PARTIAL REGULATORY IMPACT ASSESSMENT

DATA CAPTURE AND SHARING POWERS FOR THE BORDER AGENCIES

Purpose and intended effect

The Objective

1.   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.   The following are key requirements for an integrated, secure border:

- Mechanisms for applying the level of control appropriate to the perceived risk and the entitlements held by those passengers. These range from the ability to deny travel and, at the other end of the spectrum, expediting clearance on arrival;

- Mechanisms for assessing, in advance of arrival, the immigration and security risks posed by passengers on scheduled or otherwise authorised services to the UK;

- Maintaining an accurate movement record of passengers travelling to and departing from the UK, in support of further border control functions, including risk analysis and detecting those who have no right to be in the UK and assist in the fight against terrorists and criminals ;

- Sharing relevant information in an efficient and legal manner between border control, law enforcement , intelligence agencies and other government departments;

- Measuring the effectiveness and efficiency of border control operations, so that operations can be continually assessed and optimised;

- Use passenger information and intelligence to inform and strengthen border control, law enforcement and intelligence agencies, making them more effective, efficient and flexible; and

- Provide more and better information about passengers to the UK (within legal constraints) that will support the work of border control, law enforcement and intelligence agencies and other government departments.

2.   The measures to be introduced will provide the Border Agencies with varying powers to capture passenger, crew, service and freight 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 are contained in Annexes B, C and D.

3.   We are also introducing data sharing provisions, which will facilitate the pooling and joint analysis of bulk data by the Agencies and a permissive power enabling the sharing and exchange of data with specified bodies.

4.   These legislative provisions, together with the implementation of e-Borders systems will support the "single window" for the provision of data by carriers to Government, 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.

Background

5.   The exercise of an effective border control involves a number of key, and frequently interdependent although complimentary, components including a counter terrorism strategy, initiatives to combat organised criminal activity and the operation of Immigration and Customs controls.

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 and freight data. Such data can be used by the agencies for purposes including national security and counter terrorism, counter proliferation, organised crime, illegal migration and people-trafficking, child welfare, including statutory duties regarding wards of court, and the apprehension of offenders (some of whom may be the subject of EU arrest warrants).

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 thereunder (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 at Annexes B, C and D.

9.   Until recently, there has been little co-ordination between the Border Agencies in making requests for information. This results in a carrier being asked for the same information by different agencies, which can be inefficient, costly and time consuming for all involved.

10.   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

11.   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 1988 but again, this is on a 'case by case' basis.

12.   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.

13.   The systematic implementation of the provisions will take place in 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.

Stage One (2004/05 to 2007/08)

- A proof of concept project Semaphore de-risks the programme by testing services whilst delivering early operational benefits to the agencies
- A further project-Iris Recognition Immigration System (IRIS) trials automated entry controls using biometrics
- Detailed requirements for the e-Borders solution are developed and the systems procured in readiness for the Initial Operating Capability of Stage Two

Stage Two (2008/09 to 2010/11)

- The e-Borders Operations Centre (e-BOC)-which will encompass the "single window" for the receipt of passenger data from carriers- and all core system capabilities (including Authority to Carry) come into being
- Services are rolled out incrementally to all air, sea and rail carriers operating internationally to/from all major UK ports, leading to the Major Operating Capability milestone, at which time the vast bulk of international traffic will be covered

Stage Three (2011/12 to 2013/14)

- Provides additional services to cover remaining areas, including small air- and sea- ports, leading to the Full Operating Capability by March 2014.

14.   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.

15.   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 Government.

16.   By 2010, we expect to see some 120 million people travelling to the UK each year. 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[1].   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. Lord Carlile who was appointed on 11 September 2001 to review the functioning of the Government's Terrorism Act and,

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[1] International Organisation for Migration

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 21st century Customs service which can tackle the modern challenges of serious and large scale smuggling and security threats at the UK frontier."

17.   Against this background, we recognise that we must find ways for our border agencies- HM Revenue and Customs, the Police Service and the Immigration 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.

18.   On 29 March 2004 the Home Office published a consultation paper on organised crime: 'One Step Ahead: 21st 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.

19.   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.

20.   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 the 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.

21.   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.

22.   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 are accurate and 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 Immigration, Asylum and Nationality Bill contains provisions in addition to those examined in this RIA which would enable an Immigration Officer to require any arriving passenger to provide information of an external physical characteristic to verify their identity and confirm they are the rightful holder of that document. Further details on these measures can be found in the 'Checking Biometric Data on Arrival' RIA.

