

UK BORDERS BILL
REGULATORY IMPACT ASSESSMENT
Revised for introduction in the House of Lords
May 2007

1. PURPOSE AND INTENDED EFFECT OF THE MEASURE

Objective

The overall objective of the proposed legislation is to provide a forward-looking and comprehensive package that will help the new Border and Immigration Agency better to police the border, tackle immigration crime and ensure a hostile environment for those who abuse our hospitality.

Background

The Bill should be seen as a crucial milestone in implementing the Immigration and Nationality Directorate (now the Border and Immigration Agency) Review that was published in July 2006. Legislation is an integral part of the Border and Immigration Agency's strategy to deliver the Review commitments, alongside the work being carried out on organisational transformation and resource prioritisation.

Building strong borders, tackling organised crime and removing incentives for illegal immigrants to come to Britain are at the heart of the UK Borders Bill. The Bill is the next step in implementing the Home Office's plans to strengthen the ability of those working for the Border and Immigration Agency to deter and detect those breaking the rules and ensure that those foreign nationals legally in the UK play their part in supporting the system.

The UK Borders Bill is also part of the radical shake-up plan for the Border and Immigration Agency set out in July 2006 by the Home Secretary - which set out plans to reform the Border and Immigration Agency with the aim of making it fair, effective, transparent and trusted and to allow it to meet the global challenges ahead in the 21st Century.

Initial Regulatory Impact Assessments (RIAs) were carried out for all the proposals in the Bill. Where necessary, these were taken forward to extend the assessment and have fed into this overall RIA which sets out to identify the costs and the benefits to business, charities and the voluntary and public sectors arising out of the Bill's proposals.

The areas covered by this RIA are detailed below.

Border and identity management

- Giving immigration officers (IOs) enhanced powers to detain. This will strengthen our presence at the border by allowing IOs designated by the Secretary of State to search and detain, for a limited period, an individual who

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is subject to a warrant for arrest or who may be liable to arrest, pending the attendance of a police constable. This will support police activity at ports by ensuring that persons of interest to the police are not able to evade intervention because there is no police officer in the immediate vicinity to deal with them. It will also contribute to the objectives of the Border Management Programme to deliver a cohesive and integrated border security infrastructure.

- Introduction of a new offence of assaulting an immigration officer with an associated power of arrest, aligning IOs with uniformed staff from other agencies at the border.
- Measures to tackle facilitation and trafficking: three measures are proposed to enhance existing legislation on facilitation and trafficking to improve the

Border and Immigration Agency's capability to bring successful prosecutions in this area. These measures will:

Clarify at what point an individual will be taken to have facilitated the arrival of an asylum seeker into the UK to ensure that activity which takes place between the point of arrival and the immigration control can be caught by the offences (e.g. a facilitator disposing of a passport in the toilets prior to arrival at the immigration control)

Extend our powers to enable the prosecution of those who commit acts of facilitation from abroad irrespective of their nationality.

Aligning powers for tackling trafficking offences with those proposed facilitation measures

- Power to enable the Secretary of State to require a person subject to immigration control to make an application for a biometric immigration document. As part of this application, the individual may be required to provide biometric samples for recording and checking. Implementation will be achieved incrementally through secondary legislation. This provision will facilitate our commitment to rolling out biometric residence permits during 2008.

Detection and Enforcement

- Statutory gateway for information sharing with HM Revenue and Customs. To enable the Border and Immigration Agency to access both customs and revenue data for immigration purposes. A sanction will be imposed on Border and Immigration Agency staff for the unlawful disclosure of such data.
- Power to search for evidence of nationality. To enable an IO or a constable to be able to enter and search premises, for documents relating to a person's nationality when that person has been arrested for a criminal offence.
- Power for IOs to seize cash. To further enable Immigration Service operations to be carried out independently by giving IOs the power to seize cash under the Proceeds of Crime Act. Currently the department relies on other agencies to perform this function for us and their priorities are not the same as ours in this regard.

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- Power for IOs to forfeit and dispose of property. This will further enable IS operations to be carried out independently from the Police or other agencies and allow IOs both to seize and dispose of property as part of a criminal investigation.

- Power of arrest in relation to asylum support fraud offences. To give an IO the power to arrest a person, without warrant, where the officer has reasonable grounds for suspecting that the person has committed an asylum support fraud offence. There will also be associated powers of entry, search and seizure.

Deportation and Restriction

- Automatic deportation for foreign national prisoners. To ensure that foreign national criminals sentenced to 12 months in custody (or any custodial sentence for a section 72 offence) are automatically deported unless they have an arguable asylum or human rights claim. Appeal rights will be restricted with unfounded claims being dealt with out of country. Court recommended deportations will remain to allow flexibility

for those falling below the set threshold.

