



**FINAL REGULATORY IMPACT ASSESSMENT  
DATA CAPTURE AND SHARING POWERS FOR THE BORDER AGENCIES**

**PUBLISHED ON 28 FEBRUARY 2006**

## **Purpose and intended effect**

### **The Objective**

1. The e-Borders Programme will establish a modernised, intelligence-led border control and security framework, based on the electronic processing of information relating to travellers to and from the UK for all modes of transport. It will:-
  - Provide a co-ordinated and integrated approach to meeting the requirements of the border control, law enforcement, intelligence agencies and visa issuing agencies in relation to the entry and exit of people to the UK.
  - Enhance the security of the UK through the provision of improved intelligence and information on traveller movements throughout the travel cycle by the development of a multi-agency operational capability.
  - Provide the systems and services to support the operation of more efficient processes for the management of resources utilised on UK border control activity.
  - Provide technology systems and services to support the more efficient management of passengers through UK border control.
2. The measures to be introduced, which are contained in the Immigration, Asylum and Nationality ("IAN") Bill, will provide the Border Agencies with varying powers to capture passenger, crew and service data and also to specify the means by which this information is to be provided. Much of the detail of the powers will be implemented through secondary legislation. Further details on these measures can be found on pages 25-39.
3. We are also introducing data sharing provisions, which will facilitate the pooling and joint analysis of bulk data by the agencies, as well as a permissive power to disclose specified data to the Security and Intelligence Services, to the extent that the disclosure is necessary for defined purposes.
4. These legislative provisions, together with the implementation of e-Borders systems will support the "single window" for the provision of passenger, crew and service data by carriers to the Border Agencies. This will allow us to move away from the situation where carriers are obliged to respond separately to individual requests for similar data from each of the Border Agencies, whilst facilitating transparency of process and providing the necessary reassurances over compliance with data protection and human rights principles.

### **Background**

5. The exercise of an effective border control involves a number of key and frequently interdependent, although complimentary, components including the operation of Immigration and Customs controls, a counter terrorism strategy and initiatives to combat serious and organised criminal activity.
6. The Border Agencies have specific statutory functions and, broadly speaking, each agency relies upon different legislation to support its particular functions. One legislative provision common to all the agencies is the ability to require carriers to provide information on passengers travelling to (and in some cases from) the UK. The data elements and the timescales for request compliance differ from regulation

to regulation. In addition, the agencies have varying powers to require crew data. Such data can be used by the agencies for purposes including combating illegal migration and people-trafficking, child welfare, including statutory duties regarding wards of court, the apprehension of offenders (some of whom may be the subject of EU arrest warrants), national security and counter terrorism, counter proliferation and combating serious and organised crime.

7. The data acquisition powers are currently derived from:

- Paragraphs 27(2) and 27B of Schedule 2 to the Immigration Act 1971, and the Orders made there under (The Immigration (Particulars of Passengers and Crew) Order 1972, the Immigration (Particulars of Passengers and Crew) (Amendment) Order 1975 and the Immigration (Passenger Information) Order 2000)
- Customs and Excise Commissioners' Directions
- Schedule 7 to the Terrorism Act 2000 (information) Order 2002

8. Whilst the Border Agencies have access to these powers, each has implemented the provisions to a varying extent. Further information on this is available on pages 25-39.

9. Existing statutory gateways provide for the exchange of data between the Border Agencies and with other Government departments in certain circumstances. The gateways are derived from:

- Sections 20 and 21 of the Immigration and Asylum Act 1999
- Paragraphs 4(1) and 4(2) of Schedule 14 to the Terrorism Act 2000
- Section 19 of the Anti-Terrorism, Crime and Security Act 2001
- Section 20(4) of the Commissioners for Revenue & Customs Act 2005

10. Whilst statutory gateways have been developed to facilitate the sharing of information between border agencies, the decision whether to share or disclose information must be considered on a 'case by case' basis. Agencies may also rely upon certain information processing exemptions provided by the Data Protection Act 1998 but again, this is on a 'case by case' basis.

11. The provisions being introduced are a package of measures that will provide the legislative framework to support the data capture and sharing processes being introduced as part of the e-Borders Programme. It is expected that the secondary legislation required to implement the provisions will be in place by October 2006.

12. The routine implementation of the provisions to all carriers is planned for stages two and three of the e-Borders programme. The programme as a whole is designed for delivery in three stages from 2004 to 2014. In the interim the Border Agencies reserve the right to require passenger information in accordance with statutory powers. Please see the Implementation and Delivery Plan section for further details.

13. There are many key drivers influencing the development of the e-Borders proposal. Many of the drivers require a positive response to outside factors which cannot be managed with a 'do nothing' option.

14. In responding to these drivers, e-Borders seeks to move away from targeted use of the agencies' passenger information powers, towards the routine and

comprehensive capture of data, underpinned by the 'single-window' facility for carriers to provide passenger information to the Border Agencies

15. In 2004, there were around 200 million international passenger journeys to and from the UK, a figure which is expected to grow at around 5% per annum. This will result in between 400million and 600 million international passenger journeys per annum by 2030. Currently there are estimated to be 175m international migrants worldwide (more than doubled over the last 35 years), Europe is the major host area for them and human trafficking is a multi-billion dollar business<sup>1</sup>. Eliza Manningham-Buller, MI5 Director General has warned that the threat from international terrorism would be *"with us for a good long time"*. The cost to the UK of the terrorist attacks at Docklands, Bishopsgate and Manchester in the 1990s ran into hundreds of millions of pounds for each one. Throughout 2003 and early 2004, there was a catalogue of events which highlighted the danger to the UK and its partners. The attacks on London in July 2005 were a further illustration of the ongoing terrorist threats to UK interests. A recent Visit Britain report estimated the July attacks to have cost the UK £750m<sup>2</sup> in lost spending by international visitors alone. Lord Carlile who was appointed on 11 September 2001 to review the functioning of the Government's Terrorism Act and, later, the Anti-Terrorism, Crime and Security Act told Parliament that several aspects of security at ports and airports needed tightening. He stressed that the logging of passengers' details recorded by airline and ferry operators should show consistency, recording names, addresses, dates of birth and passport numbers as a minimum and concluded, *"It's impossible to provide a fool-proof system. But it should be a sieve with a finer mesh than we have got at the moment."* Terry Byrne, then Director General of H M Customs & Excise Law Enforcement has emphasised that most modern smuggling is carried out by well-financed international groups, using ever more sophisticated methods and generating huge illegal wealth. He has said that, *"We need a 21<sup>st</sup> century Customs service which can tackle the modern challenges of serious and large scale smuggling and security threats at the UK frontier."*

16. Against this background, we recognise that we must find ways for our border agencies- the Immigration Service, HM Revenue and Customs and the Police Service - to work together more effectively to protect our borders. In doing so we must ensure that legitimate trade and travel is processed with the minimum of inconvenience, whilst reducing the harm caused by organised crime.

17. On 29 March 2004 the Home Office published a consultation paper on organised crime: 'One Step Ahead: 21<sup>st</sup> Century Strategy To Defeat Organised Criminals' which recognised the need to ensure that the Border Agencies work together more effectively. The Border Agencies have been tasked with developing more closely aligned objectives and priorities and this work is being taken forward by the Border Management Programme, to ensure co-ordinated, strategically driven operational activity to protect our borders. A key area of this work involves traffic data capture and sharing, recognising that improvements here are fundamental to the ability of all the frontier agencies to identify and separate from the mass of legitimate traffic crossing our borders that which poses a risk. It makes sense, both for Government and for industry, for that data to be captured once and to then be made readily available for all frontier control purposes.

---

<sup>1</sup> International Organisation for Migration

<sup>2</sup>

<http://www.visitbritain.com/corporate/presscentre/presscentrebritain/pressreleasesoverseasmrkt/augoct2005/TierStatement.aspx>

18. A further White Paper, "Controlling our borders: Making migration work for Britain- a five year strategy for asylum and immigration" includes our e-Borders proposals, which will deliver an integrated secure border control system. At the heart of e-Borders is the ability to harness passenger information in order to provide Government and law enforcement agencies with a greatly enhanced capability to meet immigration, counter-terrorism, national security and law enforcement requirements.

19. It is important, therefore, to recognise the complimentary nature of the e-Borders and wider Border Management Programme initiatives. Also to acknowledge the link with other Government initiatives, such as the e-Frontiers Programme. e-Frontiers aims to transform HM Revenue & Customs' business capability for intelligence-led detection of prohibited and restricted cargo movements at UK frontiers by capturing data from carriers, storing it and allowing for both real-time targeting and historical data analysis to be carried out. The Police Service has indicated an interest in participating in e-Frontiers at an early stage and there is scope for wider Border Agency involvement.

20. The majority of the data sharing gateways which currently exist were drawn up before the kind of integrated closer working now demanded of the Border Agencies by the Government under the auspices of e-Borders and the Border Management Programme. Most current statutory powers are designed to enable the agencies to obtain information from each other to fulfil their own, individual statutory functions. They do not envisage the Border Agencies participating in joint activities for the greater corporate good, including the joint analysis of carrier data to enhance border security in the wake of the prevailing levels of threat to UK homeland security. Whilst existing statutory gateways provide for the exchange of data between agencies in certain circumstances, these are not sufficiently comprehensive or flexible enough to support the full range of processes being introduced under the e-Borders and Border Management Programmes.

21. Resources to process increasing passenger numbers and address the issues outlined above are not unlimited and the control agencies need to adapt to the constantly changing behaviour of those seeking to abuse the controls. However, the majority of passengers present little or no risk to the integrity of our controls. Efficient and flexible ways to process low risk passengers need to be identified which minimise delay at the controls, but which continue to identify those passengers who pose a risk to border security. Modernisation of border security is required to facilitate such processes. Many existing processes are 'paper based' and automation of functions will release staff for re-deployment to front line activities. There is the further opportunity to take advantage of new technology, such as biometrics, to enhance the robustness of border control processes. In this context, the IAN Bill contains provisions in addition to those examined in this RIA which would enable an Immigration Officer to require any arriving passenger or crew member to provide information about his external physical characteristics to verify his identity and confirm he is the rightful holder of that document. As biometric technology becomes increasingly available, the Border Agencies will wish to be able to exploit this new identity management tool. Further details on these measures can be found in the: 'Checking Biometric Data on Arrival' RIA on the Home Office website.

22. As outlined above, effective control over arrivals to the UK is dependent upon being better informed about the identity, provenance and entitlements of those arriving so that migration can be actively managed. Capturing accurate data on those arriving in the UK allows an audit of movements into *and out of* the UK and

also provides an opportunity to implement a system which may prevent, as far as possible, those who are a known threat, from travelling to the UK.

23. The value of passenger information is not confined to a single journey. In this respect, it is essential that law enforcement and intelligence agencies can retain passenger information for a sufficient period of time to achieve the aim of maintaining an effective border security capability. For immigration control purposes the ability to refer to an audit trail of movements is key to risk assessing passengers and measuring compliance. In addition, in the national security and organised crime context, experience has shown that the ability to track the earlier movements of suspects during post incident investigation or during intelligence development is a vital investigative tool. As terrorists may have entered the country a considerable time before an incident and organised criminals may have crossed the border many times in pursuit of their activities, the retention of the data for a reasonable time is considered essential. We see these as fundamental building blocks for enhancing border security.

24. In addition to the drivers outlined above, there are a number of international trends which have influenced the development of the e-Borders proposal. The UK is not alone in its recognition of the benefits of passenger information. A number of countries, including Australia, the US and Canada already operate or are considering implementing e-Borders type proposals. Best Practice for utilising passenger information for law enforcement purposes is being considered at a number of international fora, including the International Civil Aviation Organisation (ICAO), the International Air Transport Association (IATA) and the G8. The introduction last year of the EU Directive on the obligation of carriers to communicate passenger data reflects the direction in which Member States are proceeding. The passenger information provisions contained in the Immigration and Asylum Act 1999 and The Immigration (Passenger Information) Order 2000 are consistent with this Directive. In addition, the European Council Declaration on Combating Terrorism, which was issued in March 2004, called upon the EU Commission to bring forward proposals for the use of passenger data for border and aviation security and other law enforcement purposes. We acknowledge that the majority of the examples given relate to aviation.

### **Risks if Government does not intervene**

25. The UK faces a range of major issues, threats challenges and opportunities that can be addressed by effective and efficient border controls; these include sustained passenger growth and ongoing terrorist threats to UK interests. These need to be managed, and a solution sought which seeks to integrate the requirements of the border control, law enforcement and intelligence agencies into a comprehensive strategy.