23.   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.

24.   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. In the national security context, experience has taught that during the investigation following a terrorist incident the ability to historically track the movements of the suspected perpetrators or indeed attempt to identify them by reference to their travel is a vital investigative tool. As the terrorists may have entered the country a considerable time before the incident the retention of the data for a reasonable time is therefore necessary. In addition, for immigration control purposes the ability to refer to an audit trail of movements is key to risk assessing passengers.   An audit trail of movements which illustrates a passenger's compliance will weigh in that passenger's favour while evidence of non-compliance will clearly attract closer examination by an immigration officer. We see these as fundamental building blocks for enhancing border security.

25.   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 Passenger Information Order 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.

Risks if Government does not intervene

26.   The UK faces a range of major issues, threats and challenges, including sustained passenger growth and ongoing terrorist threats to UK interests, that can be addressed by effective and efficient border controls.   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:

- Higher costs of maintaining the same level of control, if at all possible
- Very significant risk of failing to meet service levels, public commitments and high profile targets
- Growth in public dissatisfaction with the performance of the Government's immigration, security and anti-crime policies
- Failure to meet the requirements outlined in the White Paper for closer co-operation between the border agencies

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

Options

28.   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 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 systematic provision of passenger data
- 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 specified format 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.

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 systematic 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 specified format 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

Key Benefits

- Provides a "single window" for the carriers
- Move towards systematic 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 systematic 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 format in which information required must be provided
- Obligation to share data will enable large scale pooling and joint analysis of data

Key Concerns

- Costs for carriers who will be required to invest in IT systems to deliver the required data in the required format
- 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 specified format 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 risk.

Data Collection and Transport Costs

29.   Data extraction and transport costs are likely to be a major cost component of the e-Borders Programme, and there are currently a number of possible data transport solutions being investigated. The programme has received indicative costings from two industry providers for data extraction and transport and based its cost model on the mid range of these costings. It is likely, however, that an internet based method will prove practicable with a significant reduction in cost.

30.   There are three main elements to the cost of data collection and transport viz:

- The cost of extracting PNR (Passenger Name Record) data from a carrier's reservation system
- The cost of transmitting PNR data
- The cost of transmitting API (Advance Passenger Information) data

31.   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 services travelling to and from the UK at the time of departure.

32.   At present the indicative costs (provided by potential industry suppliers-"Provider A" and "Provider B") attached to each of the options for data extraction and transport, per transaction, identified break down as follows:

	PNR Extraction	PNR Transport	API transport
Provider A	£0.05	£0.15	£0.04
Provider B	£0.05	£0.05	£0.04
Internet	£0.05	NIL	NIL

33.   It is planned that e-Borders will commence its implementation during 2007/08 and achieve major operating capability at the end of 2010. The table below shows the estimated number of passenger arrivals (based upon DfT projections in respect of air travel) and the estimated per transaction cost of data transport for each of the options described above during the implementation phase.

	2007/8	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14
Passenger Arrivals (mill)	106.9	110.4	114.0	117.7	121.6	125.6	129.7
Data Cost (£m)							
Provider A	7.5	15.5	23.9	29.7	34.0	35.2	36.3
Provider B	3.5	7.2	11.1	13.8	15.8	16.3	16.9
Internet	1.3	2.8	4.3	5.3	6.1	6.3	6.5

34.   It is estimated that in 2018/19 there will be approximately 153m international arrivals and a similar number of departures.   The estimated annual cost of data transport, in 2004/05 values is shown in the table:

Provider A	1. £42.7m
Provider B	2. £19.9m
Internet	3. £7.6m

35.   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.

36.   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.

37.   Several other countries have introduced, will be or are considering introducing similar requirements. It is likely there will be a convergence of hardware requirements (e.g passport readers) as each state specifies its requirements to carriers. In this context the potential costs to industry may be overstated.

38.   e-Borders will initially be funded mainly from the Home Office/IND budget allocation and ongoing costs will be incorporated in the planned expenditure of the relevant agencies. In the medium to long-term it is forecast that the financial benefits for all the agencies involved will significantly outweigh expenditure. In addition work is underway to establish the practicality of charging passengers a small fee to cover costs.

39.   Set out below is a summary of the discounted costs and anticipated benefits that will accrue from e-borders in the 15 year period to 2018/19.

Overall Costs (Resource & Capital)	£1,098m	
Including contingency allowance of	£466m	
Quantified benefits	£1,466m	[2]

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[2] Notes on table:

This case is made over 15 years, and the implementation is planned in three stages over a nine-year period.

