



DRAFT REGULATORY IMPACT ASSESSMENT

POLICE AND JUSTICE BILL: SIMPLIFYING POLICE POWERS OF STOP AND SEARCH AT AIRPORTS

1. Title of proposal: *Simplifying police powers of stop and search at airports*

Introducing a new power to enable police to stop and search any person or vehicle in any area of an airport, whether designated or non-designated, where they have reasonable grounds to suspect that criminal activity has, or is about to take place.

2. Purpose and intended effect

2.1 Objective

2. The objectives of this proposal to simplify the powers available to police at airports are:

- To reduce airside theft
- To reduce opportunities for terrorist activity in the UK
- To reduce smuggling of prohibited goods

2.2 Background

Powers currently available to the police to prevent crime at airports

3. The Terrorism Act 2000 provides the police with unfettered stop and search powers for the prevention of terrorism and arrest powers where police reasonably suspect a person to be a terrorist. In terms of dealing with criminal offences, however, different powers of stop, search and arrest apply to different airports in different circumstances.

4. Police powers at airports are drawn from a number of Acts and byelaws which have been amended over time to form a complex web of legislation. Confusion and gaps in police powers at airports means that relatively minor criminal activity may go undetected. In addition to the obvious implications that this has in terms of general crime prevention, this criminal activity also provides opportunities that could be exploited by terrorists with disproportionate consequences.

5. There are differences between police powers at designated airports and police powers at non-designated airports.¹ Section 27 of the Aviation Security Act 1982 gives powers, at the nine designated airports only, to a police constable who has reasonable suspicion that a passenger or airport employee may have stolen or be conveying something stolen from the airport, to stop and search that person or any vehicle. Police operating at non-designated airports do not enjoy these powers.

6. Other gaps in the powers currently available to police include an inability to stop and search members of the public and airport employees for stolen or prohibited articles in certain areas of the restricted zone and cargo areas. Police enjoy different powers in different areas of individual airports. In some cases these areas are not physically delineated. For example, within the Restricted Zone airside areas:

- Some of the airside area is a 'public place' since members of the public have access 'on payment or otherwise'. PACE powers could be used in these areas.
- Other areas of the airport are private areas which are used by private companies and not to be accessed by the public. PACE powers do not apply here.

7. In short, at present the following gaps exist in the powers that are available to police at airports:

- No powers to search staff and visitors leaving airside via staff exits (to prevent thefts);
- No powers to stop and search members of the public for stolen or prohibited articles in certain areas of the restricted zone (to prevent theft and smuggling);
- No powers to stop and search members of the public for stolen or prohibited articles in cargo areas (to prevent theft and smuggling);
- No powers in the restricted zone to determine the reasons why a person is on, at or near an airport.

2.3 Rationale for Government Intervention

8. There seems to be a growing acceptance that, at airports, relatively minor criminality provides opportunities that could be exploited by terrorists with disproportionate consequences.

Sir John Wheeler's report

9. In May 2002 Sir John Wheeler was appointed by the Home Secretary and the Secretary of State for Transport to undertake a review of security at airports within the UK, including the threat from serious and organised crime, with particular reference to the role of the Police Service. Sir John was also asked to consider how security arrangements can best be delivered and to make recommendations regarding future organisation and structure, including the need for any legislative change.

¹ Nine airports have been designated for uniformed policing purposes under the Aviation Security Act 1982. These are Heathrow, Gatwick, Stansted, Birmingham, Manchester, Glasgow, Edinburgh, Prestwick and Aberdeen.

10. Sir John recommended a multi-agency approach to airport security. To this end, the Home Office and Department for Transport have established Multi Agency Threat and Risk Assessment (MATRA) working groups at 35 airports around the UK with the following terms of reference:

- To consider criminality at the airport;
- To consider how that criminality could create opportunities for terrorists;
- To draw up action plans to deal with residual risks.

11. The groups (which consist of representatives of law enforcement agencies and airport representatives) have used an agreed methodology to map the threats, vulnerabilities and residual risks to the airport from both terrorism and criminal activity. The groups are now in the process of drawing up action plans to address the residual risks.

12. The Wheeler report also highlighted the confusion over police powers of stop and search at airports and what powers can be used where. During his consultation, Sir John received a number of requests for clarity over police powers to search staff and visitors leaving airside via staff exits. The primary purpose of such a power would be to prevent theft from the airport. As noted earlier, there is a growing acceptance that, at aerodromes, relatively minor criminality provides opportunities that could be exploited by terrorists with disproportionate consequences.

13. Sir John's report recommended that,

"the powers available to police officers at airports under the Aviation Security Act 1982 should be simplified. It is not clear why they should be limited to designated airports only and it seems sensible that there should be one set of powers that applies airside."

14. The report advised that this would require primary legislation.

15. MATRA groups consider that police powers to stop and search within the restricted zone at an airport will play a vital part in countering criminal activity.

