

Title: Impact Assessment of new powers to search for and seize invalid travel documents in the Anti-social Behaviour, Crime and Policing Bill IA No: HO Lead department or agency: Home Office Other departments or agencies: Her Majesty's Passport Office, the police and Ministry of Justice	Impact Assessment (IA)		
	Date: 14/10/2013		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
	Contact for enquiries: Ify Okoye - 020 7035 3709 ifeyinwa.okoye@homeoffice.x.gsi.gov.uk		

Summary: Intervention and Options	RPC Opinion: N/A
--	-------------------------

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?	
£-0.1m	N/A	N/A.	No	N/A

What is the problem under consideration? Why is government intervention necessary?
 On 25 April 2013, the Home Secretary issued a Written Ministerial Statement updating the criteria for refusing or cancelling British passports on public interest grounds under the Royal Prerogative. The particular intention was to use this power to disrupt the travel of individuals seeking to engage in terrorism-related and other serious criminal activity abroad. Supporting powers are needed to ensure individuals do not remain in possession of cancelled passports which they might attempt to use for travel, and to clarify the ability of law enforcement agencies to remove invalid travel documents at port.

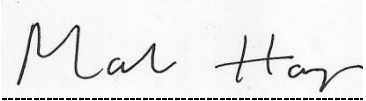
What are the policy objectives and the intended effects?
 -To ensure that British passports that have been cancelled under the Royal Prerogative are removed from the holder to prevent them from being used for travel.
 -To locate and remove invalid travel documents from individuals who are seeking to use them for travel at port, for example, to evade justice, conceal their whereabouts or circumvent immigration control.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
 Option 1: Do nothing
 Option 2: Legislate to provide explicit powers of search and seizure of invalid travel documents, including cancelled passports, with two new criminal offences to ensure that the powers can be enforced when faced with non-compliance. Option 2 is the preferred option: it targets those whose passports have already been cancelled on public interest grounds or who are evidently trying to travel (given that they are at a port) on invalid travel documents.

Will the policy be reviewed? It will not be reviewed. If applicable, set review date:

Does implementation go beyond minimum EU requirements?	N/A				
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
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 (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible MINISTER:  Date: 14 OCTOBER 2013

Summary: Analysis & Evidence

Policy Option 1

Description: Do nothing

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

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

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

As the base line this is zero.

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

As the base line this is zero.

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

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

As the base line this is zero.

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

As the base line this is zero.

Key assumptions/sensitivities/risks

Discount rate % 3.5

Without a power specifically to search for and seize invalid travel documents, agencies will continue to seek to use existing powers to come into the possession of invalid documents. However, these powers may only be exercised in limited circumstances and are not available in all cases. They are not, therefore, a reliable option in all cases where a passport has been cancelled or another invalid document is being used at the border. Without a stand alone search and seizure power, the risk that a cancelled passport remains in the possession of the holder, or that invalid documents are successfully passed off at the border, is therefore significantly higher. Where this leads to travel for terrorist or other criminal purposes, there is the potential for significant damage to the national interest and consequent costs which will continue if new powers are not brought forward.

BUSINESS ASSESSMENT (Option 1)

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

Summary: Analysis & Evidence

Policy Option 2

Description: Legislate for new powers to search for and seize invalid travel documents, including cancelled passports

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV))		
			Low:	High:	Best Estimate: -0.1

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate	0.1		negligible	negligible

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

Resource costs to the Border Force and police in raising awareness about the new statutory powers and training are estimated to cost £0.1m.

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

The cost of seizing other invalid documents at the border cannot be quantified due to the limited data available. The main affected groups, the police and Border Force have been contacted and assess that the policy is likely to affect very few people. There could be downstream Criminal Justice System costs due to the non-compliance offences but these are expected to be minimal.

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

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

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

The powers will help protect the public by, for example, disrupting travel for terrorism-related purposes; and they will ensure that justice is upheld for those using invalid travel documents for criminal purposes such as to circumvent immigration controls. Resource savings to authorities in seizing invalid travel documents have not been quantified due to the limited data available. Savings to police in Royal Prerogative cases have been quantified and are estimated to be negligible.

