

AVIATION SECURITY: CONSULTATION ON A STATUTORY AUTHORITY TO CARRY SCHEME

September 2011



Home Office



SCOPE OF THE CONSULTATION

Topic of this consultation:	To seek views on the introduction of an ‘Authority to Carry’ Scheme to prevent individuals who pose a terrorist threat from flying to the UK.
Scope of this consultation:	To seek views on: <ul style="list-style-type: none"> • a proposal to introduce an ‘Authority to Carry’ Scheme to prevent individuals who pose a terrorist threat from flying to the UK; • the potential impact of the proposed scheme; and • the construction of a Scheme that would most effectively prevent individuals who pose a terrorist threat from flying to the UK whilst minimising any negative impact on industry and the travelling public.
Geographical scope:	UK wide
Impact assessment (IA):	An Impact Assessment and Equality Impact Assessment are provided in the appendices of this consultation.

BASIC INFORMATION

To:	<ul style="list-style-type: none"> • Passenger airlines operating flights to the UK and providing passenger data to e-Borders • Civil Aviation Authority • Non-governmental organisations, community groups, faith groups and civil liberties groups • European Commission
Duration:	12 weeks
Enquiries:	By e-mail: predeparturechecks@homeoffice.x.gsi.gov.uk
How to respond:	By e-mail to the above email address or in writing to Mark Forsyth, Office for Security and Counter-Terrorism, Home Office, 2 Marsham Street, London SW1P 4DF.
Additional ways to become involved:	Engagement with stakeholders began in advance of formal consultation and will continue throughout the consultation period. Requests for meetings can be made to the e-mail and postal addresses above
After the consultation:	All responses will be considered by the Home Office and a Government response will be published.

BACKGROUND

Getting to this stage:	<p>In response to the attempted terrorist attack onboard an aircraft over Detroit on 25 December 2009, a range of work has been undertaken to consider the effectiveness of aviation and border security. The Government's Strategic Defence and Security Review and the Home Office Business Plan include the commitment to make changes to pre-departure checks to better identify people who pose a terrorist threat and prevent them flying to or from the UK.</p> <p>The Government's proposal to introduce an Authority to Carry Scheme, which would prevent foreign national who pose a terrorist threat from flying to the UK contributes towards meeting this commitment.</p>
Previous engagement:	<p>Preliminary meetings have been held with representatives of the airline industry and we have liaised with the Civil Aviation Authority. The UK Border Agency continues to hold a dialogue with the European Commission in respect of e-Borders and free movement rights data protection arrangements.</p> <p>Previous consultation on e-Borders referred to proposals for an Authority to Carry Scheme.</p>

Alternative formats

Should you require a copy of this consultation paper in any other format, e.g. Braille, Large Font, or Audio, please write to the e-mail or postal address above.

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Foreword by the Home Secretary



Following the attempted terrorist attack on board an aircraft over Detroit on Christmas Day 2009, and the attempt to bring down two cargo planes bound for the US in October last year using explosive devices concealed in printer cartridges, it is clear the UK must take appropriate protective measures to provide security for the aviation industry, UK citizens and its national interests.

Last October the Government published the National Security Strategy and the Strategic Defence and Security Review. Together they provide direction for our national security policy, capabilities and resources to 2015.

Within the review, and as part of a range of work to reduce the terrorist threat to aviation, the Government committed to make changes to pre-departure checks to better identify people who pose a terrorist threat and prevent them flying to or from the UK. In line with that commitment we are consulting on the introduction of an Authority to Carry Scheme which would introduce regulations so that airlines can be denied authority to bring to the UK individuals who pose a terrorist threat.

The Government cannot address the threat in isolation and we continue to work with key partners in industry and the community. In developing these proposals we have worked closely with the passenger airline industry to ensure our overall approach to security complements existing business practice rather than adversely affecting it. We will continue to do what we can to make effective security less intrusive and ensure minimum burden on the travelling public and the industry where possible.

Where we are able to prevent individuals who pose a threat from boarding aircraft to the UK we must do so. We look forward to receiving your views on our proposals.

A handwritten signature in black ink, appearing to read 'Theresa May'.

