UK BORDERS ACT 2007
SEARCH POWERS PILOT

UKBA Response to the Independent Equality Impact Assessment
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</tr>
</tbody>
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INTRODUCTION

THE SEARCH POWERS

1. **Sections 44 to 47 of the UK Borders Act 2007** were introduced as part of the Government’s plans for improving the handling of foreign nationals within the criminal justice system. The primary driver for these powers is the need to protect communities from the harm caused by criminality. This is a priority for both the police and UKBA as we seek to identify and remove those foreign nationals who, as a result of their criminal conviction become liable for removal. The most recent data for the numbers of Foreign National Prisoners that have been deported are shown in the following table which also shows the number of those who were convicted of certain types of offence:

<table>
<thead>
<tr>
<th>Period</th>
<th>Total no. of FNPs deported</th>
<th>Murder / attempted murder / causing death</th>
<th>Sex-related offenders</th>
<th>Drug offenders</th>
</tr>
</thead>
<tbody>
<tr>
<td>01/01/08 to 31/12/08</td>
<td>nearly 5,400</td>
<td>50</td>
<td>260</td>
<td>1,600</td>
</tr>
<tr>
<td>01/01/09 to 30/09/09</td>
<td>3,890</td>
<td>35</td>
<td>over 230</td>
<td>over 1,000</td>
</tr>
</tbody>
</table>

2. The new powers support this shared agenda by enabling the nationality of persons arrested for criminal offences to be established when they first enter the criminal justice system.

3. The powers apply to immigration officers and the police, providing them with the power to search premises for documents relating to nationality or identity where a person has been taken to a police station following their arrest for a criminal offence. There are several important safeguards that apply to the powers:

- they only apply to persons who are suspected of not being British citizens and where relevant documents may be found on the premises.
- they may only be exercised by a constable or an immigration officer after authorisation by a senior official/officer, who must give written authority for the power to be used.
- it may not be exercised if a person has been released without charge.

4. Although it is not on the face of the legislation a commitment was given to Parliament¹ that:

- inquiries must be made first to see whether the individual is already known to UKBA or the police before a search is instigated.
- searches will be necessary only where an individual fails to co-operate in establishing his or her identity, or the officer has reasonable grounds to believe that he is not telling the truth.

5. The power to search third party premises under section 45 of the UK Borders Act 2007 requires authorisation from a justice of the peace and must be based on reason to believe that the person is not a British citizen and that nationality documents will be found on the premises.

6. The justice of the peace must be satisfied that:

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¹ Committee Stage – HoC, 20/03/07, Column number 453
http://www.publications.parliament.uk/pa/cm200607/cmpublic/borders/070320/am/70320s01.htm
RESTRICTED

- it is not practicable to communicate with any person entitled to grant entry to the premises;
- 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;
- entry to the premises will not be granted unless a warrant is produced;
- 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.

THE EQUALITY IMPACT ASSESSMENT (EIA) PROCESS

7. An initial EIA was produced by UKBA in January 2007 following consultation with policy leads in UKBA, the Home Office, the Association of Chief Police Officers (ACPO) and HMRC. That informed the development of policy and proposed that the powers be piloted. As a result, during the passage through Parliament of the UK Borders Act, Ministers undertook to pilot the powers in a number of areas before they would be rolled out nationally. They also gave assurances that any disproportionate impact identified by the pilot would be addressed.

8. The initial pilot for the powers took place from October 2008 to January 2009 in three Operation Swale teams (i.e. made up of both immigration and police officers) in the Metropolitan Police area (Hackney, Waltham Forest and Islington) focussed on tackling immigration crime.

9. Prior to the pilot the project team met with the London Criminal Justice Board and agreed that the pilot would be subject to an Equality Impact Assessment (EIA). Furthermore it was agreed that commissioning an independent EIA would provide greater reassurance and provide a robust examination of the powers.

10. The EIA was in two phases. The first phase was an initial impact assessment of the new powers which would inform the conduct of the pilot prior to launch. The second phase was the full impact assessment reflecting the findings and data gathered from the pilot. This response is to the second and final EIA. The UKBA’s response including the response to the 14 recommendations that were made are dealt with individually in the following sections. Importantly the independent consultants had complete editorial freedom and, with the exception of factual corrections, the final EIA represents their findings.
11. As is reflected in the recommendations the main benefit that came out of the process was the engagement with the Independent Advisory Groups (IAG). IAGs are community consultative bodies which are set up by the police and reflect the demographics of the local community. Their purpose is to increase trust and confidence in the police and provide advice on ways to improve the quality of service delivery.

12. The IAG highlighted sensitivity among communities about the need for powers to be exercised fairly and proportionately, but importantly the EIA also found that the positive impact of the powers was also recognised. It states that “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.”

13. However, we do recognise that initially there was some concern about the impact that the powers could have on community groups. This may partly be due to misunderstanding of the power. For example, the discussion at Hackney IAG was tabled under the subject heading of ‘stop and search powers’ but the UK Borders Act powers are not, and should not be confused with, police powers to stop and search. The UK Borders Act provisions are entry, search and seize powers that are triggered only where an individual has been arrested on suspicion of an offence.

14. Clearly this indicates a need for UKBA and the police to clearly communicate the purpose of the powers and the significant safeguards that are in place in order to allay any concerns that could arise as a result of misunderstanding or confusion.

**Phase I**

15. The results from the initial pilot (set out in the following table) found that the powers were rarely used, but that where they were used nationality documents were found and in half the cases this lead to deportation.

<table>
<thead>
<tr>
<th>Gender</th>
<th>Ethnicity</th>
<th>Offence</th>
<th>Items found</th>
<th>Confirmed nationality</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>Black</td>
<td>Breach of bail</td>
<td>Birth certificate</td>
<td>Unconfirmed</td>
<td>UK birth certificate found but possible identity abuse means individual is still subject to investigation</td>
</tr>
<tr>
<td>Male</td>
<td>Black</td>
<td>Actual bodily harm</td>
<td>Passport (expired)</td>
<td>Jamaican</td>
<td>Found to be overstayer with history of offending that caused harm to the community. Deported.</td>
</tr>
<tr>
<td>Male</td>
<td>Black</td>
<td>Actual bodily harm</td>
<td>Birth certificate and copy of passport</td>
<td>Jamaican</td>
<td>Found to be overstayer, refused further permission to remain.</td>
</tr>
<tr>
<td>Male</td>
<td>Black</td>
<td>Handling stolen credit card</td>
<td>Passports (one Nigerian and two counterfiet)</td>
<td>Nigerian</td>
<td>Charged with two ID Card Act offences, received 12 months custodial sentence and was subsequently deported.</td>
</tr>
<tr>
<td>Male</td>
<td>White</td>
<td>Fraud</td>
<td>Two passports (Ecuadorian and Spanish)</td>
<td>Ecuadorean</td>
<td>Spanish passport was counterfiet. Charged with ID Card Act offence, received 6 month custodial sentence and was subsequently deported.</td>
</tr>
<tr>
<td>Male</td>
<td>Black</td>
<td>Failed asylum seeker</td>
<td>Passport (expired)</td>
<td>Ivorian</td>
<td>Found to be an immigration offender. Subject to reporting requirements.</td>
</tr>
</tbody>
</table>
16. The limited use of the powers should be seen in context of the arrests made. The EIA reports that over 1,300 arrests were made in the pilot site areas during the initial pilot period. However, two thirds of those arrested were British nationals and therefore the power is not applicable in any of these cases. Therefore the power could only possibly apply in relation to the 441 arrests of foreign nationals.