Key assumptions/sensitivities/risks	Discount rate	3.5
--	----------------------	-----

There will be minimal impact because the powers will be used in a small number of cases on an intelligence-led basis. There is a risk that although the intention is for these powers to be exercised on an intelligence-led basis, the powers may be used in a wider way at the border by Border Force or police officers and so exercised more than currently envisaged. We can mitigate this by monitoring and reviewing the use of the powers, and providing clear messaging about the safeguards around the police's ability to search for cancelled passports in country (this can only be done on the Home Secretary's authorisation). The public may perceive the policy as yet another stop and search power. We can minimise this risk by clear messaging about the powers' intention and scope and by monitoring and reviewing the use of the powers. There could be a downstream impact on the Criminal Justice System due to the non-compliance offences but this is likely to be minimal.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	N/A

Evidence Base (for summary sheets)

Problem under consideration

The Government's ability to disrupt individuals from travelling abroad to engage in terrorism-related and other serious or organised criminal activity has become increasingly important with developments in Syria and other parts of the world. The Royal Prerogative power can be used to disrupt individuals who seek to travel on a British passport to engage in terrorism-related activity or other serious criminal activity abroad which then impacts on the UK. The Home Secretary has the discretion, under the Royal Prerogative, to refuse or withdraw a British passport on public interest grounds. The public interest criteria were updated in a Written Ministerial Statement on 25 April 2013. In updating the Royal Prerogative, it became clear that there were no explicit enforcement powers to require the return of a cancelled passport. This needs to be addressed.

There is also a need to clarify the statutory powers available to Border Force officers (immigration officers and/or designated customs officials) and police officers at ports to disrupt people who seek to use invalid travel documents to enter or leave the UK. Invalid travel documents are those that are cancelled, expired, not issued by the government or authority by which they purport to be issued or have been altered in an unauthorised way. Immigration officers can examine people entering or leaving the UK for the purpose of determining their nationality and leave status, and have powers of arrest in cases where there is a reasonable suspicion that a person is or has committed a criminal offence. However, they have no power to require a British citizen to hand over a cancelled passport for the purpose of inspecting and seizing it. Having an explicit statutory power for Border Force and police officers to search for and seize invalid travel documents, including cancelled passports, would help address this problem.

Rationale

One of the key aims in using the Royal Prerogative is to disrupt the travel of individuals seeking to engage in terrorism-related and other serious criminal activity abroad. The lack of an explicit power and direct mechanism to remove a passport that has been cancelled on public interest grounds under the Royal Prerogative makes Government intervention necessary.

There is no power for a Crown official, such as a Border Force officer, to search a person for the purpose of seizing a cancelled passport, even though passports remain the property of the Crown at all times. There is also no direct power for a police officer to retrieve a passport cancelled on public interest grounds. Without new powers, individuals of concern may remain in possession of a passport, which appears valid on the face of it and they might seek to use for travel, even though it has been cancelled.

The search and seizure statutory powers that are available at the border to make sure that invalid travel documents can be removed from individuals need to be clarified. For example, immigration officers have existing powers to search for and seize documents for immigration purposes at points of entry into and embarkation from the UK. However, these powers are not available to designated customs officials or police officers, nor are they available in cases where officers already know that a person has a right to enter and remain in the UK (such as with British citizens). Having an explicit power for immigration officers, customs officials and police officers to examine and seize invalid travel documents would bring clarity to this area and enable invalid travel documents to be seized at the border from people who should not have them.

Objectives

-To ensure that British passports that have been cancelled under the Royal Prerogative are removed from the holder to disrupt him from travelling and prevent the passports from being passed off as valid travel documents.

-To locate and remove invalid travel documents from individuals who are seeking to use them and pass them off as valid travel documents at port to, for example, to evade justice, conceal their whereabouts or circumvent immigration control.

Options and appraisal (Costs and Benefits)

Option 1 is to make no changes (do nothing).

Option 2 is to legislate for powers to search for and seize invalid travel documents, including cancelled passports.

Option One: Do nothing

There are no additional costs or benefits if there is no policy change.

Risks/Assumptions

Without a power specifically to search for and seize invalid travel documents, Border Force officers and the police will continue to seek to use existing powers to come into the possession of invalid documents. However, these powers are only available in limited circumstances and are not therefore a wholly reliable option to use in all cases where a passport has been cancelled or another invalid document is being used at the border.

Without a stand alone search and seize power, the risk that a cancelled passport remains in the possession of the holder, or that invalid documents are successfully used at port, is therefore significantly higher.

Where this leads to travel for terrorism-related or other criminal purposes, there is the potential for significant damage to the national interest and consequent costs which will continue if new powers are not brought forward. The authorities may not be able to disrupt individuals from travelling and there is a risk to public safety as a result.

Option Two: Legislate for power to search for and seize invalid travel documents, including cancelled passports.

The proposal is to create two new powers of search and seizure for invalid travel documents.