- Reporting and residency restrictions for people with leave. To enable the Border and Immigration Agency to impose reporting and residency restrictions on people in certain categories. The proposed use is for people who have committed serious crimes in the UK but whose removal would breach international obligations.

Other

- Exclusion of late evidence at appeal at Asylum and Immigration Tribunal. Under the Points Based System (PBS) applicants must submit all their supporting evidence as required by the immigration rules together with their application. The new PBS application process will make clear exactly what documentation the applicant must provide. This provision brings the immigration appeal system into line with this policy.

- Amend the definition of an asylum seeker for the purpose of asylum support. The outcome in a case pending before the House of Lords could mean that where an asylum application is refused and the applicant appeals, the individual is no longer eligible for Section 95 support. This proposal aims to allow destitute appellants to continue to be entitled to this level of support.

- Introduction of over-cost charging for visa and immigration applications. In order to ease the burden on the UK taxpayer. This measure will give the BIA the ability to cross-subsidise between the end-to-end operations of the immigration system to deliver a flexible charging model that still recovers the overall costs of the service.

- Establish an independent inspectorate to focus on overall efficiency and effectiveness across the Border and Immigration Agency's and its partners' operations, quality of decision-making, enforcement powers, access to information and the treatment of individuals, including a sense of comparative performance in different regions of the country. Effective assessment of these key themes will provide confidence to Parliament

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and the public and to those who use and receive services from the Border and Immigration Agency.

2. CONSULTATION

Consultation within Government and with the public has been undertaken in relation to some of the measures in the Bill.

3. OPTIONS

The specific options for each measure have been identified in each of the initial RIAs and were also covered in the course of completing this final RIA. General options for the Bill are:

- do nothing – this would maintain current inefficiencies around crossagency working; mean applicants who have received initial asylum refusals and who are pursuing in time appeals would not be eligible for appropriate support; and benefits outlined in the IND Review would not be realised.

- implement in part – to do this would not fully realise key benefits of the IND Review.

- implement in full – would provide a package of tools with which to better protect our border, tackle immigration-related crime, oversee the Agency's services and appropriately deal with those foreign nationals who choose to abuse the hospitality of the UK.

It is recommended that the Bill is implemented in full. This would provide a

package of tools with which better to protect our border, tackle immigration-related crime and appropriately deal with those foreign nationals who choose to abuse the hospitality of the UK.

4. COSTS AND BENEFITS

Business Sectors affected

It has been assessed that there will be little impact on the business sector the charging power alone does not impact the business sector but its subsequent use in charging regulations would need to be assessed. A requirement for those subject to immigration control to provide their biometric details should place no direct burdens on business, charities or voluntary bodies. However, many businesses and other groups may choose voluntarily to only accept biometric documents as proof of identity.

It is intended, in the future, to require employers to check whether an applicant or employee has a biometric document with the requisite entitlement enabling them to work.

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Costs and benefits

Table 1: Information on the costs and benefits of implementing each measure in full.

TABLE 1

Measure Key benefits of preferred option

Cost

A - Border and Identity Management

Giving designated

Immigration

Officers a power

to detain an

individual who is

subject to a

warrant for arrest

or who may be

liable to arrest by

a police

constable.

Creating the

offence of

assaulting an IO

- The benefits of the new

detention powers will

largely fall to the border

agencies in terms of

optimisation of resources.

There will also be benefits

in border security terms

and primarily in the areas

of crime reduction.

- The offence of assaulting

an IO will provide IOs with

the same level of

protection as is currently

the case for other

uniformed agents of the state and will promote the safety of IOs and help ensure they are able to work without fear of assault. The introduction of this power also assists the alignment of agency powers.

- Specific training requirements for designated immigration officers are under development but it is anticipated that the training will be similar in many respects to the training that is currently given to immigration officers who exercise powers of arrest under the Immigration Acts. The training will be tailored, however, to the specific detention functions that designated officers will be exercising.

- In terms of financial implications for the Border and Immigration Agency, arrest training (with the current training provider) and equipment for an immigration officer is currently £1744. The cost of training and equipping 25% of the current Border Control chief immigration officer and immigration officer workforce would therefore be in the region of £1.5m.

- In respect of the assault offence, the time involved in affecting an

arrest, gathering witness
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statements and
interviewing will vary
depending on the
circumstances of each
case and number of
witness statements
required.. Using the time
taken to process current
offences under s25 of
the 1971 Act as a guide
it is estimated that cases
will take 8-24 hrs to
process from the point
of arrest. This may be
balanced by the
possibility of some
limited resource savings
for the police as IOs,
rather than police
officers, will be
exercising powers of
arrest and processing
cases.