17. While the statistics are helpful in setting the context of the pilot the success of the power should not be measured in sheer volume of use. The powers will not be used against every foreign national that is arrested. Before the powers can be used a check must be made with UKBA to ascertain whether the individual’s nationality has been confirmed. This process is designed to ensure that the powers are only used where it is necessary to establish the individual’s nationality and this minimises the need for the power to be used and the subsequent impact on the individual’s human rights. In each of the six cases above the power was only used where nationality could not be confirmed via other means.

18. The limited use of the powers and the safeguards that are in place should reassure communities that the powers are not used disproportionately and the results clearly show that where the powers were used they enabled foreign national prisoners and illegal immigrants to be dealt with more effectively.

19. The findings should also be considered in the operational context in which the power was piloted. The powers were piloted by Operation Swale teams (joint teams of police and UKBA officers) that were created to target the serious harm that is caused by illegal immigration. Given the range of police and immigration powers that are already available to joint operation teams, especially when investigating immigration offences, it is perhaps unsurprising that the new powers were used so infrequently. For example, the police have powers under the Police and Criminal Evidence Act 1984 (PACE) to search for evidence of an offence. In some cases, such as identity fraud, the individual’s nationality documents would be seizable as evidence of the offence. The Immigration Act 1971 provides similar powers for Immigration Officers to search for and seize evidence of immigration offences under the Act. It also provides immigration officers with the power to search for and seize documents that establish the identity, nationality or citizenship of an individual who has been arrested under the administrative powers in Schedule 2 of the 1971 Act.

Phase II

20. For this reason the second phase of the pilot was carried out from November 2009 to February 2010 to test the use of the powers in three distinct environments:

- **Police only** – Understandably the primary focus of the police must be on investigating the offence in question but the police are increasingly recognising the benefits of the new powers in removing harmful individuals from the community. They also enable the police to comply with requirements in the Police and Criminal Evidence Act 1984 (PACE) Codes of Practice in relation to the rights of foreign nationals and third country agreements.

  It was felt that this was the area where the powers would be of most benefit. This is because police powers are focused on gathering evidence of the offence and the police do not have the powers to search for and seize documents that establish identity, nationality or citizenship that immigration officers have under the administrative provisions of Schedule 2 of the 1971 Act. Therefore where an individual who is lawfully in the UK is arrested for a non-immigration offence the police were powerless to search for documents that enable them to prove the suspect’s nationality. This is the gap that
the new powers deal with by providing the police with the ability to identify the nationality of an individual at the outset of the criminal justice process.

- **UKBA only** – It is generally felt that the powers will be of limited use to immigration officers given the type of offences that they investigate and the evidential and administrative powers that are already available. However, piloting the powers in UKBA sites would enable us to examine how the new powers compliment existing powers and, importantly, ensure that police and immigration officers use the powers consistently.

- **Joint operations** – The second phase enabled us to further test the findings of the initial pilot in a non-Metropolitan police force. This would enable us to develop best practice based on a wider test of the powers.

21. The pilot has shown that where the power is used effectively it closes the previous gaps that hindered the police in being able to identify the nationality of suspects arrested for non-immigration offences. The pilot has also shown that the powers enable UKBA and joint operations teams to take action to ascertain nationality at an earlier stage in the process which reduces the time that people spend in custody and associated costs and risks.

22. The statistics from the second phase of the pilot show that:

- Section 44 power (entry without warrant) was sought 42 times, authorised 39 times, with entry made 37 times. On one further occasion the search was conducted using Schedule 2 powers. The breakdown of the 38 searches by pilot site is as follows:
  - 19 - UKBA Enforcement & Compliance NW (Liverpool)
  - 9 - Rebutia Team (Joint Operations, Leicester)
  - 5 - UKBA South Yorkshire Enforcement Unit (Sheffield)
  - 3 - West Yorkshire Police, Bradford Bridewell
  - 2 - West Yorkshire Police, Leeds Bridewell

- Section 45 power (entry with warrant), not used to date.

- As a result of the 38 searches documents which helped to establish the individual’s nationality were found on 23 occasions (61%).

- 18 individuals were confirmed as their claimed nationality, four were confirmed as a different nationality from that claimed and in one case enquiries are ongoing.

- Seized documents included 14 passports (in one case the birth certificate was also found, in another case the ID card was also found), one copy of a visa, two UKBA documents and two foreign driving licences.

- Uses of the power were sought in relation to 20 different claimed nationalities, the main nationalities claimed were Indian (nine), Chinese (seven), Bangladeshi, Nigerian, Pakistani (three each), Israeli and Vietnamese (two each).

- The ethnic breakdown of suspects were searches took place were Asian (42%), Black (26%), Chinese (24%), Mixed (5%), White (3%).

- One juvenile was subject to search, another search was carried out in relation to an individual falsely claiming to be a minor.

- No complaints made by individuals or community groups concerning the powers.

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2 In two cases further UKBA checks meant that a search was not required, in another case the individual’s passport was produced to the police by the detainee’s partner.

3 In two cases the address given was found to be false so no entry was made.
23. The different methods of recording between UKBA and the police mean that it is not possible to compare the ethnicity results of the pilot against the ethnic breakdown of the total number of arrests in all of the pilot sites.

24. As the results show the powers were used against a broad range of nationalities and ethnicities. Tables 1 and 2 shows the breakdown of ethnicity and nationality respectively of cases where the power was authorised in total and by each pilot site:

Table 1 – Search Powers Pilot, Ethnic Breakdown (total and by pilot site)

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Liverpool</th>
<th>Leicester</th>
<th>Sheffield</th>
<th>Bradford</th>
<th>Leeds</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>White - British</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>White - Irish</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>White - Any other white background</td>
<td>2</td>
<td>5%</td>
<td>2</td>
<td>10%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mixed - White and Black Caribbean</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mixed - White and Black African</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mixed - Other</td>
<td>2</td>
<td>5%</td>
<td>1</td>
<td>5%</td>
<td>1</td>
<td>9%</td>
</tr>
<tr>
<td>Asian or Asian British - Indian</td>
<td>5</td>
<td>12%</td>
<td>3</td>
<td>15%</td>
<td>2</td>
<td>18%</td>
</tr>
<tr>
<td>Asian or Asian British - Pakistani</td>
<td>5</td>
<td>12%</td>
<td>3</td>
<td>15%</td>
<td>1</td>
<td>9%</td>
</tr>
<tr>
<td>Asian or Asian British - Bangladeshi</td>
<td>3</td>
<td>7%</td>
<td>1</td>
<td>5%</td>
<td>1</td>
<td>9%</td>
</tr>
<tr>
<td>Asian or Asian British - Other</td>
<td>6</td>
<td>14%</td>
<td>4</td>
<td>36%</td>
<td>2</td>
<td>40%</td>
</tr>
<tr>
<td>Black or Black British - Caribbean</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black or Black British - African</td>
<td>8</td>
<td>19%</td>
<td>3</td>
<td>15%</td>
<td>1</td>
<td>9%</td>
</tr>
<tr>
<td>Black or Black British - Other</td>
<td>2</td>
<td>5%</td>
<td>1</td>
<td>9%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chinese or other ethnic group - Chinese</td>
<td>7</td>
<td>16%</td>
<td>6</td>
<td>30%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chinese or other ethnic group - Other</td>
<td>3</td>
<td>7%</td>
<td>1</td>
<td>5%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 2 – Search Powers Pilot, Nationality Breakdown (total and by pilot site)

