

Title: Carriers' Liability Penalty Charge Consultation IA No: HO0079 Lead department or agency: The Home Office Other departments or agencies: The Department for Transport, Business, Innovation and Skills, Border Force and the UK Border Agency.	Impact Assessment (IA)		
	Date: 15/10/2012		
	Stage: Consultation		
	Source of intervention: Domestic		
	Type of measure: Secondary legislation		
Contact for enquiries: Grant Oliver, The Home Office. Tel: 020 7035 3081			
Summary: Intervention and Options			RPC Opinion: AMBER

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£2.0m	£0m	£0m	No
			NA

What is the problem under consideration? Why is government intervention necessary?

Passengers arriving in the UK with inadequate documents can present the UK with significant costs and risks. In 2011 there were about 4,100 inadequately documented arrivals (IDAs) and this is unacceptably high. Current legislation provides for a fixed charge on air and sea carriers that bring IDAs to the UK. This has remained at £2,000 since 1991 and may have lost its deterrence effect. The current penalty requires secondary legislation to amend it and therefore government intervention to provide an effective response to this problem. The Home Office will also review its incentives to carriers to achieve a higher standard of document checking.

What are the policy objectives and the intended effects?

The policy objective is to encourage carriers to perform more effective checks on their passengers. The intended effect is to reduce the number of IDAs brought to the UK which should result in a reduction in asylum costs for the government plus possibly a reduction in other harms. A reduction in IDAs would also lead to a reduction of security and reputational risks for carriers.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1 - Do nothing: This is likely to cause the number of IDAs to remain constant or rise as the penalty becomes less effective over time.

Option 2 - Introduce a deterrent penalty at a higher level. A significant increase in the penalty should act as an incentive to carriers to perform better document checks on their passengers and it is proposed to increase the penalty to a level within the range of £7,000 to £10,000. A higher penalty should lead carriers to rigorously enforce standards across all document processes and to also ensure they have an incentive to focus their effort on detecting document breaches that lead to IDAs reaching the UK where they pose a risk and cost on the UK.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 04/2014					
Does implementation go beyond minimum EU requirements?				No	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes	< 20 Yes	Small Yes	Medium Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded: N/A	Non-traded: N/A

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: _____ Date: December 2012

Summary: Analysis & Evidence

Policy Option 1

Description: To make no changes (Do nothing)

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: £0m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0		
High			
Best Estimate		£0m	£0m

Description and scale of key monetised costs by 'main affected groups'

If no changes are made to the level of the penalty charge there will be no additional costs to carriers and no additional costs to the UK Border Agency for processing IDAs and penalty charges.

Other key non-monetised costs by 'main affected groups'

There may not be additional non-monetised costs associated with this option but there would be continued risks of the current CL penalty losing its deterrence effect and a risk of steady or rising future volumes of IDAs associated with harms to the UK. These harms may impose further costs on the UK Border Agency and the wider economy that are difficult to quantify. It would be a disproportionate effort to monetise these due to significant variations in time, case types and other impacts.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0		
High			
Best Estimate		£0m	£0m

Description and scale of key monetised benefits by 'main affected groups'

No additional monetised benefits have been identified.

Other key non-monetised benefits by 'main affected groups'

No additional non-monetised benefits have been identified. Carriers would continue to face a reducing real value of the CL penalty charge over time, significantly below that which was introduced 20 years ago.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

The key assumption is that the volume of IDAs would remain at the same level over time. This would impose reputational and security risks on the UK Border Agency and the wider UK economy. There is no guarantee that the volumes of IDAs would not rise under this option.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0m	Benefits: £0m	Net: £0m	No	NA

Summary: Analysis & Evidence

Policy Option 2

Description: To introduce a deterrent penalty at a higher level

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: £86.5m	High: £63.1m	Best Estimate: £68.5m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£0m	£0m	£0m
High	£0m	£0m	£0m
Best Estimate	£0m	£0m	£0m

Description and scale of key monetised costs by 'main affected groups'

Carriers will be fined a higher penalty if their standards are not robust enough to prevent IDAs entering the UK. The penalty for non-compliant activity will be transferred to HM Treasury Consolidated Fund. These costs are excluded from the NPV calculation as only compliant activity counts towards this. The estimate of the additional transfer from an increase in the penalty to £7,000 is about £7.3 million per year or £63.4 million (PV) over 10 years.

