

THE ASYLUM AND IMMIGRATION (TREATMENT OF CLAIMANTS ETC) BILL

Regulatory Impact Assessment on requirement for carriers to obtain, on request, copies of relevant pages of passengers' travel documents or passports before travel to the UK; and to provide that information directly to UK Immigration authorities within a timeframe and in a manner to be stipulated.

Purpose and intended effect of the measure

Objective

1. This provision seeks to reduce the number of undocumented arrivals (UDAs) at UK ports, and subsequent abuse of the asylum system, by minimising the benefit to passengers of destroying or disposing of documents at any point prior to their presentation at the UK immigration control. To test the impact on carriers of such a measure, a trial of 6 months duration will take place. Evaluation of the trial would include consideration of the effectiveness of statutory and voluntary approaches, including the possibility of incentives for a voluntary scheme. The power would be commenced only if the evaluation and review process, including production of a full RIA, concluded it was justified.

Background

2. Undocumented arrivals take longer to process at ports of entry, delay and frustrate the asylum process, put pressure on immigration detention space and delay or frustrate the removal of those without any basis to remain in the UK.

3. Undocumented arrivals pose particular problems for the UK Immigration authorities. The destruction of travel documents conceals identity and nationality, requiring a longer screening process at ports. It can conceal travel history to frustrate the instigation of Safe Third Country action. By creating doubt as to the nationality and identity of the applicant it lengthens the asylum process. It can seriously disrupt or prevent the removal of those with no basis to remain by concealing the information necessary to secure a travel document on which they can be successfully removed. As a consequence of existing Government initiatives numbers seeking asylum on arrival at UK ports are falling overall, but the proportion of undocumented arrivals travelling at UK airports is growing. This can also place a burden on carriers through potential carriers' liability charges.

4. Under existing powers (Schedule 2, paragraph 27 of the Immigration Act 1971, and the Immigration (Passenger Information) Order 2000) the Immigration Service can already require carriers to provide a range of passenger information, including personal details, travel document details, ticketing details, travel history and onward travel plans. These powers are currently used on an ad hoc basis and provide a range of written detail relating to an individual. The proposal is for a small change to the existing legislative framework to allow also for the **copying of** any document containing passenger information. This would provide a photograph along with details of the document and details of any entry clearance.

5. Initiatives already being undertaken to reduce the overall number of asylum seekers will also impact on the number of undocumented passengers arriving at UK ports. These measures include the establishment of juxtaposed controls in more locations, greater use of new detection technologies at UK ports of entry, and the extension of the Airline Liaison Office (ALO) network. There are related provisions already in the Asylum and Immigration (Treatment of Claimants etc) Bill, which make it an offence to arrive undocumented, and to fail to comply with the re-documentation process; and also allow for failure to produce documents without a good explanation to be taken into account when assessing the credibility of a claim.

6. This proposal provides an additional tool, which would have the advantage of flexibility and immediacy.

Risk Assessment

7. The vast majority of passengers are bona fide travellers. It is important that the proposed measure results in the minimum of passenger disruption. There are no published statistics relating specifically to undocumented arrivals. However, management information suggests that the total number of inadequately documented arrivals, including undocumented arrivals, continues to grow. In 2002 undocumented arrivals represented less than half of port asylum applications. In the first half of 2003, nearly three quarters of port applicants arrived undocumented.

8. UDAs cause delay at immigration control whilst probable nationality and identity is established. Destruction of passports can also conceal, for example, a Schengen Visa, thus frustrating the operation of Safe Third Country action, and leaving the UK determining an asylum claim which is the proper responsibility of another EU Member State. Where asylum applicants have no claim to remain in the UK it is Government policy to effect their rapid removal. It is time consuming and resource intensive to establish the necessary level of biodata of an uncooperative individual. Acquiring new documentation from national authorities can take up to several months putting pressure on detention accommodation. Undocumented applicants without a valid asylum claim can therefore frustrate rapid removal, increasing costs to the UK taxpayer. Dealing with such cases is time-consuming and resource intensive for all those involved and impacts directly on the HO, DCA and DWP, as well as local authorities.

Options

Option 1: Do nothing

9. If no action is taken, current management information suggests that undocumented arrivals will continue to increase, particularly at airports. This will result in further delay at ports as UDAs are processed, increased detention costs, further pressure on detention space, and continued pressure on the asylum system by those who have no claim to remain in the UK. The UK's inability to deal quickly with undocumented applicants will act as a pull factor, encouraging more individuals to come here, destroying or disposing of documents before arrival, and claiming asylum once here.