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Liverpool</th>
<th>Leicester</th>
<th>Sheffield</th>
<th>Bradford</th>
<th>Leeds</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Afghan</td>
<td>1</td>
<td>2%</td>
<td>1</td>
<td>9%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bangladeshi</td>
<td>3</td>
<td>7%</td>
<td>1</td>
<td>5%</td>
<td>1</td>
<td>9%</td>
</tr>
<tr>
<td>Botswana</td>
<td>1</td>
<td>2%</td>
<td>1</td>
<td>5%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chinese</td>
<td>7</td>
<td>16%</td>
<td>6</td>
<td>27%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Congolese</td>
<td>1</td>
<td>2%</td>
<td>1</td>
<td>9%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cypriot</td>
<td>1</td>
<td>2%</td>
<td>1</td>
<td>5%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>European</td>
<td>1</td>
<td>2%</td>
<td>1</td>
<td>5%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Guyanese</td>
<td>1</td>
<td>2%</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Indian</td>
<td>9</td>
<td>21%</td>
<td>3</td>
<td>14%</td>
<td>6</td>
<td>55%</td>
</tr>
<tr>
<td>Iraqi / Syrian</td>
<td>1</td>
<td>2%</td>
<td>1</td>
<td>9%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Israeli</td>
<td>2</td>
<td>5%</td>
<td></td>
<td></td>
<td>2</td>
<td>40%</td>
</tr>
<tr>
<td>Libyan</td>
<td>1</td>
<td>2%</td>
<td>1</td>
<td>5%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Malaysian</td>
<td>1</td>
<td>2%</td>
<td>1</td>
<td>5%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nigerian</td>
<td>4</td>
<td>9%</td>
<td>2</td>
<td>9%</td>
<td>1</td>
<td>20%</td>
</tr>
<tr>
<td>Pakistani</td>
<td>3</td>
<td>7%</td>
<td>2</td>
<td>9%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sierra Leonean</td>
<td>1</td>
<td>2%</td>
<td>1</td>
<td>9%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Somali</td>
<td>1</td>
<td>2%</td>
<td>1</td>
<td>5%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>South African</td>
<td>1</td>
<td>2%</td>
<td>1</td>
<td>5%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vietnamese</td>
<td>2</td>
<td>5%</td>
<td></td>
<td></td>
<td>2</td>
<td>67%</td>
</tr>
<tr>
<td>Zimbabwean</td>
<td>1</td>
<td>2%</td>
<td>1</td>
<td>5%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

25. As the EIA recognises the very nature of the power, and the issue it seeks to address, means that it was expected that the use of the power would almost certainly impact the BME
community disproportionately. Therefore the purpose of the pilot was to ensure that the powers are used appropriately and effectively protect, rather than harm, local communities.

26. In this respects the statistics show that:

- The 38 searches related to:
  - 29 immigration offences
  - six non-immigration offences
  - three individuals arrested for immigration and non-immigration offences.

- The non-immigration offences included murder, rape, sexual assault, drug production, breach of court bail, fraud and three cases of assault.

- Of the 18 individuals who’s nationality was confirmed as a result of the search this included individuals arrested on suspicion of the following offences:
  - murder, Nigerian passport found as a result of the search
  - rape, Nigerian passport found as a result of the search
  - assault, Congolese driving licence found as a result of the search
  - illegal entry and breach of court bail, European passport found as a result of the search.

27. Further analysis of the cases has shown that a number of cases relate to individuals who are known to the police in relation to wider offending behaviour. These include individuals who had previously:

- claimed asylum in two different names and nationalities (Iraqi and Syrian). Known to the Serious Organised Crime Agency (SOCA) as a suspected people trafficker, previously been imprisoned in the Netherlands and had also been arrested in the UK previously for assault and numerous driving offences.

- been convicted of driving with excess alcohol and arrested for a sexual offence, offences against the person, public order and fraud.

- been cautioned for theft, subject to a non-molestation order and arrested for common assault, criminal damage and theft.

- been arrested and cautioned for assault.

28. Overall, as expected, the powers were used relatively rarely when considered against the overall enforcement activity in the pilot site areas. For example, 5,319 arrests were made in Leeds and Bradford during the pilot period. However, 86.8% of those arrested were British nationals and therefore the powers do not apply to these cases. Therefore the power could only possibly apply in relation to the remaining 703 arrests of foreign nationals.

29. Even with the high proportion of searches carried out in Liverpool the table below shows that, excluding Leicester, the powers were used against less than 5% of the total number of arrested foreign nationals. If we conservatively estimate that the Operation Rebutia team in Leicester dealt with 900 arrested foreign nationals that ratio falls to 2.2%.
<table>
<thead>
<tr>
<th>Pilot Area</th>
<th>Total Number of Arrests</th>
<th>Total number searches under UK Borders Act</th>
<th>% arrests resulting in UK Borders Act search</th>
</tr>
</thead>
<tbody>
<tr>
<td>Liverpool</td>
<td>33</td>
<td>18</td>
<td>54.5%</td>
</tr>
<tr>
<td>Leicester</td>
<td>Not known*</td>
<td>9</td>
<td>Estimate less than 1% of foreign nationals</td>
</tr>
<tr>
<td>Sheffield</td>
<td>50</td>
<td>5</td>
<td>10%</td>
</tr>
<tr>
<td>Bradford</td>
<td>338</td>
<td>3</td>
<td>0.9%</td>
</tr>
<tr>
<td>Leeds</td>
<td>365</td>
<td>2</td>
<td>0.5%</td>
</tr>
</tbody>
</table>

30. The relatively low levels of use are primarily because of the safeguards that are in place which mean that the powers can only be used once checks with UKBA records have been made and the person has failed to co-operate or there are reasonable grounds to believe that the individual is not telling the truth. For example Bradford estimates that the power was considered approximately 20 times and Leeds estimates that the powers were considered approximately 6 times per day but that searches were not necessary following checks with the UKBA.

31. With the exception of the North West Enforcement and Compliance team in Liverpool (who used the powers proactively as part of illegal working operations) use across the operational environments was relatively steady. Although the North West team used the powers relatively frequently (when compared to the other pilot sites) under standard operational practice the individuals would have been detained and their premises searched under Schedule 2 powers or with their consent. The slightly higher use of the powers by the Operation Rebutia team in Leicester is because the powers compliment the existing operational focus, knowledge and expertise of the team which exists to tackle the harm caused by immigration crime.

32. The slightly lower use within the police only sites is partly because they began piloting the powers later than the other sites. The pilots commenced in the UKBA and joint operations sites on 23 November and ran for over 13 weeks. The pilots could only commence in Bradford Bridewell on 11 December and in Leeds Bridewell on 23 December meaning the pilot ran in the police sites for approximately 11 and 9 weeks respectively.

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*It is impossible to ascertain accurate statistics for the Operation Rebutia team due to their structure and operational deployment. The team are not deployed at all times across all police stations in the Leicestershire Constabulary area. Recording will depend on whether the arrest was carried out by a police or an immigration officer. In some cases an individual may be arrested by a police officer for one offence and then further arrested by an Immigration Officer for immigration matters, leading to double counting of arrests.*
SUMMARY OF INDEPENDENT EIA RECOMMENDATIONS

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.