Theresa May
Home Secretary

Executive summary

We continue to face a serious and sustained threat from terrorism. The current assessment of the threat to the UK is SUBSTANTIAL meaning an attack is a strong possibility.

The aim of CONTEST the UK's Counter-Terrorism strategy is to reduce the risk to the United Kingdom and its interests overseas from terrorism, so that people can go about their lives freely and with confidence. This includes strengthening our protection against attack.

As part of our response to the attempted terrorist attack over Detroit on Christmas Day 2009, we made a commitment in the Strategic Defence and Security Review to make changes to pre-departure checks to better identify people who pose a terrorist threat and prevent them flying to or from the UK, in order to strengthen the protection of UK aviation and national security.

There are a range of powers available to the Government to prevent individuals who pose a terrorist threat from flying to the UK. These include our visa regime, which applies to those who require a visa to travel to the UK. There are measures relevant to counter terrorism, such as licence conditions upon release from prison and control orders (and their replacements announced earlier this year) that place restrictions on an individual which, where applicable, may prohibit international travel from the UK. Breach of such requirements could involve the subject's recall to prison or be a criminal offence. Advanced Passenger Information sent to e-Borders can be used to detect such breaches and notify airlines not to board an individual in these circumstances, and inform law enforcement agencies such as the Police so that they may provide a response.

This consultation invites views on a proposal to implement powers to prevent certain foreign national individuals, who pose a terrorist threat, from flying to the UK. These would be individuals who would already be refused entry at the UK border, either because they are formally excluded from the UK on national security grounds or are subject to a UN or EU Travel Ban.

We consider implementing an 'Authority to Carry' Scheme to offer the most effective means of preventing these individuals from flying to the UK. Primary legislation is in place¹ to permit regulations to be made introducing an 'Authority to Carry' Scheme, whereby airlines will be required to seek authority to carry passengers to the UK.

The Government may inform the airline that authority to carry is not given. The anticipated frequency where 'Authority to Carry' would be denied is very low. However, the impact of an attack against an aircraft could be very high and the UK government's first priority is to protect the security of its citizens.

The proposed Scheme will extend to all airlines that provide Advance Passenger Information to the e-Borders system operated by the UK Border Agency (UKBA). Airlines submitting Advance Passenger Information to e-Borders would receive notification from the UKBA's National Border Targeting Centre when 'Authority to Carry' is denied.

In practice, airlines will continue to submit Advance Passenger Information to e-Borders as is routine, with checks being completed within the standard time window when carriers can submit passenger data to e-Borders, which is between 24 hours and 30 minutes before the scheduled time of departure for all checked-in passengers.

Some airlines may prefer to submit Advance Passenger Information at the end of this window, as suiting the operation of their business. This presents a practical challenge for the Scheme, particularly the short time available following the provision of Advanced Passenger Information to e-Borders and the departure of flights. Once Advanced Passenger Information is sent by airlines, checks are able to be completed quickly and with the airline informed of any denials. Where airlines submit their passenger data at this later end of this window we want to ensure they are able to respond to any denials of authority to carry, much as they are prepared for other emergency situations. Engagement with the airline industry has suggested

1 Section 124 of the Nationality, Immigration and Asylum Act 2002 refers.

that their existing 24/7 Operations Centres and Security Offices are suitable points of contact as they already respond to other time-critical situations. Together with the airline industry we have identified ways in which to make this process as effective as possible. We would like to provide all the necessary information to airlines in a notice that informs them that authority to carry a passenger has been denied, and we propose to provide airlines with a 'briefing sheet' for their use and reference, as well as providing all the necessary information on the notice. Airlines are able to submit passenger data at any time within the data submission window. We will work with industry, including as part of this consultation, to assess how best to operate this aspect of the Scheme.

Civil liberties are at the heart of the Government's approach to counter-terrorism and it will be important to ensure these proposals give consideration to people's freedoms.