Further analysis is underway within the core agencies to cost some of the quantifiable benefits identified

A contingency of 200% has been included in respect of capital costs in accordance with guidance contained in HM Treasury's Green Book

Preliminary indications arising from the implementation of Project Semaphore demonstrate that the estimates in respect of connectivity in particular can be reduced significantly

Impact on Public Sector

40.   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.

Impact on Carriers and other external stakeholders

41.   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.

42.   We acknowledge, however, that the comprehensive and routine provision of passenger, crew, service and freight 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.

43.   We also acknowledge the potential for advance passenger information (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, 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 machine-readable zone (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 passenger data 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. 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.

44.   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 (valued at about £400 million) in 2006. Failure to award a contract at this time will seriously impact on our ability to begin rolling out e-Borders from 2008 as the Government has committed to do.

45.   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. We shall, in turn work through these options with industry in order to identity and address the impact.

46.   These options range in cost. For example there are a number of potential technical options for transferring data. These range in cost from one penny to fifteen pence per transaction. We estimate 100,000,000 transactions in relation to inbound passenger movements per year.

47.   Whilst 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.

48.   For example, the provision we are introducing to support data sharing between the Border Agencies along with e-Borders systems, will support the delivery of the "single window". This will enable carriers to provide data to Government on a once only basis, instead of having to comply with separate requests from individual departments as at present. This addresses concerns previously raised by industry and will greatly reduce the impact on industry.

49.   We will refine the RIA during the Parliamentary process and take account of any additional information we are able to glean from stakeholders whose comments on this partial RIA will be welcomed.

Benefits Summary

50.   The main stakeholders will derive many benefits from e-Borders, and these can be readily divided into two categories, those which have been quantified and those which have not yet been quantified. Some examples of these are;

Quantified

Note: The figures quoted below are over the 15 year period to 2018/19

- It will provide the potential to realise process cost reductions and enhance staff efficiency- £976 million.

- The potential obsolescence of landing cards and other manual processes will provide process cost savings- £7 million.

- The existence of a comprehensive passenger movement record will enable the identification of those claiming benefits that are conditional upon residence in the UK- £158 million.

- It will reduce the number of removals that need to be effected at public expense- £78 million.

- It will enable the collection of embarkation data without the costs of establishing staffed controls- £183 million

Not yet Quantified

- The passenger data, movement audit trail and management information will be valuable to border control, law enforcement and intelligence agencies, providing greater support for immigration and security operations. In addition, there will be broader benefits including joined-up border operations, closer relationships with OGDs, and the opportunity to exploit synergies with other countries, particularly in the field of counter-terrorism and international crime.

- Passengers who present no perceived threat to the integrity of UK Borders are processed more efficiently and delays to their progress through the arrivals control are minimised.

- Carriers will benefit in terms of security, liability, customer confidence. Improved intelligence will result in more targeted interventions by the border control agencies.

- Improved management information will help influence strategic decisions by the control agencies.

- Improved interceptions of Class A drugs with the inevitable social benefits that will accrue.

- More focussed interventions demonstrates proportionality of responses.

- It will enhance the capacity to identify those seeking to evade excise duty.

- UK Immigration Service will have the information to operate a fundamentally more effective control, impacting the incidence of targeted immigration abuse.

- It will enable all the agencies to manage their resources more effectively and respond swiftly and appropriately to the perceived risk.

Equity and Fairness

51.	Please see the Race Equality Impact Assessment below.

Consultation with small business: the Small Firm's Impact Test

52.	Consultation with the Small Business Service is ongoing.

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 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. 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.	Informal consultation on e-Borders has included, to date, 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 this year and one to one meetings with individual carriers. A meeting with a group of key industry stakeholders will take place on 20 June to discuss the detail of the legislative provisions.

56.   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. In addition many of the data capture provisions will require the detail to be specified in secondary legislation provisions before we can proceed with implementation.

57.   As already mentioned, a key aim of the e-Borders strategy is to be able to assess the impact of our proposals on industry. As part of that strategy we shall be working with potential suppliers to identify the different technical options to support e-Borders. We shall, in turn work through these options with industry in order to identify and address the impact.

58.   In addition, Project Semaphore, the pilot, test bed project for e-Borders which commenced at the start of 2005, is providing the opportunity for 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.

59.   We intend, once Semaphore has been operating for a reasonable period of time (probably by September 2005), to publish 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

60.   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.

61.   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 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.

62.   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.

