



Home Office

Carriers' Liability Charge:

Consultation on proposals to increase the level of charge and introduce a new incentives scheme

March 2013

Scope of the consultation

Topic of this consultation	Proposals to increase the level of the carriers' liability charge (Section 40 of the Immigration & Asylum Act 1999 (as amended)) and introduce a new Approved Route incentives scheme
Scope of this consultation	To seek views on: <ul style="list-style-type: none"> • The proposal to increase the level of the charge • The proposals for Approved Route to succeed the current Approved Gate Check scheme • The potential impact of the proposals
Geographical scope	UK wide
Impact Assessment	An Impact Assessment is provided for this consultation

Basic information

To	Passenger airlines, ferry companies, general aviation and maritime operators bringing passengers to the UK, industry representative bodies, passenger groups, and the Civil Aviation Authority
Duration	4 weeks
Enquiries	By email to CL&ARConsultation@homeoffice.gsi.gov.uk
How to respond	By email to the above address or in writing to Grant Oliver, Border Security Unit, Home Office, 2 Marsham Street, London SW1P 4DF. The consultation closes on 9 April 2013.
After the consultation	All responses will be considered by the Home Office and a Government response will be published
Alternative formats	Should you require a copy of this consultation paper in any other format, eg Braille, Large Font, or Audio, please write to the email or postal address above

CONTENTS

Foreword by Mark Harper, Minister of State for Immigration.....	4
Proposals.....	5
Consultation Questions.....	8
Response Form.....	9
Consultation guidelines.....	11
Appendix A: Approved Route <i>gateway criteria</i>	12
Appendix B: Approved Route.....	14

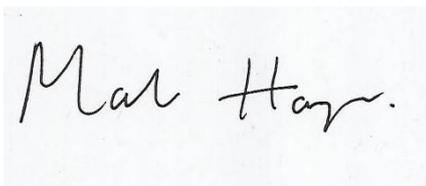
FOREWORD BY MARK HARPER, MINISTER OF STATE FOR IMMIGRATION

The Government is committed to achieving a secure and effective border. Preventing passengers travelling to the UK without proper documentation is a key part of this commitment. If a passenger arrives in the UK without a document which satisfactorily establishes their nationality or identity, they can pose a significant risk to the UK. There can also be a cost to the public purse.

Whilst the carriers' liability charge has had an important impact in reducing the number of people coming here without proper documentation, its effectiveness has lessened in recent years whilst the risks remain. The time has therefore come to refresh the charge and this consultation document sets out our proposals in this regard. Although we are proposing a significant increase, the level of the charge has not been increased for over twenty years, despite significant changes in the market place. It is important to view the proposals in this context.

Our clear policy objective is to reduce the number of passengers arriving here without the proper documentation, and we want to work in partnership with carriers to achieve that. We have therefore also reviewed the operation of the Approved Gate Check (AGC) scheme to take account of current airline operating models and provide more incentives for carriers.

We hope to provide a level playing field which rewards and supports carriers who want to work with us. We look forward to hearing your views on our proposals.

A handwritten signature in black ink that reads "Mark Harper." The signature is written in a cursive style and is positioned on a light grey rectangular background.

Mark Harper MP
Minister of State for Immigration

PROPOSALS

The arrival of passengers in the UK with inadequate documents has been a source of concern for many years. This is because such passengers can pose a significant cost or risk to the UK.

A charge was first introduced in the UK by the Immigration (Carriers' Liability) Act 1987, which made carriers liable for a £1,000 charge if they brought an inadequately documented arrival (IDA) to the UK. This charge was raised to £2,000 in 1991 and 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 charge is to encourage carriers to check documents at the port of embarkation, and where necessary, deny boarding to IDAs. If the charge had been increased in line with inflation it would now stand at about £3,500¹.

Whilst the number of IDAs has fallen significantly since 1991, recently the level of IDAs and penalty demands has remained relatively static suggesting in part that the charge level has lost some of its deterrent effect. In 2011, approximately 4,000 IDAs arrived in the UK. A demand for payment of the charge is typically served in less than half of cases² - for example because the forgery/counterfeit is not reasonably apparent or the carrier could not be identified, or because the carrier benefits from AGC. However, given the potential costs and risks involved, the Government still considers the number of IDAs to be too high. We are proposing to increase the level of the charge, the policy objective being to considerably reduce the number of IDAs coming to the UK by financially incentivising carriers to improve their document checking effectiveness and standards.