The intended effect of the Scheme is to reduce the possibility of a terrorist attack by preventing specific individuals identified as posing a terrorist threat from boarding aircraft to the UK, so that people can go about their lives with confidence and freedom. The current assessment is that this will only apply to approximately 2-3 individuals per year and will not more widely affect the general travelling public. The current assessment is that the likelihood of the Scheme inconveniencing members of the travelling public is very low. Measures will be put in place to minimise the potential for members of the travelling public to be mistakenly identified as an individual whom an airline should be denied authority to carry under these arrangements. We will work with civil liberties groups and passenger interest groups, including as part of this consultation, to make sure the Scheme can be as effective as possible.

Proposals

Our proposals, on which we invite views, are as follows:

INTRODUCTION OF AN 'AUTHORITY TO CARRY' SCHEME

Legislative powers are available to refuse entrance or admission to the UK to passengers of all nationalities, with the exception of UK nationals. The Home Secretary has the power to exclude foreign nationals from the UK on national security as well as other grounds. The visa regime, which applies to those individuals who need a visa to travel to the UK, can be used to deny entry clearance to those who pose a terrorist threat. Visa nationals who do not have a visa and are therefore inadequately documented for travel to the UK can be prevented from travelling by the airline under Carrier's Liability arrangements whereby the airline may be financially liable for the costs of a passenger refused entry to the UK.

However, an individual who does not require a visa for the UK and who poses a terrorist threat, even one who is excluded from the UK on national security grounds or is the subject of an UN or EU travel ban, may still attempt to travel and, currently, airlines will not always be aware of such an exclusion or travel ban.

UK Border Agency officers from the Risk and Liaison Overseas Network (RALON) provide advice and training to airlines across the world, and as a result carriers deny boarding to approximately 70,000 inadmissible or inadequately documented passengers per annum on routes to the UK. However this advice is provided in the form of a recommendation rather than a direction, and can never seek to be fully comprehensive in covering all international flights to the UK.

Implementation of an 'Authority to Carry' Scheme would provide the ability to prevent individuals who pose a terrorist threat and who would be refused leave to enter at the UK border from flying to the UK. Currently, these individuals would be refused entry on arrival to the UK and be removed from the country. The scheme would have the effect of preventing them boarding aircraft to the UK to begin with, in order to ensure protection of the plane and the UK.

The proposed Scheme specifically denies airlines the authority to carry specified passengers on an exceptional basis. In doing so, it will build on existent practices, such as the submission of Advance Passenger Information to e-Borders before travel, the completion of watchlist checks and the provision of advice to airlines.

APPLICATION OF THE SCHEME

The proposed Scheme will apply to all airlines flying to the UK that have been issued with an IS72 form by the UK Border Agency requiring submission of passenger data to e-Borders. Our proposal is that the class of passenger within the scope of the Scheme is all passengers, with the exception of British nationals, on flights to the UK. Using the same mechanism of e-Borders, there will be separate arrangements for British nationals who are identified as posing an aviation security threat and are seeking to fly to the UK.

OPERATION OF THE SCHEME

An airline operating flights to the UK, and issued an IS72 form by the UK Border Agency, will provide Advance Passenger Information to e-Borders between 24 hours and 30 minutes before departure for all checked-in passengers. The submission of this information will constitute a request for 'Authority to Carry' all passenger on the flight that comes within the scope of the Scheme.

Where an airline is denied authority to carry an individual passenger the airline will then be informed by UK Border Agency by telephone and email that the passenger should not be brought to the UK. Where the carrier is denied authority to carry, the passenger will not be able to board the flight and will be given a notice that the UK Border Agency has provided to the airline, which will also contain information for the passenger to query the denial of authority or seek redress through the official Government channels.

If an airline has not received any notification within 15 minutes of departure that authority to carry any passenger has been denied, the airline may conclude

that it has not been denied authority to carry any passengers on that flight. Existing Carrier's Liability and detention and removal cost arrangements in relation to inadmissible and inadequately documented passengers are unaffected.

A civil penalty will apply if an airline brings to the UK a passenger in respect of whom either (i) it was required to seek authority to carry but failed to do so; or (ii) it was denied authority to carry. However, this will be subject to a defence of "reasonable excuse".

The intention of the proposed Scheme is to reduce the risk of a terrorist attack against an aircraft bound for the UK by preventing known individuals who pose a threat from boarding the aircraft. Where such an individual is reported as having boarded an aircraft we will call upon existing communication protocols, in place for responding to in-flight emergency situations, to ensure a proportionate response can be considered.