63.   We would welcome comments from stakeholders on this assessment.

Enforcement, Sanctions and Monitoring

64.   Data sharing power

Options 1 & 2

Enforcement

65.   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

66.   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

67.   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

68.   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, service and freight 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

69.   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.

70.   Please see Annexes B, C and D for information specific to each of the Border Agencies' data capture proposals.

Summary and Recommendation

71.   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 systematic 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			
Initial capital investment required			

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 21st 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 border agencies to share data.

<u>**Race Equality Impact Assessment: Data capture and sharing powers for the Border Agencies**</u>

<u>**Background to the provisions**</u>

The e-Borders programme aims to modernise and integrate the management of passenger information to expedite the movement of legitimate passengers while helping to safeguard the United Kingdom against serious and organised crime, terrorism and illegal immigration.

The aim is to combine existing carrier systems with advanced information technology to allow the border agencies, working together, to "export the border" from the United Kingdom, assessing passengers in advance of arrival, filtering out known threats and creating new opportunities to share information and intelligence between border control, law enforcement and intelligence agencies in the United Kingdom.

This will provide a more effective and flexible control appropriate to the perceived risk, faster passenger processing and a means of sharing and obtaining relevant border information through compatible systems across government.

The White Paper, 'One Step Ahead: 21st Century Strategy to Defeat Organised Criminals' 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.

<u>**Consideration**</u>
The provision by carriers of advance passenger information (API) and passenger name record (PNR) or reservation data will allow more appropriate levels of inspection by the border agencies, geared to the perceived risk, allowing resources to be focused where most needed. An authority to carry (ATC) scheme will allow the Immigration Service to prevent specified categories of passenger from travelling to the UK by requiring carriers to request a check against government databases before departure.

The provision of API and reservation data by carriers will apply in respect of **all** passengers, irrespective of their race or nationality, travelling on all routes by all methods of transport to the UK. Refusal of ATC is likely to be restricted to very specific categories of passenger, such as those people subject to a Deportation Order or an EU Travel Ban. The finer details have yet to be worked through and legal advice would be needed before any final decision could be taken on which categories ATC would apply to but they will not be based on nationality or race. Primary legislation is already in place. Secondary legislation subject to the affirmative resolution process will be required before the ATC scheme is implemented.

The provisions proposed will oblige the Border Agencies to share data which is relevant to their statutory purposes and in accordance with stated aims. The provisions will also provide for the sharing of data with other government departments and bodies where appropriate in the pursuance of their statutory duties.

The Border Agencies will make use of profiling which involves running a series of pre-defined profiles against reservation data. Most profiles are based on information obtained from actual results or from intelligence received. They do not discriminate on the grounds of race, nationality or gender because they look at data elements within a booking that tell a story which may point towards a suspect individual. These elements are typically items like method of payment, routing, travel agency, time of booking etc and are non-discriminatory.

e-Borders will introduce a revised immigration control which will allow many bona fide passengers to qualify for faster clearance, and biometric-controlled automatic gates will be available to certain categories of low-risk passenger. Eligibility to apply to enrol in such a scheme is based on **immigration status**, not race or nationality. Passengers eligible to apply include: passengers who are either permanently or temporarily resident in the UK; UK visa holders after the initial entry; frequent visitors who meet certain criteria, EU/EEA nationals on the basis of their free movement rights and UK nationals on the basis of their UK citizenship. There will be a one-off enrolment process, for those wishing to use the system. When they subsequently arrive at any of the UK ports with IRIS barriers, they will bypass the queues to see an immigration officer and look into a camera. If the system recognises them as being admissible, a barrier will open automatically and let them into the UK. Use of the IRIS barriers may be extended in the future to holders of biometrically-enabled travel documents, without the need to pre-register. The incorporation of biometric data in travel documents will provide a secure means by which a person's identity may be verified, something that may be done via an automated process. Where that person's entitlement to enter the UK is one which may also be verified automatically this, together with the ability to confirm identity via the use of the biometric data provides the basis for automated clearance.

The provisions introduced by the programme are not a substitute for the current controls exercised by the Border Agencies, they will enhance the effectiveness of these controls. The Border Agencies will continue to carry out their statutory functions and continue to exercise their respective controls in accordance with their own regulations and in accordance with relevant wider legislation including the Race Relations (Amendment) Act. The new provisions will not prevent, for example, the Immigration Service from seeking a ministerial authorisation under the Race Relations (Amendment) Act where necessary, as now. (Provided a difference in treatment on the grounds of nationality is authorised by legislation or a Minister it will be compliant with the race legislation. A minister will only issue an authorisation allowing a difference of treatment on grounds of nationality if there is an objective and justifiable reason for the difference in treatment). The provision of API and PNR data, the subsequent sharing of that data, the operation of an ATC scheme and charging for the service apply to all those seeking to travel to the UK, irrespective of nationality or race.