Option 2: Establish a voluntary code of practice so that information can be provided without recourse to legislation

10. The efficacy of a voluntary code of practice would depend upon co-operation from carriers. We recognise that many responsible carriers are already working with Government to achieve improvements in a number of areas and would be prepared to co-operate with a voluntary scheme. Discussions have already begun to develop a trial scheme, to run for six months, in parallel with the passage of the Bill through Parliament.

11. However, there can be no guarantee that a voluntary scheme will be effective without any statutory back-up. There may be difficulties in enforcing it, and carriers will have no recourse for dealing with non-cooperating passengers... If a voluntary scheme was tried, and failed, the problem would remain, without the option of a statutory power to address it.

Option 3: Introduce legislation requiring carriers to provide copies of travel documents on request to the UK immigration authorities, to be implemented on a targeted and selective basis

12. A statutory requirement to copy could be applied on a targeted and selective basis, where information or intelligence showed there to be a problem with UDAs arriving on particular routes or using particular carriers. Careful targeting would minimise difficulties for carriers, reducing cost and bureaucracy; it would also minimise delay and inconvenience for bona fide passengers. This would enable HO to target areas of greatest concern. Copying of documents, along with the new offences of being undocumented and failing to co-operate with the re-documentation process, would act as a deterrent, discouraging those without a genuine claim to asylum from attempting to arrive undocumented in the UK.

13. The requirement would complement other initiatives. For example, it would not be necessary where there are juxtaposed controls (i.e. at Coquelles and at rail stations in Paris Gare du Nord, Lille and Calais Frethun). Juxtaposed controls have already proved successful in reducing the numbers of undocumented arrivals and we are therefore seeking to expand their use. We anticipate that the forthcoming establishment of more juxtaposed controls at the ports of Calais, Dunkirk and Boulogne will reduce numbers of UDAs from those locations still further.

14. The proposal would place additional requirements on carriers in terms of workload, bureaucracy and resources. There would be a number of operational issues to be resolved, in particular the physical demands of operating copying facilities given time and space constraints; possible issues with electricity supplies; the impact on passengers and potential consequences for staff safety; the need to ensure secure transmission of copies of documents to the UK; and the need for carriers to ensure that any new procedures were lawful in individual countries. We acknowledge that these issues need to be explored as fully as possible with carriers and others, and the six-month trial will be the opportunity for this.

Option 3a): Introduce legislation requiring carriers to provide copies of travel documents on request to the UK immigration authorities to be implemented on a targeted and selective basis only if deemed necessary after a voluntary pilot scheme has been operated and evaluated.

15. A statutory power, for selective and targeted use as above, could be held in reserve, to be commenced only after the proposed trial had shown that it would be both feasible and effective.

Option 4: Introduce legislation placing a blanket requirement on all carriers to provide copies or images of travel documents to the UK immigration authorities.

16. This would require all carriers with services to the UK to copy the documents of all passengers. This approach would be a disproportionate response to the issue of UDAs. It would increase workload, bureaucracy and costs for carriers and would create unacceptable delays at ports for passengers. Since the aim of the proposal is to address specific areas of concern, which can be done through effective targeting, a blanket approach is not required. This option has been discounted as disproportionate.

Option 5: Requirement for carriers to collect all travel documents

17. Requiring carriers to collect documents from passengers before or during travel and to hold them for the duration of travel is another possible alternative. To be effective, the documents would need to be reunited with their owners at Immigration control. This could lead to confusion and delay the processing of all passengers through Immigration control. Amongst other things there could be

difficulty in persuading or forcing passengers to comply, significant practical difficulties in reuniting passengers with documents, and a range of difficult security and safety issues. This option has been discounted as disproportionate and unworkable

Benefits/costs analysis

Option 1: Do nothing

18. The number of asylum seekers fell by 34% in the second quarter of 2003 compared to the first quarter, as a result of Government initiatives to deter unfounded claimants. We have already put in place a range of measures to detect and deter would-be illegal immigrants and to prevent them from reaching the UK without adequate documentation. Existing juxtaposed controls on Channel Tunnel services are effective in reducing the number of IDAs and plans are underway to allow British immigration officers to exercise their full control powers at the ports of Calais, Dunkirk and Boulogne (juxtaposed controls). Other measures include a network of 25 Airline Liaison Officers (ALOs) in 23 different countries. ALOs provide advice and assistance to airlines but have no power to carry out any UK immigration control function at foreign airports.