Other key non-monetised costs by 'main affected groups'

No additional non-monetised costs have been identified.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£0m	£10.0m	£86.5m
High	£0m	£7.0m	£63.1m
Best Estimate	£0m	£7.8m	£68.5m

Description and scale of key monetised benefits by 'main affected groups'

The main benefit is the £63.4 million (PV) or (£7.3 million per year) that HM Treasury Consolidated Fund receives as a transfer from carriers due to penalties imposed. The potential reduction in asylum costs is estimated to be about £5.1 million (PV) over 10 years or approximately £0.6 million per year. There is some uncertainty around these estimates and they should be treated with caution.

Other key non-monetised benefits by 'main affected groups'

A reduction in IDAs should bring a non-monetised benefit to the UK Border Agency and to the UK public from a reduction in processing asylum claims, enhanced reputation and lower security risks.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

The key assumption is that a 35 per cent penalty rate is constant. These data are taken from management information statistics. The estimates are subject to sensitivity analysis around the proportion of IDAs that become penalty charges, the proportion making an asylum claim and varying the level of the penalty.

A key risk is that carriers disengage as they perceive the penalty as too high.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0m	Benefits: £0m	Net: £0m	No	NA

Evidence Base (for summary sheets)

A. Strategic Overview

A.1 Background

The Immigration (Carriers' Liability) Act 1987 made carriers liable for a £1,000 penalty (the CL penalty) if they brought a passenger to the UK without adequate documentation, known as Inadequately Documented Arrivals (IDAs). The CL penalty was raised to £2,000 in 1991 by secondary legislation. It has remained at this level since, although the provisions are now in the Immigration and Asylum Act 1999 (the 1999 Act).

The purpose of the CL penalty is to encourage carriers to check documents at the port of embarkation, and where necessary, to deny boarding to passengers who do not have the correct documentation. In 1991, the number of IDAs brought to the UK was 13,000. On doubling the penalty the number of IDAs declined by about 30 per cent in 1992 and the number of demands for penalty payments fell by 40 per cent compared to four years of increasing demands from 1987. The volume of IDAs in 2011 stood at around 4,000 (UK Border Agency management information, 2012) and has been close to that level in recent years.

The UK operates an Approved Gate Check (AGC) scheme whereby the UK Border Agency will waive some charges for which the carrier is liable if they have AGC status on that particular route. AGC status is route specific and is a voluntary procedure that is granted in return for an audited high standard of document checking and security procedures at a port of embarkation, a good level of co-operation from the carrier, and a satisfactory record in paying outstanding charges. Where AGC status is achieved carriers tend to be offered support in their document checking standard and training, and receive some benefits in terms of waived penalties for specific categories of IDA cases. There are currently 441 routes to the UK with AGC status (UK Border Agency, 2012). The Government seeks to maintain a business relationship with carriers as well as a security partnership. Therefore in parallel with any changes to the CL regime, we are also reviewing the operation of the AGC. The review is looking at the circumstances in which charges are waived and whether any other activity by airlines, such as advanced passenger assessment or data provision that could be a consideration in granting AGC. The aim is to ensure the scheme provides the best support for carriers in reducing IDAs.

The cost to the UK of IDAs can be high as some may go on to claim asylum in the UK. The National Audit Office (NAO) recently estimated that, the cost of a failed asylum seeker could range between £3,000 and £25,000 for a single adult depending on their profile and case type (National Audit Office, 2009). Often in cases where there has only been a breach of visa requirements, there is less risk of harm to the UK. In cases involving forged, counterfeit and/or destroyed travel documents, the risk of harms to the UK may be higher, particularly for illegal immigration or criminal activity.

As one of the highest priorities for UK national security, the Government is committed to addressing the threat from terrorism and protecting the UK and its interests at home, internationally and at our border. Passengers arriving in the UK without a document that satisfactorily establishes their identity or nationality may pose a security risk. It can be difficult to fully verify identity in these circumstances and individuals wishing to come here for organised crime or terrorism purposes may view this as a potential method of entry to the UK. However, no evidence that IDAs have entered the UK for these purposes has been assessed in this IA.

A.2 Groups Affected

We expect the following groups to be affected.

- The carrier industry, as carriers may have to pay an increased level of penalty charge if they bring an IDA to the UK, but may also benefit from better management of security and reputational risks.
- The UK public, who may benefit from reduced IDA process costs (including asylum process costs) and enhanced security.

A.3 Consultation

Within Government

The following were consulted in the development of these proposals: Department for Transport, Department for Business, Innovation and Skills, the UK Border Agency and the UK Border Force.

Public Consultation

A consultation will be conducted in early 2013. The consultation will be sent to all airlines and ferry companies operating in the UK, as well as airline trade bodies and passengers' representative groups. It will be placed on the Home Office website for the interest of the wider public.