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.

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.

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.

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

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.

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.

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.

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.

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.

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

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.

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.
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.

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. UKBA ensures that the community impact of operations remains under constant review. Enforcement operations are jointly assessed with the police, who provide specific advice regarding local community issues and whether we should proceed or not with any operation.

34. This is a timely recommendation as the UKBA is in the process of major restructuring to introduce Local Immigration Teams (LITs) throughout the UK. We are looking to embed community engagement into LITs’ operating systems; and utilise the well established local arrangements for consultation and liaison delivered by our partners. Work is currently being taken forward to develop workshops for LIT leaders. This will be delivered later this year and will cover the strategic context of communications, engagement and partnership working with local delivery partners, including established local agencies and groups.

35. Our aim is to strengthen and not duplicate or destabilise the existing mechanisms for community engagement, minimising burdens on community structures. While our primary focus must be on enforcement to ensure compliance with immigration rules, the strengthening of partnership working will improve understanding of UKBA policy and practice, allowing a more informed response to community concerns. In turn communities will become more aware of the powers that are being used and the benefits they bring.

36. As with the response to recommendations 1 and 2 we are looking to embed community engagement into LITs operating systems by using existing local arrangements within the police IAG and neighbourhood policing framework for consultation and engagement with the local community. Similarly we are looking to work with our local partners to ensure that we maintain a consistent approach in effectively engaging with communities.

37. Current and externally published guidance on the procedures used when risk assessing a UKBA operational visit within the community is available on the UKBA website at http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/oemsection/. Chapter 31 of the Enforcement Instructions and Guidance (EIG) makes clear that Immigration Officers must carry out checks on a range of systems in order to identify and minimise any potential risks. That includes checks with the Police to ensure that UKBA is aware of any relevant and current community tensions.
38. The level of checks depends on the scale of the operation. Firstly it should be remembered that all enforcement visits are assessed by the Joint Intelligence Units who assess all information and intelligence relating to the subject and premises, including any known special needs or warnings that increase the risks associated with the enforcement activity.

39. In addition in the case of lower tier operations (involving less than three suspects) the police are notified of the proposed enforcement activity and requested to flag any concerns about community impact within 72 hours. In the case of middle and upper tier operations (which involve 4 to 20 or more than 20 suspects respectively) UKBA submit a Visit Enforcement Notification (VEN) which includes a Community Impact Assessment which the local police force must complete and return to UKBA before the enforcement activity can take place. The only exception to this procedure is in the Metropolitan Police area where checks against police records are made through the Joint Intelligence Units who have access to police records in line with the Police National Intelligence Model.

40. Further safeguards are already in place to ensure that any proposed enforcement activity is considered against previous enforcement activity to minimise the impact of operations on communities and reduce any possible perceptions of harassment. The process is also intended to safeguard against addresses being targeted by more than one law enforcement agency. Firstly, all visits must first be authorised by the Tasking and Co-ordination Group (TCG). This is made up of senior operational managers who direct and provide oversight of all operational activity in their area. The TCG specifically assesses each visit to ensure it is proportionate, legal, accountable / auditable and necessary. Additionally chapter 31.2 of the EIG states that “Where more than one visit to an address is made to an address, each must be fully justified and must not constitute unreasonable inconvenience to the occupiers”.

41. Clearly there is a need to strike an appropriate balance between ensuring that communities are fully aware of the powers, particularly in areas where the risk of increased tension and/or hostility is high, and the need to protect the integrity of pre-planned operations. This practice is already well established within the IAG system and engagement on the new powers must be a matter for individual LITs to determine with local police contacts to ensure an appropriate balance is struck between the need to maintain community confidence and protect operational effectiveness.

**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.**

42. We fully accept the EIA recommendation in relation to disability but believe that the principle applies to all powers of entry and areas of vulnerability. This includes other aspects such as health, mental health, culture and language. This broader approach to effective risk assessment is fully embedded into existing UKBA operational practices and protocols to prevent harm to both the public and staff.

43. The UKBA’s ‘Race, Disability and Gender Equality Scheme 2008 – 09’ recognises that diversity issues, and disability in particular, are of particular relevance to enforcement activity and recommends that:

- appropriate staff be trained in carrying out equality impact assessments to ensure that policies and procedures comply with equality legislation, and that
- operations should consider disability and gender issues and draw up a risk assessment whenever these might be a factor.
**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.

44. UKBA already recognises the importance of using the media to raise public understanding of our role and the powers that we use to enforce immigration rules. For example our regional press network has grown significantly over the last year and the coverage they secure, through both proactive and reactive work, makes up a major part of the activity we undertake through the Agency’s Strong Border, Tough Enforcement campaign.

45. Many stories appear each week in the regional press, see two examples in Annex B, which demonstrate to communities the broad range of work we carry out every day. Similarly the Sky series UK Border Force (broadcast on Sky and Freeview channels) has helped enormously to raise our profile with the public as a law enforcement body with powers to detain and arrest. This has reached UK audiences in excess of 10 million over the course of the two series.

46. The need to target specific sectors of the media is already reflected in our existing practices as news announcements from across the Home Office are routinely sent to the BME media. However their decision to publicise this news depends on whether they believe it to be of interest to their readers. Additionally the media engagement team in the Home Office Press Office are working to engage with specialist, consumer and BME media on specific issues. For example, as part of the recent public consultation about introducing a points test for citizenship, we sought to engage with the BME media as part of our communication engagement strategy. The Immigration Minister Phil Woolas wrote an article for the Asian newspaper Eastern Eye outlining our proposals and was also interviewed on Sunrise Radio, an Asian radio station.

47. The new powers to search for nationality documents are only one of a number of enforcement tools available to the UKBA and the police. As we have already explained we are committed to ensuring that the new powers are understood by local communities. However, we believe that this would be best achieved through targeted local community engagement and regional media rather than a national media campaign. In line with existing practice, outlined above, regional media should be the vehicle for communicating the impact of the new powers where they lead to the successful removal of harmful individuals from the local community. Ultimately it is a matter for UKBA’s regional press teams and individual police forces to determine their local media priorities, but where it is appropriate to do so we will provide the necessary support to maintain a consistent approach and ensure that all members of the community understand the impact and benefits of the powers on the safety of their community.

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

48. UKBA fully supports the recommendation that the powers should only be used by officers who have been trained in the use of the powers. This is consistent with the undertaking that Ministers have given to Parliament that no Immigration Officer will exercise the powers to search persons and premises and seize and retain relevant material unless they have been properly trained to do so and have been designated by the Director.

49. Piloting the power in two phases has enabled us to develop, review and update the training material that will be made available to operational officers as part of any national roll out of the powers to ensure that the powers are used appropriately. Material has been developed
50. However, we do not believe that the powers should only be used by specialist search teams. This would be contradictory to the modernisation agenda which gives Chief Officers discretion to make best use of police resources by enabling appropriate individuals to be designated with the powers necessary to carry out specified law enforcement functions. This need for operational discretion is established within the UK Borders Act itself as section 47 of the UK Borders Act amends the Police Reform Act 2002 to enable Chief Constables to empower Designated Investigating Officers to use the powers.

