



HM Revenue  
& Customs

# Proposed Commissioners' Directions on reporting of passenger and crew information for customs purposes: a Consultation Document

## **Consultation document**

Publication date: 25 March 2015

Closing date for comments: 15 May 2015

<b>Subject of this consultation:</b>	Proposed Commissioners' Directions (CDs) on reporting of passenger and crew information for customs purposes
<b>Scope of this consultation:</b>	The purpose of this Consultation document is to consider the new proposed CDs and the advance notification timescales.
<b>Who should read this:</b>	Anyone required to report passenger information in advance for customs purposes, particularly those involved in general aviation.
<b>Duration:</b>	25 March 2015 to 15 May 2015
<b>Lead official:</b>	Karen Rourke
<b>How to respond or enquire about this consultation:</b>	Please send email responses to <a href="#">Excise &amp; Customs Law Team</a>  Please send written responses to HMRC, Excise & Customs Law, 7 <sup>th</sup> Floor SW, Alexander House, 21 Victoria Avenue, Southend-on-Sea, SS99 1AA
<b>After the consultation:</b>	We will publish a summary of the feedback
<b>Getting to this stage:</b>	This is the culmination of two years of work already undertaken to establish Commissioners' Directions.
<b>Previous engagement:</b>	We have already notified our intention to consult through engagement at meetings with the trade and also through the GA Challenge Panel.

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# 1. Purpose of the Paper

1.1 In May 2013, new Commissioners' Directions (CDs) on reporting of Passenger Information for customs purposes came into effect. The General Aviation (GA) Trade Sector identified difficulties in complying with the advance notification timescales in the CDs and, as a result, the time limits specified in the CDs are not being enforced.

1.2 The Government recognises the problems facing UK GA and is committed to ensuring that customs requirements do not impede opportunities for GA to continue to contribute to the UK's growth. GA poses particular challenges for the customs authorities because of the unscheduled and unpredictable nature of the traffic. The Government is committed to delivering the smoothest passage possible for legitimate pilots, passengers and goods, with the intention that UK Customs is recognised globally as the world's leading Customs authority for facilitating legitimate trade.

1.3 Therefore the purpose of this discussion paper is to consider the new proposed CDs and the advance notification timescales.

1.4 The Directions state: 'unless otherwise agreed with the Commissioners'. This effectively ensures that existing arrangements for scheduled airlines and shipping traffic remain as before these CDs were published. Neither do they affect the current reporting requirements for pleasure craft or ferry companies.

## 2. Background

2.1 The Customs and Excise Management Act 1979 (CEMA) provides for Commissioners' Statutory Directions, which are a form of secondary legislation that lay down detailed rules of procedure or requirements.

2.3 The CDs are made under CEMA sections 35(1) and 64(1) in 2001 to set out the requirement for passenger information, for customs purposes. Since then the Directions have formed the basis of operational practice.

2.3 There is a Customs Civil Penalty for a failure to report, with a maximum penalty of £1000. The use of regulatory civil penalties to underpin customs requirements is well-established and uncontroversial and they provide a method for penalising non-compliance with customs law where criminal prosecution would not be appropriate. When faced with non-compliance all the circumstances are considered and the most appropriate response is used. Penalties are not issued automatically or as a first resort.

2.4 The information is required so that customs officers can (a) monitor the travel movements of known and suspected criminals in and out of the country and (b) apply profiling techniques developed over many years to flights and maritime journeys (and their passengers) leading to the identification of those who may be involved in smuggling prohibited/restricted goods or dutiable products.

2.5 In early 2012 General Aviation (GA) reports could be submitted via the 'Collaborative Business Portal' (CBP). As a result of this, in May 2013, new CDs came into effect. However, because of the difficulties identified with the advance notification timescales, the time limits specified in the CDs are not being enforced. HMRC is now proposing to revise the CDs with new advance notification timescales.

2.6 Directive 2010/65/EU on reporting formalities for ships arriving in/or departing on ports of the Member States is due to come into force in 2016. This may result in further changes being necessary to the CDs. However, there are ongoing discussions with the Commission over the implementation of Directive 2010/65/EU on reporting formalities for ship arriving in/or departing from ports of the Member States. Therefore, we will not review maritime arrangements, including Commissioners' Directions, until it is known how the Directive will be implemented.

## 3. Airport Designations

3.1 All Aircraft, save as permitted (by the Commissioners of HMRC which includes Border Force), are required to land at a 'customs and excise' airport when entering from a third country. Once designated, the airport is required to operate under a full customs Examination Station Approval (ESA). It is subject to any conditions laid down in an extant ESA but there are no customs restrictions on the types of traffic that may be handled there.

