EQUALITY IMPACT ASSESSMENT

Search powers pilot: Sections 44-47 of the UK Borders Act 2007
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Note on the assessment
This is an equality impact assessment of the search powers pilot of the UK Borders Act 2007. It is an independent assessment conducted by Diversity Solutions Consultancy. It supplements the initial assessment completed in advance of the pilot.

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**Introduction**

1) In 2006, the Rt. Hon. Dr. John Reid MP, former Home Secretary, set out an eight-point action plan for his department aimed at transforming the UK’s immigration services. The plan was a response to Mr. Reid’s assessment of the Home Office immigration operations as ‘not fit for purpose’. He told the House of Commons Select Committee that 1,019 foreign national prisoners had been released without being considered for deportation when they “ought to have been”. The system was, he said, "inadequate in terms of its scope; it is inadequate in terms of its information technology, leadership, management, systems and processes...I believe that we can carry out, and must carry out, a fundamental overhaul of our whole Immigration and Nationality Directorate. That is why today I have set out, and you will be able to see it in my ministerial statement, eight strategic action points which I have given as a guide to my officials.”

2) The eight points of the Home Secretary’s action plan are as follows:

- Ensure individuals in contact with criminal justice, immigration and asylum systems have a unique personal number.
- Make it an obligation for suspects and criminals to declare their nationality.
- Instruct all agencies to refer other categories of foreign national cases to immigration directorate.
- Order officials to audit-trail all policy criteria governing which individuals should be considered for deportation.
- All decisions on deportation to be made according to the most robust interpretation of international obligation requirements.
- Clear procedures demanded for dealing with foreign national prisoners held in Scotland and Northern Ireland.

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1 Rt. Hon. Dr. John Reid MP, Evidence to Home Affairs Select Committee on 23.5.2006: [http://www.publications.parliament.uk/pa/cm200506/cmselect/cmhaff/775/6052302.htm](http://www.publications.parliament.uk/pa/cm200506/cmselect/cmhaff/775/6052302.htm)
• Officials to make arrangements for considering deportation of mentally disordered offenders.
• Enhance arrangements to facilitate the return of prisoners earlier in their sentence.

3) The UK Border Agency is an agency of the Home Office, established in April 2008 as part of the transformation of the UK’s immigration services. It was created to improve the UK’s security through stronger border protection whilst welcoming legitimate travellers and trade. The Agency brings together the work previously carried out by the Border and Immigration Agency, customs detection work at the border from Her Majesty’s Revenue and Customs (HMRC), and UK Visa Services from the Foreign & Commonwealth Office (FCO). It has a global workforce of 25,000 people, with more than 9,000 warranted officers operating in local communities, at the border and across 135 countries worldwide, with wide ranging search, seizure and detention powers.

4) In March 2007, the Home Office published its strategy, Enforcing the rules – a strategy to ensure and enforce compliance with our immigration laws\(^2\). This set out a comprehensive approach to UKBA’s enforcement work, including new inter-agency partnerships and information sharing. As part of the strategy for implementing the Home Secretary’s eight-point action plan, a pilot of the new powers to search for and seize documents, sections 44 to 46 of the UK Borders Act 2007, took place from October 2008 to January 2009 in the London boroughs of Islington, Hackney and Waltham Forest. The pilot was conducted by officers of UKBA and the Metropolitan Police Service.

5) The equality impacts of the new search powers on the UK’s majority and minority communities are the subject of this assessment report.

\(^2\) Download strategy report from http://ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/enforcementstrategy/
6) Most foreign national people are in the UK legally and contribute positively to the UK economy and society. Managing legal migration for the benefit of the UK is a key objective of the Government’s immigration policy. So too is compliance with UK immigration laws. It is important that the rules are clear and that UKBA has appropriate powers to effectively enforce compliance with them. In particular, this means dealing robustly with foreign nationals who commit serious offences. In doing so, the Agency must ensure that it enforces the rules fairly and without unlawful discrimination.

7) UKBA works in partnership with other criminal justice agencies including UK police forces and criminal justice boards. Established in April 2008, the agency has a workforce of 25,000 people. Over 9,000 warranted officers operate in local communities, at the border and across 135 countries worldwide. They have wide ranging search, seizure and detention powers.

8) In June 2008, the Home Secretary announced that new local immigration teams are being introduced across the UK, alongside Local Crime Partnerships with police services. Around 7,500 UKBA officers and staff across the UK will be reorganised into 63 Local Immigration Teams. Their task is to focus on local immigration crime, deporting people with no right to be in the UK and those who pose a threat, targeting first those criminals who pose the most harm.

9) The new search powers will support the task of immigration teams, assisting police and immigration officers to identify accurately the nationality of people at the point of entry into the Criminal Justice System in order to facilitate deportation and administrative removal where appropriate.

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Summary of new powers

10) The search powers were detailed in the initial equality impact assessment, which should be read in conjunction with this assessment (see appendix 1).

11) Arrested people are not always willing to provide any or accurate information about their true nationality. This means that, on entering the criminal justice system, they may not be identified as people who are liable to deportation; and decisions relating to possible deportation are delayed. Where a person is being prosecuted for a criminal offence, the police have no current power of entry and search for nationality documents unless they are evidence that relate to that specific offence or, in some cases, a related offence.

12) The new search powers close the gap and apply where a person has been arrested for an offence and a police constable or immigration officer suspect that the person is not a British citizen and documents that will prove the individual’s nationality may be found on premises:
   - occupied or controlled by the individual
   - where the individual was arrested; or
   - where the individual was immediately before their arrest.

13) Safeguards are in place to ensure that the new powers are not applied disproportionately. Before a search is instigated, police or immigration officers will make inquiries to see whether the individual is already known to UKBA. Searches will only be necessary where an individual fails to co-operate in establishing their nationality, or where an officer has reasonable grounds to believe that an individual is not telling the truth. The search power will be exercised by a constable or an immigration officer on the written authorisation of an officer of Inspector/Chief Immigration Officer rank or above.

14) Detailed questions may be used to probe further in case of any suspicion and will help to determine reasonable grounds. The questioning will assist officers to arrive at a reasoned judgement, helping to eliminate arrested people for
whom this power should not be used. An interpreting service via Language Line is available to arrested people for whom English is not a first language.

15) The new powers also allow police or immigration officers to apply to a justice of the peace for a warrant to search other premises if they believe that an individual is not a British citizen and relevant documents are held there. This will ensure that people cannot avoid detection by placing relevant documents in someone else’s safe keeping to avoid them being seized. It will also allow police or immigration officers to seize and retain the documents of foreign nationals who are immigration offenders but who do not meet the criteria for deportation, thereby facilitating their removal from the UK.

16) Under current policy, foreign nationals are liable to be deported if they receive a prison sentence of 12 months or more, are convicted of an immigration offence or are convicted of any offence involving drug dealing or firearms. Immigration offences include entering the UK without leave or in breach of a deportation order (illegal entry), overstaying, or failing to comply with conditions imposed by an immigration officer (e.g. working in breach of the amended Immigration Act 1971 or absconding from temporary admission).

17) It is expected that the search powers will be used in very few cases. This is borne out by the results of the pilot, where the power was used on six occasions. The recommendations of the assessment are proportionate, limiting the risk of unlawful discrimination in all aspects of UKBA’s work.

**Summary of assessment**

18) The equality impacts of the new search powers were tested through independent research conducted by Diversity Solutions Consultancy. The research included consultation with community representatives in the boroughs of Hackney and Waltham Forest, UKBA officers and Metropolitan Police Service officers.
The research findings indicate strong support for the search powers when they were explained to community representatives and they understood how the powers will be used to reduce significant harm that results from criminal activity perpetrated by foreign nationals. However, community representatives expressed concern about the potential for damage to trust and confidence between police services and minority ethnic communities if the search powers are not seen to be applied in a fair and respectful manner.

It is important to note that, during the pilot, the powers were exercised only by designated police and immigration officers within small, well-trained and experienced teams working as part of Operation Swale\(^4\). On further rollout, Local Immigration Teams will need effective operational and diversity training to ensure the same high standards as those delivered by Operation Swale officers.

Since 1999, following the publication of the Stephen Lawrence Inquiry Report\(^5\), police services have put considerable resource into building positive relationships with diverse communities. As a new agency, UKBA is still developing its community relationships in conjunction with their police counterparts. The regional structure of the agency, together with its local teams, is designed to bring the organisation closer to the communities it serves. This was apparent in the research for this assessment, where community representatives tended to focus their concerns about potential damage to community relations on police services rather than UKBA. However, warranted immigration and police officers may use the search powers independently of each other where they have appropriate authorisation.

The introduction of Local Immigration Teams gives UKBA an excellent opportunity to build relationships with local communities and their

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\(^4\) This is a joint venture between the police and UKBA targeting serious harm caused by illegal immigration in the local community.

\(^5\) [http://www.archive.official-documents.co.uk/document/cm42/4262/4262.htm](http://www.archive.official-documents.co.uk/document/cm42/4262/4262.htm)
representatives. Police services confirm significant benefits from relationships such as those with community-led Independent Advisory Groups, including increased trust and confidence and better community intelligence.

23) Even though UKBA and police officers must treat arrested people with due regard to their rights under UK equality and human rights law, the impact of searches on others such as family, friends, colleagues and strangers has the potential to damage community cohesion. The research showed that community representatives and police officers believe that effective diversity training is fundamental to maintaining community trust and enhancing community cohesion.

24) Since 1999, police services have ensured that their learning and development programmes have due regard to the goods, facilities, services and employment provisions of equality law as it relates to all equality groups. Individual forces have their own training teams. Through the National Policing Improvement Agency (NPIA), all police services have access to a wide range of training courses, including equality, diversity and human rights courses.

25) UKBA does not have the range of learning and development resources available to police services. The researcher analysed the learning materials delivered by UKBA to enable its employees to understand their duties and responsibilities under equality law. The analysis showed a significant emphasis on the employment provisions, with little focus on the provisions related to goods, facilities and services. Training materials related to implementing the Human Rights Act 1998 were not analysed.

26) A key recommendation of this assessment is that the equality and human rights training programme available to UKBA employees should be enhanced to include the essential dimensions of goods, facilities and services. The dimension of employment is already adequately covered.
27) All UKBA employees have the potential to enhance trust and confidence between communities and the Agency; and to enhance community cohesion. Effective and proportionate training for UKBA employees in the practical application of equality and human rights law is fundamental to achieving this. So, too, is effective leadership that delivers a culture where unlawful discrimination against customers as well as employees is not tolerated in any way; and where the Agency’s duty to promote and enhance good relations between all communities is a key priority for every employee.