Simplifying police powers of stop and search at airports

16. Police powers at airports need to be amended – existing gaps in those powers need to be plugged and the powers need to be simplified. Lack of appropriate stop and search powers have been a serious obstacle for police when conducting anti-smuggling operations and in detecting staff collusion and thefts. A new authority is therefore required to enable police to stop and search any person or vehicle in any area of an airport², whether designated or non-designated, where police have reasonable grounds to suspect criminal activity. This new power would reduce opportunities for criminal activity at airports and, in turn, simultaneously reduce opportunities for terrorist activity.

² EU reg 2320/2202 Article 2(1) uses the following definition: "airport" shall mean any area in a Member State which is open for commercial air transport operations.

3. Consultation

3.1 Within Government

17. We have discussed the proposals with police, Special Branch, Security Service, NCIS, Immigration Service, DfT, HM Customs and Excise, Treasury and Cabinet Office Better Regulation Executive.

18. A high level Quality Assurance Group was established to oversee the implementation of Sir John Wheeler's recommendations. Home Office, DfT, Special Branch, Police, Customs, Immigration, Security Service and NCIS were all represented within the Group. At this forum, the police argued the case for a general power to stop and search any person or vehicle in any area of an airport in respect of any crime. This is, in effect, the equivalent of Section 44 of the Terrorism Act 2000 which provides the police with powers to stop and search vehicles and persons for the prevention of terrorism. Unlike Section 44, however, the new power requested by the police would be available on a permanent basis and available in respect of any crime.

19. We are clear that there is a need for a power which enables police to stop and search any person or vehicle in any area of an airport, whether designated or non-designated, where police have reasonable grounds to suspect criminal activity. Although this power is not quite as extensive as the police would like, they have nevertheless welcomed the new power as greatly beneficial.

3.2 Public Consultation

20. We have consulted, airlines, airport operators and cargo operators through the Quality Assurance Group, which was established to oversee implementation of Sir John Wheeler's recommendations on airport security. We have also formally consulted ACPO, The Scottish Executive and the Northern Ireland Executive. All are content with the proposals.

21. This provision has also been cleared through the Policing Bureaucracy Gateway (PBG). The PBG has been established in line with Cabinet Office policy and with the support of the Home Secretary. Its purpose is to ensure that the impact of new policies and procedures on the frontline has been addressed. Members of the Gateway include the National Bureaucracy Adviser (an Assistant Chief Constable); representatives from Cabinet Office; Her Majesty's Inspectorate of Constabulary; the Home Office's Performance and Delivery Unit, Police Reform Unit and Research, Development and Statistics Directorate; and the Manual of Guidance Editorial Board.

22. The PBG cleared the proposal and indicated in feedback that it was likely to reduce bureaucracy in the police. They considered it would reduce the amount of queries received by senior officers at airports from frontline police officers querying which stop and search power they should use in a particular circumstance.

4. Options

Option 1- Do nothing

23. For:

- There is no obvious advantage in this option.

24. Against:

- The police claim that their current powers are not sufficient to provide comprehensive deterrence within the peculiarities of an airport, which is private property with restricted access. This provides significant opportunities for both criminal and terrorist activity.
- We have also been told anecdotally that at present, officers are using their powers under the Terrorism Act 2000 to prevent criminal activity where circumstances are such that it is difficult to disassociate terrorism from crime. This is an uncomfortable situation and we need to provide the police with a clear power to tackle the criminal activity noted above.
- Sir John Wheeler has recommended that changes are made to simplify the powers available to police officers at airports. Ministers have accepted his recommendations in principle.

Option 2 - Create a blanket power

25. ACPO (TAM) has asked for a blanket provision, similar to section 44 of the Terrorism Act 2000, to enable a constable to stop and search without warrant any person, and/or vehicle, in any area of an airport to ensure they are not in possession of any stolen property or illegal or prohibited item. The police argue that because of the special nature of airports, stronger police powers such as these are proportionate and necessary to prevent and detect the criminals likely to exploit the environment.

26. For:

- This would simplify the powers available to police at airports.

27. Against:

- It would be politically contentious and could be considered a disproportionate response to the actual problem.
- Industry has advised that this option would be strongly opposed by both industry and trade unions on industrial relations grounds - it would give police unfettered powers to target airport employees, among others, and such a wide power could easily be abused.

- Use of section 44 powers must be authorised by a senior police officer and confirmed by the Secretary of State within 48 hours. The powers cannot remain in force for longer than 28 days. To institute a blanket power analogous to Section 44 would therefore have significant bureaucracy and resource implications.

Option 3 - Designate all airports

28. By the Secretary of State designating all airports, the powers available under the Aviation Security Act 1982 would apply to all airports. This would enable a police constable who has reasonable suspicion that an airport employee or passenger may have stolen or be conveying something stolen from the airport, to stop and search that person or any vehicle.

29. For:

- Again, this would simplify the powers available to police at airports.