B. Rationale

EU Directive 51/2001 (the Directive) now requires member states to set a penalty charge for IDAs entering the EU from a third country. It states that the maximum penalty should be no less than £3,117 or the minimum, no less than £1,870. At £2,000 the UK penalty sits very close to the bottom of this range. As a comparison, the CL maximum penalty charge is 5,000 Euros in France and Germany and in Australia it is 5,000 Australian dollars plus a possible supplementary 1,500 Australian dollars charge (see Table B1).

The Directive requires the penalty level to be dissuasive and effective as well as proportionate. The number of IDAs has fallen considerably since the year 2000, but the level is still too high at 4,000 in 2011. The penalty has to be sufficiently high in order to persuade carriers to enforce rigorous standards so they avoid complacency. It may be that the current CL penalty level has lost some of its deterrence effect as its real value has fallen over time. If the CL penalty had been increased in line with inflation it would now stand at around £3,500¹. The consultation will seek views on what level of penalty will act as a deterrent.

Increasing the penalty for IDAs that come to the UK should ensure carriers place appropriate effort on detecting the types of abuse that results in costly IDAs entering the UK. Evidence from other penalty regimes suggest that such changes should lead to an increase in compliance. The UK Border Agency operates a Risk and Liaison Overseas Network (RALON) to provide advice and training to airlines across the world. The operational experience of RALON suggests that a greater financial penalty should increase carrier focus on document checking and might thereby reduce IDA volumes.

¹ Source: calculated using the ONS Composite Index, March 2012, Table 34. Calculation, £3,523.07 = £2,000 x (927.8/526.7).

Government intervention is necessary as the current level of penalty is no longer providing sufficient incentive to reduce the number of IDAs further and therefore leaving it unchanged risks imposing higher costs on the UK. Currently there is no other form of self-regulation, incentives or other measures that will address this problem as effectively as an increased carriers' liability penalty but this will be explored in the consultation.

C. Objectives

The policy objective is to ensure carriers perform rigorous and more effective document checks on all their passengers to a very high standard and thereby prevent inadequately documented passengers arriving in the UK. This would reduce subsequent costs arising from IDAs and other possible harms.

The Home Office intends achieving the policy objective by setting the carrier penalty at a higher and more dissuasive level. The penalty should be set at a level to deter carriers from not performing adequate checks to stop IDAs where they occur. In parallel, there will be a review of the AGC to ensure this option continues to be available to the most highly assured and trusted carriers.

Raising revenue itself is neither an objective nor requirement for implementing this change. Any extra CL penalty revenue will accrue to the Government and will go directly to HM Treasury Consolidated Fund.

D. Options

Option 1 is do nothing

Inflation has eroded the real value of the current CL penalty. If no change is made to the charge it offers no further encouragement to carriers to perform better document checks and further reduce the number of IDAs. This option would not therefore achieve the policy objective.

Option 2 is to introduce a deterrent penalty at a higher level

This would involve an increase in the CL penalty level to encourage carriers to perform better document checks on all passengers that should result in less harms to the UK. This option is a deterrent penalty. Some IDAs pose a greater risk and cost to the UK, either through crime, immigration or security risk. Operational experience indicates that these cases tend to be deliberate acts on the part of the perpetrator, whereas some IDAs can be accidental. Internal estimates suggest the cost of dealing with IDAs in 2009 was in the range of £9,000 to £17,000 for asylum cases and between £2,000 and £6,000 for non-asylum cases. These estimates fit with the NAO (2009) asylum cost profiles and the central estimate of £13,000 is close to the NAO (2005) estimate of £11,000.

The initial proposal is a higher penalty set in the £7,000 to £10,000 range. There are two considerations in setting the penalty level: Firstly, does it help to achieve the objective? Secondly, the penalty should be set at a level that is high enough to have a deterrent effect. Primarily, this is to ensure the penalty is set at a high level to encourage carriers to rigorously check documents so that IDAs can be avoided. The penalty should not allow carriers to pay a smaller fine that would allow them

not to perform rigorous checks and avoid the behaviour change associated with more effective checks and also where IDAs do occur that the penalty reflects, in some way, the costs of dealing with IDAs. The proposed penalty is set above the current level, taking into account inflation and to provide a deterrent. Index linking the penalty to an inflation index should be considered in order to avoid the penalty losing its deterrent effect again. This would require primary legislation.