If we are to give effect to the proposals in the One Step Ahead White Paper for closer co-operation between the agencies, the powers sought are essential. They will not adversely affect the genuine traveller and indeed in many instances, arriving passengers will benefit from these measures since they will support expedited passenger clearance or pre-clearance. For these reasons and the reasons outlined above, we do not therefore, consider that any of these arrangements would amount to direct or indirect discrimination, or would impinge on our race equality duties.

<u>Relevance</u>

We do not consider that the provisions proposed under the e-Borders programme are relevant to the race equality duty in that they do not breach any of the aims of the duty.

Enhanced powers to enable HM Revenue and Customs to obtain information on passengers travelling from the UK to another EU country, and in respect of all international journeys in advance of arrival in the UK.

An extended power to require carriers to provide the details scheduled in the Commissioners Directions dated November 2001 <u>in advance</u> of the arrival of the means of transport.

A new power to require carriers to provide the details scheduled in the Commissioners Directions dated November 2001 in respect of journeys outbound from the UK to another EU member state.

2. Purpose and intended effect

(a) The Objective

1. To provide HMRC with powers to make mandatory the provision of the passenger data (that they may already require under the aforementioned Commissioners Directions) in advance of the arrival of the means of transport. This will allow sufficient time for the information to be used for profiling and targeting of individuals of potential interest, and allow time for a decision to be made as to whether an intervention is appropriate and for the resources to make such an intervention to be so directed.

2. To provide HMRC with the powers to require the passenger data that they may already require under the Commissioners Directions in respect of inbound and outbound journeys to and from third countries (ie non-EU countries) and on journeys *inbound* from EU countries, to journeys outbound from the UK to another EU member state.

3. To allow HMRC to fully participate in the e-Borders programme. This 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 advance provision of passenger information on all journeys into the UK will allow it to play a full part in e-Borders and also support the "single window" for the provision of data by carriers to government once only. This will avoid the current situation whereby carriers are 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 21st 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.

HMRC already enjoys 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, but this is considered to be insufficient for HMRC to require the data to a pre-determined time in advance.

The powers to require information on outbound EU journeys were disapplied as part of the Single Market provisions but HMRC's experience has shown this to be a specific weakness in their ability to target and profile smugglers. Many attempts at moving cash connected with drugs smuggling out of the UK involve a journey to another European hub airport and then transfer to a separate flight onwards to the country of destination. Additionally, HMRC's attempts to track the movements of known criminals under current investigation is hindered by the lack of powers to routinely examine outbound EU passenger lists.

(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. The lack of current powers to require outbound EU data mean that HMRC must make a separate request to individual carriers each time they wish to check whether an individual is travelling on an EU journey. This places a burden not only on the HMRC officer but also on the carriers who often have to dedicate specific company personnel to deal with these requests. Additionally, the inability for HMRC to apply its profiles to outward EU passenger lists leaves a massive gap in its ability to highlight individuals whose pattern of travel upon departing from the UK mean they would be of interest upon their return. Many seizures of illicit goods come about as a result of profiling behaviour on the outward leg of a journey, and the ability to only use these techniques on journeys to and from third countries leaves a major gap in HMRC's control of the border.

By 2010 it is expected that some 120 million people will be travelling to the UK each year. HMRC knows 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 around 30% of seizures made at the London Airports are generated by advanced profiling techniques using passenger information by around 10% or less of staff in those areas.

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 and individuals selected for intervention while leaving the vast majority of innocent travellers to continue their journeys uninterrupted. The plugging of the current gaps in their powers as 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 acts of threat to the 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 implementation of these provisions will be part of a package of measures to be rolled out as part of the e-Borders Programme. 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 implementation of these provisions will be part of a package of measures to be rolled out as part of the e-Borders Progamme. 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 Firm's Impact Test

Consultation with the Small Business Service is ongoing

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 Progamme. 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.

No ability to enforce or impose sanctions. Monitoring would occur through current work practices. Non compliance would be addressed through current methods (negotiation, good will by the carrier, MOUs etc.)

Option 2. As option 1.

Option 3.

The changes requested by HMRC in Option 3 enhance existing powers set out in sec.35 and 64 of CEMA 1979.