In developing these proposals, we have given consideration to EU Directive 51/2001 which requires member states to set this type of charge for when IDAs enter the EU from a third country. As a comparison, the charge maximum is 5,000 Euros in France and Germany. We have also taken into account the new Authority to Carry (ATC)³ Scheme which sets a maximum £10,000 penalty where a carrier fails to comply with the ATC scheme.

The Government seeks to maintain a security partnership with carriers. To that end, we operate the AGC scheme whereby the UK Border Agency (UKBA) will waive some charges for which the carrier is liable if they have AGC status on that particular route. AGC status 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. UKBA also operates the Risk and Liaison Overseas Network (RALON) to help carriers detect IDAs, thereby avoiding potential charges.

Charge increase

The National Audit Office⁴ 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. IDAs may also pose a security risk. Individuals wishing to come here for organised crime or terrorism purposes may view this as a potential method of entry as it can be difficult to fully verify identity in these circumstances. The current charge level no longer reflects this level of risk or the cost of dealing with some IDAs.

¹ Source: calculated using the ONS Composite Index

² Source: UKBA Carriers' Liaison Section

³ Nationality, Immigration and Asylum Act 2002 (Authority to Carry) Regulations 2012 and Security and Travel Bans Authority to Carry Scheme 2012

⁴ 'Management of Asylum Applications by the UK Border Agency', National Audit Office Jan 2009 (page 36)

Our proposal is to raise the level of the charge to £7,000 per IDA. We see this as being a sufficiently high level to encourage carriers to perform better document checks. Our calculations suggest that a lower level could allow carriers to perform less rigorous checks and avoid the behaviour change associated with more effective checks. We recognise that this is a complex issue, and we are therefore asking interested parties to provide any other information which could be of assistance in providing a robust evidence base. The consultation Impact Assessment (IA) provides a detailed rationale for the proposed charge level and asks a number of specific questions about the economics of the increase (IA page 10 and 11). A central factor in deciding the charge level is the financial cost to carriers of compliance. We would therefore welcome any information from carriers to help us understand this.

The proposed increase would be a significant recalibration of the existing charge. It is over 20 years since the level was last raised and this has allowed the charge to lose some of its deterrent effect. We would wish to avoid another large increase in the future and would therefore welcome views on the benefits of providing an annual inflation level uplift to the revised penalty level.

Approved Route

AGC is intrinsically linked to the policy objective of the civil penalty regime. We have reviewed the current operation of the AGC, our intention being to provide a greater incentive for carriers to work with us in reducing the numbers of IDAs. We are proposing to introduce a successor scheme called Approved Route (AR) which would build on existing processes where possible. As with the current scheme, AR would be route specific. It would provide for up to ten charge waivers a year on that route if the carrier fulfils certain criteria around document checks and check-in security. These we are calling the AR 'gateway criteria'. The charge waivers could be for cases where a passenger fails to produce any document to the Border Force Officer when asked to do so, or if a passenger rips out a visa or other endorsement en route to the UK, or if the passenger has no visa when required to have one.

If the carrier also submits all data required by the Home Office for that route, and also fully engages with the department, then they would formally qualify for AR on that route and would be able say on public facing material that it is a Home Office Approved Route. The carrier would also then qualify for six more charge waivers of the types above on that route each year. In order to qualify for full AR, we are proposing that air carriers would have to adopt a contract with their handling agent which meets certain standards, including appropriate sanctions for misdirected flights. We would welcome views from air carriers on this proposal.

Appendix A sets out in detail the proposed criteria and incentives for the AR 'gateway criteria', and **Appendix B** sets out the proposed criteria and incentives for the full AR incentives scheme.

Advance Passenger Assessment

In online check-in operating models there is often a reduction in contact time between passengers and staff. In order for AR to fit with this type of model, we are proposing to make provision for carriers to benefit if they are carrying out effective advance assessment of their passengers. So if a carrier is effectively assessing their passengers in advance against common IDA profiles, and dealing appropriately with those which are more likely to incur a charge, they could still be accredited by the new scheme despite operating an online check-in model.