Summary of Recommendations

28) The list below sets out the recommendations of the assessment:

29) Recommendation 1: that UKBA’s Local Immigration Teams should develop partnerships with community-led Independent Advisory Groups that work with police services to enhance community trust and confidence and increase opportunities for community intelligence.

30) Recommendation 2: that UKBA offers training in its enforcement role and related legislation to members of Independent Advisory Groups.

31) Recommendation 3: that the risk of adverse impacts on other disabled people who are third parties must be taken into account and that due regard to disability needs should be included in operational planning.

32) Recommendation 4: that UKBA should consult in advance with IAG members and/or other community representatives in localities where its search operations may risk tension or hostility within or between communities, or towards police and immigration services.

33) Recommendation 5: that UKBA should build community trust and confidence with minority ethnic communities and the wider community by using ethnic
minority and mainstream media to publicise its work, including the results of using the power to search for and seize documents.

34) Recommendation 6: that the search powers should be used only by well-trained, designated officers working in specialist teams.

35) Recommendation 7: that the search powers should be rolled out incrementally to ensure learning from previous search operations is built into the training for each team authorised to use the powers.

36) Recommendation 8: that risk of adverse community impacts should be assessed on all occasions where the search powers are used, including consideration of decisions to take other family members into custody.

37) Recommendation 9: that investigations into all complaints about the use of search powers should include due consideration of equality and human rights since a complaint of discrimination may not be explicit.

38) Recommendation 10: that officers should be required to undertake mandatory training on equality and human rights law before using the search powers, with particular emphasis on delivering non-discriminatory goods, facilities and services.

39) Recommendation 11: that the diversity training programme for UKBA employees should be revised to incorporate learning about the provisions of equality law related to goods, facilities and services.

40) Recommendation 12: that the revised diversity training programme should be quality assured by a specialist equality, diversity and human rights practitioner.

41) Recommendation 13: that UKBA’s senior executive receives six-monthly equality monitoring reports that enable them to keep equality impacts under continuing review and to consider:
• whether or not the new search powers are being applied in non-discriminatory ways
• how the positive equality impacts of the powers should be promoted to all communities
• opportunities for enhancing relationships with diverse communities
• actions required to mitigate any further adverse equality impacts.

42) Recommendation 14: that the full assessment should be published by UKBA as a means of showing due regard to statutory duties under UK equality law and positive commitment to good equality practice.
Equality impact assessment

43) This assessment sets out the equality impacts on the UK’s diverse communities of the search powers of sections 44 to 46 of the UK Borders Act 2007. The assessment includes recommendations to enhance positive equality impacts and mitigate adverse equality impacts on the UK’s majority and minority communities. Section 47 of the Act, which is the extension of search and seizure powers to police civilians, was not tested.

44) The search powers were tested during a three-month pilot conducted in the London boroughs of Hackney, Waltham Forest and Islington. The pilot started on 20 October 2008 and ended on 20 January 2009.

45) The findings of the pilot, including the recommendations of this assessment, will help to inform operational practice. The findings, general principles, training and guidance will be distributed and communicated to police forces and UKBA regions throughout the UK so that they can implement the powers effectively.

46) During the pilot, the search powers were exercised only by designated police and immigration officers within small, well-trained and experienced teams working as part of Operation Swale. Officers from UKBA and the Metropolitan Police Service worked together to identify foreign nationals who were subject to the search powers.

47) The search powers apply to people who it is reasonably suspected are not British. For this reason, UK citizens who are from black and minority ethnic communities and people who are citizens of African and Asian countries may experience disproportionate adverse equality impacts when the search powers are used.
It must be noted also that black and minority ethnic communities may also benefit to the greatest extent from the search powers because immigration offenders and foreign nationals who are convicted of serious crimes are more likely to be positively identified as people subject to removal or deportation. This point was reflected in community consultation.

Consultation was undertaken during the search powers pilot with community groups in the three London boroughs where the pilot took place. The consultation highlighted the potential for adverse equality impacts that may arise if the powers are used in ways that damage trust and confidence in police and immigration services. Minority ethnic communities were identified by consultees as being at greater risk from adverse equality impacts compared to other equality groups.

Data on search powers pilot

This stage of the equality impact assessment reviews the arrest data used to inform the assessment. It also includes some results of an in-depth interview between the researcher and a police officer working directly on the search powers pilot as part of Operation Swale. In the time available, it was not possible to interview immigration officers working directly on the pilot. The interview questions were sent to the Metropolitan Police Service in advance and were the same as the questions asked in consultation with community representatives (see Appendix 2). UKBA provided the statistical data that informs the assessment.

During the period of the pilot, which ran from 20 October 2008 to 20 January 2009, a total of 1,330 people were arrested in the three London Boroughs where the pilot took place. Where claimed nationality was in doubt, immigration checks were carried out on 997 (75%) of the people arrested. Each check was conducted by specialist police officers working in partnership with immigration officers.
52) Of the 1,330 people arrested, six (0.5%) were the subject of a search for nationality documents using the new search powers. Four of these were arrested during the pilot. Two others are included because they were arrested just after the conclusion of the pilot.

53) Each search was authorised by a senior officer. The police officer interviewed stated that, in each case, due regard was given to equality and human rights issues of proportionality and relevance.

54) Of the six people whose nationality was in doubt, five were Black males and one was a White male. Two claimed Jamaican citizenship. The others claimed to be citizens of the UK, Nigeria, Ecuador and the Côte d'Ivoire respectively. None declared a disability.

55) The person claiming UK citizenship was arrested in November 2008 for breach of bail conditions. The immigration data search revealed possible identity abuse with citizenship identified as either Nigerian or British. Officials were unable to confirm the person’s nationality before his release from prison on a previous date. A UK birth certificate was found during the search but the person’s right to that status is subject to ongoing investigation.

56) Both Jamaicans were arrested on different dates, one in October 2008 and the other in February 2009. Both were charged with the offence of causing actual bodily harm. The immigration data search did not confirm citizenship and a document search was authorised. The search discovered the expired passport of one arrestee and the birth certificate and photocopied passport of the other. During the search, both were also found to be overstayers and therefore immigration offenders subject to removal. One of the men (with a history of offending that caused harm to the community), has already been deported. The other has been refused further permission to remain.

57) The Nigerian was arrested in December 2008 when police and immigration teams were making arrest enquiries for another person. On being found in
possession of another person’s credit card, he was charged with handling. He claimed to have entered the country on a two-year visa but no evidence of this was found during the immigration data search. A document search was authorised. The search confirmed his citizenship as Nigerian when two passports were found, one Nigerian and one Portuguese. He was subsequently deported.

58) The Ecuadorian was arrested in January 2009 and charged with fraud. The immigration data search did not confirm citizenship and a document search was authorised. The search revealed two passports. One was a genuine Ecuadorian passport and the other was a counterfeit Spanish passport. The search confirmed his citizenship as Ecuadorian. He was subsequently removed from the UK.

59) The Ivoirian was arrested in February 2009 as a possible failed asylum seeker. The immigration data search did not confirm citizenship and a document search was authorised. A very old, out of date passport was found, which confirmed Ivoirian citizenship. The search confirmed him as a failed asylum seeker and therefore an immigration offender subject to removal. UKBA granted him temporary release while the decision to remove is determined.

**Formal consultation**

60) Consultation with community groups in the pilot localities was conducted during February 2009, following completion of the pilot. UKBA and police officers also contributed to the consultation outputs; and participated in the formal consultation meeting held with members of the Hackney Independent Advisory Group (IAG) to the Metropolitan Police Service. This is a predictive assessment following a three-month pilot of the search powers. The assessment makes recommendations that minimise the potential for the concerns expressed by community representatives to come to fruition.
Consultation is an essential part of an equality impact assessment. It enables a broad spectrum of community views to be heard and their direct experience to be reflected in policy. In this case, the policy is the new search powers available to police and immigration officers under sections 44-46 of the UK Borders Act 2007.

Consultation confirmed that the search powers are likely to result in adverse equality impacts for particular groups, especially minority ethnic communities. Community representatives should continue to be involved in identifying adverse impacts that are not predicted at this early stage of assessment, and actively engaged in recommending ways of mitigating them.

To prepare this predictive assessment, community representatives were consulted in the London Boroughs of Hackney and Waltham Forest. The assessment, therefore, reflects the positive equality impacts expressed by residents of Hackney and Waltham Forest. It also reflects the concerns expressed by these consultees about the potential for adverse equality impacts and how these may be mitigated.

Common themes emerged from community consultation. With respect to positive equality impacts, members of Hackney and Waltham Forest IAGs were pleased at the potential for faster removal of serious criminals from their communities. However, they were also concerned about the potential for harming community cohesion if the powers are not understood by the wider community and if they are used without due care.

Community concerns reported by IAG members included:

1. search powers will have a disproportionate impact on the black community
2. powers may be applied in ways that could be perceived as racial and religious harassment
3. wrong premises of people with no connection to suspect may be searched
4. diversity training for immigration officers is not adequate
5. potential for indiscriminate use of search powers as ‘fishing expeditions’
6. potential for wrong identification of innocent people
7. potential for wrongly identifying people with mental health issues as uncooperative
8. potential for treating other family members as ‘criminals by association’

66) Community solutions for reducing the risk of unlawful discrimination and potential harm to community cohesion included:

1. effective diversity training for immigration officers
2. powers to be used only by well-trained, designated officers working in experienced teams
3. due care and respect to be given to others in the search vicinity including family, friends, colleagues and strangers
4. risk assessment of community impacts where consideration is given to taking other family members into custody
5. community trust and confidence to be maintained by publicising the benefits of the search powers to the wider community

Consultation responses in detail

67) In February 2009, the researcher sent a questionnaire to the Chairs of the Independent Advisory Groups (IAGs) working with the Metropolitan Police Service in Islington, Hackney and Waltham Forest. The questionnaire is attached at Appendix 2. The researcher spoke to IAG Chairs in Hackney and Waltham Forest. Each Chair agreed to use the questionnaire to consult on the search powers with the communities they represent.

