



Draft Regulatory Impact Assessment

Police and Justice Bill: Data Capture

1. Title of Proposal

Enhanced powers to enable the Police to capture passenger and crew data on air and sea journeys within the UK.

2. Purpose and Intended Effect

The Objective

2. To facilitate the acquisition, pooling and joint analysis of bulk data as part of the e-Borders programme. The powers will enhance the Police's ability to investigate terrorism and serious organised crime.

Enhanced Police Powers: Data acquisition

3. The Police and Justice Bill proposes enhanced powers to enable a police officer of the rank of Superintendent or above to capture bulk passenger, crew and flight / voyage data on air and sea journeys within the UK.

4. Under the provisions of the Bill the Police will have a power to request prescribed data in advance of travel, from the owner or agent (carrier) of a ship or aircraft which arrives or is expected to arrive in any place in the UK from a place in the UK. The key aim is for the Police to be able to obtain bulk data prior to the passengers or crew travelling and in a format which supports electronic processing. The information may be used for any Police purpose.

5. Where requested to do so, the owner or agent of a ship or aircraft will be required to provide the specified data to the Police. A request must be made in writing, setting out the information required and the date upon which the request expires. The request, in writing, will be acceptable by e-mail or fax. As such the costs are likely to be minimal This requirement for the carrier to provide

information is facilitated by a corresponding requirement for passengers and crew members to provide the necessary data to the carrier.

6. The new powers will allow the police to gather bulk information about passenger travel so that individuals who are watch listed can be identified in advance of travel and an appropriate response by the border agencies can be put in place. This will allow the border agencies to better target their resources on known and suspected terrorists and reduce the threat to the plane or vehicle. Targeting specific flights or crew would not allow this benefit to be achieved.

7. These changes complement the changes that will be introduced by the Immigration, Asylum and Nationality Bill (IAN Bill) which will allow the police to request bulk international passenger, crew, flight / voyage information from carriers. The original scope of IAN Bill did not encompass domestic data so the provisions have had to be introduced in the Police and Justice Bill. The combined effect of the powers will support the wider changes that are being implemented under the e-Borders programme. Without them the latter will not be able to deliver its full potential.

8. The costs to industry of introducing the bulk data provisions are dependant upon the detailed consultations that we are pursuing separately. We propose to strike a balance between the value to the police in preventing terrorism and the costs to industry of providing particular data fields. During the public consultation with industry, representatives were content with this pragmatic approach.

9. The data will be used primarily for preventing terrorism and thwarting serious and organised crime but in the process may be used for other crime detection and crime prevention purposes.

10. The information collected will be held in compliance with the relevant provisions of the Data Protection Act 1998 and without breaching convention rights (within the meaning of the Human Rights Act 1998).

Data sharing

11. We are also proposing a duty of co-operation to allow the Police to share the information acquired with the UK Immigration Service and HM Revenue and Customs for the purposes of immigration and revenue and customs. These data sharing provisions will enable the pooling and joint analysis of bulk travel data where it is relevant to Police, Immigration Service and HM Revenue and Customs functions. Under the provisions of the Bill, the Secretary of State will issue a code of practice relating to data-sharing between the agencies. The statutory code of practice was an undertaken given to the industry during the consultation period. The code itself will not need to be laid before parliament, but will be published.

12. These legislative provisions together with the changes being made under the Immigration Asylum and Nationality Bill (IAN Bill) and the e-Borders Programme will enable us to move away from the current situation wherein carriers are obliged to respond separately to individual requests for similar data from each of the Border Agencies (the Police, Immigration Service and HM Revenue and Customs). The processes of data acquisition and data sharing will be simpler and more efficient.

13. The efficiencies and savings cannot be determined with any accuracy. Currently individual border agencies issue ad hoc requests for data but these are not collected centrally. The number and nature of such requests will vary across the country and according to date and time. The majority of such requests will be intelligence led, others by instinct on the part of the border agencies. Passenger data and crew data is already provided to the carrier for their own purposes and should not pose any significant resource burden upon them.

14. The new processes will be more transparent and will therefore provide the necessary reassurances regarding compliance with data protection and human rights principles.

Background

Enhanced Police powers

15. Police powers to capture bulk passenger, crew and flight / voyage data on air and sea journeys within the UK are an essential component of a more effective border security capability and will enable more effective criminal investigation. This data will provide the Police with invaluable intelligence, enabling them to track in detail the movements of suspected criminal and terrorist passengers and to establish an accurate picture of those passengers' travel patterns and networks. This can only be achieved if the Police are able to obtain the data in advance of the time of travel and in a format which supports electronic processing.