51. We cannot support any suggestions that would unreasonably impact upon a Chief Officer's ability to determine the most appropriate deployment of their resources to meet the operational needs of their force. This principle applies equally to UKBA as we do not want to prevent the agency from being able to develop operational practices that make best use of our front line resources in the future. However, it must be stressed that at this time there are no plans to allow anyone other than arrest trained immigration officers to use the powers.

52. Understandably the EIA recommendation focuses on the UK Borders Act powers but it must be recognised that immigration and police officers already exercise a broad range of enforcement powers, including other powers of entry, search and seizure. Although this is a new power it builds on the existing framework of powers and there is a clear need to maintain a consistent approach rather than develop a different framework that would create confusion for operational officers and the public. Processes to execute the new powers are consistent with existing practice and guidance relating to existing powers of search.

53. The key to ensuring that the powers are exercised fairly and appropriately is through effective training and ensuring that any officers who are permitted to use the powers are assessed as being trained, suitable and capable to do so.

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.

54. During the passage of the UK Borders Act through Parliament, Ministers made a clear commitment to ensure that the powers would be piloted in a number of areas before they would be rolled out nationally. The initial pilot in the Metropolitan Police area was limited to Operation Swale teams (joint teams of immigration and police officers) in three Borough Command Units.

55. To ensure that the powers will be used appropriately and fairly a second phase pilot was carried out to test the use of the powers in two LITs and two police stations (as well as a further joint ops team). This has enabled us to fully assess the use of the powers in different operational environments and ensure that any lessons learned are taken into account in the training and implementation materials that have been developed to support national roll-out of the powers.

56. We do not envisage that all immigration and police officers will begin using the powers on 1 April 2010. What has been agreed with Ministers, and with ACPO and NPIA, is that the powers will be available from 1 April 2010 but that officers may only use the powers once they have been trained. This will allow individual areas to effectively plan their timetable for implementation and training. During that period we will work with operational colleagues to
address any key issues that arise during implementation and disseminate emerging best practice.

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.

57. Risk assessment is embedded within existing UKBA processes and procedures. UKBA enforcement officers receive guidance and instruction on how and when to complete risk assessments during their induction training. This subject is revisited during Arrest Training, Operational Leadership and Method of Entry.

58. Individual responsibility and accountability for ensuring risks are managed effectively for all operations remains with the officer in charge (OIC). The OIC will be responsible for the job specific risk assessment and introducing any new control measures which will minimise and manage the risk(s) associated with the visit. Dynamic Risk Assessment (DRA) during the visit will be essential to ensure the UKBA duties of care issues are considered. DRA is simply the continuous assessment of risk in the rapidly changing circumstances of an operational incident, in order to implement the control measures necessary to ensure an acceptable level of safety. The assessment of risk in dynamic situations is undertaken prior, during and after the execution of an operation. The benefits of proceeding with a task or operation must be weighed carefully against the risk.

59. Published guidance (see hyperlink in paragraph 36) sets out the current UKBA policy and legal framework that applies when dealing with other individuals who are encountered during the course of a search. The guidance is clear that other individuals should only be invited to answer questions about their immigration status if there are reasonable grounds to suspect that they are immigration offenders or, where the purpose of the visit is to locate a named offender, to eliminate them from enquiries.

60. Therefore we believe that sufficient systems are in place to ensure that risks are managed dynamically throughout the course of an operation and that the impact on other family members should be minimal unless there are grounds to suspect that they are an immigration offender, in which case UKBA would be expected to investigate that individual’s status.

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.

61. As with all public bodies that exercise coercive enforcement powers it is vital that UKBA is fully accountable and has systems in place to ensure that lessons learned feed into operational best practice. Integral to that is the need to ensure that all complaints are properly examined with a view to ensuring that UKBA is complying with its statutory duties under equality and human rights legislation. There are comprehensive oversight mechanisms governing the handling of complaints against the UK Border Agency.

62. Any complaint received which includes an implicit or explicit allegation of racism or other discrimination is assessed by the relevant Customer Service Unit (CSU) which manages and monitors customer complaints in that region or operational business area. To ensure best practice the CSU uses the Independent Police Complaints Commission’s (IPCC) assessment criteria to determine whether a complaint genuinely does demonstrate discrimination, or whether there is strong evidence to suggest the Agency’s actions can be accounted for by other factors.
63. Any complaints alleging serious misconduct by a member of staff are forwarded by the CSU to UKBA’s Professional Standards Unit (PSU) which is a central team independent of business areas and made up of 15 specialist investigators trained by the police (or approved bodies) to appropriate national standards. The PSU ensures that serious misconduct allegations are investigated quickly, professionally, consistently and to high standards.

64. The PSU will always undertake a formal investigation where explicitly racist statements or clearly racist behaviour are alleged. PSU records key information about all complaints which are formally investigated to allow analysis for trends, including those of racism or other discrimination. Importantly, the Policy, Oversight and Best Practice Unit reviews the findings and recommendations of all serious complaints investigations to look for trends and identify/recommend ‘lessons learned’.

65. Further assurance of the most serious cases (arising in England and Wales) is provided by the IPCC who oversees serious complaints, incidents or conduct allegations relating to UKBA staff exercising immigration, asylum and customs functions in England and Wales. The criteria for a mandatory referral to the IPCC requires that the matter must involve one of the following: a death or serious injury; serious assault; serious sexual offence; serious corruption; criminal offence aggravated by discriminatory behaviour; or any incident which engages Articles 2 (the Right to Life) or 3 (against inhuman or degrading treatment) of the European Convention on Human Rights and in the case where it relates to exercise of immigration and/or asylum functions involves the exercise of a specified enforcement function. The list of specified enforcement functions includes powers of arrest, entry, search and seizure.

66. Once a referral has been made by UKBA, the IPCC will decide whether it will investigate the complaint independently, or manage or supervise the investigation of a complaint by the police or by PSU. They may also refer the case back to UKBA or request a local investigation be undertaken.

67. Similar independent oversight arrangements are planned for serious complaints, incidents or conduct matters that arise in Northern Ireland. Provisions in the draft Immigration (Simplification) Bill will introduce a specific role for the Police Ombudsman for Northern Ireland. Legislation already allows the Police Complaints Commissioner for Scotland (PCCS) to enter into an agreement with the Secretary of State (with the approval of Scottish Ministers) in order that he may review UKBA’s handling of certain complaints involving the exercise of specified enforcement functions. Work to finalise that agreement is now complete and Ministers have agreed the content. Arrangements are being made for the signing of the agreement during March 2010.

68. The independent oversight arrangements detailed above are supplemented by the Parliamentary and Health Service Ombudsman’s remit. The Ombudsman can look into complaints about a service provided by UKBA when the matter is referred to her by an MP.

69. The integrity of UKBA’s complaints procedures are also subject to the scrutiny of the independent Chief Inspector of the UK Border Agency. Under section 48 of the UK Borders Act 2007 the Chief Inspector has a duty to monitor and report on the efficiency and effectiveness of the Agency. The Act itself sets out key aspects of the agency’s performance that the Chief Inspector must consider and make recommendations about. This includes:

- compliance with law about discrimination
• practice and procedure in relation to the exercise of enforcement powers (including powers of arrest, entry, search and seizure), and
• the handling of complaints

70. The Chief Inspector has recently completed a thematic review of the way in which the Agency handles complaints. The Chief Inspector’s report, which is due to be published later in 2010, will be carefully considered by UKBA and our response to his findings and recommendations will be also be published to ensure transparency and openness.