68) Members of Hackney and Waltham Forest IAGs responded in writing to the questionnaire. It was not possible to speak to the Chair of Islington IAG and there were no verbal or written responses from Islington IAG members.
69) In February 2009, the researcher attended a meeting of Hackney IAG to establish that the new powers were fully understood and to hear the views of its members. UKBA senior managers and Operation Swale police officers also attended the meeting to answer questions from IAG members.

70) In general, community representatives who responded to the consultation supported the use of the new search powers as a means of further enabling the criminal justice system to protect the public from harm. Both the written and verbal responses suggest that communities and individuals do not tend to distinguish between the different legal powers used by immigration and police officers when conducting different types of searches. The responses also suggest that they do not tend to distinguish between officers of immigration and police services.

71) The written response below, from a Hackney IAG member, is typical of the views expressed verbally and in writing by all IAG respondents. It suggests that, even where unconnected search powers are used, all searches may be considered by communities within the general framework of stop and search or stop and account.

“I have some reservations regarding this legislation and the impact it will have on the community. I am anxious that this will lead to police having powers and choosing to stop people simply because they have a certain skin tone, dress in a certain way or follow certain religious beliefs.

“I believe the ramifications of this legislation will be far deeper than the intended outcome. I am concerned that there will be an abuse of power, vilification of certain people and undermining community cohesion work which we have tried very hard to develop over the years in order to gain the trust of BME communities.

“These are my thoughts in short. I believe my views reflect some of the BME community leaders which I have consulted on this issue.”
Another member of Hackney IAG wrote:

“The police make a great thing of it having to be someone who is already being arrested on suspicion of a criminal offence, and who hasn't been able to be verified on the police national computer, but that could apply to almost anyone - it doesn't take much, if you're black to get arrested! There could be all sorts of reasons why peoples' names / details don't check out. Where does this leave asylum seekers?

“It's inevitable that black people will be disproportionately affected because the majority of people here illegally are black. Consequently, the impact on the larger black community will be greater.”

A member of Waltham Forest IAG wrote a long response, with the main points quoted below:

“I believe the groups that may potentially [be] affected are those from different ethnic groups, faith groups, certain age groups and young non-white men... There are dangers if the use of the powers is seen to impact more severely against people who are of Black, Middle-Eastern or Muslim appearance as opposed to white foreign nationals. The key...is that the whole process requires careful and sensitive handling in terms of the police and immigration officers’ approach and manner...The scope for things going wrong is huge. Due to the transient existence of many illegal entrants, they may have links to a number of addresses...It is not difficult to envisage that despite their best endeavours, officers could end up searching the property of individuals who are entirely innocent and may have absolutely no connection to the suspect, which may result in a huge public outcry and accusations of heavy handed policing.

“Also it is imperative that the police and immigration officers involved are able to treat suspects and conduct the search with general tact and courtesy. As
an immigration solicitor...I have personally found that immigration officers tend not be as enlightened as their police officer counterparts...This may be due to insufficient and inadequate training of immigration officers on diversity issues. I therefore am of the view that as during the pilot, the powers should continue to be exercised only by designated officers within a well-trained and experienced team ...this is a key factor in minimising the potential for things going wrong.

...If it is perceived that the search powers are being used in an indiscriminate and heavy-handed manner then I believe that there could be irreparable harm and damage caused to community trust and confidence towards the authorities. But...if the key objective (apprehending those with no leave to remain in the UK and therefore eligible for deportation/removal) is made sufficiently clear to the public then that may minimise some of the controversy.

“...the consequences for the individual subject to the search powers are very serious and it can be equally so for a person linked to the suspect especially if they are for example a family member...the immigration officers [attending the home address] may decide to take the partner and children into custody. An incident such as this if witnessed by neighbours and other members of the public, could result in the perception of the officers’ actions as heavy handed, racist and disproportionate. In short it would be extremely damaging to community relations. This is why it is important that an established team of immigration and police officers are designated to carry out these searches. Reasoned judgement and the ability to anticipate the likely consequences of a particular course of action in the context of these searches are imperative.”

74) Another member of Waltham Forest IAG wrote:

“If the right people have been targeted in the first place – they have done something wrong and are refusing to co-operate, in my view, we can’t really expect the police and immigration authorities to walk on eggshells round
them. I am assuming the usual safeguards are in place around body searches and who is allowed to search whom.

“My main concern would be around people with mental health issues who may be wrongly identified as being uncooperative or have been wrongly identified as involved in criminal activity in the first place. The other one would be...family and community members who may be inadvertently caught up with the search. So long as every effort is made to explain to them why it is happening and that the reason is because their friend or family member is involved in something illegal and refusing to co-operate and they are not themselves treated as if they are criminals, then problems should be minimised.

“...I think the possible impact on the indigenous community should also be considered in these circumstances – if people are seen to be ‘getting away with’ criminal activity because they are from a particular group.

“The only other issue I can think of is how we ensure that both police and immigration officers are operating in the same way with the same sort of safeguards etc. I understand that the searches may not always take place with a police officer present – is that correct? Is there adequate training in place for anyone who may need to carry out these searches?”

Likely equality impacts

The equality impact assessment sets out the positive equality impacts of the new search powers. It also sets out adverse equality impacts. Mitigating adverse impacts should maximise the positive impacts, minimise risk of unlawful discrimination, limit risk of legal action and reduce cost to the public purse.
76) The equality impacts are identified as far as possible. UKBA will conduct robust and regular monitoring to identify other equality impacts that are not apparent at this stage.

77) It is important to note that searches could take place in premises of third parties such as suspects' workplaces, homes, shared accommodation and other premises. In such cases, people who are not the targets of a search may be present when the search operation is conducted. Such third parties may include dependent and non-dependent relatives, co-tenants, employers, colleagues and others.

**Positive equality impacts**

78) UKBA is responsible for enforcing immigration law. This includes responsibility for deporting foreign national criminals sentenced to 12 months or more including those convicted of gun and drug crimes, and removing immigration offenders to their home countries.

79) The new powers to search and seize documents are aimed at suspected criminals who create fear and insecurity in communities. They are not aimed at communities themselves. The powers are intended to contribute to the protection of all communities by

- facilitating the deportation or removal of foreign nationals who commit crimes; and
- facilitating the removal of immigration offenders.

80) The great majority of people are law abiding and support the work of criminal justice agencies. However, some people are criminals who cause considerable harm to other individuals. They also cause problems for their own community and create tension with other communities.

81) Consultation conducted for this assessment with the Independent Advisory Groups (IAGs) of Hackney and Waltham Forest showed clear support within
communities for deporting foreign nationals who commit serious crimes. Communities also support removal of immigration offenders. IAG members identified reduced criminal activity as having significant positive benefits for all communities, including minority ethnic communities.

82) The negative impact of racist stereotyping on black and minority ethnic communities is very high. This includes, for example, sensationalist stereotyping in media reports of ‘black on black’ gun crime and unfounded allegations of ‘walls of silence’ within black and minority ethnic communities. This is not borne out by the facts.

83) The overall level of gun crime in England and Wales is less than 0.5% of all crime recorded by the police. The British Crime Survey indicates that knives were used in 6%, of an estimated 2,164,000 non-fatal violent crimes in 2007/08. In the same year, the number of knife homicides was 270.

“Violent knife crime is concentrated in the deprived areas of large cities. ...While some immigrants from countries where knife-carrying is socially acceptable may be more predisposed to carry knives, knife use is not linked to ethnicity but rather reflects the local demography.”

84) People of all ethnic groups who have trust and confidence in police and immigration services are willing to provide officers with community intelligence about criminal activity in their locality. People in all communities do not find it easy to report crimes and some fear reprisals. Various methods are available to make reporting crimes easier and maintain anonymity, such as Crimestoppers, non-police and online reporting.

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8 Ibid, page 23
Members of all Independent Advisory Groups (IAG) work with police services and other criminal justice agencies such as the Crown Prosecution Service. IAG members consult directly with all communities in their localities. Their role is to represent community views to agencies of the criminal justice system and other bodies such as local authorities. IAG members are committed to increasing crime reporting within their communities. They are a valuable resource for UKBA in the fight against immigration crime.

**Recommendation 1:** that UKBA’s Local Immigration Teams should develop partnerships with community-led Independent Advisory Groups that work with police services to enhance community trust and confidence and increase opportunities for community intelligence.

**Recommendation 2:** that UKBA offers training in its enforcement role and related legislation to members of Independent Advisory Groups.

**Mitigating adverse impact**

The assessment identifies a number of risks that may result in adverse equality impacts. Recommendations are made to mitigate the risks, enhance positive equality impacts and minimise the potential for unlawful discrimination. The risks identified are similar to community concerns reported by IAG members.

Each risk identified should be considered as a high risk so that due regard is paid by UKBA and all police services to minimising and eliminating each one from the earliest stage of rollout. The actual level of risk can only be proven when the search powers have been used over a longer period and greater geographical spread.

The risks are as follows:
1. the search powers will have a disproportionate impact on black and minority ethnic communities because they target foreign nationals
2. third parties with a disability may be put at risk
3. minority communities may perceive the powers as harassment
4. community cohesion may be put at risk
5. inadequate training on equality law provisions related to goods, facilities and services risks inappropriate responses to individual and community concern
6. inadequate training on equality and human rights law risks inappropriate treatment of individuals and communities.

91) The recommendations to mitigate the risk of unlawful discrimination, perceptions of harassment and the potential for damage to community cohesion are similar to those suggested by IAG members. The risks and reasons for the recommended mitigations to each risk are set out below.

**Disproportionate impact on black and minority ethnic communities**

92) It is inevitable that black and minority ethnic communities will experience disproportionate impact from the use of the search powers compared to the majority ethnic white community. This is because the search powers target people who are citizens of countries outside the European Union. There may also be disproportionate impacts on some religious groups compared to others, for example Muslims because most Muslims in the UK are black people of African and Asian heritage.

93) People who are citizens of EU countries, including black people of African, African-Caribbean and Asian heritage, will also be targeted for document searches if they do not co-operate with enquiries into their nationality. They will also be targeted for nationality document searches if officers are not satisfied that they are being truthful and there are no immigration or other computer records available to confirm nationality other than those kept in the home or at other premises.
Disproportionate impact on other equality groups

94) It is not anticipated that there will be disproportionate equality impacts on other equality groups. This is because the searches will not target people because of their gender, gender identity, disability, sexual orientation or age. However, when searches are being conducted, equality and human rights law requires non-discriminatory practice, with due regard to the cultural and religious needs of all people in the vicinity. Due regard must be paid also to the needs of third parties with identified disabilities, as well as suspects.