In addition to growing passenger numbers, the key drivers and issues which have influenced the development of the e-Borders proposal are shown in the table below. Many of these require a positive response to outside factors which cannot be managed with a "do nothing" option:-

<b>Drivers</b>	<b>Issues</b>
<b>Border Security</b>	<ul style="list-style-type: none"> <li>i. Need to enhance border security has significantly increased in recent years</li> <li>ii. Need for accurate data in respect of passenger and crew movements into and out of the UK</li> <li>iii. Desirable to deny entry to those who, prima facie, do not qualify for entry into the UK</li> </ul>
<b>Managed Migration</b>	<ul style="list-style-type: none"> <li>iv. Effective control over passengers and crew arriving in and departing from the UK is dependent upon being better informed about the identity, provenance and entitlements of those arriving</li> </ul>
<b>Counter Terrorism</b>	<ul style="list-style-type: none"> <li>v. The threat from terrorist groups remains high and is unlikely to diminish in the short to medium term</li> <li>vi. The political and economic impact of an attack would be significant and there is strong pressure to counter this threat.</li> </ul>
<b>Serious and Organised Crime</b>	<ul style="list-style-type: none"> <li>vii. The UK continues to be attractive to those involved in serious and organised crime; the border provides a unique opportunity to identify and intervene with those involved. The importance of this risk to the UK is reflected in the formation of the Serious and Organised Crime Agency (SOCA)</li> </ul>
<b>Efficiency and Flexibility</b>	<ul style="list-style-type: none"> <li>viii. The majority of passengers and crew present little or no risk to the integrity of UK Border controls;</li> <li>ix. Resources to process increasing passenger numbers are not unlimited;</li> <li>x. The control agencies need to adapt to the constantly changing behaviour of those seeking to abuse the controls.</li> </ul>
<b>Modernisation</b>	<ul style="list-style-type: none"> <li>xi. New technology, such as biometrics, will enhance the robustness of border control processes;</li> <li>xii. Many existing processes are “paper based” and automation of functions will release staff for re-deployment to front line activities.</li> </ul>
<b>International Trends</b>	<ul style="list-style-type: none"> <li>xiii. Other countries are adopting similar initiatives;</li> <li>xiv. Implementing a modernised approach enables the UK to influence developments and participate in potential international data sharing.</li> </ul>

26. The proposed measures are a key element in delivering the e-Borders Programme and in responding to the challenges outlined above.

### **Options**

27. The e-Borders programme has identified and evaluated a number of options for meeting the key requirements of the core agencies. A summary description of the key benefits and concerns of each of the options is set out below:

## **Option 1 – Maintain status quo**

### **Description**

- Agencies to continue to use individual existing data capture powers and implement these to varying degrees in accordance with the current approach (i.e. Immigration Service on targeted/pilot exercise basis, Customs to extent able to negotiate access with individual carriers/operators)
- Carriers can determine within certain parameters how they wish to provide Advance Passenger information (API)
- Agencies analyse data individually
- Agencies share data on case by case basis through existing information sharing gateways/common law powers etc

### **Key Concerns**

- Does not deliver the “single window” for the carriers, whereby requests for data are properly co-ordinated
- Fails to address the need for routine provision of passenger and crew data in advance of arrival and departure.
- Limits the effectiveness and efficiency of agencies
- Carriers have to adapt and alter their systems and processes to meet specific requests from individual agencies
- Fails to provide all the necessary data in the required form and manner and at the required time to the agencies
- Agencies individually collect and analyse data which leads to duplication of effort and is not cost effective
- Sharing of data only takes place where there is prior knowledge that information will be of interest/relevance to recipient agency or in relation to specific requirements.
- Fails to address the key drivers and issues

### **Key Benefits**

- No capital expenditure for carriers and agencies
- No policy or legislation changes



## **Option 2 – Each agency to make optimum use of existing powers**

### **Description**

- Agencies move towards routine application of data capture powers (i.e. rather than targeted)
- Agencies streamline data acquisition/receipt process through co-ordination of requests for information.
- Carriers can determine within certain parameters how they wish to provide (access to) information required.
- Agencies maximise use of existing data sharing gateways

### **Key Concerns**

- Limited benefits for the agencies
- The need to monitor the data being shared is resource intensive
- Fails to provide all the necessary data in the required form and manner and at the required time to the agencies
- Costs for carriers who choose to invest in IT systems to deliver the required data
- Carriers will have to make changes to their existing processes
- Fails to address the key drivers and issues

### **Key Benefits**

- Provides a “single window” for the carriers
- Move towards routine provision of passenger data for agencies
- Growing awareness within each agency of other agencies’ needs will lead to more frequent sharing of data.

**Option 3 – Introduce provisions to enhance data capture and provide for a duty of co-operation placing an obligation on border agencies to share data**

**Description**

- Agencies move towards routine application of enhanced data capture powers (i.e. rather than targeted)
- Agencies streamline data acquisition/receipt process through co-ordination of requests for information
- Agencies can specify form and manner in which information required must be provided, and the timing of its provision
- Obligation to share data will enable large scale pooling and joint analysis of data

**Key Concerns**

- Costs for carriers who will need to invest in IT systems to deliver the required data in the required form and manner and at the required time
- Carriers will have to make changes to their existing processes
- Initial capital investment required

**Key Benefits**

- Wide range of benefits in terms of effectiveness, efficiency, counter-terrorism, security and anti-crime capability
- Agencies can require all data necessary to support individual agency functions
- Provides comprehensive data in the required form and manner and at the required time to all the agencies
- Co-ordinated request and provision of passenger data – the “single window”
- Streamlining of data analysis process
- Routine sharing of data will enhance effectiveness through improved ability to identify targets
- Agencies will be able to operate in a co-located environment without risk of unlawful disclosure of acquired data
- DPA, HRA compliance monitoring simplified
- Agencies can maximise potential to mount appropriate, co-ordinated and proportionate response to risk.
- The required information will be provided routinely by industry rather than separately in response to non routine requests for specific information from each of the individual agencies and, where the necessary infrastructure exists, will be transmitted electronically thus allowing the data capture and provision process to be absorbed into the normal working practices of the carrier

## Data Collection and Transmission Costs

28. The e-Borders programme has been examining a number of possible data collection and transmission solutions, which employ both industry systems and the internet. Whilst it is important to emphasise that no decisions have yet been taken about the technical and other solutions which will be employed in implementing e-Borders, trialling work undertaken in connection with Project Semaphore indicates that the transmission of passenger and crew data via the internet is both technically feasible and secure. Such a solution would provide a significant cost reduction, compared to other methods, as the cost of transmitting data is, effectively, zero. At present the indicative costs for using the Internet are broken down in the table below:

29. The intention is that carriers will be required to provide the following

- PNR (or its equivalent) in respect of all passengers travelling to the UK at the time of departure
- API in respect of all passengers travelling to and from the UK at the time of departure.
- Crew particulars on all ships, rail and aircraft arriving in or departing from the UK

30. There are four main elements to the cost of data collection and transmission viz:

- The cost of extracting PNR (Passenger Name Record) data from a carrier's reservation system
- The cost of capturing API from the passenger's travel document
- The cost of transmitting PNR data
- The cost of transmitting API data

	<b>PNR Extraction</b>	<b>PNR Transmission</b>	<b>API Capture</b>	<b>API Transmission</b>
<b>Internet (per transaction)</b>	£0.05	NIL	£0.01	NIL

31. Several other countries, including the US, Canada, Japan, Australia and a number of EU countries, have introduced, will be or are considering introducing similar requirements. It is likely that there will be a convergence of software and hardware requirements (e.g. passport readers) as each country defines its requirements to carriers. In this context the potential costs to industry may be overstated.

32. The table below shows the estimated number of passenger and crew arrivals and departures (based upon DfT projections in respect of air travel) and estimated extraction and transmission costs during the implementation phase.

	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14
Passenger Arrivals and departures <sup>3</sup> (mill)	273	283	293	304	315	325
Crew Arrivals and departures <sup>4</sup> (mill)	12.6	13.1	13.6	14.1	14.7	15.2
<b>Data Cost (£m)</b>						
Internet	0.5	2.5	5.6	7.8	9.6	11

33. The most effective method of capturing API from passengers' travel documents is via an optical character reader that is able to read the data in the Machine Readable Zone (MRZ) of the document, through the document being swiped through the reader. It is estimated that 10,000 such devices would be required at a cost of £700 per reader plus £700 for installation. It should be noted, however, that many carriers will already have been required to invest in such equipment as a result of other States' initiatives.

34. The need to provide API data will require carriers to modify their IT systems and check in processes to accommodate these requirements. Based upon figures provided by the UK Airline Industry in 2004, the total cost of providing the necessary IT systems and passport readers is estimated at £4m (figure is based on costs for 7 major UK airlines, with 85% of the market, and 15% added for other UK based airlines) with ongoing running costs, net of data transport, of £470K per annum. The data transports costs identified above are derived from passenger numbers regardless of carrier. They therefore capture the costs that would fall to foreign operators. Whilst no decisions have been made about how data will be provided, an alternative to passport readers might be document scanners. One maritime industry source has estimated basic hardware costs, suggesting that these would be in the region of £7,340 per machine (to include purchasing, installing and commissioning a scanner). The sum put forward reflects the necessity of cabling large sites and also of providing ancillary IT equipment to associate scanner readings with the registration number of the vehicle in which the passengers are travelling. For the UK ferry network, (excluding cruise traffic), the industry source suggests that 650 scanners would be required to cover all foot and car passengers (but not coach) check-ins, giving a total of £4.771 million. Whilst we do not dispute these figures, we believe that significant savings could be made on the quoted £7,340 cost of an individual machine if a quantity in the region quoted (650) were to be purchased in bulk.

<sup>3</sup> Source: DfT "Air Traffic Forecasts for the UK 2000" and UK Immigration Service figures in relation to sea and rail for 2003/04. Air figures include transit and domestic passengers

<sup>4</sup> Figures have been calculated on the basis of a crew to passenger ratio of 1:20. If using the internet method of data transmission, it is expected that transaction costs would be close to zero. [There is no PNR type data in respect of crew]. Crew figures include transit and domestic movements.

35. Based upon figures provided to the US Customs & Border Protection Agency the estimated cost to passenger shipping companies of complying with their similar requirements was \$125,000 per carrier with a 5% annual maintenance cost thereafter. We recognise, however, that the US sea carrier market differs to that of the UK, where the ferry sector is characterised by high-volume, as well as fast turn-round services.

36. Whilst it is forecast that the financial benefits of implementing e-Borders will outweigh expenditure and the principal costs of implementation will fall to the UK Government, carriers will also incur costs. The programme has been actively engaging with carriers to ensure that the preferred solution imposes the minimum cost burden commensurate with delivering the programme's objectives. In addition scoping work is underway to establish the practicality of charging passengers a small fee to cover costs.

37. The table below shows the costs to Government, other GDP and Passenger Welfare costs of e-Borders compared to that of maintaining existing systems over the 25 years to 2029/30.

Option	NPC £m			
	Government	Other GDP	Passenger Welfare Costs <sup>5</sup>	Total
<b>Existing Systems</b>	2,885	292	6,191	<b>9,368</b>
<b>e-Borders</b>	2,193	628	2,697	<b>5,518</b>

### Impact on Public Sector

38. The e-Borders programme proposals will result in major changes to working practices in the public sector. These provisions will support much closer working between the agencies as well as impacting on how other Government departments carry out their business. We have customised a change framework for managing the delivery of e-Borders business change.

### Environmental Impact

39. None identified

### Social Impact

40. None Identified

### Health Impact

41. None Identified

### Impact on Carriers and other external stakeholders

<sup>5</sup> Passenger Welfare Costs reflect the value of passenger time expended on negotiating border controls. They have been calculated in line with Department for Transport guidance.

42. It is important to recognise that the data capture provisions being introduced amend existing provisions, which enable the Border Agencies to require the provision of data from carriers.

43. We acknowledge, however, that the comprehensive and routine provision of passenger, crew and service information will impact on carriers. Carriers operating into and out of the United Kingdom by air, sea and rail will be affected. The actual impact is likely to vary from one carrier to another and will be influenced by factors such as the amount of information currently collected, whether the carrier already has in place systems to collect and store data and whether it is already complying with a requirement to provide data to the Border Agencies in the UK or overseas. The impact is also likely to vary depending on the means whereby the information is provided to the Border Agencies.