16. At present it is not possible for the Police to capture and analyse bulk data prior to travel on journeys within the UK.

- Under Schedule 7 of the Terrorism Act 2000, an examining officer (a constable, an immigration officer or a customs officer) has powers to capture passenger information from the owners or agents of certain ships and aircraft only at a port or border area and only for counter-terrorism purposes.

- Since the powers are limited to examining officers at ports, police officers in a joint border agency environment cannot directly gain access to information obtained under Schedule 7.
- In addition, Schedule 7 does not cover the acquisition of bulk data.

17. Identified patterns in terrorist and criminal activity is key to reducing the freedom of these individuals and groups to move across our borders. We have evidence that terrorist groups often look for those access points through the border where they are less likely to be identified. Blanket data coverage will reduce the risk of this displacement effect.

18. Some limited data sharing does already take place under common law powers or through statutory gateways, for example, under the Immigration & Asylum Act 1999 and the Terrorism Act 2000. However, these are not sufficient for the joint working envisaged or for sharing bulk data.

19. The provisions proposed under the Police and Justice Bill would help plug this gap in Police powers and enable the Police and other Border Agencies to gain intelligence on journeys within the UK. This would support both general police and criminal justice functions as well as counter terrorism functions.

20. We hope it is clear from the above where the current vulnerabilities lie and how the legislative proposals will help to cover these.

The Border Management Programme

21. 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. As a result, the Border Agencies have been tasked with developing more closely aligned objectives and priorities under the auspices of the Border Management Programme, which aims to ensure co-ordinated, strategically driven operational activity to protect our borders.

22. The Border Management Programme addresses areas where working practices of the border agencies can be aligned and more joint working introduced (e.g. joint profiling and targeting of border traffic, and joint agency mobile brigades). The working practices will be strengthened by the joint border operations that the legislative changes will underpin.

23. The powers set out within the Police and Justice Bill are critical to ensuring the effective operation of the Border Management Programme. A core strand of this work focuses upon the acquisition, pooling and joint analysis of traffic data by the Border Agencies. Improvements here are fundamental to the ability of all the

Border Agencies to identify and separate traffic which poses a risk to the UK from the mass of legitimate traffic which crosses our borders every day. It makes sense, both for Government and for industry, for that data to be captured once and to be made readily available for all border control purposes.

24. At present, each Border Agency has specific statutory functions and, broadly speaking, relies upon different legislation to support its particular functions. Sharing or disclosure of travel information between the Border Agencies may only be done on a case-by-case basis. This system is not sufficiently comprehensive or flexible enough to cope with joint working under the Border Management Programme and e-Borders Programmes.

E-Borders

25. A further White Paper, "Controlling our borders: Making migration work for Britain - a five year strategy for asylum and immigration" sets out our e-Borders proposals, which will deliver an integrated secure border control system. At the heart of this system is the ability to harness passenger information and thereby provide Government and law enforcement agencies with a significantly enhanced capability to meet counter-terrorism, national security, immigration and law enforcement requirements. The Border Agencies are developing an electronic database which will enable their joint pooling and analysis of bulk passenger data. Carriers will have to provide data only once and that data will then be available to the Police, the Immigration Service and HM Revenue and Customs. It is important to recognise the complimentary nature of e-Borders and the wider Border Management Programme.

26. The main legal framework which supports e-Borders is Part 3 of the IAN Bill. Under this legislation, Police will be given enhanced powers to request passenger, crew, voyage and freight data on international air, sea and rail journeys involving the UK. A duty of co-operation will require the sharing of that data with the Border Agencies.

27. The scope of the IAN Bill did not permit the inclusion of domestic data acquisition and sharing powers for the Police. Instead we have included these provisions in the Police and Justice Bill. The Bill is therefore intended to provide a supplementary legislative framework to facilitate efficient data acquisition and data sharing processes in relation to domestic travel. The Bill's provisions will support the corresponding measures that are being introduced at the international level (through the IAN Bill and the e-Borders Programme) and enable the data that is obtained in relation to domestic travel to be shared and used within the e-Borders programme.

28. The majority of the existing data sharing gateways were drawn up before the kind of integrated, closer working that is now demanded of the Border Agencies under 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, such as the joint analysis of carrier data to enhance border security.