The first power would enable Border Force officers and police officers to search for and seize invalid travel documents at the border.

The second power would enable police officers, on the authorisation of the Secretary of State, (the Home Secretary) to search for and seize passports cancelled on public interest grounds under the Royal Prerogative "in country". This power would only be exercisable where there are reasonable grounds to believe that the person being targeted was in possession of a cancelled passport.

Use of the powers would be intelligence-led.

Two offences would be created to ensure that the powers could be enforced. These would be:

- failing without reasonable excuse to hand over all travel documents when required; and

- intentionally obstructing or seeking to frustrate a search for these documents.

Groups Affected

Apart from the individuals who would be targeted on an intelligence-led basis to remove their invalid travel documents and the general public, the main groups affected by the policy are Border Force, the police and the Ministry of Justice.

Monetised Costs

There are no expected costs to business from this option.

There are potential resource costs in terms of raising awareness about the new statutory powers and training which may fall to Border Force and the police. For the Border Force, awareness raising will be carried out by updating the Border Force manual and through issuing an Interim Operational Instruction requiring 30 minutes of staff time to familiarise themselves with the documents. With approximately 7,500 Border Force Officers, and an estimated average hourly wage of £25.75, this will cost £96.5k in the first year.¹ For the police, awareness raising would be part of online training or upload to the intranet, requiring 15 minutes of staff time to familiarise themselves with the information. With approximately 3,530 police officers requiring training, and an estimated average hourly wage of £43.16, this will cost £38.1k in the first year.²

Therefore the total cost of familiarisation is £134.6k.

We have contacted the main affected groups and assessed that the policy is likely to affect very few people as it will be intelligence-led and not targeted at the general public. There is very limited data available to be able to fully monetise costs.

As an illustration of the potential impact of the policy, we have obtained some estimates to analyse the seizure of passports cancelled under the Royal Prerogative on public interest grounds. For seizures at the border, Border Force estimates indicate that there would be no significant change in the time taken to seize a passport as a result of this policy although they agree that the policy would be beneficial and provide a more direct mechanism to seize a cancelled passport. For seizures in country, general police estimates indicate that the new statutory powers could reduce the time taken to seize a passport by 0-3 hours.

We do not have data to monetise the costs of seizing other invalid travel documents at the border in non-Royal Prerogative cases. This is due to the limited data available on border seizures. It would also be disproportionate to monetise these costs as they are likely to be small: we contacted the main affected groups and assessed that the policy is likely to affect very few people. Individuals would be targeted on an intelligence-led basis to remove their invalid documents. However, there should be minimal impact on the general public.

Non Monetised Costs

There could be a downstream impact to the Ministry of Justice due to the two non-compliance offences to enforce the new powers, if offences are being captured now, which were not before. However, this is likely to be minimal as it is assessed, following consultation with the police and Border Force, that the new offences would rarely be used. This is due to the availability for the police of other measures to employ in the event of non-compliance and the relatively low levels of non-compliance Border Force officers currently encounter.

¹ Hourly pay cost calculated using the Border Force "actual average costs" in 2013/14 prices.

² Estimates of police provided by police contact. Hourly wage calculated using Home Office estimates of police time. These were calculated using CIPFA (Chartered Institute of Public Finance and Accounts) and ASHE (Annual Survey of Hours and Earnings) data for 2011/12, figures were then inflated by 1% to take into account the pay rise in 2013. On-costs of 30% from the Standard Cost Model, Better Regulation Framework were applied.

As it is difficult to predict the volume of offences with any certainty, the below table shows the relevant unit costs of a summary offence to illustrate what the case cost through the Criminal Justice System could look like. (The offences would be summary, with a maximum of a fine and/or a six month custodial sentence.)

Criminal Justice costs (see footnotes for limitations/caveats)³

Area	Description	Cost	Source
CPS	Pre charge cost for a summons/prosecution. 2008/2009 cost, presented in 2011/12 prices	£40	<i>MoJ Internal estimate, February 2010</i>
	Magistrate court cost per case. 2008/2009 cost, presented in 2011/12 prices.	£150	<i>MoJ Internal estimate, February 2010</i>
Her Majesty's Courts and Tribunal Service (HMCTS)	Magistrate court cost per case (summary motoring offence). 2010/2011 cost, presented in 2011/12 prices	£380	HMCTS Finance 2010/11
Legal Aid	Cost per case (note: eligibility rate would need to be applied if attaching a volume). 2011/12 cost.	£340	<i>Legal Services Commission, Crime Lower Report (2011-12)</i>
Prison	Cost per year. 2010/11 cost, presented in 2012/13 prices.	£28,000	<i>NOMS management accounts addendum, 2011</i>
Probation	Cost per year. 2008/2009 cost, presented in 2011/12 prices.	£2,800	<i>MoJ Internal estimate, February 2010</i>