44. We also acknowledge the potential for API data capture requirements to impact on carrier check-in transaction times. During consultation in 2002 about the implementation of the passenger information powers contained in Schedule 7 to the Terrorism Act 2000, for example, one port operator estimated that the API requirement would add 40 seconds to the existing 60 seconds for the average check-in transaction time. It is important to note, however, that the API requirement under discussion at that time included two data elements (home address and place of birth) that were not contained in the MRZ of a travel document and would therefore need to be keyed in manually in all cases. We do not anticipate that our e-Borders API requirements will include any data elements that are not contained in the MRZ of a travel document. Consequently, where a passport reader is used and a machine-readable document presented, we anticipate that any impact on transaction time could be significantly reduced. All of ICAO's 188 Contracting States must begin issuing only ICAO-standard Machine Readable Passports (MRPs) no later than 1 April 2010 and some 110 States currently already do so. We do, however, appreciate that if transaction times are increased in respect of passengers embarking from the UK, there will be an impact on port operators. One maritime industry source has suggested that additional costs would arise for sea carriers as a result of increased check in times in the case of vehicles, but that these costs are not quantifiable in the absence of practical experience of e-Borders processes. As an indication, however, of the possible impact, a comparison has been provided between the average transaction time of 50-60 seconds per car of those ferry operators who do not scan passports with 90 seconds for the one ferry operator which currently does. It is also pointed out that any additional costs that do arise from increased check-in transaction times will vary according to whether this takes place in a quiet or busy period, with a possible knock on effect which may cause traffic queues, congestion in ports and beyond and, ultimately, the cancellation of crossings.

45. The points above and the comments from industry notwithstanding, in considering the impact of the proposed measures, it is important to note a few points in relation to how we intend to implement the passenger, crew and service data capture and sharing measures being introduced as part of the wider e-Borders roll out. Legislation is being brought forward now to ensure the necessary statutory framework to support e-Borders is in place prior to awarding the e-Borders contract (the "e-Borders contract" is the contract under which a supplier develops the system(s) and provides the range of services in respect of UK border control as described in OJEU Notice (ref: 2005/S 191-188527)). Subject to the procurement process, the current proposal is to award the e-Borders contract in mid to late 2007.

46. A key aim of our procurement strategy in advance of contract award is to be able to assess the impact of our proposals on industry. As part of this strategy we shall be working with potential suppliers to identify the different technical options to support e-Borders, exploring the advantages and risks of each (the “Convergence Exercise”). We also intend work through these options with industry in order to identify and address the impact.

47. Whilst, therefore, we can provide some information at this stage it is important to note that no decisions have been made and we cannot therefore provide detailed or precise costs yet. It is also important to emphasise that no decision has yet been made on who will bear the burden of the financial costs involved but that we have always said that we will seek to reduce the impact on carriers to the fullest extent possible.

### **Compensatory Simplification**

48. Until recently, there has been little or no structured coordination between the agencies in making requests for passenger and crew information from carriers, nor the technical solution to process volume data. This can result in a carrier having to provide similar information to each of the individual agencies, within differing specified timescales and through means which vary between, and often within, each agency. We have recognised that it makes sense, both for Government and for industry, for the required data sets to be captured once and then to be made readily available for all frontier control purposes. The required information will be provided systematically by industry rather than separately in response to non routine requests for specific information from each of the individual agencies and, where the necessary infrastructure exists, will be transmitted electronically thus allowing the data capture and provision process to be absorbed into the normal working practices of the carrier. The data sharing provision in the Bill, together with the implementation of new systems will support the “single window” concept for the provision of data by carriers to Government. This will allow us to move away from the current situation, whilst facilitating transparency of process and providing the necessary reassurances over compliance with data protection and human rights principles. The “single window” initiative will be welcome to the carrier industry, which has long pressed for more efficient co-ordination of information requests from the border agencies. This addresses concerns previously raised by industry and will greatly reduce the impact on industry.

### **Benefits Summary**

49. e-Borders will deliver a wide range of benefits to stakeholders. These include:

- Improved effectiveness and efficiency in Border Control
- Enhanced national security, counter terrorism capability and ability to fight serious organised crime
- An improved ability to identify those evading excise duty
- Improved interceptions of Class A drugs with the inevitable social benefits that will accrue
- The ability to identify those claiming benefits to which they are not entitled
- Expedited processing of the majority of passengers through border controls

- Carriers will benefit from the introduction of a “single window” meaning that passenger data need only be provided to the Border Agencies once. This information will be provided routinely and, where the necessary infrastructure exists, will be transmitted electronically thus allowing the data capture and provision process to be absorbed into the normal working practices of the carrier.
- The existence of an Authority to Carry scheme will prevent the carriage of passengers who, prima facie, would not qualify for entry. This will reduce carriers’ exposure to detention and removal costs and carriers liability charges.
- e-Borders will render landing cards obsolete
- Improved public confidence in border and security controls. This may lead to a commercial benefit to carriers and the UK economy. People are more likely to travel to the UK.

### **Equity and Fairness**

50. Please see the Race Equality Impact Assessment, which can be found on the Immigration and Nationality Directorate’s website:  
[http://www.ind.homeoffice.gov.uk/ind/en/home/laws\\_policy/legislation/race\\_equality\\_impact.html](http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/legislation/race_equality_impact.html)

### **Consultation with small business: the Small Firms Impact Test**

51. As part of the e-Borders consultation process, a partial regulatory impact assessment has been issued to a wide range of industry stakeholders and representative bodies for comment. The partial RIA has also been available on the Home Office website. Through discussion with key industry stakeholders, it has been concluded that there are no businesses in the shipping or rail sectors that could be classed as small. In the aviation sector, 99% of UK originating passengers fly on carriers whose turnover, on that category of business alone, are too high to be classified as small businesses; the only area we have been able to identify where small businesses might be in operation is in the field of General Aviation (GA). Existing passenger information legislation already applies to GA (which is by no means limited to small firms or small aircraft) and it is not intended that the new provisions shall apply to General Aviation until a later stage of the e-Borders Programme. Further work is therefore required in this respect and we shall continue to consult with the British Business and General Aviation Association (BBGA) on the impact of the legislative provisions on their members, as this work develops.

52. The Small Business Service has been consulted and agrees that based on the information available to date, e-Borders proposals will not have any significant impact on small business. If, however, any small firms feel there are issues that need to be raised, they are invited to bring these concerns to our attention either now, or when further RIAs are developed in relation to e-Borders secondary legislation.

### **Consultation**

53. The provisions being introduced build on the Border Agencies’ existing powers to require data from carriers.



54. The timescales involved in bringing forward this legislation meant we were unable to consult fully with industry on the specific detail of the provisions prior to the introduction of the IAN Bill on 22 June 2005. However, since its introduction we have undertaken a three month consultation with industry. We have also had extensive consultations with industry over recent years as we have developed our e-Borders programme and we will continue to do so. Indeed a key part of the legislation on data sharing we are bringing forward is as a result of taking on board industry's concerns about their desire to transmit the data once only to government.

55. Prior to the introduction of the IAN Bill, informal consultation on e-Borders had included a series of carrier presentations in the autumn of 2003, presentations and discussions at a range of international carrier events, a major event sponsored by government in January of 2005 and one to one meetings with individual carriers. A meeting with key industry stakeholders took place on 20 June 2005 to discuss the detail of the legislative provisions. A letter, summarising the proposals and enclosing information about how to obtain copies of the legislation and the partial RIA (including internet links), and how to comment on these, was also sent to a large number of industry stakeholders (a full list of those consulted is attached at Annex E). Following the IAN Bill's introduction, a number of follow up meetings took place over the course of the summer of 2005 with, among others, air, sea and rail carriers, trade organisations, handling agents and airport and seaport operators. The meetings looked at the provisions in more detail and discussed a number of the more practical issues arising from their implementation. Comments and contributions were invited to the partial Regulatory Impact Assessment published to coincide with Introduction. Discussions also took place about how best to take forward further discussions with industry as e-Borders moves into its procurement phase. The Bill consultation process finished on 30 September 2005. Although the carriers have generally registered support in principle for the provisions in the context of the e-Borders Programme, the main issues they have raised include:

- Apportioning of costs
- Level of carrier benefits
- Compliance with international standards for data format
- Interoperability with existing systems
- Data elements to be required and the manner of their provision
- Potential for impact on check-in transaction times
- In the context of the maritime industry, the very different considerations involved and the lack of practical experience of implementing e-Borders-type systems in such an environment

56. We have developed the RIA during the Parliamentary process and taken account of any additional information we were able to glean from stakeholders whose comments on the partial RIA were welcomed. The RIA has been updated to address the main points raised by Industry. (See full responses to Consultation at Annex D). The Border Agencies have also provided more information about their intended data requirements and these are attached at Annexes A, B and C. It should be noted that in the case of the Police and Immigration Service<sup>6</sup>, the data elements will need to be specified in secondary legislation and the requirements are therefore subject to approval by Parliament.

---

<sup>6</sup> In the case of the Immigration Service, secondary legislation will be required to specify the data elements not already contained in the Immigration (Passenger Information) order 2000

57. Although we are introducing legislation now to support our e-Borders and Border Management Programme objectives, we have a considerable amount of detail to work through before the data capture powers are implemented on the routine and comprehensive basis we ultimately envisage. The consultation on the Bill provisions has not taken place in a vacuum. There are several other parts of the programme that have been working closely with industry and are continuing to do so. The programme is taking a structured approach to the management of Carriers and Port stakeholders and we have identified a number of industry fora to simplify our communications. The e-Borders Carrier and Port Teams have been holding dedicated workshops with key carriers, ports and industry organisations, to build buy-in, inform the bidder selection process and minimise the impact on carrier and port operations now and in the future. Views are being sought as to how the carriers and ports see their industries evolving over time. The intention being to demonstrate to the industries that the e-Borders solution has been 'future proofed' to enable their industries to evolve and conversely to ensure that the efficacy of the e-Borders solution is not compromised by industry developments. The e-Borders processes are being designed in consultation with carriers and ports to maximise the passenger experience and minimise disruption to carrier operations.

58. As already mentioned, a key aim of the e-Borders strategy is to be able to assess the impact of our proposals on industry. The Convergence Exercise (see paragraph 46) should assist us in this exercise. We will maintain our engagement with the carrier community during the procurement process (including during the Convergence Exercise) and beyond and seek to minimise the costs for carriers wherever possible.

59. In addition, Project Semaphore, the pilot test bed project for several elements of e-Borders, which commenced at the end of 2004, is providing the opportunity for a limited number of carriers to take part in the initial development of the processes and to voice any concerns they may have. It is allowing carriers to exercise a degree of influence over the processes being developed and designed in order to minimise negative impact on the industry and maximize the benefits for all. Carriers currently involved in Project Semaphore are from the airline industry but we are in the process of engaging with other types of carriers, including rail and sea carriers, about participation in Phase 2 of the project.

60. We intend, once Project Semaphore has been operating for a reasonable period of time to produce a report of our findings, including any lessons learned and our emerging thinking on the pros and cons of the various potential technical solutions for transmitting data. This, along with the discussions as we work through the procurement process, will provide a basis for further discussion and wider consultation with industry on the more detailed e-Borders proposals which will allow us to articulate more precisely the costs and benefits of e-Borders to industry and Government.

### **Competition Assessment**

61. The proposals will impact on those sectors involved in the carriage of passengers by air, sea and rail to the UK which will include passenger airlines, passenger shipping and rail companies.

62. It is expected that the impact of the data capture and sharing provisions might be expected to be broadly proportionate to the number of passengers and crew that a particular airline, shipping or rail business carries (though it is recognized that larger businesses might be more likely to have the necessary staff, processes and

equipment at hand to minimize the scale of additional costs). Despite such a differential impact, it is our view at this stage that the impact would be unlikely to affect competition in any market.

63. We do, however, appreciate that there is existing competition between air, sea and rail carriers on cross channel routes and between air and rail carriers on some short haul northern European routes (e.g. Paris and Brussels). There are currently juxtaposed controls in place in respect of rail routes and some sea crossings and the impact of these in the e-Borders programme has yet to be evaluated.