3.2 This requirement is disapplied for the purpose of EU flights. For customs purposes, when using an airport which does not have any type of designation or a Certificate of Agreement, operators can only fly within Great Britain and Northern Ireland or to/from destinations within the European Union (EU).

3.3 To facilitate trade and provide a wider range of airports to fly into from outside the EU, HMRC uses the 'save as permitted' to provide for 'Certificate of Agreement' (CoA) airports. Whilst they are not subject to a formal ESA, they operate under a lower level formal agreement (which allows them to handle a limited range of traffic from third-countries, including the Channel Islands).

3.4 Non-designated airports covered by Certificates of Agreement are not open generally for passenger or freight activities. An operator or pilot of a general aviation aircraft is required to report in relation to international or Channel Islands journeys to or from the UK, unless they are travelling outbound directly from the UK to a destination in the European Union.

## 4. Proposed Changes

4.1 This Discussion Paper sets out the proposed changes to the CDs for consideration. The proposed approach to be taken is that the timescale for advance notification for all airports will be:

- (a) in the case of arrivals, no later than **two hours** before departure from the last destination before the ship, aircraft or train arrives in the United Kingdom.
- (b) in the case of departures, no later than **two hours** before departure from the United Kingdom.

4.2 The information will be required to be provided by granting direct access to relevant computer systems, by electronic transmission or, where neither of these is possible, by delivering the particulars in writing, in a readable form and in the prescribed manner.

4.3 As a result of harmonising these timescales at all airports, the GA sector will no longer have to identify what airports are CoA or designated C&E airports.

## 5. Other considerations

5.1 The Government is committed to reducing the regulatory burden on GA and these timescales will harmonise the timescales with those envisaged as being required under the new Counter Terrorism & Security Act (CTSA).

5.2 On 29 August the Joint Terrorism Analysis Centre raised the UK threat level from SUBSTANTIAL to SEVERE, meaning that a terrorist attack is “highly likely”. On 1 September 2014, the Prime Minister announced that legislation would be brought forward in a number of areas. The Counter-Terrorism and Security Act 2015 received Royal Assent on 12 February 2015.

5.3 The measures will strengthen security arrangements in relation to the border and to aviation, maritime and rail transport. These provisions would extend the scope for authority to carry (‘no fly’) schemes, allow the Secretary of State to make regulations in relation to passenger, crew and service information and to give directions in relation to security measures to aviation, shipping or rail transport operating to the UK.

5.4 The CTSA 2015 will also include enabling provisions for regulations that will require advance notification for arriving and departing GA aircraft for police and immigration purposes. The detail of the requirement (data content, timescales for advance notification, form and manner of data submission) will be in regulations. The Home Office will consult publicly in the development of the regulations and will aim for as much harmonisation as possible between the reporting frameworks.

5.5 This will reduce the burden on the GA sector as, not only will they no longer have to identify the difference between CoA and C&E designated airports, they will also no longer have to try to identify different timescales and requirements. They will be able to fly into the UK secure in the knowledge that they are complying with all requirements from the Law Enforcement agencies at the Border.

5.6 This information obtained via the CDs will enable Border Force to carry out customs controls and safety and security checks on goods, people and means of transport at the Border in accordance with legal obligations and risk priorities.

## 6. Questions

6.1 The Government would like to find a solution that balances a customs service that reflects modern international trade practices with delivering a safe, secure and effective Border, featuring safeguards and sanctions that help reduce the tax gap, stop prohibited goods from causing harm, and protect UK Borders from other threats.

6.2 To help us resolve these issues, we are seeking views on the following:

(a) Would the advance notification timescales, detailed above, in relation to both 'designated customs & excise airports', and 'certificate of agreement airports' achieve this objective? If not, why not?

(b) Do you think there could be other ways that the Government could achieve this objective?

## 7. Timetable for next actions by Government

What you tell us will be taken into account when the Government decides how to proceed. Therefore, a statement will be made as soon as possible after the end of Consultation.

## 8. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

Stage 1 Setting out objectives and identifying options.

- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 3 of the process. The purpose of the consultation is to seek views on draft legislation in order to confirm, as far as possible, that it will achieve the intended policy effect with no unintended effects.

## How to respond

Feedback on this paper should be submitted to: If you have any questions about this change, please contact by e-mail, [Excise & Customs Law Team](#) or by post to:

Excise & Customs Law team  
HM Revenue and Customs  
Room LG/74  
100 Parliament Street  
London  
SW1A 2BQ

Or by fax to 03000 594275

by 15 May 2015

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC Inside Government](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

## Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed 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 the 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 with, amongst other things, 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 HM Revenue and Customs (HMRC).

HMRC 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 Principles**

This consultation is being run in accordance with the Government's Consultation Principles. [If you wish to explain your choice of consultation period, this is the place. Also, if you are holding additional meetings or using alternative means of engaging, please mention this here].