Monetised Benefits

The new powers would provide a quicker, more efficient direct means for Border Force officers and the police to enforce the Home Secretary's decision to exercise the Royal Prerogative, and to remove invalid travel documents from those who have no right to have them in their possession. The benefit here is the Border Force and police resource saved through this efficiency. We do not have sufficient reliable data to calculate the benefit of increased efficiency at the border for other invalid travel documents. However, for "in country" police seizures of passports cancelled on public interest grounds, we assume it could in future save police 0-3 hours, based on general police estimates.

We do not have the data to estimate the number of applications that will be made under the Royal Prerogative but expect that there will not be a significant number. The saving is therefore estimated to be negligible.

Non Monetised Benefits

The powers would help protect the public by disrupting, for example, travel for terrorism-related purposes; and ensure that justice is upheld for those seeking to travel on invalid travel

³ There are several caveats in generating these assumption, please see Annex A for further details

documents for criminal purposes such as to circumvent immigration controls. More clarity would be provided for immigration, customs and police officers on the powers available at port to examine and seize documents. They would make it more efficient and able for them to seize invalid travel documents from people who should not have these documents in their possession at port.

In particular, using the powers to seize passports cancelled on public interest grounds under the Royal Prerogative would disrupt the travel of individuals to places which afford them opportunities for terrorist networking, training and experiences which may radicalise them further. Intervening in such a way to disrupt an individual from enhancing their potential as a terrorist means that less resource will need to be devoted to their investigation in future since they will not have realised their potential to pose a significant threat. There may be instances where the cost of exercise of the Royal Prerogative represents investment against the far greater cost of a fully realised terrorist attack in the UK.

Furthermore, seizing passports from British citizens cancelled on public interest grounds under the Royal Prerogative may inhibit the expansion of Syria as a problematic area for radicalisation and terrorist activities.

There could also be a non monetised benefit for offences committed due to income from financial penalties including fines.

Risks/Assumptions

Possible risks could be mitigated by monitoring and reviewing the use of the powers. We can provide clear messaging about the limitations around the police's ability to search for cancelled passports "in country". For example, this can only be done on the Secretary's of State's authorisation and where there are reasonable grounds for believing that the person being targeted is in possession of a cancelled passport. The police officer will notify the individual of the Secretary of State's decision to cancel his passport and authorise its removal in this way, and provide contact details of where further information can be sought. As with the refusal or withdrawal of any passport, it is also open to the individual to make representations to Her Majesty's Passport Office and to consider taking legal advice.

The risk that a passport or other invalid travel document may be incorrectly removed from an individual is mitigated by providing safeguards in the legislation. Safeguards include providing for a document to be returned to the individual straight away if it is found to be valid, and for the checking of the document to be done as soon as possible.

The public may be concerned that the policy provides further stop and search powers for the police. We can mitigate this risk by clear messaging about the powers' intention and scope and monitoring and reviewing the use of the powers.

The powers enable invalid travel documents presented at the border for travel to be removed from circulation and prevent their use for a purpose for which they are no longer legally available. It remains open for the individual to apply for a valid travel document, if an invalid one is seized from him.

Proportionality Approach

The powers are considered proportionate to the need for and the benefits of retrieving cancelled passports and other invalid travel documents.

We have assessed that the powers will have a minimal impact because they will be used in a small number of cases on an intelligence-led basis and we do not have a system of routine exit checks at the border. In Royal Prerogative cases, it is not possible to predict with any certainty

the number of cases for which its exercise will be requested annually, although this is not expected to be significant.

It is not possible to monetise the costs of the border power (i.e. immigration officers', designated customs officials' and police officers' ability to seize invalid travel documents, including cancelled passports, at the border). This is due to the limited data available on port seizures and the way data is currently collected. However, the search and seizure powers are an enabling measure designed to allow the authorities to carry out their jobs more efficiently, so it would have a positive net present value (NPV). We have contacted partners and assessed that the policy is likely to affect very few people and so will have minimal impact. Given that this is a low cost proposal which does not affect businesses it would be **disproportionate** to spend further resource attempting to monetise the costs and benefits.