64. In considering whether these provisions will impact on competition, we have defined our market by the types of transport operating on international routes to and from the UK. For air, however, there are a great many separate markets, based on the origin and destination of passengers, within the overall market. For example London to Marseilles, Glasgow to Hong Kong, Manchester to Lima etc. The amount of competition on a route depends on the strength of the market and restrictions in the bilateral arrangements between the UK and the other country and whether the passenger wishes to travel by the most direct route, or is prepared to take a cheaper but less direct option. There are many direct routes where only one, two or three airlines operate so individual airlines would have more than 10% or 20% market share. On significant routes such as, London to New York, UK to Japan, there are often four or more airlines serving the market and the largest three airlines would have more than 50% market share. For all routes the five airlines carrying the most passengers have 48% of the total market share. Of UK airlines operating out of the UK, British Airways has approximately 25%<sup>7</sup> of the market. British Airways and easyJet airlines together have approximately 40% of the market. These figures include all routes and include charter airlines within the passenger numbers

65. In the case of sea, the total number of international passengers, including arrivals and departures, travelling on short sea routes for 2004 was 25.7 million<sup>8</sup>. The route Dover to Calais represents 52% of the total market. Three operators currently operate on this route- P& O ferries, Hoverspeed and Sea France. Brittany ferries have 12% of the market operating on the western channel on the south coast. Operators tend to operate all of their services out of a specific coastal region and one operator may dominate a single port, e.g. Brittany ferries in Portsmouth.

66. In the case of Rail, the total number of passengers using the channel tunnel, including Eurostar and Le Shuttle services, for 2004 was 15 million<sup>9</sup>. Within each of their respective areas, Eurostar (passengers) and Le Shuttle (cars and freight) currently have a monopoly position.

67. Whilst it must be emphasised that no decisions have yet been taken about the apportioning of costs, those which may impact on carriers principally relate to the extraction and transmission of passenger data, which will be required by a specified means. This may require existing systems to be updated or the implementation of new systems. Smaller carriers/operators may incur costs which are proportionately higher than larger operators. The level of the costs involved may depend on the nature and extent of the carrier's existing systems and whether the carrier already has these in place to enable the extraction and transmission of data, either to the UK authorities or those overseas. In respect of technological change within the industry,

---

<sup>7</sup> Passenger numbers obtained from CAA economic regulation - Statistics - Aviation Data Unit (ADU)

<sup>8</sup> Passenger numbers from Department for Transport

<sup>9</sup> Passenger numbers from Department for Transport

the use of legacy systems such as Galileo, SABRE, Amadeus and Worldspan continues alongside the implementation and use of new technology, such as the use of the internet to capture passenger booking information. Several other countries have introduced, will be or are considering introducing similar requirements. It is likely that there will be a convergence of software and hardware requirements (e.g. passport readers) as each state defines its requirements to carriers. In this context the potential costs to industry may be overstated.

68. It is not considered that the regulation places a restriction on price, quality, range or location of operation as there should not be significant differences in costs between the different ports from which carriers operate. Further, notwithstanding the comments above about the juxtaposed controls, the regulations will apply to all carriers and is not likely to affect the market structure, therefore.

69. We would welcome further comments on this assessment.

### **Enforcement, Sanctions and Monitoring**

70. Data sharing power

Options 1 & 2

#### **Enforcement**

71. The Border Agencies share data on the basis of statutory gateways, such as those provided by Sections 20 and 21 of the Immigration and Asylum Act 1999 and Section 19 of the Anti-Terrorism, Crime and Security Act 2001. In some circumstances, they may also share data on the basis of common law powers or by reference to exemptions provided by the Data Protection Act 1998. These mechanisms support data sharing on a case-by-case basis.

#### **Sanctions**

72. The provisions of the Data Protection Act 1998 require that information sharing must be fair and lawful and in accordance with a set of data processing principles. The Data Protection Act creates a number of criminal offences, punishable with a fine, for unlawful disclosure or non-compliance with obligations. The Human Rights Act 1998, which incorporates the rights and freedoms guaranteed under the European Convention on Human Rights into domestic law, also stipulates conditions for lawful processing. The Act provides that it will be unlawful for a public authority to act in a way which is incompatible with a Convention right. Where a court finds against a public authority it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate. The Border Agencies must ensure that, in sharing data, they act in a manner which ensures compliance with these regulatory provisions.

#### **Monitoring**

73. In many circumstances, data sharing arrangements are underpinned by Memoranda of Understanding or are effected in accordance with codes of practice or operational guidelines.

Option 3

#### **Enforcement**

74. The provision will introduce a duty of co-operation which places an obligation on the Border Agencies to share specified information, which will include passenger, crew, and service data, for limited and defined purposes. This obligation will enable the Border Agencies to jointly pool and analyse data in connection with those limited and defined purposes.

## **Sanctions**

As options 1&2

## **Monitoring**

75. The Bill introduces a requirement for the Secretary of State to publish a code of practice to establish principles for the use of the information sharing provision. This code of practice will be further supported by operational guidelines.

76. Please see pages 25-39 for information specific to each of the Border Agencies' data capture proposals.

## **Implementation and Delivery Plan**

77. A high level view of e-Borders programme and project activities and the capability delivery stages and milestones is outlined below. Given the complexity of the e-Borders programme, at this stage it very difficult to provide a firm indication as to when a particular stage is to occur. The following has been provided using the best information at the time, but is likely that timings may change during the course of the procurement and delivery.

78. The programme's three stages of capability delivery (outlined below) are bound by four major milestones:

- The start of Project Semaphore Operations at the end of 2004;
- Initial Operating Capability (IOC) marking the introduction of the e-Borders system;
- Major Operating Capability (MOC); marking the rollout of core services to all international transport services using major UK ports; and
- Full Operating Capability (FOC), marking the completion of the implementation.

**Stage One (2004 to 2009)** covers the concentrated period of preparation for the e-Borders system, beginning with establishment of the IRIS system, and the JBOC test-bed established by Project Semaphore to de-risk and inform the main programme. At the same time, the e-Borders team works on the specification and procurement of the core system with the aim to award the e-Borders contract (as defined in paragraph 45). Following on from that, the next two years sees detailed development work and an initial core delivery by the system supplier.

**Stage Two** sees the incremental roll-out of core capabilities. As Stage Two capabilities are rolled out, so further business change planning and delivery among all the partner agencies will ensure the continued realisation of programme benefits. At the same time, planning and preparation will be under way for Stage Three. Stage Two concludes with the Major Operating Capability milestone by which time all core services are intended to have been rolled out to all international carriers using major UK ports.

**Stage Three** sees further development and roll-out, concluding with the Full Operating Capability milestone.

79. The Strategic Plan will require updating as the procurement process continues and the Programme Implementation Plan matures.

### **Further Legislation**

80. The measures to be introduced will provide the Border Agencies with varying powers to capture passenger, crew and service data and also to specify the means by which this information is to be provided. Much of the detail of the powers introduced by the IAN Bill will be developed in consultation with industry and implemented through secondary legislation. Further RIAs will be developed to support the secondary legislation, where appropriate.

### **Summary and Recommendation**

81. The tables below assess the options against the key benefits and concerns, which have been identified by the agencies, as important indicators of economic and operational success.

Key Benefits	Option 1	Option 2	Option 3
No major capital expenditure required	✓		
No policy or legislation changes required	✓		
Agencies can require all data necessary to support individual agency functions			✓
Provides comprehensive data in the specified format to all the agencies			✓
Co-ordinated request and provision of passenger data – the ‘single window’		✓	✓
Improved counter terrorism, national security and law enforcement effectiveness and capability		✓Potential	✓
Meets the data acquisition and sharing needs of all the border agencies			✓
Provides the capability to pool data between all the border agencies			✓
Routine sharing of data will enhance effectiveness through improved ability to share data			✓
DPA/HRA compliance monitoring simplified			✓
Key Concerns	Option 1	Option 2	Option 3
Fails to provide all the necessary data in the specified format to agencies	✓	✓	
Does not deliver the “single window” for the carriers, whereby requests for data are properly co-ordinated	✓		
Fails to address the need for routine provision of passenger data	✓		
Reduces effectiveness and efficiency of all the agencies	✓	✓	
Carriers have to temporarily change systems/processes to meet specific requests and not cost effective	✓		
Agencies individually collect and analyse data leading to duplication of effort	✓		
Does not allow the pooling of data between all the border agencies	✓	✓	

Recommendation	
Option 1	This option allows for limited use of passenger data from the carriers but does not provide a firm foundation for an efficient, integrated, intelligence-led control
Option 2	While this option appears to provide some benefits to both carriers and the agencies, it does not provide the comprehensive data required by the agencies, nor does it allow the pooling of data between the border agencies.
Option 3	This option satisfies the data acquisition and sharing needs of the border agencies, and will provide carriers with a “single window” through which they are able to supply the required data, and provides the foundation on which an integrated secure border for the 21 <sup>st</sup> century can be built.
Conclusion: Provisions should be introduced to enhance the data capture powers available to the Border Agencies and to provide for a duty of co-operation, placing an obligation on the agencies to share data.	

### Ministerial Statement

‘I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs’.

Signed by the responsible minister

.....

Date .....

### Contact points:

Sue Hoddell  
e-Borders Policy Team  
Status Park 4, 3 Nobel Drive  
Harlington, Middlesex  
UB3 5EY  
020 8745 1697  
[Sue.Hoddell@homeoffice.gsi.gov.uk](mailto:Sue.Hoddell@homeoffice.gsi.gov.uk)

Lorraine Waugh  
e-Borders Policy Team  
Status Park 4, 3 Nobel Drive  
Harlington, Middlesex  
UB3 5EY  
020 8757 3530  
[Lorraine.Waugh@homeoffice.gsi.gov.uk](mailto:Lorraine.Waugh@homeoffice.gsi.gov.uk)



## **Enhanced powers to enable HM Revenue and Customs to obtain passenger information in advance of a ship, aircraft or through train arriving in the UK.**

### ***1. Title of proposal***

The Immigration, Asylum and Nationality Bill Regulatory Impact Assessment on the enhanced power that will enable HMRC to require carriers to provide the data items scheduled in the Commissioners Directions (October 2001) in advance of the arrival of the means of transport.

### ***2. Purpose and intended effect***

#### **(a) The Objective**

To provide HMRC with powers to request the provision of passenger data already required under the aforementioned Commissioners Directions, in advance as opposed to on arrival as currently stated. This will allow sufficient time for information on passengers to be analysed and an informed decision to be made as to whether an intervention is appropriate and for HMRC resources to be made available to carry out such an intervention if required.

The Border Management programme aims to deliver an integrated approach to border security with particular emphasis on maximising the potential for joint passenger data capture and sharing. The ability of HMRC to require information in advance will provide HMRC with the necessary tools to fully participate in e-Borders. This change will also support the “single window” concept whereby carriers will only have to supply data to the government once. This will ease pressures on carriers who are currently obliged to respond separately to individual requests for data from each of the border agencies.

#### **(b) The Background**

The White Paper “One Step Ahead – a 21<sup>st</sup> century strategy to defeat organised crime” recognised the need for the border agencies to work together more effectively. This is being taken forward under the Border Management Programme, to ensure coordinated strategically driven operational activity to protect our borders. A key workstream of the BMP involves traffic data capture and sharing, recognising that improvements here are fundamental to the ability of all of the border agencies to identify and separate from the mass of legitimate traffic crossing our borders that which poses a risk.

The White Paper makes clear that it is not the Governments’ intention to create a single border agency. To fully meet the White Paper’s requirements it is therefore necessary for each of the Border Agencies to acquire the data they need to support their statutory functions and to facilitate the extensive data-sharing envisaged under e-Borders (see corresponding e-Borders RIA).

HMRC already utilises extensive powers to require the provision of passenger data from air, sea and rail carriers. However, operational experience within the parameters of existing powers has demonstrated that they are insufficient to meet the rapidly shifting challenges posed by those attempting to smuggle drugs, drugs cash, child pornography, weapons and illicit excise goods across our border. Current HMRC powers allow for carriers to provide data not later than the time when a ship or aircraft “arrives” in the UK. This is considered to provide insufficient time for reasonable analysis of the data and targeting of resources.

### **(c) Rationale for Government Intervention**

Many carriers have entered into agreements with HMRC to provide them with the passenger data required by the Commissioners Directions. By 2010 it is expected that between 125 and 150 million people will be travelling to the UK each year. HMRC know that most modern smuggling is carried out by well-financed, highly organised international criminal groups that use ever-increasing sophisticated methods to generate huge illegal wealth. These profits can be used to finance criminal operations of interest to other border agencies such as people smuggling and terrorism. HMRC needs to maximise the impact it has on smuggling to minimise these illicit profits, and a proven method of achieving this is the use of information on all international travellers. As an indication only, HMRC estimates that 10% of Customs Officers using advanced profiling techniques account for approximately 30% of Customs seizures at the London Airports.