As a longer-term option, it is possible that the UK will consider the costs and benefits of a fully automated system where authority to carry and denial of authority to carry is communicated to the airline in respect of each passenger. There are currently no proposals to implement an interactive system, in line with a Government commitment to industry not to introduce such a system before 2013.

The UK Government continues to work closely with European Commission officials regarding the operation of e-Borders to reach a mutual understanding of how e-Borders operates in a way that strengthens the security of the UK and the EU more broadly but does not have an impact on free movement of EU citizens.

Within the development of this dialogue we have given careful consideration to the operation of pre-departure checks to better identify those that pose a terrorist threat and prevent them flying to or from the UK. This has been particularly important given the UK Government's responsibility to maintain the safety and security of the UK, its citizens and interests, including protection against terrorist attacks. The operation of these checks, including the seeking of

authority to carry as set out in this consultation, will be within the solution to be agreed with the Commission.

We have also given consideration to the need to refuse airlines 'Authority to Carry' the specified individuals in the exceptional circumstances necessary. The categories of individual to which this applies is defined and limited, as outlined in the Scheme. Where these are EEA nationals or their family members, these individuals will already have been excluded from the UK in line with EU Directive 2004/38/EC and/or have had a Travel Ban imposed by the UN and EU. As such they will no longer be able to exercise their free movement rights which includes travel to the UK.

We do not expect the proposed scheme to affect many people, with a current estimate of only 2-3 instances a year where airlines would be refused the authority to carry someone to the UK, based upon the specific terrorist threat posed by that individual. As an unintended consequence, there is theoretically potential for cases of mistaken identity, where an individual with the same or very similar full name and other biographical details such as date of birth is falsely identified as an individual posing a threat, and is prevented from flying. For the purposes of being prudent in Impact Assessment, we have allowed for the number of these cases to be equal to the number of correctly identified cases, but in reality this is not expected to materialise often or perhaps at all. We recognise the importance of minimising the probability of this occurring, and putting mechanisms in place to prevent inconvenience to passengers should this materialise. Passengers will be able to make enquiries to the contact details provided upon being refused boarding, and there is an established process in the UK border Agency for dealing with such enquiries. If an airline is ever incorrectly denied the authority to carry a passenger due to this, there will be measures in place to prevent this occurring on subsequent occasions so an individual is not inconvenienced subsequently. We would like to build on the experience and best practice of similar arrangements internationally.

Consultation Questions

CONSULTATION QUESTIONS DIRECTED TO THE AIRLINE INDUSTRY

General

1. Do you have any general comments on the purpose of the scheme?

e-Borders

2. The approach of the proposed Scheme is to conduct all pre-departure checks within e-Borders. Do you agree this approach? If not, is there an alternative model that is preferred?

Costs

3. The Impact Assessment has assessed a number of costs to airlines for operating the proposed Authority to Carry Scheme. Have the right cost items been identified? Are there other cost items that have not been identified in the Impact Assessment, and are you able to estimate their costs?
4. Do you consider the identified costs to be approximately correct, too high or too low? If you consider they are not approximately correct, what is your assessment of the identified costs?

Benefits

5. The Impact Assessment has assessed a number of benefits to airlines for operating the Authority to Carry Scheme. Have the right benefit items been identified? Are there other benefit items that have not been identified in the Impact Assessment, and are you able to estimate their benefit?
6. Do you consider the identified benefits to be approximately correct, too high or too low? If you consider they are not approximately correct, what is your assessment of the estimated benefit for these items?