Measures to
tackle facilitation

- The benefits identified are primarily non-financial in nature however they represent considerable profit in the areas of tackling facilitation crime, providing a deterrent factor and contributing to the harm reduction agenda.

- The Border and Immigration Agency; Following the recent THET judgment there has been a reduction in cases prosecuted under s. 2 of the Asylum and Immigration (Treatment of Claimants etc) Act which means that existing resources can be redirected to dealing with facilitation cases.

As such the department considers that changes

to the facilitation legislation would not result in an automatic increase in the number of staff required to operate the prosecution units as successfully as they have been up to now.

- Crown Prosecution Service; the amended powers will not necessarily result in any increased cost implications due to the number of not guilty pleas currently submitted under the

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weaker legislation. It is believed that toughening up the legislation will increase the number of guilty pleas.

- DCA; a rise in the numbers of cases being pursued is likely to generate a corresponding increase in legal aid costs and an impact upon the DCA. If defence goes to court with a barrister pleading not guilty this could cost £5,500 a case.

- Prison Service; the recent negative THET judgement has resulted in a significant reduction in successful section 2 prosecutions and associated prison spaces required. If the amended facilitation legislation were to double the number of offenders convicted the anticipated costs would be about £2.4m.

- UKVisas; anticipated training cost for the 88 staff in the Airline

Liaison Officer network is around £12,000.

Power for the compulsory registration of the biometric details of third country nationals

- Improve immigration control by identifying multiple applications made under the same identity;
- Increase the number of illegal applicants identified against when enforcement action can be taken;
- Increase the cost effectiveness of resident permit appeals costs by decreasing processing time, enabled by enhanced, evidencebased initial decisions;
- Align with the wider National Identity Scheme to ensure that there are no gaps in the system;
- In line with the department's commitment to Parliament, these costs will be set out in the 6 monthly ID card cost report.
- Costs would be covered within agreed Border and Immigration Agency budgets and also by the fees charged to those applying for the biometric immigration documents.

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- Reduce the market for counterfeit documents by increasing document security
- De-risk ID Cards by trialling similar technology and processes;
- Increase operational

efficiency through joined up processes and technology improvements;

B - Detection and Enforcement

Statutory gateway for information sharing with HMRC

- The provision of information under these new powers will enable the Border and Immigration Agency to meet its targets in terms of removing immigration offenders and tackling illegal working. Both will have indirect benefits such as reducing unfair competition imposed by businesses who employ illegal migrant workers and do not pay the national minimum wage (unlikely to be operated by employers using illegal workers), benefit fraud, consumption of public services and lost revenue.
- It is important to note that the information sharing will be reciprocal and lead to savings for both departments.
- Where the Border and Immigration Agency is looking to perform large scale checks with HMRC it is likely that such checks will be done through the use of IT. However there are a number of IT options which may support such checks. For example, currently the Border and Immigration Agency expenditure on data sharing is approximately £750,000 annually and this figure incorporates internal and external data

sharing on both an ad hoc and regular basis. DWP have a dedicated bulk data matching facility which regularly matches HMRC and DWP data to prevent and detect fraud. The cost of running this data matching service was £7million in 2005-06, but during that period DWP identified over £161million in fraud and overpayments. DWP's data matching system could be used for matching HMRC and asylum support data given that the processes are already in place. Power to search for evidence of nationality

- This power will enable an immigration officer or police officer to enter and search premises for documents relating to a
- This will require an increase in resources for Immigration Service in order to conduct the required searches.

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person's nationality. It would also allow officers to seize and retain such documents. This is part of the wider strategy to facilitate the deportation of foreign national prisoners (FNPs) by identifying nationality at an early stage where the person enters the criminal justice system.

Estimates suggest that this power could achieve the more effective identification of up to 300 foreign nationals who

could be considered for deportation. Earlier deportation proceedings could alleviate pressure on the immigration detention estate by up to 800 beds, and on the prison estate by up to 500 beds.

Based on very preliminary estimates, it is considered likely that approximately 1,000 searches would be required per annum at a cost of £0.5M. This is based on there being 1.1 million people charged per year, of whom approximately 10% (100,000) are FNPs. Of those, we anticipate that 1% would not comply and would therefore require a search (1,000). The £0.5m cost of those searches was based on pro-rata average salary costs of the immigration officers and police required to undertake searches to find nationality documentation and an estimate that approximately 45 minutes per search would be required.