71. Therefore we believe that there are sufficient systems in place to ensure that UKBA’s complaints procedures are suitably robust to ensure that all complaints are properly and appropriately assessed in line with established national standards and best practice.

**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

**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

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

72. With regards to the new search powers we fully agree that officers should only be able to use the new powers after they have received appropriate training. The materials that have been developed during the pilots place a clear emphasis on the safeguards that are in place to ensure that the powers are used fairly and appropriately. However, this training material must be considered against the context of existing UKBA training on equality and human rights.

73. UKBA enforcement officers receive guidance and instruction on how and when to consider diversity issues working towards equality of treatment towards members of the public during their induction training. This subject is revisited during Arrest Training.

74. Diversity is at the heart of the Home Office’s existing training agenda. In May 2007 the Permanent Secretary, David Normington, published the Department’s Three Year Diversity Strategy. This acts as a strategic driver to help secure an integrated and systematic approach to equality and diversity, across all business areas, within the Home Office Group. It includes the following strategic aims:

• effective Home Office implementation of statutory obligations on equality and diversity; and
• services delivered in a way that promote equality and respect

75. Progress on all aspects of the strategy are measured on a quarterly basis and significant progress has been achieved across all the strategic aims. For example, virtually every part of UKBA is now represented within a senior Equality and Diversity Action Group (EDAG) and these groups have taken the lead in driving real change and accountability across our roles as policy maker, service provider and employer.

76. We are currently working with Home Office colleagues to review the Three Year Diversity Strategy. As part of that work we are assessing the impact of the strategic aims –
specifically how effective they have been in helping business areas drive and embed equality and diversity within all aspects of their business. The revised strategy will be launched in May 2010 and we anticipate that service delivery will be given a high profile.

77. UKBA’s commitment to equality and diversity is also reflected in our ‘Race, Disability and Gender Equality Scheme 2008 – 09’, which states:

“We are determined to embed equality and diversity within all aspects of our business as an employer, policy-maker and service provider. We are totally committed to the Home Office Three Year Diversity Strategy which was launched by David Normington in May 2007. This has put in place an effective framework which ensures that there is a consistent approach across the Home Office to delivering and reporting on all aspects of equality and diversity. We will continue to drive full compliance with our legislative responsibilities and will seek to go further to truly put equality at the heart of all we do.”

78. The existing scheme is currently being reviewed in the light of the expected single equality legislation. Our revised scheme, which will be published in May 2010, will be sharper and adopt a much clearer strategic focus. There will be approximately eight objectives for the whole of UKBA which will form part of our business objectives. They will be outcome based and progress will be monitored and measured on a quarterly basis. We are currently consulting with internal and external stakeholders to ensure that these equality objectives are developed to have maximum impact on our business.

79. While we recognise the analysis of the diversity training that was examined as part of the EIA process it must also be acknowledged that those training products were designed to be applicable to the whole Home Office group, which covers a broad range of policy and service delivery areas. Therefore it was not the purpose of those training products to deliver diversity training that was focussed specifically for front line operational staff within UKBA.

80. However, the Diversity Learning Programme will be reviewed and the findings of the EIA will be considered as part of the evaluation process. We will seek to undertake an initial scoping phase for the review in early 2010 and the future development of any goods, facilities and services training will be dependent on the outcome of the evaluation. If any further Equality and Diversity training is produced UKBA has its own internal experts and legal colleagues who will ensure that it is properly quality assured.

81. UKBA are committed to ensuring that these powers are used fairly and that individuals are not discriminated on the basis of their ethnicity. As part 31.19.4 of the Enforcement Instructions and Guidance states “In order to comply with the RRA 1976, an IO must not engage a person on the basis of their appearance, race, colour, ethnic origin or nationality.” The guidance and training materials that has been produced to support roll out of the powers to the police and UKBA explicitly states that every case must be considered on its individual merits and that the grounds for suspicion that an individual is not a British citizen must be based on a range of factors which includes, but is not limited to:

- responses to questions about their nationality
- ability to provide contact details for others who can corroborate their claims
- inability or unwillingness to provide evidence of nationality
- language
- the bona fides of their stated identity based on documentary or other evidence
82. Separate to the training issues relating to the new powers this is a range of wider diversity training and guidance that is currently being considered by UKBA. For example, the Professional Standards team are currently reviewing and updating a diversity booklet, based on best practice that has been developed by Avon and Somerset Police, which it is proposed will be made available to all UKBA staff. In addition, colleagues in the Midland and East region are leading on a piece of work that is drawing together suitable training material from operational colleagues from diverse backgrounds. The findings of that work will inform the potential to develop a draft framework for future cultural awareness sessions for staff across the region. Once successfully piloted in the region we will look to roll out these sessions across the operational estate.

**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.

83. A key element of the new powers has been the need to ensure that the framework for the powers is consistent with other powers exercised by the UKBA and the police. The recommendation proposes a reporting structure that would be more burdensome and bureaucratic than that required under the PACE framework for all existing powers of entry, search and seizure. Given the limited use of the powers and the positive findings of the pilot it is also felt that such a reporting structure would be disproportionate, especially when the wider safeguards are considered.

84. It should be remembered that enforcement powers are already subject to significant oversight and accountability. For example, under the legislation the power may only be used with prior authorisation from a senior officer. Searches of other premises may only be carried out under warrant from a Justice of the Peace who must be satisfied that the individual may not be a British citizen, nationality documents relating to the individual may be found on premises specified in the application, the documents would not be exempt from seizure and:

- it is not practicable to communicate with any person entitled to grant entry to the premises;
- 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;
- entry to the premises will not be granted unless a warrant is produced, or
- 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.

85. Once the warrant has been executed or expired it must be endorsed and returned to the issuing court showing:

- if any articles specified in the warrant were found
- if any other articles that were seized
- the date and time the warrant was executed and if present, the name of the occupier (or if the occupier is not present the name of the person in charge of the premises)
• the names of the officers who executed it and any authorised persons who accompanied them;
• if a copy, together with a copy of the Notice of Powers and Rights was handed to the occupier or left on the premises (and where).

86. The general safeguards under PACE that ensure accountability also apply, for example:
• the occupier must be given a notice which sets out the power and authority under which the search is made, the extent of the powers and the rights of the occupier and the owner of any seized property
• once the search is complete the officer in charge must make a record of the search detailing:
  - the premises searched
  - the time and date of the search
  - the power used
  - the details of the officers who carried out the search and the names of people of the premises
  - any items that were seized
  - how the search was conducted including whether force was used and why

87. In addition, any officer within UKBA Immigration Group must submit a report detailing any use of force. These notifications are recorded and retained centrally and an annual report created to highlight trends. From April 2010 a monthly panel consisting of officers from the National Arrest Team Coordinator (responsible for strategy and tactics), the Operational Support Unit (responsible for delivering training to arrest trained staff) and The Office of the Children’s Champion will review the last 30 day’s notifications and will highlight any issues identified.

88. Existing UKBA processes require a mandatory operational debrief to be carried out after each operation. That process examines what went well and identifies any lessons learnt that need to be escalated to senior managers to inform operational and policy development.

89. We therefore propose that, in line with existing powers, the driver for reviewing and monitoring the use of the power will rest primarily with operational supervisory staff and the existing inspectorate and complaints handling structures. These existing structures ensure that any lessons learned are shared and applied across the organisation.