Responding to disability

95) A person targeted for a search may not be disabled. However, there is a risk of adverse impacts on anybody with a disability who is present at the time of the search, including third parties such as dependent and non-dependent relatives, co-tenants, employers, colleagues and others. This risk must be taken into account and due regard to disability needs should be included in operational planning.

96) Diversity training should teach officers how to consider actively the disability needs of members of the public and respond to them appropriately. Officers should know, for example, how to take into account and respond in appropriate ways to people who have:

- sensory impairments (visual and hearing)
- mental health impairments
- learning disabilities
- hidden impairments such as epilepsy, diabetes, chronic heart disease
- mobility impairments
97) Language support professionals, such as sign language interpreters, must be available when needed.

98) **Recommendation 3:** that the risk of adverse impacts on disabled people who are third parties must be taken into account and that due regard to disability needs should be included in operational planning.

**Minimising perceptions of harassment**

99) Following the recommendations of the Stephen Lawrence Inquiry, police services have increased trust and confidence in the police by consulting and involving community representatives. For example, in critical incidents and situations where there is a high risk of adverse community impacts, police services frequently consult in advance with community representatives such as IAG members. They may also include IAG members on operational gold, silver and bronze groups as, for example, in the Damilola Taylor murder case and many others. Even though people of African and Asian heritage are disproportionately subject to police stops and account/search to a significant extent, active community engagement has increased police accountability, reducing perceptions of racial and religious harassment, for example in instances of stops⁹.

100) As part of the consultation for this assessment, UKBA senior officers attended a meeting of Hackney IAG to explain the new search powers and their value in reducing harm that results from criminal activity. UKBA would benefit from building community partnerships using, for example, IAG meetings to explain the role of UKBA and the introduction of Local Immigration Teams. This will help to reduce risk related to perceptions of racial and religious harassment, for example where the new search powers are used in workplaces.

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101) Inappropriate use of the search powers could be construed by individuals and communities as ‘fishing expeditions’, risking claims of unlawful harassment. As one consultee pointed out, immigration offenders often have unsettled lives, moving quickly from place to place. There is a risk that permission to search for nationality documents may be granted for an address that is no longer connected to the suspect.

102) **Recommendation 4:** that UKBA should consult in advance with IAG members and/or other community representatives in localities where its search operations may risk tension or hostility within or between communities, or towards police and immigration services.

103) **Recommendation 5:** that UKBA should build community trust and confidence with minority ethnic communities and the wider community by using ethnic minority and mainstream media to publicise its work, including the results of using the power to search for and seize documents.

**Minimising risk of harm to community cohesion**

104) When using the new search powers, it is important to give due regard to the third part of the general duty to promote race equality, which gives UKBA and other public bodies a statutory duty to promote good relations between people of different racial groups. On all occasions, operational planning must consider community cohesion and the religious and cultural needs of others as well as suspects.

105) Inadequate planning and training increases the risk of complaints and legal action against UKBA for breaches of equality and human rights law. Such situations risk damaging community cohesion. They also risk damaging trust and confidence in police and immigration services. The risks described can be minimised by effective training and operational planning. Active community engagement should further minimise the risks and maximise intelligence.

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10 Race Relations (Amendment) Act 2000
106) Community cohesion may be harmed in the course of a search operation with consequent damage to the trust and confidence built between communities and police services. This potential risk must be minimised. Effective risk assessment of adverse community impacts will assist UKBA and its partners to demonstrate their compliance with the letter and spirit of equality and human rights law.

107) To minimise the risk of adverse impacts on community cohesion, the search powers should be used only by well-trained, designated officers working in specialist teams. The powers should be rolled out incrementally to ensure that each new team is fully trained. Lessons from previous search operations should be built into the training for each team authorised to use the powers.

108) If searches must take place where family, friends, colleagues and others are present, officers should be trained to explain the reasons and carry out searches in a calm, professional manner.

109) There may be particular risk of harm to community cohesion in family situations, where officers searching premises for the documents of a suspected immigration offender find documents of close relatives who may also be immigration offenders. Where other family members are detained as a result, neighbours and colleagues may be concerned about racial and religious harassment.

110) Searches in workplaces risk creating anxiety for employers and employees. Black and minority ethnic communities may perceive themselves at increased risk of harassment as a result of the search powers. Workplace searches may also risk creating situations where employees express inappropriate behaviour that creates a disciplinary situation for the employer.

111) Searches for documents risk inappropriate workplace behaviour by employees in searched premises, such as insulting name-calling and
inappropriate jokes that could amount to unlawful racial or other harassment. Such behaviour may be directed at other employees and officers. The risk can be minimised by good operational planning that is put into action by trained officers. If this does not happen, an employer may take disciplinary action against an employee. This would be a negative consequence for the employer, the employee and the officer.

112) Complaints are excellent learning opportunities for every organisation, including UKBA. Where complaints are made into the use of search powers, all investigations should include due consideration of equality and human rights. Complainants may not make explicit their concerns about unlawful discrimination. The Agency must investigate actively where such concerns are implicit, learning any lessons that may result from investigations.

113) Recommendation 6: that the search powers should be used only by well-trained, designated officers working in specialist teams.

114) Recommendation 7: that the search powers should be rolled out incrementally to ensure learning from previous search operations is built into the training for each team authorised to use the powers.

115) Recommendation 8: that risk of adverse community impacts should be assessed on all occasions where the search powers are used, including consideration of decisions to take other family members into custody.

116) Recommendation 9: that investigations into all complaints about the use of search powers should include due consideration of equality and human rights since a complaint of discrimination may not be explicit.

Diversity training
117) Before using the search powers, all officers should undertake proportionate, mandatory training on equality and human rights law with particular emphasis on delivering goods, facilities and services in non-discriminatory ways.

118) Since 1999, police services have ensured that their learning and development programmes have due regard to the goods, facilities, services and employment provisions of equality law as it relates to all equality groups. Current equality law requires non-discriminatory treatment on grounds of race, disability, gender, gender identity, sexual orientation, religious and non-religious belief and age.

119) Through the National Policing Improvement Agency (NPIA), which was formed in 2007, all police services have access to a wide range of training courses. This is reflected, for example, in the training plan arrangements set out in the NPIA’s Equality Scheme11. Training available includes e-learning diversity training developed by the National Centre for Applied Learning Technologies. This e-learning course is one of a range of equality and human rights courses available to police officers and staff as part of their continuing professional development. All new recruits must undertake diversity training as part of their induction programme. At least one force, Surrey Police, uses a supplementary e-learning diversity course as part of its recruitment and selection programme.

120) UKBA, which was formed in 2008, does not have the learning and development resources available to police services. To assess the quality of diversity training currently available to UKBA12, the researcher analysed the Home Office mandatory diversity e-learning undertaken by all UKBA staff, and the non-mandatory diversity training programme available to UKBA managers. The analysis identified that both training programmes have a strong focus on the employment function, emphasising the duties and responsibilities of employees.

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to treat each other with fairness and respect. The training has a weak focus on the goods, facilities and services provisions of equality law.

121) Consequently, UKBA employees do not seem to have an opportunity to undertake adequate training on their duties and responsibilities to treat all those that they deal with due regard for their legal rights under equality and human rights law.

122) UKBA’s main function is the enforcement of immigration law, which applies to foreign nationals. The weakness identified in the diversity training programme increases the risk of unlawful discrimination by UKBA employees, leaving UKBA at risk of vicarious liability for the actions and inactions of its employees in this respect. It is a legal requirement of the Race Relations (Amendment) Act 2000 that all employees of the Home Office and its agencies receive proportionate training to understand the requirements of the Act. In the opinion of the researcher, the limitations of the diversity training programme currently available to UKBA employees means that UKBA does not yet meet this requirement.

123) The equality and human rights training programme available to UKBA employees should be enhanced to include the essential dimensions of goods, facilities and services. The dimension of employment is already adequately covered. UKBA’s equality scheme\textsuperscript{13} contains the following action.

“Border control is developing existing training materials around diversity and cultural awareness to include particular case studies showing how stereotypes can indirectly affect decisions (this will include all three strands).”

124) The revised training material should be quality assured by an equality, diversity and human rights specialist to ensure an adequate focus on duties and responsibilities of equality law related to goods, facilities and services.

\textsuperscript{13} Border control action plan, UKBA equality scheme 2008-09, page 44
125) All UKBA officers have the potential to enhance community relations with UKBA, and to enhance trust and confidence between communities. Effective and proportionate training for UKBA employees in the practical application of equality and human rights law is fundamental to enhancing community cohesion. Equally, without adequate training they have the potential to harm good relations. This concern was expressed by community representatives during the consultation process.

126) **Recommendation 10**: that officers should be required to undertake mandatory training on equality and human rights law before using the search powers, with particular emphasis on delivering non-discriminatory goods, facilities and services

127) **Recommendation 11**: that the diversity training programme for UKBA employees should be revised to incorporate learning about the provisions of equality law related to goods, facilities and services

128) **Recommendation 12**: that the revised diversity training programme should be quality assured by a specialist equality, diversity and human rights practitioner

**Monitoring and Governance**

129) UKBA leadership, from the senior executive to all layers of management and supervision, should deliver a culture where unlawful discrimination against customers as well as employees is seen not to be tolerated in any way; and where the agency’s duty to promote positive community relations is a key priority for all employees.

130) UKBA has a legal duty to monitor the effects of its policies according to race, disability and gender outcomes. The Equality Bill 2009 sets out how the
Government intends to extend the duties to include sexual orientation, religion and belief and age.

131) Policy outcomes must be monitored for equality outcomes, with any adverse equality impacts removed or mitigated to satisfy the requirements of the Race Relations (Amendment) Act 2000, Disability Discrimination Act 2005 and the Gender Duty of the Sex Discrimination Act 1975, as amended by the Equality Act 2006.

132) Equality monitoring should be embedded in general performance management, with monitoring results used to improve service delivery. The responsibility for making this happen rests with UKBA’s management teams. Each team should have responsibility for reporting its equality monitoring results to the senior executive. This will assist compliance with statutory duties to publish equality performance results.

133) The responsibility for ensuring good results for equality and diversity performance rests with UKBA’s senior executive. The executive team is responsible for ensuring that all employees understand equality and human rights legislation and are equipped to deliver equality of outcomes to all individuals and communities. The performance management cycle should, therefore, include regular, routine equality monitoring reports from all relevant managers. This will assist the executive to ensure that legal compliance and good practice standards are achieved by all teams. Where this is not the case, the executive can consider the resources needed to achieve the required results.