What a carrier may be willing to pay (as a penalty) to avoid the costs of effective document checking should be considered. Evidence about the harm caused by different types of IDAs, and the level of penalty needed to give carriers sufficient incentive to operate robust checks, should be gathered as part of the consultation.

An option to introduce a two-tier penalty was considered. This was based on the fact that there were some high harm and low harm cases. However, a two-tier penalty did not offer as powerful a deterrent as Option 2. It meant that carriers might take risks that they could mitigate their error and either have no penalty or a lower penalty. This offered less incentive to encourage rigorous and effective checks. A single penalty set at the appropriate level offers a clear and effective deterrent to carriers who do not conduct rigorous document checks at ports of embarkation.

Other options including non-regulatory options will be explored in the consultation.

E. Appraisal (Costs and Benefits)

General assumptions and data

The options have been appraised objectively with a low, central and high estimate made using the assumptions discussed below. The impact the options may have is described and a 10 year appraisal is presented using a social discount rate of 3.5 per cent as per the Green Book guidance (HM Treasury (2003)).

Volume assumptions and scenarios

The number of IDAs and associated CL penalties has fallen significantly over time, see Table 1. There were 13,000 IDAs and 10,700 penalty demands in 1991. The number of IDAs declined by around 30 per cent and the volume of penalty charges decreased by about 40 per cent after the penalty was doubled in 1991. However there were still 4,000 IDAs in 2011 which is too high a level. The numbers of IDAs declined by about 65 per cent for the period 2001 to 2005 but the number of penalty demands over 2005 to 2010 has remained relatively static as the penalty charge rate has increased over that period. These data may indicate that carriers are becoming complacent about the level of the penalty charge and the degree of effort employed to enforce rigorous document checks.

In 2011, CL penalties were charged in around 40 per cent of IDA cases (UK Border Agency, 2012), that is of approximately 4,000 IDAs around 1,600 incurred a penalty charge. Exemptions from a penalty can be due to a range of reasons, including that the forgery or counterfeit was not 'reasonably apparent' and therefore exempted from the charge under the 1999 Act.

4,100 IDAs with a 35 per cent penalty charge is the baseline used in the model for the year 2012 and is held constant across the years. The 35 per cent was the average penalty rate for the period 1991 to 2011. In the low estimate the

assumption is that there is no change in volumes over the ten year period. It is assumed that in the first year of an increased penalty a greater volume change is observed compared to the subsequent years following the 1991 penalty increase change pattern. In the central estimate it is assumed that in the first year there is a 10 per cent reduction in IDAs but thereafter the number of IDAs decline by 5 per cent per year. This is equivalent to a 43 per cent decrease over 10 years. In the high estimate the initial reduction is assumed to be 20 per cent followed by 5 years of a reduction of 16 per cent (the average reduction in IDAs over the period 2000 to 2011) then four years of a 5 per cent fall in IDAs, which is similar to high, medium and low changes which occur in the years 2000 to 2011. This is equivalent to a 73 per cent decrease over 10 years.

Table 1 IDA and Penalty Charge Volumes, 1987 to 2011.

Year	Actual IDAs	Change in IDAs (%)	Penalty Demands	Change in Penalty Demands (%)	Proportion of IDAs incurring a penalty charge (%)
1987			3,900		
1988			4,400	12	
1989			7,900	79	
1990			9,600	22	
1991	13,000		10,700	11	81
1992	9,000	-28	6,400	-41	67
1993	10,000	3	5,500	-13	57
1994	12,000	19	6,600	20	57
1995	14,000	20	6,200	-7	44
1996	13,000	-7	6,200	0	47
1997	21,000	62	6,200	0	29
1998	28,000	34	6,400	4	23
1999	31,000	10	5,700	-10	18
2000	27,100	-13	6,900	20	25
2001	19,300	-29	5,400	-22	28
2002	19,200	0	3,800	-29	20
2003	17,200	-10	3,800	-2	22
2004	11,200	-35	3,000	-22	26
2005	7,100	-37	2,400	-18	34
2006	6,900	-3	2,300	-4	34
2007	6,700	-3	2,400	3	36
2008	5,800	-14	2,400	1	42
2009	5,100	-13	2,400	-2	47
2010	4,000	-20	2,000	-17	49
2011	4,000	0	1,600	-19	40

Source: UK Border Agency, 2012.

Note: Estimates of IDAs are based on management information and are taken from operational data. Estimates may not match due to rounding.

Due to data improvements and other border innovations comparisons between pre-2000 and post-2000 IDA data are not recommended. The penalty demand data is a comparable series from 1987 to 2011.