Authority to Carry

7. The proposed Authority to Carry Scheme uses the existing e-Borders data submission window, where Advance Passenger Information can be sent to e-Borders between 24 hours and 30 minutes before the scheduled time of departure for all checked in passengers. Where Advance Passenger Information is received at 30 minutes before departure only a limited time is available for UKBA and the airline to action a denial of Authority to Carry. Do you have any suggestions on how to make this as effective as possible?
8. Could you provide an estimate of the proportion of all your passengers for whom you send, or could send, Advance Passenger Information to e-Borders by the close of this window (30 minutes before departure)?
9. Sending data earlier would provide more time for UKBA and the airline to action a denial of Authority to Carry. How much do you send, or could you send by 60 minutes before departure?
10. The proposed Scheme would include a 'reasonable excuse' defence be part of the sanctions regime. Do you agree with that? What sorts of reasonable excuse might you envisage?
11. Does the draft text to be supplied to an airline in the event of a refusal of authority (at Appendix 2) provide the information an airline would need? Is there anything different or additional that may be helpful?
12. The Authority to Carry Scheme takes its name from legislation. Are the meanings of the terms 'authority to carry' and 'refusal' or 'denial' of authority to carry clear? If not, are there different terms which may be clearer?
13. How would you implement a denial of authority to carry within your business, and what action do you envisage your business taking following the notice that authority to carry has been denied for a specific passenger?

14. What contact points within your operations would you suggest the National Border Targeting Centre use to notify denial of Authority to Carry? Are there certain protocols that could facilitate this process?
15. As a longer-term option, the UK is considering the costs and benefits of an interactive API system. The UK Border Agency has given a commitment to industry not to introduce such a system before 2013. At this early stage, your views and experiences would be welcome to understand the industry perspective on this, particularly to help understand the costs and benefits for you in implementing this for the UK. We are particularly keen to explore the merit in applying international or common standards and your experience of existing systems such as the Advance Passenger Information System Quick Query (AQQ). There would be a separate consultation before the introduction of such a system.
20. Individuals prevented from flying will already be subject to a legal basis where they would be refused entry to the UK. We propose that if the airline is denied Authority to Carry them, the individual can contact the UK Border Agency to lodge queries or address any problems that have arisen. Do you have any comments on this situation and how it can best be dealt with?
21. The Impact Assessment includes estimates of the length of delays and the cost to individuals. Do you consider these to be reasonable, too high or too low?
22. The intended effect of the scheme is to reduce the risk of terrorist attacks. Do you consider the scheme will have any positive or negative effects on community relations?
23. If you do consider there might be negative effects, how might these be best reduced or managed?

CONSULTATION QUESTIONS FOR ALL

16. Do you have any general comments on the purpose of the scheme?
17. The Equality Impact Assessment identifies there are potential impacts on four equality strands – race, religion/belief & non belief, gender and age. Do you consider the right impacts have been identified for these strands?
18. Do you consider there may be impacts for other equality strands listed in the Equality Impact Assessment? If so, could you state which characteristic may be impacted and outline the potential impact?
19. Does the suggested wording for a passenger affected by a denial of authority to carry (including in the text for airlines at Appendix 2), which would include designated contact points in the UK Border Agency, provide the information the passenger would need? Is there anything additional that may be helpful?
24. Are there any further comments you would like to make relating to the proposed Scheme?

Response form

Name

Address

Postcode

email

Company Name or
Organisation
(if applicable)

Please tick **one** box
from the list below
that best describes
you/your company or
organisation.

- Small to Medium Enterprise (up to 50 employees)
- Large Company
- Representative Organisation
- Interest Group
- Local Government
- Central Government
- Law Enforcement
- Member of the public
- Other (please describe): _____

If you are responding on behalf of an organisation or interest group how many members do you have and how did you obtain the views of your members:

Number of members

Views were obtained by

I would like my response or personal details to be treated as confidential.

Reasons (please
explain below):

Provide your responses underneath, before returning to the address provided.

Thank you for taking the time to respond to this consultation. Please now send your response (to reach us by 6 December 2011) to:

email:
predeparturechecks@homeoffice.x.gsi.gov.uk

post:
Mark Forsyth,
Office for Security and Counter-Terrorism,
Home Office,
2 Marsham Street,
London SW1P 4DF

Confidentiality & Disclaimer

RESPONSES: CONFIDENTIALITY & DISCLAIMER

The information you send us may be passed to colleagues within the Home Office, the Government or related agencies.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation criteria

The Consultation follows the Government's Code of Practice on Consultation – the criteria for which are set out below:

Criterion 1 – When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2 – Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3 – Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4 – Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5 – The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6 – Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7 – Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

The full Code of Practice on Consultation is available at: www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44420.html