19. However, the number of undocumented arrivals at UK ports remains unacceptably high and further measures are necessary in order to address this problem.

Option 2: Persuade carriers to sign up to voluntary code of practice so that passenger information can be provided without recourse to legislation

20. Procedures could be put in place fairly quickly and easily, and many carriers may co-operate with such a scheme. But it could not be guaranteed to be effective. There would be difficulties in enforcing such a scheme in cases of non-compliance.

21. Those seeking to abuse and frustrate the asylum process are likely to exploit any weakness in the process. The benefits of a voluntary scheme could be significantly reduced compared to option 3.

Option 3: Introduce legislation requiring particular carriers to provide copies of travel documents to the UK immigration authorities to be applied on a flexible, targeted basis on request over selected periods of time

22. A requirement for carriers to provide copies of travel documents would increase the number of cases where applicants could be linked back to their travel documents. This would enable quicker determination of genuine identity, thereby speeding up processing times for asylum claims, reducing detention and support costs and assisting the redocumentation and removal process. The deterrent effect of the proposal should reduce overall asylum intake and allow resources to be targeted towards dealing with genuine asylum seekers. The proposed targeted approach would allow effort to be concentrated on routes and areas of greatest concern and would benefit the travel industry by reinforcing the credibility of responsible carriers.

Costs

23. Unpublished management information indicates that in the first half of 2003 undocumented arrivals represented over 70% of port asylum applications. This proposal would seek to reduce that number by targeting problem areas. Costs provided here assume 500,000 passengers are targeted and that one in 500 would otherwise be a no document case. It must be stressed these are broad assumptions at this stage and the costs are indicative only. The costs to carriers are based on estimates provided by carriers as part of the consultation exercise. Their estimates varied very widely. The six-month trial will provide better information on which to base a fuller impact assessment, on which any decision to commence the proposed requirement will be based.

24. Greater benefit would be gained if this measure was successful in reducing intake. If these measures did not reduce intake but simply provided data on identity, travel route and nationality there would still be considerable cost savings. These would be from reduced Immigration Officer and interpreter input, reduced detention costs and the reduced cost of dealing with a Third Country case.

Option 2

Public sector costs/benefits

	Cost	Saving
Savings arising from reduction in number of UDAs		£225k to £10.8m
Reduction in Carriers Liability Charges	£100k to £750k	
Additional processing costs	£100k to £150k	

Cost to Carriers

25. The costs in this section refer to the total costs of the scheme and not the costs falling to each individual carrier. Each individual carrier will only bear a small proportion of these costs. The technical

solution adopted for copying of documents significantly impacts on the cost of the scheme. The upper costs refer to probable costs of photocopying documents, which is likely to prove the most expensive and most time-consuming option. The trial will look in particular at making an electronic copy of the document. For example scanners can be purchased for around £100. However the cheaper products tend to be slower giving rise to increased processing costs. The trial will consider a variety of possible solutions to determine the most effective balance between equipment and staff costs. The majority of expenditure would be incurred overseas.

26. A basic photocopying operation, considered the most expensive option, can be costed as follows (for 500 thousand passengers)

Cost of paper = £28k (based on 2 sheets per passenger).

Photocopiers = £20k (based on one copier per check in desk at overseas airports, including extended warranty).

Additional Security Staff = £80k (needed to deal with the potential consequences of increased check in times and delayed departures. This is a pro-rata cost assuming the 500k passengers in this example were from several originating points: if the 500k came from a single large market then the cost would be lower).

Additional check-in staff = £100k (more staff needed because photocopying would slow down the check in process)

Additional check-in desks = £30k (based on a rough rental payment)

NB: Cost of delays to flights - the range provided is based on initial estimates provided by carriers. The upper end of the scale includes potential consequential costs of delays such as missing connecting flights/ payment of compensation etc.

	Cost	Saving
Cost of copying including equipment	£10k to £78k	
Additional check in and security staff	£90k to £180k	
Cost of delays to flight departures	£50k to £2.1m	
Reduction in Carrier Liability Charges from no document cases		£100k to £750k

Option 3

Public sector costs/benefits

	Cost	Saving
Savings arising from reduction in number of UDAs		£600k to £10.8m
Reduction in Carriers Liability charges	£100k to £750k	
Additional processing costs	£100k to £150k	

Cost to Carriers

27..As for option 2.