30. Against:

- This option has major resourcing implications. Currently, where an airport is designated, the costs of policing that airport fall to the airport management rather than to the state. Small airports in particular would bitterly oppose having to pay for a permanent police presence (the key feature of designation), which may be disproportionate to the risk of crime at many airports.³
- Gaps in police powers at airports would still remain, most significantly in the ability of police to stop and search in certain areas of the restricted zone and cargo areas.
- The affirmative resolution procedure applies if an airport is to be designated without the agreement of the airport manager.

Option 4 - Create a new stop and search power where police have reasonable grounds to suspect criminal activity

31. This proposal differs from the blanket power suggested at option 2 in that this power relies upon the police having reasonable grounds to suspect that criminal activity has or is about to take place. This is our preferred option.

32. For:

- This would go some way to delivering what the police are asking for. It would plug the gaps that currently exist in the powers available to police at airports and ensure that frontline police officers were clear about the powers available.

³ An independent review of policing at airports was announced by the Secretary of State for Transport on 21 November 2005. This will include the feasibility of the designation process. The report is expected to be completed by spring 2006.

- It would also fulfill Sir John Wheeler's recommendation that those powers be simplified.

33. Against:

- This measure is not as extensive as the police feel is necessary.
- It would require a change to legislation and could take some time to enact.

34. This stop and search power would be used in accordance with the guidance issued in the Stop and Search Manual which has been published jointly by Home Office, Association of Chief Police Officers and Association of police Authorities.

5. Costs and Benefits

5.1 Sectors and groups affected

35. This proposal will potentially impact upon all police forces in the UK and all employees, contractors and visitors to airports in the UK.

5.2 Benefits

Option 1 – Do nothing

36. There is no clear benefit in this option.

Option 2 – Create a blanket power

37. This would achieve the primary objective of simplifying the powers available to police at airports.

Option 3 – Designate all airports

38. Again, this would simplify the powers available to police at airports.

Option 4 – Create a new stop and search power where police have reasonable grounds to suspect criminal activity

39. Like options 2 and 3 above, this option would simplify the powers available to police at airports. The new power would put an end to confusion over what powers can be used by police to conduct stop and searches in certain areas of an airport. This should improve their ability to prevent crime at airports, such as theft from passengers and retail outlets and smuggling of prohibited goods. Preventing this kind of relatively minor criminal activity would also reduce opportunities that could be exploited for terrorist purposes.

40. The significant improvements in crime prevention and detection, which this measure should achieve, will contribute to the safety of passengers and staff at airports.

41. Reduced instances of theft should lead to a reduction in insurance claims. It may also result in increased levels of investment by companies at the airport on the basis that it is now a safer environment than it was previously.

5.3 Costs

Option 1 – Do nothing

42. The powers of stop and search currently available to police at airports are not sufficient to provide comprehensive deterrence of criminal activity. Instances of theft from passengers and retail outlets and smuggling of prohibited goods will therefore continue to go undetected. This has serious implications for both crime prevention and counter terrorism.

43. Sir John Wheeler's recommendations will not be fulfilled.

Option 2 – Create a blanket power

44. The wide scope of this power would render it a contentious move. It could therefore have significant political repercussions. As noted above use of section 44 powers must be authorised by a senior police officer and confirmed by the Secretary of State within 48 hours. The powers cannot remain in force for longer than 28 days. To institute a blanket power analogous to Section 44 would therefore have significant bureaucracy and resource implications for the police and Government.

45. This option may also have significant implications in terms of industrial relations on the grounds that police would have unfettered powers to target airport employees, among others, and such a wide power could easily be abused.

Option 3 – Designate all airports

46. This would have a serious economic impact upon all airports that are not currently designated. Obviously it would have a disproportionate impact upon the smaller airports which will have fewer resources and which will also probably be less at risk of criminal and terrorist activity and therefore less likely to benefit from the new measures.

Option 4 – Create a new stop and search power where police have reasonable grounds to suspect criminal activity

47. As the new power would provide an additional police tool, there may be opportunity costs where police are exercising these new powers and are therefore unavailable to undertake other tasks. However, this is a question of prioritisation for the police, which will depend upon the particular circumstances of the situation. Clearly it is preferable for the police to have the option.

48. The new power is required to plug the gaps (outlined in paragraph 7) which exist in police powers. These gaps, which allow minor criminality, could be exploited by terrorists with disproportionate consequences.

6. Small Firms Impact Test

49. No issues

7. Competition assessment

50. No issues

8. Enforcement , Sanctions and Monitoring

Enforcement

51. Not applicable

Sanctions

52. Not applicable

Monitoring and review

53. The impact of the new proposals will be monitored and reviewed through the crime statistics at the airport and discussion within the airport MATRA group.

54. The powers will also be monitored by the Stop and Search Action Team (SSAT) which was formed (from within the Home Office) in 2004 to take work forward to ensure that stop and search as a police power is used fairly and appropriately. The SSAT has significant input from the community. It is scrutinised by a Community Panel and is overseen by a Delivery Board evolved from the Lawrence Steering Group sub-group on stop and search.

9. Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed

Date

Hazel Blears, Minister of State, Home Office