Consultation Co-ordinator

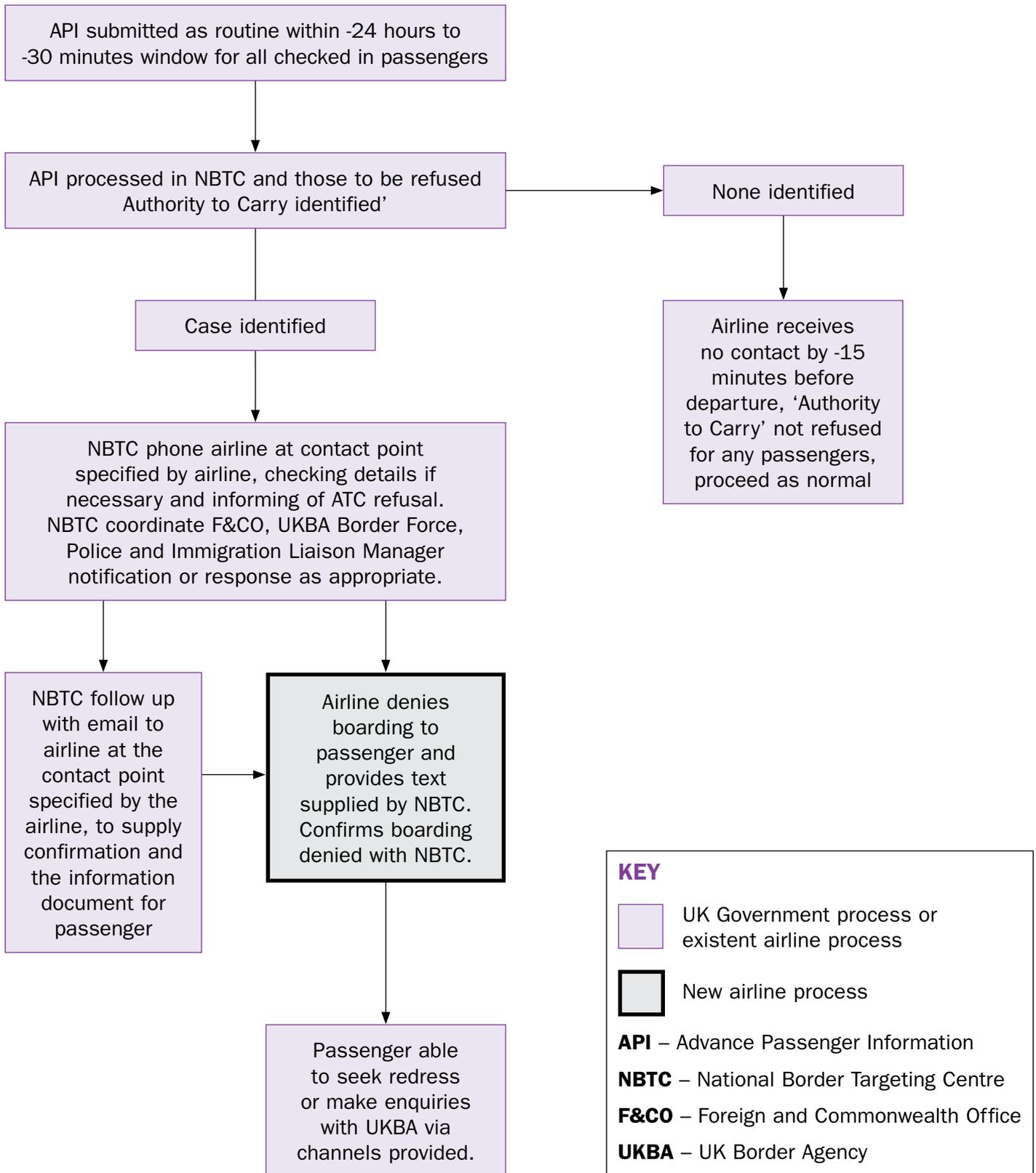
If you have a complaint or comment about the Home Office's approach to consultation, you should contact the Home Office Consultation Co-ordinator, Adam McArdle. Please DO NOT send your response to this consultation to him.

