

3. Sensitive data

(a) Why will sensitive data be processed, and under what conditions and safeguards?

36. Passenger and crew data which is sensitive personal data (SPD) is only captured and processed where it is necessary to do so and proportionate to immigration, police or customs purposes. Both normal and sensitive personal data are processed in accordance with the requirements of the UK Data Protection Act 1998.

37. Frontline officers at the UK border will not readily have access to SPD. This is only available to operatives within the UK Joint Border Operations Centre who have a high degree of security clearance and are subject to stringent training and audit requirements. The use of the data is proportionate because it is only where travel document information data transmitted by a carrier produces an automatic hit against our watch list, indicating a person is of particular interest, that a specially trained operative would examine the SPD available (enriched with any other passenger information data which may have been requested to the extent the carrier has already collected it as the case maybe) in order to decide whether an alert should be issued to the frontline officer. The frontline officer will decide what intervention, if any, is appropriate on the basis of that alert. For example if an intervention was in prospect for an individual in say a wheelchair then the officers making that intervention will need the information to assess where that intervention might best take place. The whole point about SPD is that it varies enormously and it is not possible to describe how it might be used in every circumstance. In a large number of cases it will not be accessed by the specially trained analyst as it is only when an individual becomes of interest that a more detailed scrutiny of the other passenger information (PNR) may become necessary and proportionate to concerns already raised about that particular passenger.

38. SPD is often used to eliminate an individual from inquiries where an automated hit has occurred. The UK's original response included a link to the Code of Practice governing the use of e-Borders data which is attached here again¹.

39. The current draft of the PNR Framework Decision makes provision for the capture and processing of sensitive personal data. The UK would, of course, give effect to the terms of that Decision if and when it is agreed.

(b) Is such information required from each traveller including EU citizens?

40. No. Other passenger information will only be required on specific routes and to the extent already known to the carrier. Currently, as set out above, it is only being provided by some carriers on Intra-EU routes on a voluntary basis and as we have

1

said above, we do not intend to make the collection of this data mandatory unless or until this is required by an agreed EU PNR Framework Decision.

4. Retention periods

(a) Is this retention period applied to all personal data processed in the system?

41. Yes. The data retention period is currently set out in the published Code of Practice² on the management of information shared by the UK Border Agency, Her Majesty's Customs and Revenue and the Police. The Code is required to be made under section 37 Immigration, Nationality and Asylum Act 2006. This Code was laid before Parliament and has been subject to review by the UK Information Commissioner's Office.

42. The Commission will be aware when it published its Commission Staff Working Document accompanying the proposal for the PNR Framework Decision in 2007³ that it proposed a retention period, in respect of PNR data, of five years in an active database followed by eight years in an archived database⁴. The Code of Practice, which was published in 2008, followed the Commission proposal but instead opted for a lesser period of 5 years active and 5 years archived. Once the data is archived, it can only be accessed on a case by case basis for specific reasons. As mentioned at the meeting with Commission representatives in June, the UK will act consistently with practices to be adopted within the EU and, the UK will adapt its retention periods in order to comply with the draft Framework Decision on Passenger Name Records as and when this is agreed.

(b) Is there a distinction between *bona fide* travellers not being identified as dangerous or criminals and those who represent a threat to the public security, defence or are serious criminals?

43. No. The UK absolutely accepts the need to be proportionate and only retain and access the data that is necessary for legitimate immigration, police and customs purposes. However, the distinction between bona fide and non-bona fide travellers is not always clear which is why data needs to be kept for more than a minimal period of time.

44. The Commission considered in its Staff Working Document that it was necessary to retain data as, "for example, it would be impossible to develop the risk-assessment mechanisms and behavioural patterns if the data would be deleted immediately. Also,

² See section 4.5.5 of the Code and the entry in respect of '5th Data Protection Principle: Data not kept for longer than is necessary'.

³ See Annex A 'Analysis of other parameters' and section on 'data retention period' at page 35 of the Commission Staff Working Document accompanying the Proposal for a Council Framework Decision on the use of Passenger Name Record (PNR) for law enforcement purposes: IMPACT ASSESSMENT {COM(2007) 654 final SEC(2007) 1422 dated 6 November 2007 which can be found at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007SC1453:EN:HTML>

⁴ The document states that "this period was deemed as striking an acceptable balance between what the law enforcement authorities wanted and what is considered adequate and acceptable."

in case that a person is identified as a criminal or a terrorist after the flight has landed, it would be impossible to find the persons with whom he was flying.”⁵ The UK agrees. Retention of data allows the UK to do post incident responses which an individual not previously identified as being of interest then becomes so. For instance, those wishing to establish an entitlement to British citizenship need to show *inter alia* residence over a long period and the database will allow that to be done by recording the point at which the person entered or departed from the UK. Data was used after the 7/7 bombings in London to show where suspects had travelled and when. In similar incidents this information would again be useful in aiding the Police in their investigations.