This will give HMRC the ability to enforce compliance and impose sanctions in respect of failure to comply with the new enhanced requirements under option 3, alongside existing requirements for information set out in the Commissioners Directions.

HMRC has individual agreements with carriers about the provision of data, allowing non compliant carriers to be easily identified.

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), including biometric data from travel documents, and additional reservation data to the extent that it is known to the carrier.

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 21st 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 government, 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 and crew 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 Machine Readable Zone (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 systematic basis. No carrier will be compelled to provide any more PNR data than they gather routinely for their own commercial purposes.

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.

Accordingly, the proposed provisions seek to deliver a more comprehensive date 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 government, 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 respond to this new identity management tool.

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 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 last year.
- Risk to maintaining reductions in undocumented arrivals, approximately 10,000 inadequately documented passengers arrived at UK ports of entry last year.
- 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 implementation of these provisions will be part of a package of measures to be rolled out as part of the e-Borders Programme. 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 implementation of these provisions will be part of a package of measures to be rolled out as part of the e-Borders Progamme. 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 Firm's Impact Test

Consultation with the Small Business Service is ongoing

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 Progamme. 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 and crew 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 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, crew and freight 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.

2.   A new power to enable a Superintendent to request freight 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

3.   To provide the police with enhanced powers to capture passenger, crew and freight 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, crew or freight travelling and in a format which supports electronic processing.

4.   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 and contribute to the effective operation of e-borders and the Border Management Programme. The powers will support to joint working with other Border Agencies in regard to the movement of people and goods involved in both terrorism and serious organised crime through the UK's border and to support general police and criminal justice functions.

(ii) The background

5.   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*).

 6.   A key element of the *BMP* is to ensure that data about passengers, crew and freight 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.

7.   At present the Police are able to obtain from carriers some data for counter terrorism purposes. However this is not sufficient for the proportionate pursuit of their border control functions. Legal advice suggests 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

8.   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.

9.   DfT forecasts indicate that the travelling population will increase dramatically over the next 20 years. Police presence at ports is currently limited and any increase in the deployment of police resources must be achieved by the re-deployment of personnel from existing duties where new posts cannot be created. Therefore the Police Service needs to maximise the productivity of existing resources. In port policing terms this means increasing the Police's ability to operate in an intelligence-led environment.

10.   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, crew and freight 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 or goods carried and to mount a proportionate response. Where this involves stopping or monitoring a person or goods through the port the use of advance traveller or freight data combined with existing intelligence systems will allow a targeted intervention, with an improved likelihood of a positive outcome.

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

12.   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 the police only have powers to capture data under Sch 7 to the Terrorism Act 2000. The powers under this Act do not enable them to obtain information for serious and organised crime purposes, nor do they allow the capture of information in advance of a passenger travelling. In addition, the current legislation does not allow for the provision of bulk data.

13.   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.

14.   This has been demonstrated through the successes already attained by Project Semaphore (despite the functionality being very limited at present):

- eight individuals suspected of terrorist activity have been detained in the UK or overseas,
- six terrorist related intelligence reports have been generated,
- four crime warrants have been executed,
- one crime related intelligence report has been submitted,
- a suspect involved in the importation of child pornography to the UK has been identified, and,
- at the time of writing, the PNC has been linked to the Semaphore system for three and a half hours and already one arrest has been made at Heathrow of a suspect wanted for an offence of indecency in Strathclyde.

15. In each case it is unlikely that these identifications would have been made without the ability to capture and share data within the Semaphore system. Currently Semaphore only receives data on outbound passengers after they have departed. Access to advance information would have allowed UK Police to respond and prevent the above mentioned individuals, suspected of terrorism related activity, from boarding aircraft.

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

- The owner or agent (carrier) of a ship, aircraft or vehicle[3] 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).

17. A request would be made in writing of the carrier and specify the information required and the date on which it expires.

Freight data

18. Information about freight movements and the identity of persons and companies involved with them allows HMRC to target and select for examination high-risk consignments before they arrive in the UK. These consignments could also involve the movement of terrorist assets, drugs, immigrants or smuggled goods connected with serious and organised criminality. Joint working initiatives under the Border Management Programme have identified that information from the freight transport industry could be of great value to Police investigating terrorist and serious organised criminal activity.

19. The Police will request freight data from:

- The owner or agent (carrier) of any ship, aircraft or vehicle which arrives or is expected to arrive in any place in the UK from outside the UK;

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[3] These terms are defined in paragraph 1(2) of schedule 7 to the Terrorism Act 2000

- The owner or agent (carrier) of any ship aircraft or vehicle which leaves or is expected to leave the UK.