**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.**

90. The initial Home Office EIA produced for Parliament is already published on the UKBA website. To ensure openness and transparency we will also publish the initial and final EIAs, produced by Diversity Solutions, and our response to the final EIA on the UKBA website at:


91. The availability of these documents will also be flagged to all colleagues who are responsible for taking forward delivery of the community engagement recommendations to ensure that local communities are aware of, and can access, the EIAs.
92. Following the second phase of the pilot, the EIA was submitted to Home Office ministers to determine whether or not the powers should be rolled out nationally.

93. As the EIA recognises the very nature of the power, and the issue it seeks to address, means that the power will almost certainly impact the BME community disproportionately. Therefore the key issues that have been tested throughout the EIA and pilot processes and the findings are:

- Has the pilot indicated that the safeguards associated with the power are sufficiently robust to prevent abuse of the power?

94. The safeguards on the face of the Act and the requirement to check existing systems to determine whether nationality can be ascertained before the power is authorised mean that in all cases the powers were only exercised where nationality was in doubt and could not be verified by other means.

95. When considered in the context of the wider enforcement activity that took place in the pilot sites the powers were only applied in relation to approximately 2.2% of the overall number of arrested foreign nationals.

96. Additionally the powers must also be exercised under the wider framework of safeguards provided by PACE which applies in relation to all powers of entry, search and seizure. For example, where entry is made without warrant:

- prior written authority must be obtained from a senior officer
- the officer in charge should:
  - first try to communicate with the occupier or any other person entitled to grant access to the premises to explain the authority under which entry is sought and to ask the occupier to allow entry
  - identify themselves, show their warrant card and state the purpose and grounds for the search
  - identify anyone else who is accompanying them on the search
- reasonable and proportionate force may only be used if it is necessary to enable entry and maintain the integrity of the search
- the occupier must be given a notice which sets out the power and authority under which the search is made, the extent of the powers and the rights of the occupier and the owner of any seized property
- the premises may only be searched to the extent necessary to achieve the object of the search
- the search may not continue once the object of the search has been achieved or once the officer in charge of the search is satisfied that the object of the search is not on the premises
- the search must be conducted with due consideration to the property and privacy of the occupier and with no more disturbance than necessary
- once the search is complete the officer in charge must make a record of the search detailing:
- the premises searched
- the time and date of the search
- the power used
- the details of the officers who carried out the search and the names of people of the premises
- any items that were seized
- how the search was conducted including whether force was used and why

97. Therefore we are satisfied that the existing safeguards are sufficient to protect the public and prevent abuse or arbitrary use of the power.

- **What other steps need to be taken to minimise the possible negative impacts of the power?**

98. The pilots have demonstrated that the use of the powers have a positive, rather than negative, impact on communities by enabling police and UKBA to identify and subsequently remove foreign national prisoners that cause harm.

99. However, the need to engage with communities is clear and the recommendation that Local Immigration Teams should engage with Independent Advisory Groups has been agreed with ACPO and has been fed into the current ACPO review of IAGs. The broad purpose of the review is to identify existing IAG practice across all police forces in England and Wales and to establish a clearer structure and framework that will enable IAGs to engage effectively and consistently with the police. Clearly IAGs will continue to exist primarily to increase trust and confidence in the police and improve delivery of police services but ACPO has also acknowledged that developing a clearer framework for IAGs will also improve the ability for wider stakeholders and enforcement agencies to work with the police in engaging with the communities they serve.

100. The significant safeguards that are in place and the need to comply with equality and diversity legislation is strongly emphasised in the guidance and training material that will be used to roll out the power.

101. Should any issues surrounding the powers emerge in the course of the roll out these will be picked up by existing systems and structures that are in place to ensure accountability and scrutiny of the exercise of enforcement powers.

102. The UKBA remains committed to keeping operational training under review to ensure it complies with human rights legislation and best practice.

- **Has the power enabled the foreign nationals to be dealt with more effectively within the criminal justice system?**

103. The pilot has shown that where the power is used effectively it closes the previous gaps that hindered the police in being able to identify the nationality of suspects arrested for non-immigration offences. The pilot has also shown that the powers enable UKBA and joint operations teams to take action to ascertain nationality at an earlier stage in the process which reduces the time that people spend in custody and associated costs and risks.

104. Although it is too early to fully assess the impact of the second phase of the pilot in terms of deportations and removals the first phase of the pilot clearly demonstrated that the new
powers significantly improve the ability for the police, UKBA and the wider criminal justice system to effectively deal with foreign nationals who either present a danger to communities or are here unlawfully and should be removed.

105. Given the findings of the EIA and the pilots we are satisfied that, subject to ongoing implementation of the UKBA response to the EIA recommendations, the powers have been found to be appropriate and proportionate and should be rolled out nationally as soon as possible.
44 Search for evidence of nationality

(1) This section applies where an individual has been arrested on suspicion of the commission of an offence and an immigration officer or a constable suspects—

(a) that the individual may not be a British citizen, and

(b) that nationality documents relating to the individual may be found on—

(i) premises occupied or controlled by the individual,
(ii) premises on which the individual was arrested, or
(iii) premises on which the individual was, immediately before being arrested.

(2) The immigration officer or constable may enter and search the premises for the purpose of finding those documents.

(3) The power of search may be exercised only with the written authority of a senior officer; and for that purpose—

(a) “senior officer” means—

(i) in relation to an immigration officer, an immigration officer of at least the rank of chief immigration officer, and
(ii) in relation to a constable, a constable of at least the rank of inspector, and

(b) a senior officer who gives authority must arrange for a written record to be made of—

(i) the grounds for the suspicions in reliance on which the power of search is to be exercised, and
(ii) the nature of the documents sought.

(4) The power of search may not be exercised where the individual has been released without being charged with an offence.

(5) In relation to an individual “nationality document” means a document showing—

(a) the individual's identity, nationality or citizenship,
(b) the place from which the individual travelled to the United Kingdom, or
(c) a place to which the individual is proposing to go from the United Kingdom.

45 Search for evidence of nationality: other premises

(1) This section applies where an individual—
(a) has been arrested on suspicion of the commission of an offence, and
(b) has not been released without being charged with an offence.

(2) If, on an application made by an immigration officer or a constable, a justice of the peace is satisfied that there are reasonable grounds for believing that—

(a) the individual may not be a British citizen,
(b) nationality documents relating to the individual may be found on premises specified in the application,
(c) the documents would not be exempt from seizure under section 46(2), and
(d) any of the conditions in subsection (3) below applies,

the justice of the peace may issue a warrant authorising an immigration officer or constable to enter and search the premises.

(3) The conditions are 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.

(4) Sections 28J and 28K of the Immigration Act 1971 (c. 77) (warrants: application and execution) apply, with any necessary modifications, to warrants under this section.

(5) In the application of this section to Scotland a reference to a justice of the peace shall be treated as a reference to the sheriff or a justice of the peace.

46 Seizure of nationality documents

(1) An immigration officer or constable searching premises under section 44 or 45 may seize a document which the officer or constable thinks is a nationality document in relation to the arrested individual.