It is not possible to accurately forecast the impact of a change in penalty level on numbers of IDAs therefore we have set out ranges below using the assumptions above. The consultation will seek evidence to develop the assumptions behind the policy proposal. In this consultation the Home Office is gathering evidence on the potential impacts on all affected groups as a result of the proposals. Any feedback will be used to inform the final policy proposals and accompanying IA.

One-in-one-out (OIOO)

Changes to penalties and fines are outside the scope of the One-In-One-Out process and so OIOO impacts are not included in this assessment.

OPTION 1 – To make no changes (do nothing)

Costs

There will continue to be risks of steady and increasing IDA volumes in the future due to the reduced deterrence effect of the current CL penalty and this may lead to ongoing process costs and harms to the UK. However, due to the disproportionate effort required to estimate the potential costs of this option from higher volumes of IDAs, the Home Office is not estimating any monetised or non-monetised costs or benefits from the do nothing option in this assessment.

Benefits

There are no additional monetised or non-monetised benefits.

OPTION 2 – to introduce a deterrent penalty at a higher level

Costs

Evidence from other penalty regimes suggests an increased penalty should increase compliance and reduce risks of non-compliance. For example, survey data shows that after the penalty for using a hand-held phone while driving was increased from £30 to £60 in 2007 (Walter, 2007), there was an immediate drop in the proportions of drivers doing this. In addition, the number of Fixed Penalty Notices (FPNs) issued following the penalty increase, decreased by more than a third in 2008 (Department of Transport, 2012b).

Costs to carriers

No significant carrier training or familiarisation costs are expected as no change to document checking processes is proposed. Any training relevant to this is expected to be delivered in line with routine business updating.

Compliant carriers who remain compliant

Compliant firms with robust standards are unlikely to face any further costs although if they incur a penalty it will be at a higher level as there will always be some IDAs that will occur.

Non-compliant carriers who become compliant

Non-compliant firms who adapt their behaviour and enforce robust standards and rigorous checks are likely to face lower levels of costs because the overall number of IDAs, and hence penalties, will reduce. So even with a higher level of penalty they are likely to see a reduction in costs.

Non-compliant carriers who remain non-compliant

Non-compliant firms who do not change their behaviour and continue to allow IDAs to enter the UK will probably face a large increase in costs because the volume of IDAs may remain the same but the penalties will be at a higher level.

Clearly compliance will reduce IDAs and that is the intended policy objective and the potential reduction in costs should act as an incentive to the carrier.

If the level of penalty charge was increased to £7,000, the additional cost to carriers for each IDA with a CL penalty would be £5,000 and if it was set at £10,000, the additional cost to carriers would be £8,000. The penalty cost (and benefit) is estimated as the level of the penalty x the volume of IDAs x the time period.

The extra cost to a carrier is expected to be around £5,000 per case on average. It is assumed that the demand for payment of a CL penalty charge is served on the carrier in around 35 per cent of IDA cases. There are currently 220 carriers, of which 130 are regular operators, and in 2011, 146 carriers were served a penalty notice. In the financial year 2011-12 about 50 per cent of all IDAs were traced to three carriers and so it will be particularly important to make sure the new penalties encourage these carriers to check documents robustly.

This section assumes that the penalty is set at £7,000. The estimated cost to carriers as a result of the increase could be about £9 million in the first year for the central scenario and approximately £63 million (PV) over 10 years. The low estimate, assuming that the increased penalty does not affect the underlying number of IDAs who are able to get through indicates that over 10 years the cost will be around £85 million (PV). However, given the evidence it might be expected that the higher penalty will lead to improved document checking standards and a further reduction in numbers of IDAs. The high impact estimate suggests that the costs to carriers could be only £40 million (PV) over 10 years because of the greater reduction in IDAs. It is not possible to estimate with any precision the likely level of IDAs in ten years time and these estimates should be treated as indicative. If carriers are able to reduce the numbers of IDAs further then the costs could be substantially less.

These impacts should be considered a transfer from non-compliant carriers to HM Government and hence are not included in the IA monetised costs.

Table 2 Impacts of a Penalty set at £7,000, £8,500 and £10,000, (£m)

Penalty	£7,000			£8,500			£10,000		
	Low	Central	High	Low	Central	High	Low	Central	High
Cost	86.5	63.4	39.6	105.0	76.9	48.1	123.5	90.5	56.6
Benefit	86.5	63.4	39.6	105.0	76.9	48.1	123.5	90.5	56.6
Asylum Benefit	0.0	5.1	23.5	0.0	5.1	23.5	0.0	5.1	23.5
Total Benefit	86.5	68.5	63.1	105.0	82.1	71.6	123.5	95.6	80.1
NPV	86.5	68.5	63.1	105.0	82.1	71.6	123.5	95.6	80.1

Note: The NPV appears the same as the costs and benefits value but the costs arise from non-compliant activity therefore they are not included in the NPV. It is only the addition of the asylum benefit that alters the total benefit.