HMRC is an intelligence-led law enforcement agency which must optimise the use of its resources so that the highest risk flights and voyages can be targeted leaving the vast majority of innocent travellers to continue their journeys uninterrupted. The plugging of the current gaps in the power outlined herein will help to achieve this, while also allowing the type of closer-working as required by the White paper.

### **The impact of not responding**

The UK faces major passenger growth coupled with the threat posed by increasingly professional and well-financed smuggling groups. The threat to society posed by successful smuggling of drugs, weapons, child pornography etc. is considerable, as is the spin-off financing from these activities to other threats to UK border and homeland security. HMRC's greatest weapon against these threats is access to information on who is entering and leaving the UK, and their patterns of travel so that years of experience of targeting and profiling can be utilised alongside the increasing availability of sophisticated data-manipulation techniques. It is no secret that smuggling groups invest considerable time and money in devising techniques to avoid detection and interception. The ability to have the complete information picture allows HMRC to maximise their ability to confound these attempts at breaching the UK border as fully as possible.

Failure to enhance current HMRC powers would also mean that HMRC would be unable to contribute data to the e-Borders data "pool" thereby weakening its contribution to the ethos of the White Paper, and make the provision of the "single window" for carriers more difficult to achieve.

### **3. Consultation**

The routine implementation of the provision will be part of a package of measures to be rolled out as part of the e-Borders Programme. In the interim, however, the Border Agencies reserve the right to require passenger information in accordance with statutory powers. The timescales involved in bringing forward this legislation have meant we have been unable to consult fully with industry on the specific detail of the provisions prior to introduction. We have however had extensive consultations with industry as we have developed our e-Borders programme and we will continue to do so. Consultation on the implementation of these particular provisions will take place as part of wider consultation on e-Borders.

Please refer to the main document for further details.

#### **4. Options / 5. Costs and Benefits**

The routine implementation of the provision will be part of a package of measures to be rolled out as part of the e-Borders Programme. The Options analysis, including costs, benefits and impact, therefore needs to be seen in the wider context and reference should be made to the main document for further details.

#### **6. Small Firms Impact Test**

We do not consider there to be any significant impact on small business. Please refer to the main document for further details.

#### **7. Competition assessment**

The routine implementation of the provision will be part of a package of measures to be rolled out as part of the e-Borders Programme. The Competition assessment therefore needs to be seen in the wider context and reference should be made to the main document for further details.

#### **8. Enforcement, sanctions and monitoring**

##### **Option 1.** Do nothing.

HMRC will be unable to insist on the advance provision of data from carriers. This will not provide HMRC with the time necessary to analyse data effectively and target high risk travellers whilst allowing the majority of legitimate travellers to continue their journey unaffected. This lack of power also creates an unlevel playing field amongst carriers. Many carriers voluntarily supply data to HMRC whilst some do not.

##### **Option 2.** Legislate and apply powers.

The changes requested by HMRC enhance existing powers set out in sec.35 and 64 of CEMA 1979.

Will provide HMRC with the time necessary to analyse data effectively and target high risk travellers whilst allowing the majority of legitimate travellers to continue their journey unaffected. HMRC will have the ability to enforce compliance and impose sanctions in respect of failures to comply with the new enhanced requirement when the Commissioners Directions are amended.

## **Immigration Service powers to acquire passenger and crew data**

An extended Order making power under paragraph 27B of Schedule 2 to the Immigration Act 1971 to require carriers to provide details of services (flight, voyage or rail service) into and out of the UK.

An extended Order making power under paragraph 27 of Schedule 2 to the Immigration Act 1971 to require passenger and crew information in advance of travel and in the form and manner directed by the Secretary of State.

Extended powers under Part I and Part II of the Immigration (Passenger Information) Order 2000 to request additional Advanced Passenger Information (API), and additional reservation data to the extent that it is known to the carrier. The Immigration Service has no current plans to include any data elements that are not contained in the MRZ of a travel document in its API *passenger* data requirements.

## **2. PURPOSE AND INTENDED EFFECT**

### **a) *The Objective***

The e-Borders Programme is an initiative to deliver an integrated approach to border security that will provide a more effective and flexible control appropriate to the perceived risk and faster passenger processing. We already operate a highly successful intelligence led approach by risk assessing flights in advance of travel and the objective of the new provisions is to maximise the potential for joint passenger and crew data capture and sharing.

The security of our Borders is paramount. We have already made great progress in securing our borders by reducing asylum intake to its lowest monthly level since March 1997 and by halving the number of undocumented arrivals. However, we are faced with increasing challenges from predicted increases in passenger arrivals, the need to secure the land, sea and air borders, the need to facilitate the travel of legitimate travellers and to respond to the threat from organised crime and terrorism.

### **b) *The Background***

We intend to strengthen our border controls before entry to process more efficiently those who meet the criteria for admission and rigorously prevent those who do not from reaching the UK. The evidence supports our conclusion that it is better to regulate entry before arrival. For example, as well as the considerable reduction in asylum intake and undocumented arrivals following the introduction of juxtaposed controls in France and Belgium set out above, our network of airline liaison officers (ALOs) based overseas has prevented more than 30,000 inadmissible passengers from travelling. Given the additional practical difficulties and costs associated with removal from our territory, the Immigration Service spent £17 Million in 2004/05 removing passengers because there was no information of their arrival, it is clear that prevention would reduce this expenditure.

The aim of this provision is to extend the existing Immigration Service powers to acquire passenger and crew data to support the function of the e-Borders systems and facilitate closer and more effective working with the other Border Agencies. It will also facilitate the introduction of an Authority To Carry (ATC) scheme, already provided for in Section 124 of the Nationality Immigration and Asylum Act 2002, and

allow us to take advantage of new biometric technology being introduced to travel documents. All of this supports our overarching objective to 'export our border'.

The White Paper "One Step Ahead- A 21<sup>st</sup> century strategy to defeat organised crime" recognised the need to ensure that the border agencies work together more effectively. The border agencies have been tasked with developing more closely aligned objectives and priorities and this work is being taken forward by the Border Management Programme, to ensure co-ordinated, strategically driven operational activity to protect our borders. A key area of this work involves data capture and sharing, recognising that improvements here are fundamental to the ability of all the frontier agencies to identify and separate from the mass of legitimate traffic crossing our borders, that which poses a risk.

A further White Paper, "Controlling our borders: Making migration work for Britain- a five year strategy for asylum and immigration" includes our e-Borders proposals, which will deliver an integrated secure border control system. At the heart of e-Borders is the ability to harness passenger information in order to provide government and law enforcement agencies with a greatly enhanced capability to meet counter-terrorism, national security, immigration and law enforcement requirements.

The legislative provisions proposed, together with the implementation of e-Borders systems, will support the "single window" for the provision of data by carriers to the Border Agencies allowing us to move away from the current situation where carriers are obliged to respond separately to individual requests for similar data from each of the border agencies.

Central to the e-Borders programme, therefore, is the routine capture of comprehensive passenger, crew and service information in advance of arrival in and departure from the UK through a "single window", and the joint analysis of that data in a multi-agency, co-located environment. Whilst the border agencies currently have access to a range of data capture and sharing powers, these are not sufficient to support the full range of e-Borders processes or the more integrated working under the wider Border Management Programme.

The Immigration Service, in particular, has already made significant progress in tackling organised immigration crime and reducing the number of undocumented passengers through the intelligent use of passenger information to target resources and intervention strategies. The e-Borders system will provide an opportunity to increase our effectiveness in a multi-agency framework.

Currently, the Immigration Service has the legislative power to require data from carriers. These powers are derived from:

- Paragraph 27 and 27B of Schedule 2 to the Immigration Act 1971
- Immigration (Particulars of Passengers and Crew) Order 1972, as amended by the Immigration (Particulars of Passengers and Crew) Order 1975.
- Immigration (Passenger Information) Order 2000 made under the Immigration and Asylum Act 1999
- Immigration (Form and Manner of Passenger Information) Direction 2000

The powers also apply to trains arriving through the Channel Tunnel by amendments introduced by the Channel Tunnel (International Arrangements) Order 1993.

Paragraph 27B allows the Secretary of State to dictate the form and manner in which the information will be provided and to set a time when information must be provided by the use of Directions issued by the Secretary of State.

Passenger information is specified by Order. This is done in the Immigration (Passenger Information) Order 2000. The form and manner in which passenger information must be provided is specified in the Immigration (Form and Manner of Passenger Information) Direction 2000

Whilst these powers are currently utilised to help fulfil the statutory functions of the Immigration Service, an extension to these powers is necessary to acquire further data that is required for the proportionate pursuit of Immigration Service functions. In particular, data is required in advance of travel and in an electronic format so that joint processing and analysis can be facilitated in an efficient manner by the three Border Agencies. The data elements concerned are those which are currently broadly available to the Border Agencies at the time of the passenger's arrival in the UK. For example, the proposals to capture additional API data fields are confined to those that are recorded in the MRZ of a passenger's passport. We anticipate that this data will be gathered using an electronic reader. In respect of PNR information, much of this is already provided to the Immigration Service on a voluntary basis but this proposal seeks to make our powers in this area explicit so that we can gather this data on a routine basis. No carrier will be compelled to provide any more PNR data than they gather routinely for their own commercial purposes.

## **Crew**

Legislation requiring the provision of crew information has not changed for 30 years. Given changes in the political climate, which raise security needs to a higher level, we have reviewed how crew information is provided. Under current legislation, ( the Immigration ( Particulars of Passengers and Crew ) Order 1972, ( the 1972 Order ) as amended by the 1975 Order ) the captains of ships arriving in the UK must furnish an immigration officer with particulars of the crew ( as set out in the 1975 Order ) within 12 hours of the arrival of a ship, if required. The captains of aircraft must provide the names, dates of birth and nationalities of all members of the crew of an aircraft arriving in the UK as soon as is practicable after the arrival.

## **Trains**

Eurostar, Eurotunnel, passenger and freight trains and 'through tunnel' freight trains carry crew, who may be subject to control. Statutory Instrument 2000 No 913 ( The Channel Tunnel (International Arrangements) (Amendment) Order 2000 ) amended schedule 4 to the Channel Tunnel ( International Arrangements ) Order 1993 and so amended Paragraph 27B and 27C of Schedule 2 to the Immigration Act 1971 with regard to the provision of passenger information. However, it made no amendment to Paragraph 27, which relates to the provision of air and sea crew particulars. Under current legislation therefore, particulars of train crew cannot be required.

## **c) Rationale for government intervention**

Existing statutory powers were established before the kind of integrated closer working now demanded of the border agencies by the Government and envisioned by e-Borders and the Border Management Programme. Current powers are designed to enable the Immigration Service to obtain information from carriers in a targeted manner. They do not anticipate the border agencies participating in joint activities,

including analysis of carrier data to enhance border security based on the levels of threat to UK homeland security. Whilst existing powers do provide for the acquisition of data from carriers in certain circumstances, these are not sufficiently comprehensive or flexible enough to support the full range of processes being introduced under the e-Borders and Border Management Programmes.

To date, the Immigration Service data acquisition powers have been exercised in an essentially non-routine way with targeted intelligence-led acquisition of data based on the information and resources available. There has been little or no structured coordination between the agencies in this specific area nor the technical solution to process volume data. The Immigration Service has also been reliant on the voluntary co-operation of carriers to provide additional vital information to support its statutory functions. Increasingly, this co-operation has been withdrawn as legal constraints around data protection have been realised and as carriers, particularly in the low cost sector, seek to drive down costs. This results in an increased risk to our secure border strategy.

## **Crew-Current Procedures and Problems**

### **Air**

Some 32,000 aircrew arrive each week at Heathrow alone and generally by-pass the immigration control with consent through Crew Customs. A general declaration, showing details of the crew, is provided, but this does not provide the full personal details required under the 1972 Order and does not allow for full checks to be made. Spot visits are, however, made by the Immigration Service to conduct such checks and to ensure that persons using that facility are, in fact, entitled to do so. Similar arrangements exist at most major airports, though practices and procedures tend to vary and are dictated by airport geography. The sheer numbers involved militate against conducting manual checks on all aircrew. Though abuse of crew clearance arrangements is not believed to be widespread, there have been occasions where non operational crew have been found using operational crew facilities – so by-passing immigration controls. In the current political situation there is a need to ensure, as far as possible, that all persons arriving in the United Kingdom are checked. Even where a crew list is provided ‘as soon as is practicable’ after the arrival of the aircraft, this can allow sufficient time for a crew member of interest to the Immigration Service to enter the UK before he can be identified and intercepted.