(c) Will data be retained merely on the basis that it might possibly become relevant at some unknown time in the future?

45. Please see the answer to the above data protection question 4(b).

5. Right of citizens

(a) Are citizens informed in a clear manner of their rights (access, rectification, erasure or blocking)? If so, how are they informed?

(b) Is there a central service or body responsible for dealing with requests and complaints of citizens who avail themselves of their data protection rights?

(c) How may a citizen exercise his/her rights to access to his/personal data and to rectify, delete and block his/her personal data?

46. We are committed to being transparent about what information will be collected on travellers and how that information will be used. Notwithstanding that the UK e-Borders system does not collect data directly from passengers, but from carriers, we engage very closely with the carrier community to ensure that carriers have the most up to date information about the UK’s e-Borders system that can be passed on to passengers, including what data is being collected and why. This is most commonly done through the internet sites of the majority of carriers, the internet increasingly being the primary method of arrangement for travel (and purchasing of tickets) for those entering and departing the UK. We are providing carriers with a clear statement on the purposes of this data which they may want to use on their websites.

47. In addition, information about the e-Borders programme and what it means for individual passengers is provided to the public with full transparency on the UK Border Agency website⁶. The website clearly identifies the data that; will be collected on all passengers (Advance Passenger Information); collected on some passengers (Other Passenger Information); what the data is used for; how long it will be retained for; and who will have access to that information. Many carriers already refer to the

⁵ Page 35 of the Commission Staff Working Document.

⁶ <http://www.ukba.homeoffice.gov.uk/travellingtotheuk/beforetravel/advanceinfopassengers/>. This includes a link to leaflet designed for the public entitled “e-Borders: your questions answered”.

provision of passengers' data to governments including the UK in information they make available to their customers.

48. It should also be noted that as an ever-increasing number of countries across the globe are collecting passenger information for those crossing their borders, an increasing number of carriers (primarily in the international aviation sector) have decided to make the provision of API data (by the passenger) a condition of carriage. This will be reflected in the terms and conditions between carrier and passenger. The UK would like to see (and is actively working towards) a common EU protocol regarding how and when passengers are informed (through the agreement of an EU Framework Decision on Passenger Name Records).

49. An individual can make a request to the relevant organisation - whether the UK Border Agency, the relevant police force or HM Customs and Revenue - under the Data Protection Act 1998 to see the information which is held on them on the e-Borders system. Where any data is incorrect, the individual has a right to the incorrect data being either corrected or removed from the system. Contact details on to whom those applications can be made are set out in Annex E to the Code of Practice referred to above and details are also available on the public websites of each organisation⁷. In respect of personal data provided by a carrier to e-Borders via the UK Border Agency following a request made by an immigration officer, the Agency's guidance on dealing with requests for disclosure applies. This is set out in Chapter 24 of the Agency's Immigration Directorate Instructions which are available on its website.⁸ However, full disclosure may not be made where some of the information is relevant to national security or is of such a nature that it falls within an exemption to the UK Data Protection Act 1998.

50. There is not currently a single point of contact to receive subject access requests relating to e-Borders data, but it is anticipated that such a point will be created to simplify subject access requests in the future. The input of the Commission in the development of this process would be welcomed.

Conclusion

51. The UK trusts these responses provide sufficient information to assist the Commission in consideration of the existing pilot complaint. UK officials found the meeting held in June to be constructive and we would be pleased to arrange a further meeting if that would assist an early resolution of this matter.

ANNEX 1:

⁷ For instance, in respect of the UK Border Agency, which would hold the data provided by a carrier following a request made by an immigration officer, the process for a member of the public to request information on data held about that person is set out on the Agency's website at: <http://www.ukba.homeoffice.gov.uk/navigation/foi/>. Guidance on how the Agency processes

⁸ <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/idischapter24/>. Section 11 deals with subject access requests under data protection legislation.

“Travel Document Information” (also known as Advanced Passenger Information) which, if requested by an **immigration officer**, the carrier must provide (extract from Statutory Instrument 2008 No.5):

SCHEDULE 1 Information specified: immigration

Particulars of crew

1. The information is—

(a) the following information as provided on the member of crew’s travel document—

(i) full name;

(ii) gender;

(iii) date of birth;

(iv) nationality;

(v) type of travel document held;

(vi) number of travel document held;

(vii) expiry date of travel document held; and

(viii) issuing State of travel document held;

(b) where a travel document is not held, the type of identification relied upon together with the number, expiry date and issuing State of that identification;

(c) the vehicle registration number of any vehicle in which the member of crew is travelling and which is being transported by ship or by aircraft or by through train or shuttle train and, if the vehicle has a trailer, the trailer registration number;

(d) the number of crew on board the ship or aircraft or through train or shuttle train;

(e) the fact that the person is a member of crew; and

(f) in relation to crew on a ship—

(i) the place of birth of the member of crew; and

(ii) the rank, rating or equivalent of the member of crew.