Summary and Recommendations

In summary, we recommend Option 2, legislating for explicit search and seizure powers for invalid travel documents for Border Force (immigration officers and designated customs officials) and police officers at the border. This would clarify the statutory powers available at the border to search for and seize these documents.

A new "in country" search and seizure power for police officers to remove a passport cancelled on public interest grounds on the authorisation of the Secretary of State would help enforce the Home Secretary's decision to exercise the Royal Prerogative power and disrupt the travel of individuals of concern.

The costs of these measures will be minimal as they will affect very few people and will be intelligence-led. However, the measures will bring much valued benefits in terms of public protection (for example, in disrupting travel for terrorism-related purposes) and upholding justice, through preventing individuals from seeking to travel on invalid documents to circumvent immigration controls or for other criminal purposes.

Implementation

The Government plans to implement these changes, subject to Parliament's approval, in the Anti-social Behaviour, Crime and Policing Bill by the end of the 2013/14 Session.

We will monitor the number of cases where passports are removed following the exercise of the Royal Prerogative on public interest grounds, and the use of the new powers. This will be done on a yearly basis.

Border Force and the police will also review and monitor the use of the powers at port in 'non-Royal Prerogative' cases.

Magistrates and Crown Court costs per case and relevant assumptions⁴

1. Magistrates court costs (2011/12 prices)

To generate the costs by the offences provided in the supplementary document, HM Courts and Tribunals Service (HMCTS) timings data for each offence group were applied to a court cost per sitting day provided by HMCTS Finance. Magistrate's court costs are £1,300 per sitting day in 2011/12 prices. One assumes a sitting day is 5 hours. The HMCTS costs are based 2010/11 direct court and judicial near cash costs, uprated to 2011/12 using the GDP deflator⁵.

There are several limitations with the use of HMCTS timings data from the Activity based costing (ABC) model, the Timeliness Analysis Report (TAR) data set and the costing process:

ABC Model (timings data)

- The timings data used are based on the time that a legal advisor is present in court. This is used as a proxy for court time. Please note that there may be a difference in average hearing times as there is no timing available e.g. when a District Judge (Magistrates Court) sits;
- Timings do not take into account associated administrative time related with having a case in court. This could mean that costings are an underestimate;
- The timings are based on data collected in February 2009. Any difference in these timings could influence costings.

TAR dataset (volume data)

- Initial guilty or not-guilty pleas only are included;
- Other indictable offences relate to all other offences that have not been specifically classified;
- Includes all criminal cases which have been completed in the magistrates' courts, i.e. where a final verdict has been reached (e.g. guilty or not guilty) or the case is passed to the Crown Court.

Costing process

- The timing data used excludes any adjournments (although the ABC model does hold information on this separately), and is based on a case going through either one guilty plea trial (no trial) or one effective trial. However, a combination of cracked, ineffective and effective trials could occur in the case route. As a result the costings could ultimately be underestimates;
- Guilty plea proportions at the Initial hearing from Q2 in 2012 are used, based on the Time Analysis Report. As these can fluctuate, any changes in these proportions could influence court costs calculations (effective trials take longer in court than no trials (trials where there was a guilty plea at the initial hearing)).

2. Crown Court costs (2011/12 prices)

To generate the costs in the supplementary note, timings data was applied to a Crown court cost per sitting day provided by HMCTS Finance. This was added to the cost of the initial hearing (magistrates court time multiplied by the magistrates cost per sitting day), as all criminal cases start in the Magistrates courts. Crown Court cost is £2,100 per sitting day in 2011/12 prices, assuming a sitting day is 5 hours. The HMCTS costs are based on 2010/11 direct court and judicial near cash costs, uprated to 2011/12 using the GDP deflator⁶.

There are several limitations of the timings data used to generate the costs:

⁴ Costs under £1,000 rounded to the nearest £10; costs over £1,000 rounded to the nearest £100.

⁵ Please see: http://www.hm-treasury.gov.uk/d/gdp_deflators.xls

⁶ Please see: http://www.hm-treasury.gov.uk/d/gdp_deflators.xls

- The average time figures which provide the information for the timings generates above do not include any down time, for example, juries moving in and out of the court room. This would lead to an underestimate in the court costing;
- Timings do not take into account associated administrative time related with listing a case for court hearings. This could mean that costings are an underestimate;
- The data which informed the timings data exclude cases where a bench warrant was issued, no plea recorded, indictment to lie on file, found unfit to plead, and other results;
- Committals for sentence exclude committals after breach, 'bring backs' and deferred sentences;
- Appeals exclude cases abandoned before appearance in court.