### **Sea**

Although responsibility for providing sea crew information currently rests with the captain of the ship, in practice, crew lists are normally provided to the Immigration Service by the ship’s agent, acting on the captain’s behalf. Standards of compliance vary widely, with some agents not providing crew lists at all, others providing lists within 7 days (rather than within 12 hours, as required) and others not providing lists until after the ship has departed. Even where crew lists are provided within 12 hours of the ship’s arrival, persons of interest to the Immigration Service have ample opportunity under the current legislation to enter the UK unchecked. Some agents already routinely provide crew information by fax or e-mail before ships’ arrivals. Historically, the arrival of non professional seamen at UK ports has presented occasional challenges to our immigration controls and there have been a number of cases where passengers have posed as sea crew in an apparent attempt to avoid visa requirements and routine immigration controls / passenger checks.

Captains have a responsibility under current legislation to inform UKIS where a member of the crew deserts ship, requires to be repatriated or will not depart with the vessel for any other reason. There are no mechanisms in place, however, to identify instances where deserters, or other crew members who fail to depart with the ship are not reported.

Accordingly, the proposed provisions seek to deliver a more comprehensive data acquisition framework that will support the aims of e-Borders and the Border Management Programme processes. The provision will also facilitate transparency of process and ensure compliance with relevant Data Protection and Human Rights principles, which ensure fair, lawful and proportionate data acquisition.

The Immigration Service will continue to retain individual powers to require carriers to provide data, but the Government has recognised the impact on industry, including the potential for that impact to be increased if having to respond separately to requests for data from each of the individual agencies. In committing to minimise that impact where it is possible to do so, the government has previously given undertakings to the carrier community to work towards the creation of a “single window” for the provision of data to the Border Agencies, recognising that it makes sense, both for Government and for industry, for the required data to be captured once and then to be made readily available for all frontier control purposes. The e-Borders systems will support the delivery of the “single window”.

This will ensure that in complying with our future requirements for routine and comprehensive provision of data, carriers will not be required to provide that data to the other Border Agencies separately, thus reducing the cumulative impact of the individual data acquisition regulations. It will also ensure that as biometric technology becomes increasingly available that the Immigration Service will be able to exploit this further.

The provisions will also support a modernisation of the Immigration Service powers to effectively respond to the risk posed by unscrupulous persons posing as sea and aircrew. Modern technology now allows for the electronic transfer of crew details in advance of travel and will allow the Immigration Service to administer an effective flexible clearance policy based on a proper evaluation of risk.

The Bill contains a power for the Secretary of State to introduce secondary legislation to enable an immigration officer to require air and sea [and train crew] crew particulars to be provided before the arrival of the ship, aircraft or train and by a specified means.

We envisage that the routine collection of crew data will ultimately be implemented in the longer term as part of the e-Borders programme. In the interim, and following the implementation of secondary legislation, we will require details of arriving sea crew to be routinely provided in advance. Train and air crew information will be required in advance on an intelligence led basis. Although we already request sea and air crew information we are not currently able to require the data in advance. It is likely given the current security climate that the number of intelligence led requests will increase. To reduce the immediate impact on the industry, it is proposed that initially, information be provided by commonly used electronic means such as fax or email.

## **Air**

Some of the carriers participating in Project Semaphore already have systems in



place to provide crew data to the USA authorities in accordance with legislative requirements. Some therefore also provide crew information to UKIS alongside API data. As Project Semaphore unfolds and more of the participating carriers and routes come on stream, the potential to collect air crew information routinely will widen.

## **Trains**

We envisage that crew data will be captured systematically as part of the e-Borders programme. UKIS does not envisage seeking to require crew data in the interim, as a matter of routine. However, should a need to obtain train crew particulars arise following implementation of secondary legislation and in advance of the roll-out of e-Borders we envisage that e-mail or facsimile will be used to transmit the data.

## **Departing Ships, Aircraft and Trains**

The Bill contains a power to also require crew information with respect to departing ships / aircraft. Secondary legislation will include trains. Ultimately air, sea and train crew particulars will be systematically collected under the e-Borders programme. An ability to compare lists of arriving and departing crew will provide a means to identify instances where there has been no notification of crew who have failed to depart. The Bill seeks to provide a legal basis for doing so. As is the case with particulars of arriving crew, particulars of departing crew may be provided using existing equipment if it is required, on an intelligence-led basis. There are no plans to collect data routinely on departing crew ahead of the e-Borders roll out.

The UK faces a range of major issues, threats and challenges that can be addressed by effective and efficient border controls, including sustained passenger growth and ongoing terrorist threats to UK interests. These are explained in more detail in the outline e-Borders RIA. The e-Borders Programme recognises that doing nothing will fail to respond to any of the drivers, will fail to solve any of the issues, will fail to take advantage of opportunities to improve and is untenable. It will have a serious impact on the e-Borders core partner agencies, including:

- Continued threat from organised immigration crime. More than 100 people were charged with people smuggling offences at UK ports in 2004
- Risk to maintaining reductions in undocumented arrivals, approximately 10,000 inadequately documented passengers arrived at UK ports of entry in 2004.
- Higher costs of maintaining the same level of control, if at all possible. More than 100 Million people pass through more than 350 UK ports each year. This is predicted to increase sharply over the next 5 years. For example, Liverpool airport has seen a 30% increase in passenger numbers in the last year.
- Very significant risk of failing to meet service levels, public commitments and high profile targets if we are unable to deploy our resources flexibly on the basis of an accurate risk assessment.
- Growth in public dissatisfaction with the performance of the Government's immigration, security and anti-crime policies, if border security is compromised as a result of the pressure from passenger volume and outdated processes.
- Failure to meet the requirements outlined in the White Paper for closer co-operation between the border agencies.

## **3. Consultation**

The routine implementation of these provisions will be part of a package of measures to be rolled out as part of the e-Borders Programme. In the interim, however, the

Border Agencies reserve the right to require passenger and crew information in accordance with statutory powers. The timescales involved in bringing forward this legislation have meant we have been unable to consult fully with industry on the specific detail of the provisions prior to introduction. We have however had extensive consultations with industry as we have developed our e-Borders programme and we will continue to do so. Consultation on the implementation of these particular provisions will take place as part of wider consultation on e-Borders.

Please refer to the main document for further details.

#### ***4. Options/5. Costs and Benefits***

The routine implementation of these provisions will be part of a package of measures to be rolled out as part of the e-Borders Programme. The Options analysis, including costs, benefits and impact, therefore needs to be seen in the wider context and reference should be made to the main document for further details.

Technological advances, as currently used in support of Project Semaphore, make it possible to collect and transmit passenger and aircrew details routinely. Carriers participating in Project Semaphore already collect crew information to comply with the requirements of other countries. Some have already offered to provide crew particulars, together with API data, using the same equipment. Where air crew information is collected and transmitted in this way, there will be minimal additional costs to air carriers.

We recognise that additional requests for crew data ahead of the roll-out of e-Borders may have an impact on carriers and we intend to work with carriers to minimise any such impact

#### ***6. Small Firms Impact Test***

We do not consider there to be any significant impact on small business. Please refer to the main document for further details.

#### ***7. Competition assessment***

The implementation of these provisions will be part of a package of measures to be rolled out as part of the e-Borders Programme. The Competition assessment therefore needs to be seen in the wider context and reference should be made to the main document for further details.

### **ENFORCEMENT, SANCTIONS AND MONITORING**

#### **a) Enforcement**

The proposal to extend the current powers available to the Immigration Service do not raise any additional enforcement requirements.

Existing legislation in relation to the collection of passenger and crew data is enforced by immigration staff at ports of entry. Compliance by carriers is already good in respect of the legislative requirements and we do not anticipate any significant enforcement issues.

We envisage that the advance capture of passenger, crew and service data using the 'single window' approach will be enforced by the e- Borders Operations Centre proposed under the e-Borders solution.

**b) Sanctions**

There are already existing criminal sanctions in place in connection with existing powers to collect passenger and crew data. These are set out in Section 27 of the Immigration Act 1971. The proposed extension to these powers would similarly be covered.

The Immigration Service has rarely been forced to rely on criminal sanctions to enforce compliance with existing legislation. The vast majority of disputes are resolved administratively at a local level at ports of entry. Senior officials engage with industry representatives on a regular basis through facilitation groups and in international fora.

**c) Monitoring**

The existing legislation is monitored by immigration staff at ports of entry.

The extended powers will be monitored by staff at the e- Border Operations Centre proposed under the e-Borders solution.

## **Enhanced powers to enable the Police to capture passenger and crew data.**

1. A new power to enable a Superintendent to request passenger and crew information from an owner or agent of a ship or aircraft in the form and manner directed by the Secretary of State by Order.

### **Purpose and intended effect of measure**

#### **(i) The objective**

2. To provide the police with enhanced powers to capture passenger and crew data for international travel (air, sea and rail). The key aim is for the Police to be able to obtain data prior to the passengers or crew travelling and in a format which supports electronic processing.

3. The police's current data acquisition powers are limited to passenger information only and restricted to port or border areas and the counter-terrorism context. Enhanced powers are required to improve border security, support counter terrorist and serious organised crime operations and contribute to the effective operation of e-borders and the Border Management Programme. The powers will support joint working with Border Agencies in regard to the movement of people and goods involved in both terrorism and serious organised crime through the UK's border. It will also support general police and criminal justice functions.

#### **(ii) The background**

4. The Government has made clear that it is not their intention to introduce a single border agency. The White Paper "One Step Ahead" instead sought closer and more effective working between the Border Agencies by encouraging co-operation and data sharing. To this end, while each of the Border Agencies will remain separate and autonomous entities, they are working together in the *Border Management Programme (BMP)*.

5. A key element of the *BMP* is to ensure that data about passengers and crew is captured efficiently by the Border Agencies and shared between them in support of operational activity. It will be necessary for each of the Border Agencies to acquire data under its own autonomous powers and thereafter to share the data.

6. At present the police are able to obtain from carriers some data for counter terrorism and crime investigation purposes on a case by case basis. However this is not sufficient for the proportionate pursuit of their border control functions. Legal advice confirms that current data capture and sharing powers are not sufficiently robust to support fully integrated working under the *BMP*.

#### **(iii) Rationale for government intervention**

##### *Powers to capture passenger and crew data*

7. Police counter terrorism and counter crime activities are intrinsic elements of border management. The proposed powers are critical to ensuring the effective operation of the *BMP* and *e-Borders* programmes.

8. DfT forecasts indicate that the travelling population will increase dramatically over the next 20 years. Current police presence at port is limited and additional

resources are not readily available for redeployment. Chief officers will only redeploy resources where opportunities for improved productivity can be demonstrated through intelligence led policing.

9. Through a combination of operational experience, specific intelligence and historical analysis, the Police build up pictures of suspect passengers or patterns of travel behaviour. These pictures and patterns typically share common indicators which are developed into profiles. Access to comprehensive passenger and crew data in advance of a vessel's arrival or departure in the United Kingdom will allow officers to assess the risk presented by the people carried and to mount a proportionate response. Where this involves stopping or monitoring a person or goods through the port the use of advance passenger data combined with existing intelligence systems will inform a targeted intervention, with improved likelihood of a positive outcome.

10. A more targeted approach will also reduce the likelihood of innocent travellers being stopped, incorrect intelligence reports being entered onto Police systems and will release police resources to intelligence led activity.

11. It is critical that the Police have the necessary capability and flexibility to respond to threats from terrorism and to counter serious and organised crime. At present their powers to require data are limited to Schedule 7 to the Terrorism Act 2000. This does not enable them to obtain information for serious and organised crime purposes, nor to capture information in advance of a passenger arriving in the UK. In addition, this legislation does not allow for the provision of data in bulk.

12. Electronic access to a comprehensive range of data - in advance of travel - is critical in enabling the Police to respond quickly, effectively and proportionately to changing threats.

13. This has been demonstrated through the successes already attained by Project Semaphore. Alerts relating to subjects matched against the Police National Computer and crime intelligence have led to over 89 arrests. Since July 2005 a significant number of alerts associated with national security and counter terrorist enquiries have been issued and valuable intelligence gained from examination of data collected by the Project Semaphore system.