Information which relates to passengers

2. The information is—

(a) the following information as provided on the passenger’s travel document—

(i) full name;

(ii) gender;

(iii) date of birth;

(iv) nationality;

(v) type of travel document held;

(vi) number of travel document held;

(vii) expiry date of travel document held; and

(viii) issuing State of travel document held;

(b) where a travel document is not held, the type of identification relied upon together with the number, expiry date and issuing State of that identification; and

(c) the vehicle registration number of any vehicle in which the passenger is travelling and which is being transported by ship or by aircraft or by through train or shuttle train and, if the vehicle has a trailer, the trailer registration number.

Information which relates to a voyage or flight or international service

3. The information is—

- (a) flight number, ship name, train service number or carrier running number;
- (b) name of carrier;
- (c) nationality of ship;
- (d) scheduled departure date;
- (e) scheduled departure time;
- (f) scheduled arrival date;
- (g) scheduled arrival time;
- (h) place and country from which the voyage or flight or international service departed immediately prior to arrival into the United Kingdom;
- (i) place in the United Kingdom into which the voyage or flight or international service first arrives from overseas;
- (j) any place in the United Kingdom to which a voyage or flight or international service which has arrived into the United Kingdom from overseas will subsequently go; and
- (k) number of passengers.

ANNEX 2:

“Other Passenger Information” (also known as Passenger Name Records) which, if requested by an **immigration officer**, a carrier must provide *but* only to the extent the carrier has collected the information – the carrier is not required to collect this information if it does not have it.

SCHEDULE 2 Information specified to extent known by carrier: immigration

1. The passenger and service information is the following details in respect of a passenger—

- (a) name as it appears on the reservation;
- (b) place of birth;
- (c) issue date of travel document;
- (d) address;
- (e) sex;
- (f) any contact telephone number;
- (g) e-mail address;
- (h) travel status of passenger, which indicates whether reservation is confirmed or provisional and whether the passenger has checked in;
- (i) the number of pieces and description of any baggage carried;
- (j) any documentation provided to the passenger in respect of his baggage;
- (k) date of intended travel;
- (l) ticket number;
- (m) date and place of ticket issue;
- (n) seat number allocated;
- (o) seat number requested;
- (p) check-in time, regardless of method;
- (q) date on which reservation was made;

- (r) identity of any person who made the reservation;
- (s) any travel agent used;
- (t) any other name that appears on the passenger's reservation;
- (u) number of passengers on the same reservation;
- (v) complete travel itinerary for passengers on the same reservation;
- (w) the fact that a reservation in respect of more than one passenger has been divided due to a change in itinerary for one or more but not all of the passengers;
- (x) Code Share Details(10);
- (y) method of payment used to purchase ticket or make a reservation;
- (z) details of the method of payment used, including the number of any credit, debit or other card used;
- (aa) billing address;
- (bb) booking reference number, Passenger Name Record Locator and other data locator used by the carrier to locate the passenger within its information system;
- (cc) the class of transport reserved;
- (dd) the fact that the reservation is in respect of a one-way journey;
- (ee) all historical changes to the reservation;
- (ff) General Remarks;
- (gg) Other Service Information (OSI);
- (hh) System Service Information (SSI) and System Service Request information (SSR);
- (ii) identity of the individual who checked the passenger in for the voyage or flight or international service;
- (jj) Outbound Indicator, which identifies where a passenger is to travel on to from the United Kingdom;
- (kk) Inbound Connection Indicator, which identifies where a passenger started his journey before he travels onto the United Kingdom;
- (ll) the fact that the passenger is travelling as part of a group;
- (mm) the expiry date of any entry clearance held in respect of the United Kingdom;
- (nn) card number and type of any frequent flyer or similar scheme used;
- (oo) Automated Ticket Fare Quote (ATFQ), which indicates the fare quoted and charged;
- (pp) the fact that the passenger is under the age of eighteen and unaccompanied; and
- (qq) where the passenger is a person under the age of eighteen and unaccompanied—
 - (i) age;
 - (ii) languages spoken;
 - (iii) any special instructions provided;
 - (iv) the name of any departure agent who will receive instructions regarding the care of the passenger;
 - (v) the name of any transit agent who will receive instructions regarding the care of the passenger;
 - (vi) the name of any arrival agent who will receive instructions regarding the care of the passenger;
 - (vii) the following details in respect of the guardian on departure—
 - (aa) name;
 - (bb) address;
 - (cc) any contact telephone number; and
 - (dd) relationship to passenger; and
 - (viii) the following details in respect of the guardian on arrival—
 - (aa) name;

- (bb) address;
- (cc) any contact telephone number; and
- (dd) relationship to passenger.