134) Recommendation 13: that UKBA’s senior executive receives six-monthly equality monitoring reports that enable them to keep equality impacts under continuing review and to consider:

- whether or not the new search powers are being applied in non-discriminatory ways
• how the positive equality impacts of the powers should be promoted to all communities
• opportunities for enhancing relationships with diverse communities
• actions required to mitigate any further adverse equality impacts.

Publishing assessment results

135) The Race Relations (Amendment) Act 2000 makes it a specific duty to publish the results of equality impact assessments; and the results of consultations. Without feedback, communities may feel that their contributions to consultation are not valued and their views have not influenced policy. The assessment is a valuable means of providing community feedback and showing due regard to implementing equality duties and responsibilities. It should also help to build community trust and confidence, enabling UKBA to demonstrate a robust approach to delivering positive equality results.

136) Recommendation 14: that the full assessment should be published by UKBA as a means of showing due regard to statutory duties under UK equality law and positive commitment to good equality practice.
Appendix 1: Initial equality impact assessment

EQUALITY IMPACT ASSESSMENT

Initial equality impact assessment
Search powers pilot: Sections 44-47 of the UK Borders Act 2007
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Note on the assessment
This is an independent equality impact assessment commissioned by UKBA.

Date of assessment
8 August 2008
**Introduction**

This is an initial equality impact assessment of the search powers pilot of the UK Borders Act 2007.

This is an independent assessment conducted by Diversity Solutions Consultancy. It will be used to inform the full equality impact assessment of the search powers pilot.

**Summary of assessment**

This section is a brief summary of the initial equality impact assessment and its recommendations. The recommendations are made to promote positive equality impacts and mitigate adverse equality impacts on communities and groups affected by the search powers: in effect, this means all UK communities.

Minority ethnic communities are most likely to experience adverse equality impacts since the search powers apply to foreign nationals. At the same time, minority ethnic communities may also benefit to the greatest extent because immigration offenders and foreign nationals convicted of serious crimes will be removed or deported from their communities.

Further consultation and research will take place during the search powers pilot. This may result in further recommendations in the full equality impact assessment.

**Recommendation 1:**

The draft communications strategy must be developed further to include a community engagement strategy.

For national rollout, this may include press releases in minority ethnic media (press and radio); and in police media. Press releases should include community reassurance information, for example about successful removals that have resulted in harm reduction to local communities.

For national rollout, public meetings should also be held to inform and engage local minority ethnic communities.
Recommendation 2: For national rollout, the monitoring form (Annex A) should be integrated with the Premises Search Book (Book 101) to ensure that all required equality data is captured in the same way by all immigration officers and police officers across all regions. Data outputs can be benchmarked across all regions, enabling any disproportionality to be identified and challenged.

Recommendation 3: For the pilot phase, a column must be added to the Annex A monitoring form to capture an individual’s disability/type of impairment. Currently, Annex A does not capture information related to an individual’s disability status or type of impairment. This omission must be corrected. UKBA, police forces and other partner public bodies must provide evidence that they do not treat disabled people who are subject to the search powers in less favourable ways compared to non-disabled people who are subject to the same powers.

Recommendation 4: For the pilot phase, the working group overseeing the pilot will scrutinise the equality outcomes.

Recommendation 5: For national rollout, additional tests, such as spot checks and random sampling of cases, should be implemented at regular intervals to ensure that searches are applied fairly, consistently, and without discrimination.

Recommendation 6: For national rollout, independent external scrutineers should be recruited and equipped to carry out effective monitoring of equality outcome data so that communities can be satisfied that searches are applied fairly and without discrimination. Scrutineers should be trained in proportionate ways so that they can carry out an effective and credible scrutiny role.

Recommendation 7: For the pilot phase, as part of the consultation process and full equality impact assessment, UKBA will work with the Metropolitan Police Service to convene consultation meetings during the pilot phase. This will include a joint consultation event to which the following LCJB and Metropolitan Police Service IAGs will be invited:
- LCJB IAG
- local IAGs of the pilot Boroughs
- the five central IAGs: Race IAG, Lesbian, Gay, Bisexual and Transgender (LGBT) IAG, Disability IAG, Youth IAG and the Gypsy and Traveller IAG
- themed IAGs, such as Sapphire and Trident as well as the Child Protection Team Safeguarding Children Advisory Group.

**Stage 1: Aims and objectives**

This section sets out the aims and objectives of the pilot to test the search powers of the UK Borders Act 2007. Sections 44-46 of the Act will be tested during the period. Clear instruction has been given that police civilian officers will not be authorised to use this power within the Metropolitan police area (as provided in s.47).

The powers s44-46, which may in future be conferred to a police civilian officer by s47, will be tested throughout the period of the pilot and will help inform operational usage. The findings, general principles, training and guidance will be distributed and communicated to police forces and UKBA regions throughout the UK, so that they are able to implement the powers effectively.

**Title of function**

Use of the new search powers s44-47, UK Borders Act 2007:

- Section 44: Power of search for documents relating to nationality without warrant following arrest.
- Section 45: Power of search for relevant documents with warrant.
- Section 46: Power to seize nationality documents.
- Section 47: Extension of search and seizure powers to police civilians.
The new search powers, with the exception of section 47, are to be tested during a three-month pilot in 2008. The pilot sites are the London boroughs of Hackney, Waltham Forest and Islington.

**Owners of function**


**Purpose of function**

The current immigration power of entry and search for documents relating to nationality is limited to immigration officers only, where a person is administratively arrested for the purpose of removal from the UK, or where the police have arrested the person for a criminal offence but a decision has been taken not to pursue prosecution and the person is detained under immigration powers. There is no power to search for nationality documents where a person is being prosecuted for a criminal offence unless those documents are evidence relating to the offence itself. The new search powers of sections 44-47 of the UK Borders Act 2007 seek to close that gap.

The search powers of sections 44-46 are to be tested by Operation Swale in a pilot programme to be conducted in the three London boroughs of Hackney, Waltham Forest and Islington.

Search numbers are expected to be very low. Searches will only be necessary where an individual fails to co-operate in establishing his or her identity, or an immigration officer or police officer has reasonable grounds to believe that he is not telling the truth. All searches must be authorised in accordance with the requirements of sections 44-47 of the UK Borders Act 2007.

Safeguards are in place to ensure that the search powers are not applied disproportionately. Enquiries will be made to see whether the individual is already known to UKBA before a search is instigated. When exercised by an immigration officer, the power to search will be authorised by a Chief Immigration Officer or
above. When exercised by a police constable, the power to search will be authorized by a police Inspector or above. An officer must have reasonable grounds to believe that a person may be a foreign national and subject to potential deportation before a search may be authorised.

The search powers are outlined below.

Section 44 of the Act applies where an individual has been arrested on suspicion of the commission of an offence, and an immigration officer or a constable suspects that the person may not be a British citizen. If the officer or constable suspects that nationality documents may be found on premises owned or controlled by the individual, or on premises where they were arrested, or on premises where they were immediately before being arrested, the officer or constable enter the premises to search for the documents.

However, an immigration officer or constable may exercise this search power only if they first obtain the written authority of a senior officer. A senior immigration officer must be of at least the rank of chief immigration officer. A senior police officer must be of at least the rank of inspector.

The senior officer granting the power of search must ensure that a written record is made of the grounds for suspicion that justify the decision to use the search powers. They must also record the nature of the documents that will be sought.

The search powers may not be used if the arrested individual is released without charge.

An individual’s “nationality document” means a document that shows their identity, nationality or citizenship; the place from which they travelled to the UK; or a place to which they are proposing to travel from the UK.

Section 45 of the Act applies where an individual has been arrested on suspicion of the commission of an offence and has not been released without being charged with
an offence. An immigration officer or constable may apply to a justice of the peace
(and, in Scotland, a sheriff or a justice of the peace) for a search warrant. Before
granting the warrant, the justice of the peace must be satisfied that there are
reasonable grounds for believing that the individual may not be a British citizen; the
individual’s nationality documents may be found on the premises specified; the
documents would not be exempt from seizure under section 46(2) of the Act; and
any of the conditions of section 45(3) will apply.

Under section 45(3), a justice of the peace may issue a search warrant on condition
that
a) it is not practicable to communicate with any person entitled to grant entry to the
   premises;
b) it is practicable to communicate with a person entitled to grant entry to the
   premises but it is not practicable to communicate with any person entitled to grant
   access to the nationality documents;
c) entry to the premises will not be granted unless a warrant is produced;
d) the purpose of a search may be frustrated or seriously prejudiced unless an
   immigration officer or constable arriving at the premises can secure immediate
   entry.

Sections 28J and 28K of the Immigration Act 1971 (c. 77) set out the safeguards and
execution conditions that also apply, with any necessary modifications, to warrants
issued by a justice of the peace under section 45(3) of the UK Borders Act 2007.

Section 46, subsections (1) and (2), of the Act set out the conditions under which an
immigration officer or constable may seize an arrested individual’s nationality
documents, and where the documents are not subject to legal professional privilege
(in Scotland, legal privilege).

Section 46, subsection (3), sets out the conditions under which an immigration officer
or constable may retain the seized documents of an individual who may be liable to
deportation.
Section 21 of the Police and Criminal Evidence Act 1984 (c. 60) or Article 23 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) set out the access and copying conditions that must be applied to documents that are seized and retained by an immigration officer or constable.

Section 47 extends the duties exercised by a constable under sections 44 to 46 of the Act to police civilians, with any necessary modifications.

**Immigration Rules: deportations and administrative removals**

The new search powers will assist in the deportation and administrative removal of foreign nationals who have no right to be in the UK, or who pose a threat to the UK, targeting the most harmful. The Secretary of State may decide that a person has breached UK Immigration Rules\(^{14}\) and their deportation is conducive to the public good if (amongst other things):

- he has been convicted of a serious offence or has a series of comparatively minor convictions and where the court did not recommend deportation;
- he has obtained indefinite leave to remain by deception (but see also: Administrative Removal Procedures chapter 51)

In certain circumstances, a deportation order or directions for removal may also be made under section 3(5)(b) of the Immigration Act 1971\(^{15}\) or section 10 of the Asylum and Immigration Act 1999\(^{16}\) against the spouse, civil partner or child of a person against whom a deportation order is made, or directions for removal have been given.