14. In each case the Semaphore system either identified the suspect or added to the intelligence picture. Currently Semaphore only receives data on outbound passengers after they have departed. Access to advance information would have allowed informed assessment and, where appropriate, earlier intervention.

15. The proposed power to acquire service passenger and crew information will be directed to:

- The owner or agent (carrier) of a ship, aircraft or vehicle<sup>10</sup> which arrives or is expected to arrive in any place in the UK from outside the UK (international carriers);
- The owner or agent (carrier) of a ship, aircraft or vehicle which leaves or is expected to leave the UK (international carriers).

16. A request would be made in writing of the carrier and specify the information required and the date on which it expires. This is the equivalent of the Immigration

---

<sup>10</sup> These terms are defined in paragraph 1(2) of schedule 7 to the Terrorism Act 2000

Service's provision in sub-paragraph (5) of paragraph 27B of the Immigration Act 1971 (as amended by Section 18 of the 1999 Act).<sup>11</sup>

17. The routine implementation of these provisions will be part of a package of measures to be rolled out as part of the e-Borders and Border Management Programmes. Consultation on the implementation of these provisions will take place as part of wider consultation on e-Borders and reference should be made to the main document for further details.

## **Consultation**

18. The routine implementation of these provisions will be part of a package of measures to be rolled out as part of the e-Borders Programme. In the interim, however, the Border Agencies reserve the right to require passenger information in accordance with statutory powers. The timescales involved in bringing forward this legislation have meant we have been unable to consult fully with industry on the specific detail of the provisions prior to introduction. We have however had extensive consultations with industry as we have developed our e-Borders programme and we will continue to do so. Consultation on the implementation of these particular provisions will take place as part of wider consultation on e-Borders.

19. Please refer to the main document for further details.

## **Options/ Costs and Benefits**

20. The routine implementation of these provisions will be part of a package of measures to be rolled out as part of the e-Borders Programme. The Options analysis, including costs, benefits and impact, therefore needs to be seen in the wider context and reference should be made to the main document for further details.

## **Benefits**

### **Economic**

21. The Border Management Programme will allow more effective joint working in order to strengthen border security whilst minimising the impact on legitimate traffic. This will benefit carriers.

### **Environmental**

22. No additional benefits.

### **Social**

23. No additional benefits.

## **Costs**

### **Economic**

---

<sup>11</sup> (2) If an immigration officer asks the owner or agent ("the carrier") of a ship or aircraft for passenger information, the carrier must provide that information to the officer. ....(5) a request under sub-paragraph (2) –(a) must be made in writing; (b) must state the date on which it ceases to have effect;

24. There will be some resource implications for carriers who will have to provide passenger and crew data to Police. We are working with industry to minimise costs.

### **Environmental**

25. No additional costs.

### **Social**

26. No additional costs.

### **Small Firms Impact Test**

27. We do not consider there to be any significant impact on small business. Please refer to the main document for further details.

### **Competition assessment**

28. As above

### **Enforcement**

29. Compliance by carriers is already good in respect of the current legislative requirements and we do not anticipate any significant enforcement issues. Evidence from Project Semaphore and the experience of countries that already have similar systems in place indicate that there is a willingness within the travel and transport industry to engage with Government in this activity.

30. We envisage that the advance capture of passenger and crew data will be operated through and enforced by the e-Borders Operations Centre proposed under the e-Borders solution.

### **Sanctions**

31. A new offence of failing to comply with a request is set out in the Bill. However, the vast majority of disputes are usually dealt with at a local level at ports of entry. Senior officials engage with industry representatives on a regular basis through the facilitation groups and in international fora.

### **Monitoring**

32. The proposals will be monitored by staff at the e-Borders Operations Centre proposed under the e-Borders solution. This will include comprehensive management information.

### **Competition assessment**

33. The implementation of these provisions will be part of a package of measures to be rolled out as part of the e-Borders Programme. The Competition assessment therefore needs to be seen in the wider context and reference should be made to the main document for further details.

**Customs Data Requirements****HMRC Data Requirements (as set out in the Commissioners' Directions on passenger information dated 18 October 2001).**

All information of the following descriptions held by an owner of any aircraft, vessel or through train in relation to which these directions apply, about each person carried on that ship or aircraft:

- (a) The identity of that person and the owner's description of his status;
- (b) The address of that person and any contact details obtained in relation to him or others;
- (c) Particulars recorded in connection with the making of that person's reservation and with the completion of check-in procedures applicable in relation to his journey (including any travel document information recorded);
- (d) Particulars recorded in connection with the issue of the ticket on which that person is travelling;
- (e) Particulars recorded in connection with payment made for that ticket;
- (f) Particulars of that person's journey and particulars of any other journey covered by the same reservation;
- (g) Particulars relating to the ship or aircraft on which that person is being carried;
- (h) Particulars of any seat allocated to that passenger;
- (i) Particulars of any services or facilities covered by the reservation made for that person;
- (j) Particulars of any vehicle in relation to which that person is a driver or passenger.

This requirement to provide information shall not apply in relation to any information which is not obtained by an owner of a ship, aircraft or through train in the ordinary course of his business, or which is not held in his passenger reservation or departure control system or equivalent.



**List and description of data elements required by the Immigration Service<sup>12</sup>**

<b>Data Elements</b>	<b>Description</b>
<b><u>Advance Passenger Information (API)</u></b>	
1 Full name	Personal information contained in the MRZ of the passport.
2 Gender	As above
3 Date of birth	As above
4 Nationality	As above
5 Type of travel document	As above
6 Travel document number	As above
7 Issuing state	As above
8 Expiry date of travel document	As above
<b><u>Passenger Name Record (PNR)</u></b>	
9 Place of birth	Personal information <u>not</u> contained in the MRZ of the passport.
10 Issue date of travel document	As above
11 UK visa or entry clearance expiry date	As above
12 PNR record locator code	Booking reference number
13 Date of reservation	Date reservation made
14 Date(s) of intended travel	Date passenger intends to travel
15 Name	Passenger name(s)
16 Other names on PNR	Other passengers on same booking
17 Address	Passenger's address
18 All forms of payment information	Usually in code specifying type of payment e.g. M (cash), Credit Card number
19 Billing address	
20 Contact telephone numbers	Can include telephone number for passenger, travel agency, hotel etc
21 All travel itinerary for specific PNR	Route booked for those passengers on the PNR
22 Frequent flyer information (limited to miles flown and address(es))	Only card number and type (e.g. gold card, blue card) held on PNR systems – (Other information held on separate carrier system)
23 Travel agency	Can be name, IATA code, telephone number or full address of travel agency
24 Travel agent	Person at agency who made the booking
25 Code share PNR information	PNR reference of code share booking
26 Travel status of passenger	Status of booking e.g. confirmed, wait-listed
27 Split/Divided PNR information	Where a PNR booking for more than one passenger is split due to a change in itinerary for one or more (but not all) of the passengers
28 E-mail address	Address of person who made reservation by e-mail
29 Ticketing field information	Includes ticket number and date of issue
30 General remarks	Additional information that the agent considers of interest or relevance to the booking
31 Ticket number	Number on ticket
32 Seat number	On PNR system, this can be the seat requested. On other carrier systems (such as the Departure Control System) this can be the seat allocated
33 Date of ticket issuance	Date the ticket is issued (not usually the same as the reservation date)
34 No show history	Details of passenger's non-appearance for flights
35 Bag tag numbers	Issued at check-in. Information usually held on Departure Control System and not on PNR system
36 Go show information	Where there is no corresponding PNR information for a journey. Usually related to passengers on flexible tickets who 'turn up at check-in and travel'.
37 OSI information	Additional passenger information such as infant, staff, VIP, ticket numbers
38 SSI/SSR information	Information such as special meal requests, wheelchair passengers, unaccompanied minors
39 Received from information	Details of who made the booking
40 All historical changes to the PNR	Changes to flights
41 Number of travellers on PNR	Number of passengers on the same PNR
42 Seat information	Includes class of travel
43 One-way tickets	Where passenger travelling on one-way ticket
44 Any collected APIS information	Where a carrier is required by authorities to collect personal biographic data such as

<sup>12</sup> This list describes the data elements that the Immigration Service intends to require. Those data elements which are in addition to those already specified in the Immigration (Passenger Information) Order 2000 must be specified in secondary legislation and the list is therefore subject to approval by Parliament.

45	ATFQ fields	name, date of birth, nationality, gender, travel document details Information about how a fare is constructed - quote/cost of fare
----	-------------	---------------------------------------------------------------------------------------------------------------------------------------

#### **Unaccompanied minors under 18**

46	Name of child	Personal details of child travelling without a parent or elder sibling.
47	Age	As above
48	Gender	As above
49	Language(s) spoken	As above
50	Special instructions	e.g. medication, allergies, special dietary requirements, transit details
51	Name of guardian(s) on departure	Details of the adult who hands the child over to the carrier
52	Relationship to child	As above
53	Address	As above
54	Telephone number	As above
55	Name of guardian(s) on arrival	Details of those who will be caring for the child
56	Relationship to child	As above
57	Address	As above
58	Telephone number	As above
59	Departure agent	Details of carriers' agent
60	Transit agent	As above
61	Arrival agent	As above

#### **Departure Control System (DCS)**

62	Check-in time	The time the passenger arrives to check in
63	Seat number	The seat number to indicate where the passenger was seated
64	Baggage details	How much luggage the passenger checked in
65	Check-in agents initials	Identifies who checked the passengers in
66	Out-bound indicator	Identifies where a passenger was supposed to be travelling onto
67	In-bound connection indicator	Identifies where a passenger started his journey and not just the last leg of the route
68	Group and sex indicator	Helps to identify family groups and sex of passenger

#### **Flight / Service information**

69	Flight/ship's identification	Details of arriving aircraft or ship
70	Carrier name/Nationality of ship	As above
71	Scheduled departure date	As above
72	Scheduled departure time	As above
73	Scheduled arrival date	As above
74	Scheduled arrival time	As above
75	Last place/port of call of service	As above
76	Place/port of service initial arrival	As above
77	Subsequent place/port of call within the country	As above
78	Number of passengers	As above

#### **Sea Crew**

79	Number of crew	Total crew on ship or aircraft
80	Nature & Number of Identity Document	Passport/ seaman's passport
81	Names of crew member	
82	Nationality	
83	Date of Birth	
84	Place of birth	
85	Rank/rating or equivalent	

#### **Air Crew**

86	Names of crew member	
87	Nationality	
88	Date of Birth	

#### **Miscellaneous provisions**

89	Timeframe for data	Ability to require data in advance of passenger arrival movement and to determine timescale for data provision
90	Format for data	Ability to determine format for data provision (electronic or facsimile)

**Mandatory data****The traveller's**

- Full name
- Gender
- Date of birth
- Nationality
- Type of travel document held by the passenger and its number
- The document's expiry date

**Data for each traveller to be supplied to the extent that they are known to the carrier;**

- The name as it appears on the reservation
- Ticket number
- Date and place of issue of ticket
- Identity of the person who made the reservation
- Any other names that appear on the same reservation
- Method of payment
- Credit/debit card details
- Address
- Telephone number
- Fax number
- e-mail and internet addresses
- Date of reservation
- Unaccompanied minors
- Accompanied minors travelling with a person that is not recognised as a family member
- Name, address and contact details of a sponsor in the UK
- Name and contact details of an adult dropping off the child at a port.
- Passenger Name record or other data locator used by the carrier
- Code share PNR details
- Travel status of the passenger
- Split/divided PNR information
- No show history
- No show history
- Go show history
- Check-in time
- Seat number
- Baggage details
- Baggage tag numbers
- Flight identification
- Scheduled departure date
- Scheduled departure time
- Scheduled arrival date
- Scheduled arrival time
- Last place/port of service call
- Subsequent place/port of call within the country
- Number of passengers

---

<sup>13</sup> This list describes the data elements that the Police intend to require. The data elements must be specified in secondary legislation and the list is therefore subject to approval by Parliament.

In June 2005, the Immigration, Asylum and Nationality (IAN) Bill was introduced in Parliament. At that time, the e-Borders team published a partial Regulatory Impact Assessment (RIA) on the Data Capture and Sharing Powers of the Border Agencies, which initiated a three month consultation period, during which written responses were received from nine industry stakeholders.