Power for IOs to seize cash

- This will provide the UK Immigration Service with the means to target the largest incentive for illegal migration to the UK: money. Furthermore, it will provide an extension to the current sanctions of removal and criminal prosecution currently exercised by the UK

Immigration Service, sending a strong deterrent message to individuals breaching immigration laws –particularly where the primary purpose is financial gain.

- We do not anticipate that use of these additional powers will incur additional costs to businesses, charities or voluntary bodies.

The civil process of cash seizure requires the funds to be the subject of a detention hearing before a magistrate or, in Scotland, a sheriff's court for an application to further detain the cash beyond 48 hours.

There may therefore be an increase in cost to the criminal justice system. However, some of these costs should be offset by those assets successfully forfeited, a proportion of which will be returned to all recovery agencies involved in the process

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by means of the new incentive scheme.

- Training and awareness for immigration officers regarding cash seizure powers will be required.

As a result of the HM Inspectorate of Constabulary thematic review, the Police have already been instructed to improve levels of awareness and training in POCA cash seizure powers to improve local practices. The costs of development and implementation will

therefore be minimal as these can be developed in-house and also in conjunction with the Police.

Power for IOs to forfeit and dispose of property

- Although the proposed provisions will mean that property will need to be retained for a year (with the exception of perishable goods and where storage costs would incur unreasonable expense or inconvenience), property which has been accumulating will now have an effective disposal mechanism which should mean that an attainable balance is met by disposing of such property.

- It is difficult to place a monetary value on the cost of forfeiture. With an increase in the number of orders that can be made to Magistrates' Courts asking for the property to be awarded to either the owner or Secretary of State, there may be an increase in cost to the criminal justice system. This will be monitored to ensure that the Courts are not overburdened with orders and that a balance is struck in using this power and the power to dispose of property which has not been subject to a Court order. Where items are sold, it is proposed that

the Secretary of State shall have the power to defray expenses for the conveyance, storage and custody of the property, and its sale or otherwise storage. This will provide a means of 11

funding such expenses incurred and is an added benefit to the storage consideration.

Power of arrest in relation to asylum support fraud offences

- Immigration Officers increasingly act independently of the police so extending their powers of arrest, entry, search and seizure will allow them to take effective action against potentially serious offenders without reliance on the police.

- In the first year of operation (financial year 2007/08), we expect to conduct approximately 25 prosecutions. There is no additional cost to the Border and Immigration Agency in relation to the commissioning of these prosecutions. This is because the Border and Immigration Agency has Accredited Counter Fraud Investigators in place (similar to DWP) and an Enforcement Unit to undertake those arrests

C - Deportation and Restrictions

Automatic deportation for foreign national prisoners

- The streamlined process will contribute significantly to the government's harm reduction agenda by removing a greater number of foreign national prisoners more quickly.
- The automatic threshold will also have a deterrent effect as it will leave potential and actual foreign national offenders in no doubt as to the consequence of crime.
- The overall cost of dealing with FNPs will be reduced as the process is streamlined and less time is required for consideration as this would only be on whether deportation is a breach of international obligations. This number is not quantifiable.
- The streamlined appeal process, coupled with the automacity contained in the provisions in the bill should mean that deportation cases can be processed much more quickly than at present. This should reduce the impact of the increased workload. In addition, CCD have committed to initiate deportation proceedings six months prior to the expiry of the custodial part of the sentence by spring 2007, thus increasing the likelihood that deportation can
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take place
as soon as the custodial part has expired and reducing the time spent in custody under

immigration powers.
Further modelling work
is planned on the
numbers of FNPs that
will be removed
immediately following
the end of their
sentence.

Reporting and
residency
restrictions for
people with leave

- The purpose of this
measure is to allow a
grant of limited leave to be
given subject to two new
conditions on (i) reporting
and / or (ii) residency.

The Government
considers that these new
powers will improve
contact management
between the Border and
Immigration Agency and
those granted leave
subject to one or both of
these conditions.

- The costs associated
with requiring additional
numbers to report to the
Border and Immigration
Agency will be carefully
managed by reporting
centres. The reporting
regime will be tailored to
the needs of the
individual (e.g.
somebody who can not
be removed in the
foreseeable future may
not be asked to report
every week). If
individuals fail to comply
with residency/reporting
requirements, the
Government may incur
costs if it decides to
prosecute, however it is
anticipated noncompliance
will be rare
given the possible
penalties (a fine of up to

£5,000 or six months imprisonment).

Foreign nationals granted Leave with Restrictions might approach NGOs for advice on what the restrictions mean for them in practice. The impact can be minimised if the Border and Immigration Agency carefully explains the provision to NGOs during implementation and, once implemented, informs those granted Leave with Restrictions

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what they can and cannot do in simple terms.