20.   A request would be made in writing of the carrier and specify the information required and the date on which it expires.

21.   The implementation of all 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

22.   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 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.

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

Options/ Costs and Benefits

24.   The implementation of these provisions will be part of a package of measures to be rolled out as part of the e-Borders Progamme. 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

25.   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

26.   No additional benefits.

Social

27.   No additional benefits.

Costs

Economic

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

29.   No additional costs.
Social

30.   No additional costs.

Small Firms Impact Test

31.   Consultation with the Small Business Service is ongoing

Competition assessment

32.   As above

Enforcement
33.   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.

34.   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
35.   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
36.   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

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

PARTIAL REGULATORY IMPACT ASSESSMENT
CHECKING BIOMETRIC DATA ON ARRIVAL

Proposed amendment to Schedule 2 of the 1971 Immigration Act to enable an immigration officer to require any arriving passenger to provide information of an external physical characteristic to verify their identity and confirm they are the rightful holder of that document.

Objective

2. To ensure that we can realize the full benefit of travel documents that include biometric identifiers we need to ensure that an immigration officer may require any arriving passenger with such a document to provide a copy of their biometric data for comparative purposes. This will confirm that the passenger is the rightful holder of the document.

    Note: The benefits associated with the verification of biometric data should be read in conjunction with the Immigration, Asylum and Nationality Bill Regulatory Impact Assessment on data capture and sharing powers for the Border Agencies

    Background

3. *Passports* – Many countries are planning the introduction of passports which include biometric information (i.e. information about the holder, which may be a digitalized image of the face, fingerprints or other data such as the iris pattern of the eye). This information is stored in an encrypted electronic chip contained within the passport. The EU has decided to require Member States to issue such passports, containing at least a digitalized facial image of the holder by August 2006, and at least a digitalized facial image and the fingerprints of the holder by February 2008. In order to realize the benefits of new biometrically enabled passports, Immigration and Nationality Directorate needs to be able to, in the case of each passenger who arrives with such a passport and presents it to the immigration officer: (i) access the information held in the chip; and (ii) verify that the person presenting the passport is the rightful holder. For EU nationals (other than British citizens) and other third country nationals, this will involve requiring the passenger to provide biometric information and then comparing the information provided against that contained in the document. For British citizens it could involve comparing the biometric information provided by the passenger against either that contained in the passport or that contained in any future "national identity register".

4. *Entry clearances* – IND already requires certain applications for entry clearance to be accompanied by biometric information (currently, a record of the applicant's fingerprints). By 2008 the intention is that all applications for entry clearance will have to be accompanied by biometric information. IND intends to set up a database containing the biometric information of all entry clearance applicants. There is also a possibility that IND may decide to

include the information in a chip on the actual entry clearance itself, similar to the way biometric passports will operate. In order to realize the benefits of taking biometric information from entry clearance applicants, IND needs to be able to, in the case of each passenger who arrives with an entry clearance and presents it to the immigration officer, verify that the person presenting the entry clearance is the rightful holder. This will involve requiring the person to provide biometric information and then checking that information against either: (i) the information held in the database; or (ii) the information held in the electronic chip on the entry clearance itself.

Rationale for government intervention

5. In 2003, there were approximately 90,800,000 international arrivals in the United Kingdom. Current estimates predict an annual increase of about 5% in passenger flows estimated to lead to 212,000,000 annual arrivals by 2019

6. Increases in long-haul aircraft loading capacities mean that larger groupings of passengers are likely to arrive at the primary arrivals control with consequences for staffing and resource allocation. Any system must not only be designed to deter the illegitimate traveller, but equally to speed the genuine traveller who represents the vast majority of arrivals. Biometrics offers the opportunity not only to facilitate the genuine passenger but to identify those travelling on false documents. In this respect, the use of biometric technology has the potential to complement and enhance the benefits anticipated from securing passenger information from carriers. These benefits are set out in the Immigration, Asylum and Nationality Bill Regulatory Impact Assessment on data capture and sharing powers for the Border Agencies.

7. In 2003, approximately 38,100 passengers were refused entry and removed. This provided a ratio of approximately one in 2380 refusals against all arrivals and approximately one in 320 refusals against non-EU arrivals.