ANNEX 3:

“Travel Document Information” (also known as Advanced Passenger Information) which, if requested by a **police officer**, the carrier must provide (extract from Statutory Instrument 2008 No.5):

SCHEDULE 3 Information specified: police

Information which relates to members of crew

1. The information is—
 - (a) the following information as provided on the member of crew’s travel document—
 - (i) full name;
 - (ii) gender;
 - (iii) date of birth;
 - (iv) nationality;
 - (v) type of travel document held;
 - (vi) number of travel document held;
 - (vii) expiry date of travel document held; and
 - (viii) issuing State of travel document held;
 - (b) where a travel document is not held, the type of identification relied upon together with the number, expiry date and issuing State of that identification; and
 - (c) the vehicle registration number of any vehicle in which the member of crew is travelling and which is being transported by ship or by aircraft or by through train or shuttle train and, if the vehicle has a trailer, the trailer registration number.

Information which relates to passengers

2. The information is—
 - (a) the following information as provided on the passenger’s travel document—
 - (i) full name;
 - (ii) gender;
 - (iii) date of birth;
 - (iv) nationality;
 - (v) type of travel document held;
 - (vi) number of travel document held;
 - (vii) expiry date of travel document held; and
 - (viii) issuing State of travel document held;
 - (b) where a travel document is not held, the type of identification relied upon together with the number, expiry date and issuing State of that identification; and
 - (c) the vehicle registration number of any vehicle in which the passenger is travelling and which is being transported by ship or by aircraft or by through train or shuttle train and, if the vehicle has a trailer, the trailer registration number.

Information which relates to a voyage or flight or international service

3. The information is—

- (a) flight number, ship name, train service number or carrier running number;
- (b) name of carrier;
- (c) nationality of ship;
- (d) scheduled departure date;
- (e) scheduled departure time;
- (f) scheduled arrival date;
- (g) scheduled arrival time;
- (h) place and country from which the voyage or flight or international service departed immediately prior to arrival into the United Kingdom;
- (i) place in the United Kingdom into which the voyage or flight or international service first arrives from overseas;
- (j) any place in the United Kingdom to which a voyage or flight or international service which has arrived into the United Kingdom from overseas will subsequently go; and
- (k) number of passengers.

ANNEX 4:

“Other Passenger Information” (also known as Passenger Name Records) which, if requested by a **police officer**, a carrier must provide *but* only to the extent the carrier has collected the information – the carrier is not required to collect this information if it does not have it.

SCHEDULE 4 Information specified to extent known by carrier: police

1. The passenger and service information is the following in respect of a passenger or, in so far as it applies (whether expressly or otherwise), in respect of a member of crew—

- (a) name as it appears on the reservation;
- (b) address;
- (c) any contact telephone number;
- (d) fax number;
- (e) e-mail address;
- (f) internet address;
- (g) travel status of passenger or member of crew, which indicates whether reservation is confirmed or provisional and whether the passenger or member of crew has checked in;
- (h) the number of pieces and description of any baggage carried;
- (i) any documentation provided to the passenger or member of crew in respect of baggage;
- (j) ticket number;
- (k) date and place of ticket issue;
- (l) seat number allocated;
- (m) seat number requested;
- (n) check-in time, regardless of method;
- (o) date on which reservation was made;
- (p) identity of any person who made the reservation;
- (q) any other name that appears on the passenger’s or member of crew’s reservation;

- (r) the fact that a reservation in respect of more than one passenger or member of crew has been divided due to a change in itinerary for one or more but not all of the passengers or members of crew;
- (s) Code Share Details([11](#));
- (t) method of payment used to purchase ticket or make reservation;
- (u) details of the method of payment used, including the number of any credit, debit or other card used;
- (v) Passenger Name Record Locator or other data locator used by the carrier to locate the passenger or member of crew within its information system;
- (w) the name, address and contact details of the passenger's or member of crew's sponsor in the United Kingdom;
- (x) the fact that the passenger is under the age of eighteen and unaccompanied;
- (y) the fact that the passenger is under the age of eighteen and travelling with a person who has not declared himself to be a family member; and
- (z) name and contact details of an adult dropping off an unaccompanied passenger under the age of eighteen at a port or station.