(2) Subsection (1) does not apply to a document which—

(a) in relation to England and Wales or Northern Ireland, is subject to legal professional privilege, or
(b) in relation to Scotland, is an item subject to legal privilege within the meaning of section 412 of the Proceeds of Crime Act 2002 (c. 29).
(3) An immigration officer or constable may retain a document seized under subsection (1) while the officer or constable suspects that—

(a) the individual to whom the document relates may be liable to removal from the United Kingdom in accordance with a provision of the Immigration Acts, and

(b) retention of the document may facilitate the individual's removal.

(4) Section 28I of the Immigration Act 1971 (c. 77) (seized material: access and copying) shall have effect in relation to a document seized and retained by an immigration officer.

(5) 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)) (seized material: access and copying) shall have effect in relation to a document seized and retained by a constable in England and Wales or Northern Ireland.

47 Police civilians

In Part 2 of Schedule 4 to the Police Reform Act 2002 (c. 30) (powers exercisable by police civilians: investigating officers) after paragraph 18 (entry and search after arrest) insert—

“18A Entry and search for evidence of nationality after arrest

Where a designation applies this paragraph to any person—

(a) sections 44 to 46 of the UK Borders Act 2007 (entry, search and seizure after arrest) shall apply to that person (with any necessary modifications) as if a reference to a constable included a reference to that person, and

(b) a provision of the 1984 Act which applies to constables in connection with any of those sections shall apply (with any necessary modifications) to that person.”
ANNEX B

EXAMPLE PRESS RELEASES

Migrant workers set to benefit from new project
29 October 2009

Goole's migrant worker communities are set to benefit from a new project which aims to help them access local services and overcome language barriers, after the East Riding of Yorkshire Council received a portion of government funding.

The council is one of several local authorities in the-country to receive a share of money for the project, funded by taxes paid by migrant workers when they first enter the UK.

The project will see a team of outreach workers act as a link between migrant worker community and local service providers, ensuring their needs are met.

The range of service providers include NHS organisations, Humberside Police, Humberside Fire and Rescue Service and the council.

The team of outreach workers, to be based at the Adult Education Centre on Stanhope Street in Goole, consists of three part-time employees who speak a variety of languages between them including Portuguese, Polish and Russian. This will, it is hoped, enable the various community groups to communicate effectively.

There are also plans to work with local community groups and provide opportunities for local residents to get involved and make new friends.

Outreach coordinator Paul Tricker said: "Due to the fact that we are a totally new team, our role is very much a blank canvas and that's really exciting.

"We are trying to get out and meet people to forge links with the local communities, and we'll be drawing up a list of priorities that we need to address over the coming weeks and months."

The project is managed by Humber All Nation Alliance.

The initial funding bid was submitted by manager of East Riding Local Strategic Partnership, Carl Duck. Mr Duck said: "We know a significant number of people from eastern and central Europe have moved to Goole in the last three or four years and, up until recently, there was very little support in place to help them integrate into community life.

"We are delighted to have the new outreach team on board and are confident that it will make a real difference to the people."

Stockport man arrested as people smuggling ring smashed
November 17, 2009

A man from Stockport has been arrested as part of a huge investigation into people smuggling.

The 24-year-old, from Edgeley, was one of five men arrested in the UK by the Serious Organised Crime Agency (SOCA) after a probe into an international crime network suspected of trafficking thousands of illegal immigrants into Europe.

He was due to appear at City of Westminster Extradition court tomorrow.

In other simultaneous raids, 13 suspects were arrested in France, two in Greece, two in Holland, and one in Italy.

A number of illegal immigrants were also detained - including six in the UK. Iraqi Kurdish and Afghan people smugglers were the focus of the investigation, which was led by the French Central Office for the Repression of Illegal Immigration and Employment of Foreigners without Residence Permits (OCRIEST).

5 Goole Times, 29 October 2009
6 http://www.manchestereveningnews.co.uk/news/s/1182852_stockport_man_arrested_as_people_smuggling_ring_smashed
It was supported by numerous law enforcement agencies.

The criminal network is believed to have smuggled around 2,000 illegal immigrants, mainly from Iraq and Afghanistan, into and through Europe to a number of destinations including the UK.

**Intelligence**

After gathering intelligence and conducting surveillance on the UK suspects, SOCA executed five European Arrest Warrants on behalf of the OCRIEST.

The others arrested were a 40-year-old from Birmingham, a 21-year-old from Gloucester, a 29-year-old Leeds, and a 38-year-old from Glasgow.

Officers from the UK Border Agency and local police forces were also involved in the raids and are continuing to assist SOCA.

Searches are underway at the addresses to obtain evidence in support of the investigation.

So far £14,000 in cash has been seized along with identity documents, sim cards and mobile phones.

SOCA Deputy Director Mark Phillips said: "This is a cynical, sordid crime which treats people as commodities to be exploited for profit. The harm it causes affects individuals, communities and the UK as a whole.

**Criminal network**

"We believe this criminal network was charging up to 4,000 Euros for a door-to-door service. The message today is clear - the UK is part of a global law enforcement family which will not tolerate people smuggling. Working with our national and international partners, SOCA will find you and we will stop you."

UK Border Agency Director of International Liaison and Intelligence, Tony Walker, said: "People smuggling is a heinous crime, preying on the vulnerable and making money from the misery of others.

"The message is clear that the only way to live and work in the UK is by legal routes. Last year UK Border Agency staff stopped more than 28,000 attempts to cross the Channel illegally.

"We want to protect vulnerable individuals from people traffickers while striking at the heart of smuggling rings. Today's raids and arrests demonstrate that co-ordinated European-wide operations are underway to destroy organised trafficking gangs and prosecute smugglers."

**Three arrested in immigration swoop**

*9:46pm Thursday 12th November 2009*

Kitchen workers at a popular Cantonese restaurant who are suspected of working there illegally were arrested this evening after a swoop by officials.

Immigration officers and police, wearing body armour, arrested three people as they prepared evening meals at Tam’s Cantonese Cuisine in High Street, Crosshills, near Keighley.

Two men, aged 36 and 44, and a 27-year-old woman were taken into custody. Another 25-year-old man, who was already reporting to the UK Border Agency, will have his case reviewed, a spokesman said.

All four were Chinese and understood to be failed asylum seekers.

A notice of potential liability was served on their employer, who could be hit with a £40,000 fine – £10,000 for each worker – if found guilty of breaching immigration laws. Tonight’s raid started just after 7pm when a team of eight immigration officers and four police ran into the restaurant’s foyer and upstairs to where about five people were eating.

Some officers brought the kitchen staff, who were later arrested, out of the downstairs kitchen and took them upstairs for questioning. They marched them out of the restaurant and into an unmarked van before taking them away. Those held will be questioned further and some may be deported.

John Barraclough, of Oakworth, Keighley, was waiting to eat with his wife Sarah and 14-month-old daughter Sophie when the officials raided the restaurant. He said: "We had already ordered our meal and the officers just came in and started looking in the toilets and behind the bar.

“The next thing we knew, the staff were being interviewed and were then carted off. We were sitting there for more than an hour and still hadn’t eaten.”

A UK Border Agency spokesman warned restaurants it would crack down on those ignoring the rules.

Steve Lamb, regional operations director of the UK Border Agency in the North East, Yorkshire and the Humber, said: “As this successful operation shows, we will act on intelligence to target those businesses that ignore the rules and remove those with no right to be in the UK.

“There are simple ways of checking a foreign national’s right to work and there is no excuse for not checking the identity of those applying for jobs.

“We support and encourage employers to comply with the rules but when they fail to do so it is right that we crack down on them.”