Rationale for government intervention

29. Powers to capture passenger and crew data on air and sea journeys within the UK are essential for national security and crime investigation purposes. They will provide the Police with valuable intelligence on the movement of known terrorist suspects, allowing them to build up detailed pictures of suspect passengers, travel patterns and networks.

30. It is often the case that domestic travel forms part of a journey beginning and/or ending overseas. For example, having arrived in the Republic or Northern Ireland from overseas, terrorist targets may then use domestic air and sea routes for travel to Northern Ireland and the UK mainland. Similarly, individuals of national security interest who are based in Northern Ireland may travel to the mainland for onward transit to international destinations. At present, it is not possible for the Police to capture and analyse bulk data on journeys within the UK (or between Northern Ireland and the UK mainland). This lack of data on the domestic leg of such journeys creates a critical gap in the intelligence picture both in terms of the ability to anticipate the movements of suspected criminals or terrorists and similarly in the ability to historically track the movements of such individuals.

31. 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. In addition, for immigration control purposes the ability to refer to an audit trail of movements is key to risk assessing passengers and measuring compliance. These are fundamental building blocks for enhancing border security.

32. The 9/11 Commission Report was critical of the US Government for focusing on threats from overseas when preparatory activity for the attacks was carried out within US borders. Domestic flights are as likely to be targeted by terrorist groups as many international routes. The appearance of vulnerability and limited security on any route will be key to the terrorist's strategy. The inability to effectively police domestic travel may render these routes more attractive targets. It is critical that we address this, at least in relation to domestic air travel.

33. The provisions set out under the Police and Justice Bill would help plug the gap in intelligence. DfT forecasts indicate that the travelling population will increase dramatically over the next 20 years. Electronic access to bulk passenger information in advance of travel on domestic routes will increase the ability of the Police to operate in an intelligence-led environment and enable them to respond quickly, effectively and proportionately to changing threats.

- The ability to obtain bulk information in advance of travel would enable the Police to trace the precise movements of terrorist and criminal suspects and to mount a co-ordinated, targeted response.
- Simultaneously, by targeting those passengers who are watchlisted the border agencies will not need to undertake 'spot checks' on legitimate travellers.

Why do we need the powers now?

34. A key element of the Border Management Programme is to ensure that passenger data is captured efficiently by the Border Agencies and shared between them effectively. We envisage that there will be an incremental approach to full operational use of the powers.

35. We want to give sufficient notice to carriers etc of the final agreed data sets. This will give them the opportunity to phase in the data provision requirements over a period of time. This incremental approach rather than a 'big bang' approach will be in the interests of both the industry and those responsible for the new police systems.

36. Data on domestic travel will be a key component of the e-Borders system. The procurement process for e-Borders is already underway. E-Borders are already looking to engage with a supplier. The E-Borders supplier is now expected to be selected in 2007 following a number of detailed procurement stages during 2006. The addition of domestic travel information acquisition requirements will need to be included in the procurement process as it will form an important part of the programme's overall information architecture. If the necessary legislation is not in place, this will cause significant difficulties for the preferred supplier in creating a technical solution for e-Borders.

37. As noted above, we expect the supplier will be selected in 2007. If the legislative powers are not in place the secondary legislation (and detailed requirements) will not be introduced either. The e-Borders programme would need to be considerably downsized until the appropriate powers were in place.

3. Consultation

38.

- a) Within Government: We have had detailed consultation with Police (National Co-ordinator of Ports Policing, Association of Chief Police Officers,) Her Majesty's Revenue and Customs, the United Kingdom Immigration Service and the Cabinet Office Better Regulation Executive.
- b) Outside Government: We have had meetings with carriers on the proposals. For the most part, resources will already be in place to implement provisions in the IAN Bill which sets out data acquisition requirements on international journeys. No specific feedback has been received from the industry on any potential costs as the ability to identify the costs and resources are severely impaired by the wide variation current practices and the lack of finality about the e-Borders system because of outstanding consultations with industry.

4. Options

39. *Option 1: Maintain Status Quo*

<p>Description</p> <ul style="list-style-type: none">• Police continue to use existing data capture powers and are unable to obtain bulk data for police purposes in advance of travel on journeys within the UK.• Police share data with other agencies on case by case basis using existing information sharing gateways/common law powers.
<p>Key Concerns</p> <ul style="list-style-type: none">• Fails to address Police need for systematic provision of passenger data in advance of travel.• Limits the effectiveness and efficiency of Police response through inability to acquire the necessary data in the most efficient format.• Police and other agencies independently 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.
<p>Key Benefits</p> <ul style="list-style-type: none">• No capital expenditure for carriers and agencies• No policy or legislation changes

40. *Option 2 – Introduce provisions to provide Police with enhanced data acquisition powers and provide for a duty of co-operation placing an obligation on border agencies to share data*

Description

- Police gain ability to request bulk information from carriers on all domestic air and sea journeys within the UK for any police purpose.
- Police 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 systems to deliver the required data in the specified format.
- Carriers will have to make changes to their existing processes.