\(^{14}\)Immigration rules are published on the UKBA website:
http://www.bia.homeoffice.gov.uk/policyandlaw/immigrationlaw/

\(^{15}\)Immigration Act 1971, available online at
\(^{16}\)Immigration and Asylum Act 1999, available online at
Rights of appeal are in place for anyone who is subject to a deportation order or administrative removal. A person who invokes their right to appeal may not be removed from the UK until the appeal is determined by the Secretary of State.

UKBA publishes a consolidated version of the current Immigration Rules on its website. The rules are complex and subject to change at short notice.

Immigration Rules Part 13 set out the rules of deportations and administrative removals, as follows:

A deportation order

362. A deportation order requires the subject to leave the United Kingdom and authorises his detention until he is removed. It also prohibits him from re-entering the country for as long as it is in force and invalidates any leave to enter or remain in the United Kingdom given him before the Order is made or while it is in force.

363. The circumstances in which a person is liable to deportation include:

(i) where the Secretary of State deems the person’s deportation to be conducive to the public good;
(ii) where the person is the spouse or civil partner or child under 18 of a person ordered to be deported; and
(iii) where a court recommends deportation in the case of a person over the age of 17 who has been convicted of an offence punishable with imprisonment.

Deportation of family members

365. Section 5 of the Immigration Act 1971 gives the Secretary of State power in certain circumstances to make a deportation order against the spouse, civil
partner or child of a person against whom a deportation order has been made. The Secretary of State will not normally decide to deport the spouse or civil partner of a deportee where:

(i) he has qualified for settlement in his own right; or
(ii) he has been living apart from the deportee.

366. The Secretary of State will not normally decide to deport the child of a deportee where:

(i) he and his mother or father are living apart from the deportee; or
(ii) he has left home and established himself on an independent basis; or
(iii) he married or formed a civil partnership before deportation came into prospect.

367. In considering whether to require a spouse or child to leave with the deportee the Secretary of State will take account of all relevant factors, including, as well as the following:

(i) the ability of the spouse or civil partner to maintain himself and any children in the United Kingdom, or to be maintained by relatives or friends without charge to public funds, not merely for a short period but for the foreseeable future; and
(ii) in the case of a child of school age, the effect of removal on his education; and
(iii) the practicality of any plans for a child's care and maintenance in this country if one or both of his parents were deported; and
(iv) any representations made on behalf of the spouse or child.

368. Where the Secretary of State decides that it would be appropriate to deport a member of a family as such, the decision, and the right of appeal, will be notified and it will at the same time be explained that it is open to the member
of the family to leave the country voluntarily if he does not wish to appeal or if he appeals and his appeal is dismissed.

**Arrangements for removal**

385. A person against whom a deportation order has been made will normally be removed from the United Kingdom. The power is to be exercised so as to secure the person's return to the country of which he is a national, or which has most recently provided him with a travel document, unless he can show that another country will receive him. In considering any departure from the normal arrangements, regard will be had to the public interest generally, and to any additional expense that may fall on public funds.

386. The person will not be removed as the subject of a deportation order while an appeal may be brought against the removal directions or such an appeal is pending.

**Revocation of deportation order**

390. An application for revocation of a deportation order will be considered in the light of all the circumstances including the following:

(i) the grounds on which the order was made;
(ii) any representations made in support of revocation;
(iii) the interests of the community, including the maintenance of an effective immigration control;
(iv) the interests of the applicant, including any compassionate circumstances.

391. In the case of an applicant who has been deported following conviction for a criminal offence continued exclusion
(i) in the case of a conviction which is capable of being spent under the Rehabilitation of Offenders Act 1974, unless the conviction is spent within the meaning of that Act or, if the conviction is spent in less than 10 years, 10 years have elapsed since the making of the deportation order; or

(ii) in the case of a conviction not capable of being spent under that Act, at any time, unless refusal to revoke the deportation order would be contrary to the Human Rights Convention or the Convention and Protocol Relating to the Status of Refugees.

will normally be the proper course. In other cases revocation of the order will not normally be authorised unless the situation has been materially altered, either by a change of circumstances since the order was made, or by fresh information coming to light which was not before, or the appellate authorities or the Secretary of State. The passage of time since the person was deported may also in itself amount to such a change of circumstances as to warrant revocation of the order.

392. Revocation of a deportation order does not entitle the person concerned to re-enter the United Kingdom; it renders him eligible to apply for admission under the Immigration Rules. Application for revocation of the order may be made to the Entry Clearance Officer or direct to the Home Office.

**Administrative removal**

395A. A person is now liable to administrative removal in certain circumstances in which he would, prior to 2 October 2000, have been liable to deportation.

395B. These circumstances are set out in section 10 of the 1999 Act. They are:

(i) failure to comply with a condition attached to his leave to enter or remain, or remaining beyond the time limited by the leave;
(ii) where the person has obtained leave to remain by deception; and
(iii) where the person is the spouse civil partner, or child under 18 of someone in respect of whom directions for removal have been given under section 10.

395C. Before a decision to remove under section 10 is given, regard will be had to all the relevant factors known to the Secretary of State including:

(i) age;
(ii) length of residence in the United Kingdom;
(iii) strength of connections with the United Kingdom;
(iv) personal history, including character, conduct and employment record;
(v) domestic circumstances;
(vi) previous criminal record and the nature of any offence of which the person has been convicted;
(vii) compassionate circumstances;
(viii) any representations received on the person's behalf.

In the case of family members, the factors listed in paragraphs 365-368 must also be taken into account.

395D. No one shall be removed under section 10 if his removal would be contrary to the United Kingdom's obligations under the Convention and Protocol relating to the Status of Refugees or under the Human Rights Convention.

**Procedure**

395E. When a decision that a person is to be removed under section 10 has been given, a notice will be given to the person concerned informing him of the decision and of any right of appeal.
Following the issue of such a notice an Immigration Officer may authorise detention or make an order restricting a person as to residence, employment or occupation and requiring him to report to the police, pending the removal.

Which communities and groups are likely to be affected?

The new search powers of the UK Borders Act 2007, which are to be tested by the pilot, pose potential risk for disproportionate adverse equality impacts on minority ethnic communities, and equality groups within the communities.

The search powers apply to persons who are suspected of being foreign nationals and where relevant documents may be found on particular premises.

This initial assessment has involved limited consultation with representatives of communities most likely to be affected by the new search powers. The full equality impact assessment will involve considerably more consultation.

The extract below is taken from the equality impact assessment carried out by the Home Office in July 2007 on its strategy called Cutting Crime – A New Partnership 2008-11.

“Results of consideration of existing evidence

Overall, we know that crime affects different groups of people disproportionately. The existing evidence shows: ...

Race:
The British Crime Survey shows that, after taking age into account, there are no differentials in rates of victimisation. Nonetheless, minority ethnic groups have higher rates of fear/concern about crime...

Alongside this, however, is a concern about whether minority ethnic groups will be treated fairly by the police: Minority ethnic respondents were most likely to expect to be treated worse than other races by the police (24%) than by any other organisation. According to the ‘Policing and the criminal justice system – public confidence and perceptions: findings from the 2004/05 British Crime Survey’, white people were more likely to be confident that the CJS respected the rights of people accused of committing a crime and treated them fairly than Mixed and BME groups.

Finally, we also need to recognise that there is still disproportionality in the CJS:

- People from a Mixed, Asian or Black ethnic background were more likely than those in other ethnic groups to be stopped in a vehicle by the police (16%, 13% and 15% respectively). This compares with 9% of Whites and 6% of Chinese and other ethnic groups. People from minority ethnic groups were significantly more likely to say that they felt upset than White people (17% compared to 7%).

- The report ‘Statistics on Race and the Criminal Justice System - 2005’ tells us that of the 839,977 police recorded stop and searches in 2004/5 14% were of Black people, 7% of Asian people and 1.5% of ‘Other’ Ethnic origin. The report goes on to say that relative to the general population, black people were 3 times more likely to be arrested than White people.”

Individuals and families in the UK’s minority ethnic communities do not always have positive experiences of immigration and police services. Each of the community representatives interviewed for the initial equality impact assessment mentioned the case of Joy Gardner; the collective community memory of the circumstances of her death in 1993; and collective community experience of actions to stop other deportations regarded as unjust.
How does the policy fit with wider objectives?

The new search powers attempt to close a gap in existing powers of search by allowing police officers to search for documents to confirm nationality following arrest for a criminal offence.

The power is aimed at suspected criminals who create fear and insecurity in communities. It is not aimed at communities themselves. It is intended to contribute to the protection of those communities by facilitating the deportation of foreign nationals who commit serious crimes and the removal of less serious criminals who are in the country unlawfully.

*Enforcing the Deal* ¹⁹ sets out how the government’s enforcement strategy, led by UKBA, is changing the UK’s border protection and immigration systems. The agency has set out a six-fold delivery and reform programme for its enforcement business during 2008-09, quoted below²⁰:

1. Removing those who have no right to be here, or who pose a threat to the UK, targeting the most harmful.
2. Transforming our enforcement capability.
3. Holding those who break our laws to account.
5. Transforming the collection, dissemination and use of intelligence.
6. Issuing ID cards to foreign nationals.

UKBA has already established Immigration Crime Partnerships with the majority of Constabularies in England and Wales. The partnership with the Metropolitan Police

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²⁰ ibid, page 10.
Service is called Operation Swale. The focus of Operation Swale is on the organisers and facilitators of immigration crime; and on the small minority of foreign nationals who cause significant social harm to communities.

Operation Swale is responsible for conducting the pilot of sections 44 – 46 of the new search powers. Although section 47 will not be tested directly during the pilot, the full equality impact assessment will assess the likely equality impacts of this section.

Who implements the policy?

The UK Border Agency is a shadow agency of the Home Office. It is the lead organisation responsible for the new search powers. UKBA works in partnership with other criminal justice agencies including UK police forces and criminal justice boards.

The search powers will be tested by a small-scale pilot that will run for three months from late August 2008. The pilot will operate in three London boroughs: Islington, Hackney and Waltham Forest. The powers will only be exercised by designated officers within small, well-trained and experienced teams presently working as part of Operation Swale. The pilot will be instructive in determining the operational benefits of the new power.

The UK Border Agency was established in April 2008. It has a workforce of 25,000 people, with more than 9,000 warranted officers operating in local communities, at the border and across 135 countries worldwide, with wide ranging search, seizure and detention powers.