In order to qualify for AR, a carrier would normally have to fulfil our document checking requirements for that particular route. However, if the carrier is performing a high standard of advance passenger assessment then some flexibility could be permitted against the check-in

document checking criteria. But the onus would be on the carrier. When applying for AR for a particular route, the carrier would be required to say whether they wanted their advance passenger assessment processes to be taken into account. If a carrier made such a request, we would make an assessment of their processes. Ongoing support and assurance of the process would be provided by overseas RALON teams with regional responsibilities for the carrier station. We would retain the right to withdraw any accreditation under the scheme if the advance passenger assessment fell below standard either in respect of results or in carrying out the checks.

Consultation

We are keen to get the views of partners on these proposals. We would also like to hear views on other possible non-regulatory approaches for reducing IDAs. We have distributed this consultation document to airlines and ferry companies operating in the UK, general aviation and maritime operators, industry representatives, and passengers' representative groups. Given the limited take up of the AGC scheme in the maritime sector, we are particularly keen to hear from ferry companies as to how the successor scheme could be more attractive to that sector.

CONSULTATION QUESTIONS

1. Do you have any general comments on the policy objective and the likely impact of the proposals?
2. Please explain what measures you take to prevent IDAs from entering the UK. What are the particular challenges you face? Is there anything UKBA could do to help you make your checks more effective?
3. Do you consider that the proposals for the charge increase and AR together provide a sufficient and proportionate incentive for carriers to work with the Government to reduce IDAs?
4. What is the financial cost for your business of compliance with Section 40 of the 1999 Act?
5. Can you provide any other information that could assist in building a robust evidence base as to what level the charge should be set at in order that the charge is dissuasive and effective (see pages 10 and 11 of the IA)? We think that £7,000 per IDA is the right level, but do you think this is justified in terms of inflation, risk and cost to the UK, costs of non-compliance to carriers, and international comparisons?
6. Do you consider that the proposals for AR are fair and effective? In particular, do you consider that the system of waivers is the best way to manage the process when things go wrong?
7. Do you support the proposal that in order to qualify for full AR, air carriers would have to adopt a contract with their handling agents which meets certain standards and has appropriate sanctions for misdirected flights?
8. Would a non-regulatory approach (for example: publication of success rates of compliance with reducing IDA volumes, self regulation by the sector, or a greater level of support/training from UKBA) be more effective in reducing IDAs? If so, what form would this take?
9. Should the increased penalty be index linked so as to provide for an annual uplift and avoid the need for such a large increase in the future?
10. Are there any further comments you would like to make relating to the proposals?

RESPONSE FORM

Name:

Address:
.....
.....

Postcode:

Email:

Company Name or Organisation:
(if applicable)

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

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

.....
.....

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

Number of members.....

Views were obtained by.....

I would like my response or personal details to be treated as confidential (tick box).

Reasons (please explain below):
.....

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

Thank you for taking the time to respond to this consultation. Please now send your response (to reach us by 9 April 2013) to:

Email: CL&ARConsultation@homeoffice.gsi.gov.uk

Post: *Grant Oliver
Border Security Unit
Home Office
2 Marsham Street,
London SW1P 4DF*

CONSULTATION GUIDELINES

This consultation follows the Government's '**Consultation Principles**' available in full on the Cabinet Office website at:

<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>

Confidentiality & Disclaimer

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

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

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

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

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

Consultation co-ordinator

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

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

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

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

APPENDIX A – APPROVED ROUTE *gateway criteria*

AIRLINES

APPROVED ROUTE *gateway criteria*

Document checks

- The checks must be conducted at both check-in and the gate by appropriately trained staff
- A document check must be conducted immediately prior to boarding. This should take place at the departure gate or within an adjacent sterile area
- A full check of the document must be undertaken to ensure that it is valid, that the person presenting it is the rightful holder and that a valid visa is held if one is required
- Reconciliation with the details on the passenger's boarding card is necessary

Security

- There must be an adequate level of security to ensure that these checks cannot be circumvented

Advance passenger assessment

When applying for accreditation to the scheme, carriers will be required to say whether they want their advance passenger assessment to be taken into account. Following provision of evidence by the carrier, RALON would decide against set criteria whether they are performing an effective level of advance passenger assessment. RALON would provide ongoing assurance of the carriers processes.