The key question is, in order to act as a deterrent, what level should the penalty be set at? The £7,000 level has been identified as it is the current level taking into account inflation (£3,500) then doubled to replicate the 1991 change which led to a substantial reduction in IDAs in the following year.

The £10,000 level has been identified as it follows the Authority to Carry (ATC) scheme penalty level. A mid-point is also suggested (£8,500) but the consultation will examine:

- What other evidence can airlines provide about document checking procedures in terms of the time taken per check, the number of misses and reasons why, and any information on the costs of checks, for instance, the consultation should seek to find out the proportion of staff time that is spent checking documents. If there was general agreement across the industry

about the cost of checks then it is unlikely that carriers will not have a robust system for checking documents if the penalty is set above that cost.

- Willingness to pay, that is what is the airline prepared to pay (a lower cost in a fine or penalty) in order to avoid the costs of carrying out rigorous and effective document checks that would substantially reduce the number of IDAs reaching the UK? At the moment that the £2,000 penalty is clearly not acting as a deterrent and some carriers may be tempted to pay the fine rather than expend a considerable effort deterring potential IDAs.
- Any other information that could assist in building a robust evidence base as to what level the penalty should be set at in order that the penalty is dissuasive and effective.
- Would a non-monetary impact be more suitable to deterring a lax approach to IDAs, for instance publishing monthly statistics by carrier for the volume of IDAs reaching the UK, a publicity order or a corporate rehabilitation order?
- Are there particular ports or nationalities that lend themselves to a disproportionate share of IDAs where a more focussed effort on training, AGC processes and intelligence work may be of more benefit rather than simply imposing the penalty by itself. This would be a much more proactive approach and may bring more benefits.

The six penalty principles and seven characteristics, as set out in the Macrory Review (Macrory 2006), should be implemented when setting the level of the penalty (see Annex C).

Costs to the UK Border Agency

There are no additional costs to the UK Border Agency.

BENEFITS

Benefits to HM Government and UK taxpayers

Additional CL penalty income to government as a result of the changes, based on the assumptions above, could be in the range of between £86.5 million to £39.6 million (over 10 years in present value (PV) terms) with a best estimate of £63.4 million. In the first year the central estimate of the benefit is £9.0 million (the range is £10.0 million to £8.0 million). This is because there is a higher volume of IDAs in the low scenario whereas there are larger reductions of IDAs in the high scenario, so the revenue accumulation is not at a higher level in the high scenario but revenue generation is not the objective, it is the reduction in the volume of IDAs.

If there were a reduction in the number of IDAs there would be additional benefits in the process costs and enforcement associated with IDAs. This benefit is difficult to quantify as there is limited evidence on the extent to which a change to a penalty will reduce overall IDA volumes. The central estimate indicates that a reduction in IDAs may result in asylum savings of approximately £5.1 million (PV) over 10 years based on asylum process costs (including staff costs), accommodation and asylum support costs. The range is between £0.0 million (PV) over 10 years as the low estimate and £23.5 million (PV) for the high estimate. The carrier liability penalty and the asylum saving are included in the summary as they are real benefits, a transfer of revenue and a non-cashable resource saving to the UK Border Agency.

Wider Benefits

There may be benefits to the UK public as a result of enhanced security and reduced risks but these are not possible to quantify.

F. Risks

OPTION 1 – to make no changes (do nothing)

The risks to the UK as a result of IDAs would remain as now, as would the security and reputational risks for carriers. In addition, the real value of the CL penalty would continue to fall over time, potentially leading to higher numbers of IDAs if this drop in relative cost led to any relaxation in checks.

OPTION 2 – to introduce a deterrent penalty with a higher level

The key risk would be that carriers consider the increase in the penalty to be unreasonable and withdraw engagement as a result. This risk would be managed through a parallel review of the incentives offered to carriers around the AGC.

There is also a risk that volume and proportions do not change in the manner that is assumed in this assessment.

In addition, there is a risk of a fall in payment rates leading to extra enforcement costs. This IA assumes full compliance with penalty payments by carriers.