In 2007, HM Treasury set out 30 cross-government Public Service Agreements, which set the Government's key priorities for the period 2008-2011. UKBA leads on Public Service Agreement (PSA) 3, which is to ensure controlled, fair migration that protects the public and contributes to economic growth. The Agency brings together the work previously carried out by the Border and Immigration Agency, Customs
detection work at the border from Her Majesty's Revenue and Customs and UK Visa Services from the Foreign and Commonwealth Office.

PSA 3 is made up of five indicators:

- indicator 1 - deliver robust identity management systems at the United Kingdom border
- indicator 2 - reduce the time to conclusion of asylum applications
- indicator 3 - increase the number of removals year on year
- indicator 4 - increase the removal of 'harm' cases as a proportion of total cases removed
- indicator 5 - by the effective management of migration reduce the vacancy rate in shortage occupations.

Stage 2: Data collection

This stage of the equality impact assessment reviews the data resources used to inform the assessment. Data sources used are annotated as footnotes.

Further research will take place during the pilot and this will be used to inform the full equality impact assessment.

Stage 3: Assessing likely equality impacts

This stage of the equality impact assessment analyses whether or not the policy options may have a differential impact on any equality groups that are affected by changes to functions that result from policy development. The impacts may apply to groups of staff and to users of services from diverse communities. The impacts may be positive or adverse.

The policy impacts must be identified as far as possible. Positive impacts are highlighted in stage 3.

Adverse impacts are detailed in stage 4. The assessment makes recommendations to mitigate or remove any identified effects of adverse impact. If unlawful equality
impacts are identified, the assessment will highlight these in stage 4 and recommend immediate policy changes.

**Likely equality impacts on each community and group affected.**

This initial assessment identifies both positive and adverse equality impacts on communities and groups within communities. The impacts identified at this early stage are shown below under separate headings.

At this stage of initial assessment of equality impacts, it seems that minority ethnic communities, and equality groups within these communities, are most likely to experience greater adverse equality impacts than majority ethnic communities. In some minority ethnic communities, there is a particularly negative experience of foreign national deportations.

Conversely, as a result of increased numbers of deportations of foreign nationals involved in serious crime who are living within their communities, minority ethnic communities may also experience more immediate positive equality impacts than majority ethnic communities as a result of the use of the search powers.

There is a high degree of risk that hard-won confidence and trust between criminal justice agencies and minority ethnic communities may be damaged or lost unless considerable attention is paid to reassurance within and between communities, and to continuing community engagement in monitoring the equality outcomes of the new search powers.

The likely equality impacts will be considered in more detail during the pilot of the new search powers and preparation of the full equality impact assessment.

**Likely equality impacts on disabled people**

This is an initial assessment and the impacts of the search powers on particular groups of disabled people are yet to be determined. This will happen during the
consultation phase of the full equality impact assessment, which will take place during the pilot.

At this stage, it is important to note that searches will take place in homes and other premises occupied by people who are not the targets of the search, such as dependent and non-dependent relatives, co-tenants, employers and colleagues. Whilst a person targeted for a search may not be disabled, the assessment must also consider the potential for adverse disability equality impacts on other people who may be present at the time of the search.

There may be differential equality impacts on particular groups of disabled people, such as those with:

- sensory impairments (visual and hearing)
- mental health impairments
- learning disabilities
- hidden impairments (epilepsy, diabetes, chronic heart disease etc.)
- mobility impairments

**Likely equality impacts on minority ethnic communities**

This section will be completed during the pilot, which will include a full assessment of equality impacts.

**Likely equality impacts on majority ethnic communities**

This section will be completed during the pilot, which will include a full assessment of equality impacts.

**Likely equality impacts on women and men**

This section will be completed during the pilot, which will include a full assessment of equality impacts.

**Likely equality impacts on trans people**
This section will be completed during the pilot, which will include a full assessment of equality impacts.

**Likely equality impacts on people of minority sexual identity**

This section will be completed during the pilot, which will include a full assessment of equality impacts.

**Likely equality impacts on people in different faith groups**

This section will be completed during the pilot, which will include a full assessment of equality impacts.

**Likely equality impacts on people in different age groups**

This section will be completed during the pilot, which will include a full assessment of equality impacts.

**Positive equality impacts**

The search powers are aimed at suspected criminals who create fear and insecurity in communities. They are not aimed at communities themselves. Use of the powers should contribute to the protection of all communities by (1) facilitating the deportation or removal of foreign nationals who commit crimes; and (2) the removal of less serious criminals who are in the country unlawfully.

**Stage 4: Mitigating adverse impact**

This stage of the equality impact assessment identifies, as far as possible at this early stage, the potential for adverse impact on any equality group. Recommendations are made to mitigate or remove any identified adverse impacts.

If unlawful equality impacts are identified, these will be highlighted with recommendations for immediate policy changes.
**Community concerns about adverse equality impacts**

Members of the LCJB IAG and local IAGs have expressed the following concerns in relation to the potential for adverse impacts to be experienced by affected communities:

A. That there will be disproportionate impact on BME and other equality groups – that is, that these groups will be unduly targeted and scrutinised due to their appearance, accent, culture and other irrelevant factors.

B. That the power will be used for ‘fishing expeditions’ – i.e.: that the power will be used as a surreptitious method to search premises [for drugs, stolen property, etc].

C. That the power will be used as a further tool for harassment in circumstances where stop and search goes wrong and an individual is wrongly arrested.

D. That community consultation is not sufficiently robust.

E. That there will be a detrimental impact of the reporting of crime in relation to those who are the subject of domestic violence.

F. That the training material is not appropriate or sufficiently robust.

G. The power will be used in a discriminating manner against asylum seekers.

**Actions to mitigate adverse equality impacts**

**Risk A:**

That there will be a disproportionate impact on BME and other equality groups – that is, that these groups will be unduly targeted and scrutinised due to their appearance, accent, culture and other irrelevant factors.
Mitigation to risk A:
The process is designed to safeguard against disproportionate use. A search will only be conducted once appropriate enquiries have been conducted. UKBA anticipates that the search powers will be used infrequently.

Before proceeding with a search, enquiries will first be made with UKBA to see whether an individual is already known to the agency. Once nationality is confirmed, then a search will not be necessary.

A search will only apply to those suspected of being a foreign national; or the officer has reasonable grounds for suspecting that the individual is not telling the truth. An officer may also probe the answers given to questions, testing their credibility. This will help both in determining reasonable grounds, in case of suspicion, as well as confirming the status of individuals who should not be subject to the search powers.

Statutory safeguards also exist whereby authorisation must be sought before a search can be conducted. An immigration officer must obtain authorisation from a Chief Immigration Officer or above. A police constable must obtain authorisation from an Inspector or above. This authorisation must be recorded. The search will be recorded in the decision log in the case of an immigration officer; and in the custody record in the case of a police officer. A warrant must also be obtained if the search is for a third party premises.

The monitoring form (Annex A) is designed to capture a range of information, including gender, ethnic group, claimed and proven national identity. Changes must be made to Annex A so that UKBA, police forces and other partner public bodies can provide evidence that they are complying with their statutory general duties to promote equality.

The general duties are summarised as follows:

1. Eliminate discrimination
2. Eliminate harassment
3. Promote equality of opportunity
4. Take steps to take account of disabled persons’ disabilities, even where that means treating disabled people more favourably than other people
5. Promote positive attitudes towards people
6. Promote good relations between people from different groups
7. Encourage participation by people in public life

Community reassurance and engagement is essential to building and maintaining trust and confidence between the criminal justice services and the communities they serve. Following from the recommendations of the Macpherson inquiry\textsuperscript{21} into the murder of Stephen Lawrence, The Metropolitan Police Service has done considerable work in this respect with London’s majority and minority communities. The London Crown Prosecution Service has also engaged with London’s communities to develop a series of anti-discrimination protocols and worked to ensure that all communities understand the services it provides.

UKBA is a new agency that has yet to undertake similar types of community engagement. The commencement of the search powers pilot is an opportunity for the agency to engage with, and reassure, those communities most likely to be directly affected by the powers.

Minority ethnic communities, including African, African Caribbean, Asian, Gypsy and Traveller and eastern European communities in the pilot areas must be made aware of the search powers pilot in advance. Minority ethnic people in the communities of Hackney, Waltham Forest and Islington are closely connected through work, places of worship, social and family networks. They must be informed and reassured so that they feel protected by the activities of the pilot, instead of subjected to racial harassment.

Effective communication from the outset will enhance the pilot outcomes in positive ways as communities are made to feel safer and understand better the routes

through which they may make their concerns about criminal activities known to criminal justice agencies.

A well-designed communications strategy is part of the engagement and reassurance process. The communications strategy must work from the outset of the pilot project. It must inform and reassure those communities most likely to be directly affected by the powers before the pilot commences.

**Recommendation 1:**
The draft communications strategy must be developed further to include a community engagement strategy.

For national rollout, this may include press releases in minority ethnic media (press and radio); and in police media. Press releases should include community reassurance information, for example about successful removals that have resulted in harm reduction to local communities.

For national rollout, public meetings should also be held to inform and engage local minority ethnic communities.

**Recommendation 2:** For national rollout, the monitoring form (Annex A) should be integrated with the Premises Search Book (Book 101) to ensure that all required equality data is captured in the same way by all immigration officers and police officers across all regions. Data outputs can be benchmarked across all regions, enabling any disproportionality to be identified and challenged.

**Recommendation 3:** For the pilot phase, a column must be added to the Annex A monitoring form to capture an individual’s disability/type of impairment. Currently, Annex A does not capture information related to an individual’s disability status or type of impairment. This omission must be corrected. UKBA, police forces and other partner public bodies must provide evidence that they do not treat disabled people who are subject to the search powers in less favourable ways compared to non-disabled people who are subject to the same powers.
**Recommendation 4:** For the pilot phase, the working group overseeing the pilot will scrutinise the equality outcomes.

**Recommendation 5:** For national rollout, additional tests, such as spot checks and random sampling of cases, should be implemented at regular intervals to ensure that searches are applied fairly, consistently, and without discrimination.

**Risk B:**
That the power is used for ‘fishing expeditions’ – i.e.: that the power is used as a surreptitious method to search premises [for drugs, stolen property, etc].

**Mitigation to risk B:**
It is expected that few searches will be conducted using the new search powers.

The new search powers can only be used if an individual has been arrested on suspicion of the commission of a criminal offence offence and an immigration officer or a police officer suspects that the person may not be a British citizen. The grounds will be recorded.