Key Benefits

- Increased effectiveness and efficiency in counter-terrorism, security and anti-crime capability.
- Police can require data necessary to support all police functions, not just counter-terrorism.
- Will provide comprehensive data in the specified format.
- Co-ordinated request and provision of passenger data through the “single window”.
- Streamlining of data analysis process.
- Routine sharing of data will enhance effectiveness through improved ability to identify targets.
- Agencies can maximise potential to mount appropriate, co-ordinated and proportionate responses.
 - No duplication of work by different agencies.
 - Fewer interruptions to the travel of law-abiding passengers.

5. Costs and Benefits

Sectors and Groups affected

41. Carriers operating by air and sea within the UK will be affected.

Benefits

42. The main stakeholders will derive the following benefits from the provisions:

- The passenger data, movement audit trail and management information will be extremely valuable to border control, law enforcement and intelligence agencies, providing greater support for security operations.
- Carriers will benefit in terms of both security and customer confidence. Improved intelligence will result in more targeted interventions by the border control agencies, whilst reducing the impact on legitimate traffic.
- The advance capture and sharing of data will enable all of the Border Agencies to manage their resources more effectively and respond swiftly and appropriately to the perceived risk.
- There will also be increased opportunities for joined-up border operations.

Costs

43. We acknowledge that the routine provision of passenger and crew information will impact upon carriers. Carriers operating within the United Kingdom by air and sea will be affected.

44. There are four main elements to the cost of data collection and transport:

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

45. The intention is that carriers will be required to provide the following information in relation to passengers and/or crew travelling by ship or aircraft within the UK:

- Name
- Gender
- Date of Birth
- Nationality

The Police only require PNR (or its equivalent) data to the extent that it is collected.

46. 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 systems in place to collect and store data and whether it is already complying with a requirement to provide data to the Border Agencies in the UK.

47. We also acknowledge the potential for advance passenger information data capture requirements to impact upon carrier check-in transaction times. Since passports are not required on domestic journeys, the required data – taken from travel documents and forms of ID - would need to be keyed in manually. We appreciate that if transaction times are increased, there will be an impact on port operators. We are discussing with carriers how severe the impact will be.

48. The provision we are introducing to support data sharing between the Police and other Border Agencies aligns with legislation already under consideration by Parliament to support the delivery of e-Borders. That legislation, the IAN Bill, refers to the capture and sharing of data on international journeys. It is envisaged that data on domestic journeys will also be provided by means 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 overall impact on industry.

6. Small Firms Impact Test

49. We have started to consult industry representatives about the impact of these provisions and will be consulting the Small Business Service as part of that process.

7. Competition Assessment

50. The proposals will impact upon those sectors involved in the carriage of passengers by air, and sea within the UK (including Northern Ireland) which will include passenger airlines and passenger shipping companies.

51. 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 or shipping business carries, although it is recognised that larger businesses might be more likely to have the necessary staff, processes and equipment in place to minimise the scale of additional costs.

52. We are discussing with industry their concerns that there could be a displacement effect to other modes of transport such as coach and rail if transaction times increase substantially, thereby creating delays for passengers.

8. Enforcement, Sanctions and Monitoring

Enforcement

53. Compliance by carriers is already good in respect of the current legislative requirements to provide data and we do not anticipate any significant enforcement issues. We will be working closely with industry, to give them advance notice of the requirements and to ensure that we minimise the impact of these proposals, thereby reducing any potential enforcement issues.

54. Data sharing arrangements will be underpinned by Memoranda of Understanding and effected in accordance with codes of practice or operational guidelines.

Sanctions

55. 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.

56. 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.

57. The Police must ensure that, in sharing data, they act in a manner which ensures compliance with these regulatory provisions. All necessary safeguards will be incorporated into the code/s of practice which will be issued when these provisions come into force.

Monitoring

58. The proposals will be monitored, in a timescale to be decided, by staff at the e-Borders Operations Centre proposed under the e-Borders solution.

Declaration

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

Signed

Date

Hazel Blears, Minister of State, Home Office