The Co-ordinator works to promote best practice standards set by the Government's Code of Practice, advises policy teams on how to conduct consultations and investigates complaints made against the Home Office. He does not process your response to this consultation.

The Co-ordinator can be emailed at:
adam.mcardle2@homeoffice.gsi.gov.uk
or alternatively write to him at:

Adam McArdle, Consultation Co-ordinator
Home Office
Performance and Delivery Unit
Better Regulation Team
3rd Floor Seacole
2 Marsham Street
London
SW1P 4DF

Appendix 1: Outline process for 'Authority to Carry' Scheme



Appendix 2: Draft text advising refusal of authority to carry

The following text is a suggested draft for a form of words which would be supplied by the UK Border Agency's National Border Targeting Centre to an airline refused authority to carry a specific passenger.



URGENT – DO NOT BOARD PASSENGER

To: [Airline] _____
Flight number: _____
Date: _____
Passenger: _____

AUTHORITY TO CARRY DENIED – DO NOT BOARD PASSENGER

The UK Border Agency confirms that you have been denied Authority to Carry the above named passenger under the Nationality, Immigration and Asylum Act 2002 (Authority to Carry) Regulations 2011.

You may provide the below information to the passenger:

“The UK Border Agency has confirmed we do not have the Authority to Carry you to the UK, as you would be refused leave to enter the UK on arrival. This means we cannot board you.

We must comply with this decision or we will be liable under UK legislation upon arrival in the UK.

For enquiries you can contact the UK Border Agency at: [contact details]”

Appendix 3: Draft Authority to Carry Scheme

CONTEXT

Terrorism affecting the UK and its interests is identified as a Tier One Priority Risk in the National Security Strategy. In line with CONTEST, the UK's Strategy for Countering Terrorism, the Government is committed to reducing the risk to the UK and its interests from terrorism, so that people can go about their lives freely and with confidence.

The threat level in the UK from international terrorism is SUBSTANTIAL meaning a terrorist attack is a strong possibility. For much of the past five years the threat level has been SEVERE meaning an attack was assessed to be highly likely.

The Strategic Defence and Security Review and the Home Office Business Plan include a commitment to make changes to pre-departure checks to better identify people who pose a terrorist threat and prevent them flying to or from the UK.

Current powers are available to refuse entry or admission to the UK to passengers of all nationalities, with the exception of UK nationals. The Home Secretary has the power to exclude individuals from the UK on national security as well as other grounds. The visa regime, which is applicable to those who need a visa to enter the UK, can be used to prevent travel by those who pose a terrorist threat. Visa nationals not in possession of a valid visa are inadequately documented for travel to the UK and can be prevented from travelling by an airline under Carrier's Liability arrangements.

However, the visa regime applies only to those nationals who require a visa to travel to the UK. An individual who does not require a UK visa, even one excluded from the UK on national security grounds or the subject of an EU or UN travel ban, and who poses a terrorist threat may still attempt to travel, and airlines will not always be aware of an exclusion or travel ban.

Primary legislation is in place² to permit the Secretary of State to introduce, via secondary legislation, an

² Section 124 of the Nationality, Immigration and Asylum Act 2002

'Authority to Carry' (ATC) scheme which would provide a legal basis to prevent certain individuals who would be refused leave to enter at the UK border from travelling to the UK. An ATC scheme would be founded upon the acquisition of passenger data by e-Borders, in advance of travel, for flights into the UK.³

PURPOSE

The purpose of the Authority to Carry Scheme is to prevent certain individuals from travelling to the UK who would be refused leave to enter at the UK border.

Class of carrier to which the scheme applies

The ATC scheme will apply to all passenger air carriers travelling to the UK that have been issued with an IS72 form⁴ requiring submission of passenger data to e-Borders.

Class of passenger to which the scheme applies

The ATC scheme will apply to all passengers, with the exception of British nationals, travelling on flights to the UK.⁵

The ATC scheme will operate within the existing framework of the submission of Advanced Passenger Information (API) to e-Borders, which operates in a manner compliant with the agreement reached with the European Commission regarding e-Borders and

³ e-Borders relies on powers contained in paragraphs 27 and 27B of Schedule 2 to the Immigration Act 1971, section 32 of the Immigration, Asylum and Nationality Act 2006 and sections 35 and 64 of the Customs and Excise Management Act 1979 which allow Immigration, Police and Customs officers to request passenger data from air carriers before departure to/from the UK.