Table 3 Sensitivity Analysis of the Estimates of Costs and Benefits of Carriers' Liability Policy Change (volumes, per cent and 10 year, £ million, present value)

	Baseline			Variation over 10 years		
	Low	Central	High	Low	Central	High
Penalty Charge	35%	35%	35%	25%	35%	45%
CL Penalty	14,400	10,400	6,300	10,300	10,400	8,200
IDA Reduction	0	1,800	3,000	0	1,800	3,000
Costs	86.5	63.4	39.6	61.8	63.4	51.0
Benefits	86.5	68.5	63.1	61.8	68.5	74.4
NPV	86.5	68.5	63.1	61.8	68.5	74.4
Asylum Cases	10%	25%	50%	5%	20%	60%
Asylum Reduction	0	400	1,500	0	350	1,800
Costs	86.5	63.4	39.6	86.5	63.4	39.6
Benefits	86.5	68.5	63.1	86.5	67.5	67.8
NPV	86.5	68.5	63.1	86.5	67.5	67.8
Penalty Level	£7,000	£7,000	£7,000	£7,000	£8,500	£10,000
Costs	86.5	63.4	39.6	86.5	76.9	56.6
Benefits	86.5	68.5	63.1	86.5	82.1	80.1
NPV	86.5	68.5	63.1	86.5	82.1	80.1

Note: The NPV appears the same as the costs and benefits value but the costs arise from non-compliant activity therefore they are not included in the NPV.

For the differing penalty level the £7,000 low, £8,500 central and £10,000 high estimates are presented to show the full range of the estimates.

Sensitivity analysis

The analysis of the options is tested in this section by varying: the proportion of IDAs incurring a penalty charge, the proportions that become asylum claims and the level of the penalty charge.

In the sensitivity analysis volumes are set at 4,100 for the low, central and high cases respectively as a baseline for the year 2012. In the first test the proportion of cases with a CL penalty is set at 25, 35 and 45 per cent. Table 3 shows, comparing the costs and the benefits that, the volume changes dominate. The asylum proportions are tested at 5, 20 and 60 per cent but the asylum benefit remains relatively small. Altering the level of the penalty charge only serves to increase the costs and benefits and has no effect on asylum benefit. There is a difference in NPV across the low, central and high estimates and this is driven by changes in the benefits. The assumption that there will be no change in the volume of IDAs in the low estimate is a restrictive but realistic assumption that constrains the asylum benefit to zero. The sensitivity analysis demonstrates that there is considerable uncertainty about the benefits and the assumptions used. Care should be taken when interpreting these estimates.

G. Enforcement

The changes will be communicated to carriers clearly and the sanction will be enforced through existing processes.

H. Summary and Recommendations

Table H.1 outlines the summary costs and benefits of the proposed changes.

Table H.1 Costs and Benefits		
Option	Costs	Benefits
2	£0 (PV over 10 years)	£68.5 million (PV over 10 years) (range of £86.5 million to £23.5 million)
	Costs to the wider economy (not quantified)	Benefits to the wider economy (not quantified)

Source: Home Office (Migration and Border Analysis and Border Security Unit) own estimates, 2012.

The £63.4 million (PV) cost to carriers is a transfer from non-compliant carriers to HM Government and is not included in the IA monetised costs.

Although the proposals are at the consultation stage, Option 2 is the preferred option. The main advantage of this option is that the charging structure is configured in such a way as to focus carrier behaviour on enforcing rigorous and effective checks on all passengers and this is consistent with the six penalty principles of the Macrory Review.

I. Implementation

The Government plans to implement these changes in April 2013.

J. Monitoring and Evaluation

The UK Border Agency collects detailed management information on the arrival of IDAs and the operation of the AGC scheme. The impact will initially be reviewed one year after the date of implementation. The review is likely to focus on: the number of IDAs, the number of carrier routes with revised AGC status and qualitative feedback from carriers, the UK Border Agency and the UK Border Force.

K. Feedback

Feedback will be sought from those affected by the scheme. This will be done through established UK Border Agency, the UK Border Force and Home Office procedures.

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Annex A

SPECIFIC IMPACT TESTS

Economic Impacts

Competition assessment

The policy change has been assessed to determine whether there will be any significant competition issues as a result of change. We do not expect there to be competition issues as a result of the new penalty structure or the increase in the level of the penalty.

There may be a beneficial impact on competition as AGC routes will receive a reduced penalty, encouraging greater compliance with document checking standards, and hence reducing the ability for some carriers to undercut competitors by reducing the cost and/or quality of document checks.

Current guidance and AGC accreditation criteria have been designed so that maritime and air carriers have an equal chance of accreditation.

