation

As a result of the public consultation, the following areas of the Interim Code were addressed with equalities issues particularly in mind.

Privacy: the Government believes that the cause of privacy concerns – the creation of images from scan data – has been mitigated by the requirement for all security scanners at UK airports to use ATR technology. ATR technology analyses scan data, replacing the need to create an image for review by a security officer. If the ATR software identifies areas where it calculates that an item may be concealed under the passenger’s clothing, these areas will be highlighted on an anonymous, standardised ‘mannequin figure’ for a further targeted hand-search. This software is a significant step in privacy safeguarding, as no image of a passenger is created.

Health and Safety: in the UK, all security scanners now use millimetre wave technology, which has no known health risks, and is different from x-ray technology. Millimetre wave security scanners use a very low power non-ionising form of electromagnetic radiation. The amount of electromagnetic radiation emitted by millimetre wave security scanners is many times lower than that emitted by a mobile phone.¹

The use of millimetre wave security scanners in airports is permitted under EU law (Commission Regulation (EU) No. 1141/2011, amending Regulation (EC) No. 272/2009). Limits on exposure to electromagnetic radiation have been set by the European Commission to provide a high level of protection against any potential effects on the public. Millimetre wave scanners emit far less radiation than these limits. Safety studies have concluded that, at these levels and these frequencies, there are no known health effects.

Data Protection: as 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, as we recognise that it is very important to ensure that personal

¹ USA Homeland security. Privacy Impact Assessment for TSA Whole Body Imaging.
http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_tsa_wbi.pdf

data continues to be protected, the Government has decided to require airports to undertake twice yearly checks of scanner equipment to ensure that data cannot be saved, copied or transmitted.

Training: 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 deal with passengers sensitively.

Selection criteria: as the Government believes that it is important that everyone is fully aware of all forms of potential discrimination, we have amended the Code of Practice to make it clear that passengers must 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: the Government believes that it is important that passengers can make themselves aware of the relevant legislation regarding the use of security scanners at UK airports. Therefore, the legislation has been re-drafted so that more information about selection for scanning and the scanning process is in the public domain. This information is published on the DfT section of the Gov.uk website.

Action taken by DfT

Airports' operational experience of deploying security scanners has demonstrated very low refusal rates amongst passengers. Offering an alternative screening method (including an enhanced hand search in private) may therefore not be the operational burden on airports which it was previously perceived to be. The DfT also recognises that where passengers refuse to be screened by a security scanner and are not offered an alternative screening method, it can slow down the security process, and cause long queues and frustrated travellers. Given these considerations, the Government has decided to allow an alternative screening method to passengers who refuse to be screened by a security scanner. This alternative will include at least an enhanced hand search in private.

A full private search – involving the loosening and/or removal of clothing in the presence of security staff in a private room – delivers comparable security assurance to a security scanner.

The DfT assesses that Option 3 strikes the most appropriate balance of achieving better security, safeguarding passenger rights and minimising burdens on airports and passengers.

The DfT will implement all parts of Option 3.

END

12/2013

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

.....

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.