The e-Borders team has considered the comments raised during the consultation process and whilst a number of these have been responded to by issue of a revised partial RIA, we thought it would be helpful to provide industry stakeholders with a summary of the main issues. The revised partial RIA can be found at: <http://www.homeoffice.gov.uk/about-us/publications/regulatory-impact-assessments/?version=5>. We will now work towards producing a final RIA.

### **Summary of issues raised and responses**

#### **Costs**

*Concerns have been raised about the financial impact of e-Borders on the industry including set-up costs, the cost of additional equipment, system and process change costs and data transmission charges.*

##### Costs - General

We recognise carriers' concerns about the financial impact of e-Borders. We have liaised with industry to secure cost estimates and the limited information we have received from industry so far has been included in the updated partial RIA. e-Borders costs outlined in the partial RIA are only indicative as they will be further refined as part of the e-Borders procurement process as we work through the various technical solutions and options with suppliers. e-Borders will continue to liaise with carriers during the forthcoming procurement 'Requirements Convergence Exercise' in order to minimise costs/impact where possible. It is important to emphasise that no decision has yet been made on the distribution of the financial costs involved but that we have always said that we will seek to reduce the financial and administrative impact on carriers to the fullest extent possible. The extent of the financial impact will depend on a number of decisions yet to be made, including which of several technical options are chosen to support e-Borders. Nevertheless, it would be wrong to suggest that e-Borders will not have at least some financial impact on carriers.

#### **Charging**

*Carriers have raised objections to the possibility of passengers being charged a fee to cover e-Borders costs on the grounds that passengers are already subject to a number of travel related taxes and charges.*

As previously outlined, it is important to note that no decision has yet been made on the distribution of financial costs relating to e-Borders. Charging passengers a small fee is one of the many options currently under consideration. We acknowledge the concerns carriers have raised in respect of this issue and will take these into account during the evaluation process.

### **Compliance with international standards for data format/provision**

*Industry has raised concerns regarding the method and format of data transmission, emphasising the importance of the use of international standards and compatibility of e-Borders systems and processes with existing industry systems.*

We understand the need to take account of ports' and carriers' operating procedures and wider concerns in developing e-Borders technical and operational systems and appreciate that industry is already required to provide API/passenger reservation data to other states.

In support of a consistent approach we are actively engaged in the development of international guidelines and standards on the definition, use and provision of API and passenger reservation data.

In recognition of the potential cost, staffing and system pressures carriers face in providing data, e-Borders is working to ensure the 'interoperability' of its technical system based on industry standards where possible.

e-Borders recognises that systems need to be sufficiently flexible to accommodate both push and pull methods of data transmission and we intend to work with individual carriers to find the most suitable solution. Where data is pushed, an element of data filtering will need to be undertaken by the carrier to ensure the Border Agencies receive data only in accordance with their statutory powers. Where a pull method is employed, the Border Agencies will assume responsibility for any necessary filtering of data.

Further consultation during the forthcoming procurement Requirements Convergence exercise is intended to help minimise the burden and cost to industry where possible.

#### **Potential for impact on check-in processes**

*Carriers and port operators are concerned that the requirement to capture passenger data will impact on check-in transaction times and thus may result in congestion and/or delays.*

We recognise that, as far as is possible, we must not impinge on check-in transaction times because if we do we threaten to lower port operating capacities. We also recognise that a 'one size fits all' approach may not be appropriate. We appreciate, for example, that there are different check-in procedures and reservation systems in use which vary between and often within each sector of the industry. We also acknowledge that some ports operate in more basic technological environments with limited communications infrastructure and understand that we need to take all these issues into account when developing our processes.

In addition, we recognise that there are issues that need to be resolved which are specific to the maritime industry. These include, for example, the need to identify an effective way of collecting API from coach passengers and the need to be mindful of the more limiting physical constraints of a seaport environment and the congestion that can be caused by any delays. We are currently working on ways of addressing some of these issues as part of Project Semaphore Phase 2 and look forward to working through the potential solutions with carriers.

In respect of the impact of our specific API data requirements on check in processes we do not anticipate that these requirements will include any data elements that are not contained in the machine-readable zone of a travel document. Consequently, where a passport reader is used and a machine-readable document presented, we

anticipate that data collection may be incorporated, without significant impact, into existing check-in processes. All of ICAO's 188 Contracting States must begin issuing only ICAO-standard Machine Readable Passports (MRPs) no later than 1 April 2010 and some 110 States currently already do so.

### **Accuracy of Data**

*Carriers consider they should not be held responsible for the provision of inaccurate passenger data where a passenger does not check in for a flight via the traditional method.*

In order to use API effectively, it is crucial that the data provided by carriers is accurate. We favour collection of API by means of a swipe of the MRZ through a document reader as this method ensures quick and accurate data collection. Whilst we recognise developments such as self (including internet) check-in, our requirement is for accurate data, regardless of the check-in method. We are committed, however to working with industry to identify practical solutions and minimise impact where this is possible.

### **Congestion at ports**

*Carriers have also expressed concern about the increased queues resulting from the introduction in March 2004 of enhanced document checks on EEA nationals and the reintroduction of embarkation controls from 7 July.*

Enhanced checks were introduced on the EU Control in March 2004. This has assisted all the border agencies in streamlining interventions and increased the Immigration Services' capability to identify lost and stolen passports. This clearly demonstrates the need to maintain a strengthened EU control. There is no doubt that there is an impact on queuing times but the impact will vary from one location to another and we are confident that at most locations it is not significant. The benefits to border controls, which are realised from additional scrutiny of both passenger and document, outweigh any negative impact. To reduce the impact on queuing times we are negotiating with port operators to develop flexible queuing systems where possible and processes for easing congestion when it occurs.

We routinely monitor and review all aspects of our operations including embarkation controls and will maintain our approach to operating physical embarkation controls on an intelligence-led basis. We will continue to seek ways of minimising the impact on queues where possible such as, for example, increasing the capacity of immigration staff to be deployed flexibly in accordance with operational need and exploring new ways in which we can streamline departure checks by maximising the use of new technologies.

### **Benefits to Industry**

*Carriers have expressed concerns about the limited number of carrier benefits which have been identified in the partial RIA. Some of the main benefits accruing to carriers and their passengers from the implementation of e-Borders are outlined below.*

#### **"Single Window"**

The data sharing provisions being introduced by the Bill, together with e-Borders systems, will enable the Border Agencies to move towards the operation of a 'single window' for the receipt of passenger, crew and service information. Under the 'single window', the required data will be captured once and made available to all border agencies, thereby avoiding duplication of requests to carriers. This initiative

responds to concerns previously raised by industry. The ability to deliver this information electronically will mean that it can be incorporated as an automated part of carriers' check in processes. We acknowledge though that some carriers operate in less technologically advanced environments and we look forward to working through these issues with industry during the Convergence exercise.

#### Landing Cards

Carriers will benefit from no longer having to procure, store and distribute landing cards

#### Improved Public Confidence in Border and Security Controls

e-Borders will provide the travel industry with a more secure and efficient travelling environment and port processes which can only assist in helping maintain the UK's attractiveness as a civil aviation hub.

#### Expedited Travel

Better intelligence will result in better targeted interventions by border control agencies. Therefore, passengers who present no perceived threat to the integrity of UK Borders will be processed more efficiently and delays to their progress through the arrivals control will be minimised. This targeted approach has the potential to not only reduce delays at ports but also allow for a more coordinated response so that the same passenger or vehicle is not examined by each of the three agencies in turn.

There is the potential for 'further examination' cases to be resolved more quickly as officers will have more immediate access to supplementary information and in some cases some of the preliminary investigative work can be undertaken prior to the passenger's actual arrival in the UK. This saving in time will mean less inconvenience for the passenger, will free up staff to deal with other passengers more quickly and may represent a cost saving for carriers in terms of detention charges.

Automated barriers, linked to biometrically enabled travel documents or pre-registration schemes such as IRIS, will facilitate low risk passengers through controls allowing staff to be released to process passengers who choose not to use or do not qualify for such schemes.

#### Carriers' Liability

The Authority to Carry scheme, for which legislation was passed in the Nationality, Immigration and Asylum Act 2002, will enable carriers to deny carriage to certain categories of passenger who would, prima facie, not qualify for entry. This will have the potential to reduce detention charges and removal related costs in respect of such passengers. The details of the ATC scheme will be developed in consultation with the industry and set out in secondary legislation.

Consideration is being given to including lost or stolen documents (blank as well as previously issued) as categories under the Authority to Carry Scheme. There is therefore clearly potential to reduce the number of Carriers' Liability charges imposed

as well as the associated detention and removal costs should carriers be refused authority to carry passengers presenting such documents.

Whilst e-Borders systems will contribute to the reduction of Carriers' Liability charges imposed as outlined above, it is important to note that carriers' obligations under Carriers' Liability legislation will remain. e-Borders systems will only assist carriers in filtering out known threats and previously reported document abuse. Carriers will still have a duty to ensure that passengers are properly documented.

### **Future engagement with Industry**

The co-operation of carriers and port operators is essential to securing the successful delivery of e-Borders and the programme team has in place a collaborative approach to ensure that their systems are integrated with our vision.

Our continued active engagement with carriers and ports to develop e-Borders thinking alongside industry's own thinking will assist us in delivering a joined-up solution which works as far as possible in everyone's interests.

As part of that approach, a key aim of the e-Borders procurement strategy is to be able to assess the impact of our proposals on industry. We will be working with potential suppliers to identify the different technical options to support e-Borders and the impact of these options will be considered with industry during the 'Requirements Convergence Exercise' which is due to commence in February 2006. In the nearer term, leading to that phase, we will be engaging with representatives from all categories of carriers and ports in a series of workshops to disseminate information from the programme to them while at the same time gathering more information to inform the procurement process.

Once the primary legislation is in place, we will be bringing forward secondary legislation to, for example, specify the data elements and the form and manner in which the data is required. We will continue our consultation with industry as we develop our secondary legislation.



## List of Stakeholders Consulted

Air Europa  
 Airline Operators Committee (Heathrow) (AOC)  
 Airport Operators Association (AOA)  
 Air Portugal (TAP)  
 Air Routing International  
 Air Transport Association of America (ATA)  
 Andrew Weir Shipping  
 Arcalia Shipping  
 Association of Asia Pacific Airlines (AAPA)  
 Association of British Travel Agents (ABTA)  
 Aviance  
 BAA  
 Board of Airline Representatives UK (BAR UK)  
 Britannia Airways/Thomsonfly  
 British Air Transport Association (BATA)  
 British Airways  
 British Business and General Aviation Association (BBGA)  
 British Chamber of Commerce  
 British Mediterranean Airways  
 British Midland (BMI)  
 British Ports Association  
 Brittany Ferries  
 Brussels Airlines  
 Carnival Cruise Line  
 Carnival UK  
 Chamber of Shipping  
 Charter Airline Group UK (CAG UK)  
 Condor Ferries  
 Costa Cruises  
 Coventry Airport Handling  
 Crystal Cruises  
 DFDS Seaways  
 Department for Transport (DfT)  
 Dover Port  
 easyCruise  
 easyJet  
 Eurolines  
 European Low Fares Airline Association (ELFAA)  
 Eurostar  
 Eurotunnel  
 Farnborough Airport  
 Federation of Travel Agents (FTO)  
 First Choice  
 FlyBE  
 Fred Olsen Cruise Line  
 Go Travel Direct  
 Grimaldi  
 Hebridean Island Cruises  
 International Air Carriers Association (IACA)  
 International Air Transport Association (IATA)  
 International Aviation Handlers' Association (IAHA)

Irish Ferries  
Island  
Isle of Man Steam Packet Company  
Louis Cruise Line  
Maersk  
Manchester Airport Group  
Mediterranean Shipping Cruises  
Menzies Aviation  
Monarch Airlines  
My Travel Airways  
Norfolkline  
Norwegian Coastal Voyage  
Norwegian Cruise Line  
Norwich International Airport Handling Services  
Ocean Village  
P&O Ferries  
P&O Irish Sea  
Page & Moy  
Passenger Shipping Association (PSA)  
Peter Deilmann Cruises  
Prestwick Airport Handling  
Radisson Seven Seas Cruises  
Royal Caribbean International  
Ryanair  
Saga Shipping  
SeaDream Yacht Club  
SeaFrance  
Serviceair/Globeground  
Silversea  
Sri Lankan Airlines  
Star Cruises (UK) Ltd  
Stena Line Ltd  
Swan Hellenic  
Swissport  
Thomson Cruises  
Travelscope  
VLM Airlines  
Virgin Atlantic  
Voyages of Discovery