D - Other

Exclusion of late evidence at appeal at Asylum and Immigration Tribunal

- The level of administrative saving should be significant. It has been calculated that the staffing cost of making a new decision on an application when late evidence is received is £30.50. This does not include office overheads.
- In the field of work permit and highly skilled migrant applications, in 2005/06 second decisions were made on applications because of new evidence or further representations in 16,947 cases. These cases incurred a staffing cost of £516,951.
- If applicants fail to enclose all required evidence they may need to make a new

application. This would be an additional cost. However, the new system is designed such that it will be so clear what evidence is required that applicants should not have difficulty in making complete initial applications.

Applicants will also benefit from faster processing times and greater certainty in the application process.

There is potentially a slight impact on educational institutions and employers if people who are refused decide to submit another application because the sponsor may be required to update their supporting documents. However, this impact is very low.

Amend the definition of an asylum seeker for the purpose of asylum support

- Asylum support will continue to be available to destitute asylum seekers until all appeal rights are exhausted.
- The measure will be cost neutral as it is aimed at maintaining the current position.

Power to overcharge for crosssubsidisation

- This will reduce the burden and reliance on general taxation.
- This provision is partly intended to reduce the current cost of the Border and Immigration Agency's services to the general taxpaying

public, business and educational institutions. The costs will be more proportionately borne by those that directly benefit from these services.

Chief Inspector for Border and Immigration

- Independent transparent advice, consistent across the organisation. Clear
- It is estimated that regular running costs

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Agency, reporting annually to Parliament.

lines of accountability.

The Inspectorate will also be able to make recommendations with the status to drive through improvements.

will be approximately £2m p.a.

Equality impact assessment

Equality Impact Assessments have been completed for each measure. These will be published alongside the Bill. No overall equality issues have been identified.

5. SMALL FIRMS IMPACT TEST

It is considered that all the measures in the Bill will result in little or no impact on small businesses. Where potential for an impact has been identified further work has been carried out to establish the extent and justification of this additional burden. Specifically, the power to search for evidence of nationality might impinge on business premises. However, this is minimised by the requirement of the officer to have reasonable grounds for suspecting that there are relevant documents on the premises.

When assessing the impact of a new regulation of the charging provisions on small firms, we would wish to see whether any significant impacts will arise that may have a disproportionate impact on small firms, or that may affect their competitiveness with larger firms. A change in the pricing strategy for immigration and nationality fees could have two types of impacts we need to be aware of:

- A decrease in demand for goods/services due to increased fees.
- An increase in the costs of employing migrants.

This will be assessed in relevant published RIA for future charging proposals.

6. COMPETITION ASSESSMENT

None of the measures in the Bill is likely to have an effect on competition. The impact each measure might have on competition has been duly considered in the carrying out of this RIA.

Proposals to change the charging regime for immigration and nationality fees

could have a number of possible impacts that may affect competition among markets:

- Impact on tourism industry due to a fall in visitor numbers (due to increased visa fee).
- Impact on employers of migrant workers (higher employment costs due to increased work permit fee).
- Spill-over impacts to firms with significant links to tourism industry.
- Spill-over impacts to firms with significant links to sectors in which high numbers of migrants are employed.

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- Impacts on universities and colleges educating foreign students.

Full RIAs on any future proposals will include assessment of possible impacts on competition.

7. ENFORCEMENT, SANCTIONS AND MONITORING

There will be a range of enforcement, sanction and monitoring processes used for each of the Bill's provisions. The range of sanctions proposed will include civil penalties, refusal of immigration applications, prison sentences and cash fines. The Border and Immigration Agency itself will be monitoring much of the activity expected from the provisions and in some cases this will be supplemented by further monitoring by other departments and organisations including HMRC, DCA, the Police, IPCC, Criminal Investigation Secretariat, CPS and Asylum and Immigration Tribunal.

8. IMPLEMENTATION AND DELIVERY PLAN

An implementation and delivery plan will be developed, in discussion with stakeholders, to deliver the proposals and will take into consideration the priorities identified by those stakeholders.

9. POST-IMPLEMENTATION REVIEW

We will be reviewing the legislation to find out whether it is fully effective and economic. In particular, we will seek to ensure that the measures are properly targeted and will take into account the principles of transparency, proportionality, accountability and consistency. This will include consultation with stakeholders.

10. RECOMMENDATION

It is recommended that Option 3, full implementation of the proposals detailed in this RIA, be pursued.

11. DECLARATION AND PUBLICATION

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

Liam Byrne

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Home Office

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