Business sectors affected

29. Air, rail and sea carriers. Shipping companies and rail companies have an interest but on current information the indications are that they will not be affected by these proposals.

Equality and fairness

30. The intention is that the power should be applied, on a selective and targeted basis, to specified carriers and routes for specific periods of time. The new arrangements would apply to all passengers, irrespective of their race or nationality, travelling on certain flights. The requirement on certain carriers to copy documents may result in lengthier boarding times at certain foreign airports, disadvantaging persons of all nationalities travelling from those destinations. But the requirement on airlines to copy documents would be capable of being met by all legitimate travellers regardless of their race and we do not, therefore, consider that the arrangements would amount to indirect racial discrimination. The determining factor in the decision on whether to impose this requirement would be the incidence of undocumented arrivals, not nationality and we do not therefore believe that this proposal amounts to direct discrimination on the grounds of nationality.

31. Any requirement to provide information about passengers needs to be implemented in a manner consistent with EU rights of free movement, including those of EU family members who are third country nationals.

Other costs

32. Under existing legislation (para 27B of Schedule 2 to the Immigration Act 1971 and The Immigration (Passenger Information) Order 2000), Immigration Officers already have the power to require carriers to produce a range of information in respect of passengers. It should be possible to build on procedures that are already in place in order to reduce the costs for carriers.

33. The main costs to carriers may not be the immediate set-up and operational costs but the revenue that they could potentially lose as a result of offering a slower (and possibly more expensive) service. The proposal could also make the UK less attractive as a destination and a transit point resulting in a loss of transit traffic to airports and losses to airlines who might otherwise have carried that traffic. This reinforces the need to make use of the power only where it is clear from evidence and intelligence that there is a real and pressing problem to be addressed.

Consultation with small business: the Small Firms' Impact Test

34. A full SFIT has not been undertaken. The Small Business Service has endeavoured to consult with the key representative bodies, on behalf of the Home Office, but only one trade association, ABTA, was able to offer a preliminary view.

35. They felt that the main impact would be on the main carriers, but were unclear whether some or all of the requirements may be passed on by the carriers to travel agents, over 95% of whom are small firms, business and individual travellers to produce document copies.

36. SBS welcome the intention to target the requirement, but are unclear from the present proposal how this might be achieved in practice, e.g. where passengers will be arriving at a terminal from multiple origins and are able to mix before reaching immigration control. SBS would be very concerned if a blanket requirement were imposed, which could cause uncertainty, cost and administration impacts to small firms and delays to the passenger clearing process.

37. SBS would therefore strongly favour a voluntary scheme, based on an industry code of conduct, at least initially, - and welcome the proposed trials. SBS believe the scope to introduce a compulsory scheme, together with an offer to waive carrier liability charges would act as sufficient incentives for the industry to comply.

Competition Assessment

38. The proposal 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. Whilst none of the sectors are concentrated, it is recognised that there may be high degrees of concentration on certain routes (e.g. where there are only 1 or 2 airlines operating flights from country/region x).

39. At this stage, in the absence of further costs data, it is unclear whether the proposals will create a significant cost burden such that it could have any significant effect on competition in any particular sector or market. However, it is expected that costs for copying documents might be expected to be broadly proportionate to the number of passengers that a particular airline, shipping or rail business carries (though it is recognised that larger businesses might be more likely to have the necessary staff, processes and equipment at hand to minimise the scale of additional costs). A disproportionate effect might also arise under Option 3 for businesses which operate travel routes to the UK from countries where the problem of undocumented arrivals are perceived to be most prevalent. Despite such a differential cost impact, it is our preliminary view that the costs arising from the proposals would be unlikely to be sufficiently high to affect competition in any market - even those routes where concentration is high. Additionally, it is likely that potential costs will be reduced as documents will be able to be scanned in thereby removing the need for any photocopying or paper storage.

40. We would welcome comments from stakeholders on this initial assessment.

Implementation

41. Commencement of the power is dependent on the trial evaluation and would not be before 12

Option	Total cost per annum	Total benefit per annum
Do Nothing	Nil	Nil
Voluntary Code of Practice	£0.35m to £3.3m	£0.33m to £11.6m
Require Carriers to Copy Documents on request in certain circumstances	£0.35m to £3.3m of which £2.4m would fall to carriers	£0.7m to 11.6m

DECLARATION

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

Signed.....

Date

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Minister of State

Home Office

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