Benefits/Costs analysis

8. The introduction of checks against biometric documents will potentially provide the following benefits:
   - control staff saving, by redeployment of staff to more appropriate work
   - reduction in inadmissible passengers and better identification of inadequately documented passengers
   - increased identification of forgeries
   - reduction in passengers attempting to abuse the immigration rules
   - reduction in costs of on entry non asylum refusals
   - impact on improved security at UK borders
   - improved management at arrivals
   - impact on improving the robustness of the visa issuing process and assist in quality control of visa issues
   - impact on general illegal immigration activity

Costs

9. Currently there are 47 major ports of entry and an average of 20 desks per location. Due to the staged implementation of biometric identifiers in passports, ports will only have a relatively small percentage of arrivals with biometrically enabled passports. Initially, we may only provide one reader per port. However, as biometrically enabled passports become more common we will increase the numbers of readers per port accordingly. If every desk at port were to have a reader, Border Control would have to deploy the biometric solution at 940 desks at airports, seaports and the Juxtaposed Control.

10. The aim of verification is to strengthen the checks carried out against passengers travelling to the UK. Readers are able to check whether a chip has been tampered with and can also access biometric data about the passenger. There are two systems that could be used to update the readers with information relating to public documentation:

11. a) A fully networked and integrated system will enable the readers to be updated with information on a daily basis and incorporate the security 'key' change that will take place automatically every three months to allow the readers to open up the biometric data stored in the documents. In order to access the encrypted data, the readers must have access to a public key which is provided by all countries participating in the issue of biometrically enabled documents. This 'public key infrastructure' (PKI) would be linked to all ports to enable updates on a daily basis. This would ensure the integrity of the data stored or accessible to the readers as there can be further changes to or withdrawal of the 'keys' for security reasons. This option would be the preferred option as it could be used to provide one single networked reader for each port and could then be expanded as biometric passport production increases.

12. b) Stand alone systems. CD ROMs could be used to update readers on their own (on the assumption that we had one passport reader and one visa reader per port, a CD could be sent to every port). However, CDs on their own will not be able to provide readers with updates from the PKI on a regular basis. Thus, although a cheaper way of updating reader, this will not provide the same degree of protection of the border that a daily update could provide.

13. Technology in this area is evolving rapidly and at the moment we would estimate the cost of a reader to be between £3-5000. At this stage the United Kingdom Immigration Service is not proposing to implement a fully automated control. We are only looking to provide 1 reader capable of reading the chips in the biometric passport and the visa. Initially, this may be one reader for passports and one for biometrically enabled ID cards. However, as technology is evolving we may be able to purchase technology capable of reading both. The following figures are very rough estimates that only give some indication of costs and will be adjusted over time.

   Passport readers: 47 readers (assuming 1 per port)

	(approx. £3,000 – 5,000) plus one PC per reader (approx. £1,000)
	£188,000 – 282,000:
Visa readers:	47 readers (1 per port) (approx £3,000-5000): £141,000 – 235,000

Installation costs:	Cabling £1,000,000 (approx)
	CD Rom: Negligible.

Assuming **cabling** is used to update the PKI and there is one reader for biometric passports and one for visas:

Cabling and readers

Bottom estimate:	
Cabling	£1,000,000
Passport reader	£188,000
Visa reader	£141,000
Total:	£1,329,000

Top estimate:	
Cabling	£1,000,000
Passport reader	£282,000
Visa Reader	£235,000
Total	£1,517,000

Assuming **CD Rom** is used to update the PKI and there is one reader for biometric passports and one for visas

CD Rom and readers

Bottom estimate	
CDs	£ negligible
Passport reader	£188,000
Visa reader	£141,000
Total	£329,000

Top estimate	
CDs	£ negligible
Passport reader	£282,000
Visa Reader	£235,000
Total	£517,000

Business Areas affected

14. The proposed amendment would affect arriving passengers. Any change to processing times for passengers at airports potentially impacts on the UK tourism industry. However, verification of passengers' biometric details is

likely to be selective is likely to be selective at first so that we are able to keep queues at control desks moving quickly. [Note: Any effect on processing times should be read in conjunction with the general e-Borders RIA which gives more background on e-Borders]

Equality and Fairness

15. The provision will apply to all passengers in possession of biometrically enabled documents.

Health Impact

16. Not applicable

Rural Impact

17. None

Other costs

18. None

Competition assessment

19. All other EU Member States plan to verify identity of persons crossing their borders with biometrically enabled documents. Many other countries either already use biometrics as a key element of their border control (USA, Hong Kong, Singapore for example) or plan to do so.

Small Firms Impact Assessment

20. We do not consider that there will be any impact on small firms.

Summary and Recommendation

21. Verification of the identity of arriving passengers should both facilitate the arrival of genuine passengers and increase the security of our borders against those traveling on false documents.