Enquiries must be made first with UKBA to see if the individual is already known to the agency. Before a search is conducted, appropriate enquiries must be completed to establish the nationality of the individual. Authorisation will only be given by a senior officer if these criteria are met. The officer must state what types of documents are being sought. The power cannot be implemented by other means.

In the case of third party premises, the officer will also have to make the case for using the powers to a Magistrate when applying for a warrant.

However, it is important to note that other individuals will often be present when premises are searched. They may be connected to the arrested person through family, friendship or employment relationships. In situations where an immigration officer or police officer suspect that others present may be foreign nationals without
proper documentation, the new search powers do not apply. Searches conducted using the new powers may only be used in respect of the arrested person. They are not an opportunity to avoid due legal process, which must be followed in all cases.

**Recommendation 6:** For national rollout, independent external scrutineers should be recruited and equipped to carry out effective monitoring of equality outcome data so that communities can be satisfied that searches are applied fairly and without discrimination. Scrutineers should be trained in proportionate ways so that they can carry out an effective and credible scrutiny role.

**Risk C:**
That the power will be used as a further tool for harassment in circumstances where stop and search goes wrong and an individual is wrongly arrested.

**Mitigation to risk C:**
The likelihood of the power being misused is remote as the power should only be used as a last resort once all other enquiries have been exhausted. However, it is important to note that, if individuals are arrested and subsequently released without charge, the search powers may not be exercised in such cases.

Recommendations are made to ensure that effective equality monitoring arrangements are put in place; and that internal and external scrutiny arrangements are made that will identify inappropriate and disproportionate use of the search powers.

**Risk D:**
That community consultation is not sufficiently robust.

**Mitigation to risk D:**
UKBA is committed to conduct appropriate consultation in each case when assessing the potential impact of significant change to policy and procedure, where possible reaching beyond well-established contacts to bodies and groups.
representing local communities and faith communities. Where the UK Border Agency does undertake consultations outside government, it will ensure that the exercise is:

- meaningful, in that it genuinely feeds into the decision making process and is timed to allow this to happen;
- representative, in that it is genuinely based on a proper cross-section of views and that these views genuinely represent the community groups likely to be affected; and
- effective, in that it genuinely makes an impact on the policy development process.

UKBA is working with the LCJB IAG and borough IAGs to identify risks and address concerns. UKBA plans to extend community consultation further during the three-month pilot, which will be accompanied by a full equality impact assessment. In addition, UKBA will be assisted by police community liaison officers to ensure that communities in all localities are informed and consulted about the powers.

**Recommendation 7:** For the pilot phase, as part of the consultation process and full equality impact assessment, UKBA will work with the Metropolitan Police Service to convene consultation meetings during the pilot phase. This will include a joint consultation event to which the following LCJB and Metropolitan Police Service IAGs will be invited:

- LCJB IAG
- local IAGs of the pilot Boroughs
- the five central IAGs: Race IAG, Lesbian, Gay, Bisexual and Transgender (LGBT) IAG, Disability IAG, Youth IAG and the Gypsy and Traveller IAG
- themed IAGs, such as Sapphire and Trident as well as the Child Protection Team

Safeguarding Children Advisory Group.

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This event will enable members of the IAGs that represent the various affected communities and groups within communities to be informed, share concerns and become engaged in community reassurance.

**Risk E:**
That there will be a detrimental impact of the reporting of crime in relation to those who are the subject of domestic violence.

**Mitigation to risk E:**

Tackling illegal immigration will have a positive impact on victims of domestic violence and other crimes where action is taken against the perpetrators. This includes removals of foreign nationals who perpetrate hate crimes, including domestic violence.

Police services throughout the UK encourage all individuals to report all crimes, including domestic violence. They do not check the immigration status of individuals who are reporting crimes.

However, it is possible that, in the course of a search, it may be discovered that other foreign nationals related to the arrestee do not have the right to remain in the UK. Where this is the case, the related people may also be subject to removal or deportation. However, due legal process will be applied in all cases, including the right to appeal.

All foreign nationals, including spouses, civil partners, children and other family members are subject to UK immigration rules. These rules are available on the UKBA website[^23]. The rules related to this mitigation are quoted below.

[^23]: Immigration rules are available on the UKBA website: [http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/](http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/)
Immigration Rules Part 8: Family Members, paragraphs 289A - C, set out the requirements that must be met by foreign nationals who are subjected to domestic violence. The rules are as follows:

“Requirements for indefinite leave to remain in the United Kingdom as the victim of domestic violence

289A. The requirements to be met by a person who is the victim of domestic violence and who is seeking indefinite leave to remain in the United Kingdom are that the applicant:

(i) was admitted to the United Kingdom for a period not exceeding 27 months or given an extension of stay for a period of 2 years as the spouse or civil partner of a person present and settled here; or; and

(ii) was admitted to the United Kingdom for a period not exceeding 27 months or given an extension of stay for a period of 2 years as the unmarried or same-sex partner of a person present and settled here; and

(iii) the relationship with their spouse or civil partner or unmarried partner or same-sex partner, as appropriate, was subsisting at the beginning of the relevant period of leave or extension of stay referred to in (i) or (ii) above; and

(iv) is able to produce such evidence as may be required by the Secretary of State to establish that the relationship was caused to permanently break down before the end of that period as a result of domestic violence.

Indefinite leave to remain as the victim of domestic violence
289B. Indefinite leave to remain as the victim of domestic violence may be granted provided the Secretary of State is satisfied that each of the requirements of paragraph 289A is met.

Refusal of indefinite leave to remain as the victim of domestic violence

289C. Indefinite leave to remain as the victim of domestic violence is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 289A is met.”

Risk F
That the training material is not appropriate or sufficiently robust

Mitigation to risk F:
The quality of the proposed training material will be reviewed during the course of the pilot. The review will include consultation with LCJB IAG and other IAGs.

IAG members are invited to attend the training for the pilot.

Risk G:
The power will be used in a discriminating manner against asylum seekers

Mitigation to risk G:
The power is only for use in relation to suspected criminals. Law abiding members of the community, including asylum seekers, have nothing to fear.

However, where an asylum seeker is arrested for a crime and efforts to establish their nationality fail, a search for documents will be initiated.

UKBA would never remove an asylum seeker before their claim, including any appeal, has been determined.
If a failed asylum seeker is arrested, then due process would apply. UKBA would seek to remove the individual where their nationality is established.

**Resource implications for mitigating adverse impact**

None identified at the pre-pilot stage.

**Is an alternative policy or practice needed?**

No: the function is statutory. The equality impact assessment makes recommendations that mitigates the potential for adverse equality impacts and enhances positive equality impacts.

**Stage 5: Formal consultation**

Consultation is an essential part of an equality impact assessment. This should take place in a proportionate way with equality groups affected by the policy.

Consultation is especially important where the policy has effects on equality groups and where adverse impacts may result from the policy. Equality groups affected should be involved in identifying ways of mitigating adverse impact during the lifetime of the policy.

**Describe consultation methods**

Limited consultation has taken place for the initial equality impact assessment.

Groups consulted in face-to-face meetings are as follows:

- Operation Swale members of UKBA and Metropolitan Police Service
- Chair of LCJB IAG
- Chair of Waltham Forest IAG

In addition, email contact has been made with Hackney IAG.

Consultation with Islington IAG has not yet happened.
Recommendations are made in this assessment that help to inform the consultation process for the pilot phase.

**Stage 6: Analyse impact and finalise policy**

This stage of the equality impact assessment summarises the views expressed by consultees and how these are incorporated in the policy.

Without feedback, consultees may feel that their contributions are not valued. This stage helps to direct the consultation and feedback process.

It is important to understand the role of publishing the assessment results. The assessment is a valuable means of showing due regard to promoting the general and specific race, disability and gender equality duties. The assessment process and its results also help to build the confidence of those communities affected by the policy, allowing the authority to demonstrate a robust approach to promoting its equality duties. The Race Relations (Amendment) Act 2000 makes it a specific legal duty to publish the results of equality impact assessments and consultations.

**Summary of consultees’ views**

The views of the LCJB and Waltham Forest IAGs are reflected in the section above called *Stage 4: Mitigating Adverse Impact*.

Operation Swale members support the recommendations made to mitigate adverse equality impacts.

**Stage 7: Monitoring and review**

This is an initial equality impact assessment of the search powers pilot. Recommendations for monitoring and review will be considered during the full assessment.

UKBA has a legal duty to monitor the effects of its policies according to race, disability and gender outcomes. Policy outcomes must be monitored, and any adverse impact mitigated or removed, to satisfy specific requirements of the Race

**Stage 8: Governance**

This is an initial equality impact assessment of the search powers pilot. Recommendations for performance monitoring will be considered during the full assessment.

Monitoring the equality outcomes of policy enables the impacts of the policy to be kept under review during its lifetime. Monitoring equality outcomes is an integral part of UKBA’s general duties to promote race, disability and gender equality, and the related specific duties.
Appendix 2: Consultation questionnaire

Questionnaire: Search powers of s44-47, UK Borders Act 2007

Question 1

Is there potential for unlawful discrimination to be experienced by people in any of the equality groups who are the actual targets of searches?

Question 2

Must the practice of immigration officers and police officers who are conducting searches take account of different cultural and religious sensitivities?

For example:

- Communities who are relatively new to the UK, who may not be aware of their legal rights to fair treatment.
- Disabled people with some impairments, and people whose first language is not English, who may seem obstructive if they do not understand instructions and information given during a search.
- People from different faith groups, who may seem uncooperative or hostile if search techniques are considered to be disrespectful.

Questions 3 and 4

Could the search powers have any adverse equality impacts on good relations between different communities?

Could the search powers cause any damage to community trust and confidence in respect of policing and/or immigration services?

For example,

- Is there potential for adverse equality impacts to be experienced by ‘bystander’ individuals and communities who are not the actual targets of searches? Bystanders would include family members, friends, colleagues and strangers.
- Where they can be conducted at other times, would searches conducted at 17:00 hours on a Friday, or during important religious periods like Ramadan, Yom Kippur or Guru Nanak’s birthday, be disrespectful to Muslim, Jewish and Sikh faith communities.

Question 5
Are any other adverse equality impacts likely to be experienced by individuals who are the targets of searches?

**Question 6**

Are any other adverse equality impacts likely to be experienced by bystanders?