⁴ This is a request for information made under and in accordance with paragraphs 27 (in respect of crew information) and 27B (in respect of passenger and service information) of Schedule 2 to the Immigration Act 1971 (as amended) and the Immigration and Police (Passenger, Crew and Service Information) Order 2008 (SI 2008/5).

⁵ The ATC Scheme will not apply to British nationals because ATC is an immigration power and British nationals could not fall within the categories of persons that the scheme will apply to. Using the same mechanism of e-Borders, there will be separate and related arrangements for British nationals seeking to fly to the UK in circumstances where they are identified as posing an aviation security threat.

the free movement rights of EEA nationals and their family members within the EEA. The ATC scheme will not require in respect of EEA nationals and their family members travelling on intra-EEA routes any API data additional to that required by the carrier for their own business purposes.

PROCESS

Carriers are required to provide API on flights to the UK to e-Borders at least 30 minutes before departure.⁶ The submission of this information will constitute a request by the carrier for ‘authority to carry’ all the passengers on the flight who come within the scope of the scheme.

Carriers will be informed by the UK Border Agency if authority to carry any of those passengers is refused and that the passenger should not be brought to the UK. Carriers will not have authority to carry such passengers.

Class of passenger whom a carrier will be refused authority to carry

Carriers will be refused authority to carry those passengers who would be refused leave to enter in the following circumstances:

- a) EEA nationals or accompanying/joining family members of EEA nationals who have been excluded by under the Immigration (European Economic Area) Regulations 2006 because they pose a threat either to aircraft or the UK;
- b) Third country nationals who have been excluded from the UK by the Secretary of State on grounds of national security;
- c) Third country nationals whom the Secretary of State is in the process of excluding on grounds of national security;

- d) Persons who are subject to a UN or EU travel ban;
- e) Persons who are subject to an existing deportation order on grounds of national security.

Should authority to carry a passenger be refused, the carrier will be informed by the UK Border Agency via telephone of the details of any individual. The initial phone message will be in English and be followed up with an e-mail in English detailing the denial of authority to carry. Carriers are responsible for providing contact details to receive such notifications and for ensuring that those details are kept up to date.

If no email notification is received by 15 minutes before scheduled time of departure, carriers will automatically have ‘authority to carry’ all persons on the flight.

If, due to technical failure, the carrier is unable to submit passenger data in order to seek authority to carry, and all other options for providing the data have been exhausted, the carrier should decide if it wishes to carry passengers who have not been checked against the UK no fly list.

The UK Border Agency will liaise with the carrier to discuss appropriate action should a situation arise where the carrier has permitted to travel an individual in relation to whom authority to carry would have been refused.

Passengers for whom authority to carry is denied will be informed of this action by the carrier. Passengers seeking redress will be referred to the UKBA website in line with established procedure following a decision overseas.

If UKBA overseas liaison officers interdict passengers to provide information on a visa revocation, exclusion decision, or some other change to immigration ordered by the Home Secretary, they will provide the passenger with the appropriate documentation.

⁶ This will be routine following the issuance of the IS72 form to airlines by the UK Border Agency.

LIABILITY

A civil penalty will apply if an airline brings to the UK a passenger in respect of whom either:

- a) it was required to seek authority to carry but failed to do so; or
- b) authority to carry the passenger was refused.

However, this will be subject to a defence of “reasonable excuse”.

As under existing arrangements where passengers are refused leave to enter at the UK border⁷ the airline will also be responsible for the detention and removal costs.

⁷ Section 40 of the Immigration & Asylum Act 1999 provides for a charge to be imposed on the owner of a ship or aircraft where a person requiring leave to enter arrives in the UK and fails to produce a valid “immigration document” which satisfactorily establishes identity and nationality or citizenship, and if the individual requires a visa, a visa of the required kind. Legislation on detention and removal costs is contained in Paragraphs 8(1) and 19(1) in Schedule 2 of the Immigration Act 1971.



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