Incentives

Each year the carrier would be entitled to **ten** charges to be waived on the route in the following types of case:

- No document Arrival (ie a passenger fails to produce any document to the Border Force Officer when asked to do so);
- Some Mutilated Document Cases (ie if a passenger rips out a visa or other endorsement from their passport en route to the UK); or
- Technical cases eg no visa, or expired visa.

SEA CARRIERS

APPROVED ROUTE *gateway criteria*

Document checks

- All document checks to be conducted by appropriately trained staff
- A document check must be conducted **immediately prior to the passenger entering a secure area** (or in a secure area prior to boarding)
- A full check of the document must be undertaken to ensure that the document is valid, that the person presenting it is the rightful holder and that a valid visa is held if one is required

Security

- Accurate manifest checks to be in place, to show that the correct number of passengers have legitimately boarded the vessel
- Adequate security levels to ensure above checks cannot be circumvented.
(Passenger/Vehicles should not be allowed to leave the secure zone without permission, neither should there be any opportunity to switch vessels without challenge)
- Adequate passenger detection systems in place where appropriate (this would include vehicle checks) but UKBA will consider requests for AR status from any ferry operator able to demonstrate an effective and secure system without the use of technology

Advance passenger assessment

When applying for accreditation to the scheme, carriers will be required to say whether they want their advance passenger assessment to be taken into account. Following provision of evidence by the carrier, Carriers Liaison Section (CLS) would decide against set criteria whether they are performing an effective level of advance passenger assessment. CLS would provide ongoing assurance of the carriers processes.

Incentives

Each year the carrier would be entitled to **ten** charges to be waived on the route in the following types of case:

- No document Arrival (ie a passenger fails to produce any document to the Border Force Officer when asked to do so);
- Some Mutilated Document Cases (ie if a passenger rips out a visa or other endorsement from their passport en route to the UK); or
- Technical cases eg no visa, or expired visa.

ANNEX B – APPROVED ROUTE

AIRLINES

APPROVED ROUTE

Air carrier satisfies all **Approved Route gateway criteria**

Data submission

- All data should be provided to the Home Office where required to do so by 'e-Borders: Travel Document Information – Compliance Guidance for Carriers'. All data submission should be to the standard set out in the above Guidance.

Engagement with the Home Office

- The carrier will have no outstanding debts with the Home Office
- Check-in and security arrangements must be inspected in advance and then subsequently at regular intervals by UKBA at the carrier's expense
- Carrier must provide full route information, including details of scheduling, numbers of passengers denied boarding and the reasons for the refusal to board them, and any significant changes to the route
- Carriers must have in place a contract with their handling agent which meets certain standards, including appropriate sanctions for misdirected flights
- Carrier will have a good record of compliance with removal directions for either public expense or carrier expense removals

INCENTIVES

- The carrier would be entitled to the **ten** charge waivers as a result of satisfying the **Approved Route gateway criteria**
- The carrier would be entitled to **four** more waivers of the same types of charge on the route each year if they satisfy the data submission criteria
- The carrier would be entitled to **two** more waivers of the same types of charge on the route each year if they satisfy the 'Engagement with the Home Office' criteria
- **The carrier would be able to say on public facing material that the route is a Home Office Approved Route**

SEA CARRIERS

APPROVED ROUTE

Sea carrier satisfies all **Approved Route gateway criteria**

Data Submission

- All data should be provided to the Home Office where required to do so by 'e-Borders: Travel Document Information – Compliance Guidance for Carriers'. All data submission should be to the standard set out in the above Guidance.

Engagement with the Home Office

- The carrier will have no outstanding debts within the Home Office
- Check-in and security arrangements must be inspected in advance by UKBA and subsequently at regular intervals at the carrier's expense
- Carrier must provide full route information, including details of scheduling, numbers of passengers denied boarding and the reason for the refusal to board them, and any significant changes to the route
- Carrier will have a good record of compliance with removals directions for either public expense or carrier expense removals

INCENTIVES

- The carrier would be entitled to the **ten** charge waivers as a result of satisfying the **Approved Route gateway criteria**
- The carrier would be entitled to **four** more waivers of the same types of charge on the route each year if they satisfy the data submission criteria
- The carrier would be entitled to **two** more waivers of the same types of charge on the route each year if they satisfy the 'Engagement with the Home Office' criteria
- **The carrier would be able to say on public facing material that the route is a Home Office Approved Route**