There are no significant issues or evidence that indicates that this policy change directly limits the number or range of suppliers, indirectly limits the number or range of suppliers, limits the ability of suppliers to compete or that limits suppliers' incentives to compete vigorously.

Small Firms Impact Test

There are no significant impacts on small firms as 75 per cent of firms who are carriers are classified as large firms and 25 per cent are medium sized firms (Home Office, 2008). There is no evidence that the distribution of the size of firms has changed. There are no impacts on small or micro-sized firms. While some economic barriers to entry may exist in the carrier industry (scale, capital, expertise and specialisation) this policy does not affect any of these issues.

Other Impacts

There were no other specific impacts identified when assessing this policy proposal.

Annex B

Data and Assumptions

The volumes of IDAs are taken from management information data, see Table 1, p7.

Assumptions

Although carriers may face small familiarisation costs for Option 2, these should be minimal as the changes do not affect the document checking process, just the level of the penalty. Option 2 will encourage carriers to focus on higher standards of document checking but does not impose any new requirements.

Table of Assumptions (these are evidence based where possible).

Assumptions	Low	Central	High	Source and notes
Model Assumptions				
Volumes of IDAs for 2012	4,100	4,100	4,100	Based on 2011 IDA volumes
Proportion of cases with CL Penalty	35%	35%	35%	CLS based on CL penalty demand volumes (1,500 in 2011)
CL Penalties per year	1,500	1,500	1,500	See Table 1, CLS
Current CL penalty cost	£2,000	£2,000	£2,000	CLS
Proportion of IDA higher-harm cases	50%	50%	50%	CLS/Border Policy
Option 1 - additional CL penalty	£0	£0	£0	CLS/Border Policy
Option 2 - proposed penalty a)	£5,000	£5,000	£5,000	CLS/Border Policy
Option 2 - proposed penalty b)	£6,500	£6,500	£6,500	CLS/Border Policy
Option 2 - proposed penalty c)	£8,000	£8,000	£8,000	CLS/Border Policy
Option 2 - potential IDA reduction	0%	Yr1 10% Yrs 2-9 5%	Yr1, 20% Yr 2-6, 16% Yr 7-10, 5%	Assumption, based on CLS data
Asylum case reduction	10%	25%	50%	Assumption, to reflect uncertainty
Average cost of asylum case	£9,000	£13,000	£17,000	Assumption, range based on NAO cost report (NAO 2009)

Note: CLS is Carriers' Liaison Section, the UK Border Agency and NAO is the National Audit Office.

Table B1, International Comparisons of Carriers Liability Penalties for IDAs ^[1].

France	5,000€ equivalent to £4,084.
Germany	No less than 1,000€ equivalent to £817 and no more than 5,000€ equivalent to £4,084 dependent on carrier performance ^[2] .
US	\$3,300 equivalent to £2,038.
Australia	Basic IDA 5,000 Australian \$ (equivalent to £3,203) plus additional charge of 1,500 Australian \$ (equivalent to £961) for incorrect use of the API system.
Canada	Standard charge is 3,200 Canadian \$ (equivalent to £2,011) but many airlines have an MOU with Canada which gives them a quota of IDAs for which they will be charged less. Those charges range from 0 to 2,400 Canadian \$ (equivalent to £1,508) in increments of 800 Canadian \$. After they have reached the quota the charge reverts to 3,200 Canadian \$

Source: [1] British Airways and UK Border Agency (2012) Carriers' Liaison Section, April, London. [2] UK Border Agency, German Immigration Liaison Management (2012) April.

Annex C

Macrory Review: principles and characteristics

1. I recommend that the Government initiate a review of the drafting and formulation of criminal offences relating to regulatory non-compliance.
2. I recommend that in designing the appropriate sanctioning regimes for regulatory non-compliance, regulators should have regard to the following six Penalties Principles and seven characteristics.

Six Penalties Principles

A sanction should:

1. Aim to change the behaviour of the offender;
2. Aim to eliminate any financial gain or benefit from non-compliance;
3. Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
4. Be proportionate to the nature of the offence and the harm caused;
5. Aim to restore the harm caused by regulatory non-compliance, where appropriate; and
6. Aim to deter future non-compliance

Seven characteristics

Regulators should:

1. Publish an enforcement policy;
2. Measure outcomes not just outputs;
3. Justify their choice of enforcement actions year on year to stakeholders, ministers and Parliament;
4. Follow-up enforcement actions where appropriate;
5. Enforce in a transparent manner;
6. Be transparent in the way in which they apply and determine administrative penalties; and
7. Avoid perverse incentives that might influence the choice of sanctioning response.