The Consultation Principles are available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact:

Oliver Toop, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: [hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk](mailto:hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk)

Please do not send responses to the consultation to this address.

# Annex A: Relevant Draft Government Legislation

The Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers conferred on them by sections 21, 35(1) and 64(2)(b) of the Customs and Excise Management Acts 1979 ("CEMA 1979"), direct as follows-

(a) The Passenger Information Directions made on 21 May 2013 are revoked.

(b) In the case of any certificate of agreement airport-

- i) these Directions are to be treated as forming part as of the terms of approval in place at the airport, and
- ii) any requirement specified in terms of approval is revoked to the extent that it is inconsistent with these Directions.

(c) Save in the manner specified in (b) above, nothing in these Directions alters any other direction given under section 21, 35(1), or section 64(2) of CEMA1979.

(d) The following directions shall be cited as:

## **Commissioners' Directions Passenger and Crew Information**

1. These Directions apply in respect of:

- (a) any ship, aircraft or through train which it is intended will next travel to a place in the United Kingdom from a place outside of the United Kingdom;
- (b) any ship or aircraft which it is intended will next travel from any port or airport in the United Kingdom to a final destination outside either the European Union or the Isle of Man.

2. Unless otherwise agreed with the Commissioners, an owner of a ship, aircraft or through train, to which these Directions apply must provide the prescribed information to the proper officer no later than the time specified in paragraph (3) below.

3. The prescribed information is to be provided-
- (a) in cases described in paragraph 1(a) above, no later than 2 hours before departure from the place outside the United Kingdom.
  
  - (b) in cases described in paragraph 1(b) above, no later than 2 hours before departure from the United Kingdom, or
  
  - (c) before such time as the Commissioners may otherwise direct.

4. (1) The prescribed information is only to be treated as having been provided for the purposes of these Directions if-

(a) in cases where the information is comprised of data electronically stored by the owner-

- (i) the proper officer is granted direct access to the system on which that data is stored it, or
  
- (ii) the data is transmitted electronically to the proper officer, or

(b) in cases where it is either not reasonably practicable to comply with paragraph (4)(1)(a) above, or where the Commissioners otherwise direct, by delivering the information in writing, in a readable form and in the prescribed manner.

(2) For the purposes of this paragraph information is delivered in the prescribed manner-

(a) in cases where it is in respect of the intended travel of an aircraft, when it is notified to the Commissioners in the form specified in Schedule 2, and

(b) in any other case, when it is notified to the Commissioners in such form as they may direct or approve

5. In these Directions:

“certificate of agreement airport” means an airport, not being a designated “customs and excise airport” for the purposes of section 21 CEMA 1979, and operating under a certificate of agreement.

“crew” does not include crew members of any ship who are required to be reported pursuant to IMO FAL form 5.

“owner” includes an operator, commander or master;

“prescribed information” means the information specified in Schedule 1, but only to the extent such information would otherwise have been obtained by the owner in the course of their business or have been within their knowledge or possession;

“proper officer” means....

“ship” does not include a ship certified to carry 12 passengers or fewer;

“shuttle train” and “international service” have the meanings given in sections 1(9) and 13(6) of the Channel Tunnel Act 1987 (“the Act”).

“through train” means a train, other than a shuttle train, which, for the purposes of section 11 and 12 of the Act is engaged on an international service;

**Made by:**

**On date:**

**and:**

**On date:**

Two of the Commissioners for Her Majesty’s Revenue and Customs

## **SCHEDULE 1: List of Information Required**

### 1. General information for the ship, aircraft or train:

- (a) name, number or registration details of the flight, ship or train;
- (b) total number of passengers carried;
- (c) particulars of the departure to include point of departure, UK county, date and time;
- (d) particulars of the intended arrival to include the point of arrival, UK country, date and time;
- (e) name and job title of the person completing the report;
- (f) contact telephone number for the owner.

### 2. Specific passenger and crew information:

- (a) Identity including: full name, date of birth, nationality and any other information displayed on the person's travel document;
- (b) address and any contact details;
- (c) any particulars recorded in connection with the reservation and checking in;
- (d) any particulars recorded in connect with the issue of the ticket (for travel);
- (e) any particulars recorded in connection with the payment made for that ticket;
- (f) number and names of passengers on the same booking;
- (g) particulars of the journey and of any journey covered by the same reservation;
- (h) particulars of any seat allocated to that passenger;
- (i) particulars of any services or facilities covered by the reservation made for that passenger;
- (j) particulars of any vehicle carried on the plane, train or ship in relation to which that person is a driver or passenger.

## **Schedule 2: General Aviation Report**