

Summary: Intervention & Options

Department /Agency: Department for Transport	Title: Impact Assessment of the "Port Security Regulations 2008"	
Stage: draft consultation	Version: 0.1	Date:
Related Publications: Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security		

Available to view or download at:

<http://www.dft.gov.uk/consultations>

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

European Community Treaty obligations require transposition of EC Directive 2005/65 on enhancing port security ("the Directive") into UK law.

What are the policy objectives and the intended effects?

The purpose of the Directive, and transposing Regulations, is to introduce common measures across the EC to enhance port security, and to ensure that security measures taken pursuant to Regulation (EC) No 725/2004 on enhancing Ship and Port Facility Security benefit from enhanced port security in the wider port area.

What policy options have been considered? Please justify any preferred option.

Six options have been identified to implement the Directive in the UK, they are listed in the "evidence base" below, but the recommended approach is:

Implementation of the Directive based on current security policies would minimise additional costs to port operators, users and the Exchequer. It would build upon existing measures and best practice, and minimise State intervention in the industry. This is the option that the draft implementing Regulations have been developed upon.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

15 December 2008, when the European Commission report to the European Parliament on implementation.

Ministerial Sign-off For SELECT STAGE Impact Assessments:

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:

Summary: Analysis & Evidence

Policy Option:	Description:
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' See evidence base below.		
	One-off (Transition) Yrs			
	£ 20M			
	Average Annual Cost (excluding one-off)			
	£ 8.5M	Total Cost (PV)	£ £118,000	
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' £2.25M Port security committees (no longer required). Intangible benefits of enhanced and greater visibility of security measures in ports.		
	One-off Yrs			
	£ 2.25M			
	Average Annual Benefit (excluding one-off)			
	£ 2.25M	Total Benefit (PV)	£ 2.25M	
Other key non-monetised benefits by 'main affected groups' See evidence base below				

Key Assumptions/Sensitivities/Risks

Price Base Year 2007	Time Period Years 5	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	SUMMER 2008			
Which organisation(s) will enforce the policy?	DfT (TRANSEC)			
What is the total annual cost of enforcement for these organisations?	£ 2.5M			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ 8.6M			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)	
Increase of £	Decrease of £	Net Impact	£	

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Title of Proposal

1. Directive 2005/64/EC of the European Parliament and of the Council on enhancing port security - Implementation stage.

Purpose and intended effect of measure

The objective

2. The fourth citation of the Directive sets out its object as being “In order to achieve the fullest protection possible for maritime and port industries, port security measures should be introduced, covering each port within the boundaries defined by the Member State concerned, and thereby ensuring that security measures taken pursuant to Regulation (EC) No 725/2004 benefit from enhanced security in the areas of port activity. These measures should apply to all those ports in which one or more port facilities covered by Regulation (EC) No 725/2004 are situated.”

3. The Directive applies to all ports in the UK (and Gibraltar) that contain at least one port facility that is within the scope of the EC Regulation. The Directive requires the designation of “Port Security Authorities” to be responsible for the preparation and implementation of “port security plans” based on the findings of “port security assessments”, and co-ordination of security within the port. Although similar measures were required under the EC Regulation, the emphasis and focus of activities is intended to be at a higher, coordinating level than that of a simple port facility.

Background

4. The attacks in the US, Madrid and London have highlighted both the vulnerability of and threat to transport systems world-wide. Following the attacks in the US in September 2001, the maritime transport system was identified as potentially vulnerable, both as a target and/or vehicle for future attacks because of the lack of international security framework.

5. The IMO responded by developing new security requirements for ships and port facilities to counter the threat of acts of terrorism. These requirements are set out in amendments to the Convention on the Safety of Life at Sea 1974 (SOLAS) and an International Ship and Port Facility Security Code (ISPS Code). The SOLAS amendments and the ISPS Code were formally adopted by contracting governments in December 2002 and came into force on 1 July 2004, and related principally to Ships but also the concept of a “ship/port interface”, as the IMO did not have jurisdiction over port activities. The issue of “port” security was addressed, following Resolution 8 of the IMO’s 2002 SOLAS conference, by an International Labor Organisation working group on drafting a Port Security Code (akin to the ISPS Code) which was eventually adopted in March 2004.

6. At European level, the Council and European Parliament adopted an EC Regulation on enhancing ship and port facility security which provided the legal basis for the implementation of the IMO (ISPS Code) requirements in all EU Member States. They also went on to examine the parallel issue of Port security beyond the ship/port interface, and the result is the EC Directive 65/2004 on enhancing Port Security.

Rational for government intervention

7. In the UK 95% by volume and 77% by value of international trade is carried in ships and 7% of domestic freight tonnage moves by water. In addition, 15% of UK international

passenger movements are by sea and two thirds of passenger vehicles between the UK and other countries go by sea. This makes the UK port industry a significant player in the UK economy, as well as an essential node between other modes of transportation. A serious security incident involving the maritime transport system, within the UK or elsewhere in the EU, could lead to a drop in public confidence and could damage the economy.

8. Following the Madrid bombings in March 2004, the European Commission published an amendment to the port security Directive placing more emphasis in the proposed requirements for adequate security controls for Roll-on Roll-off (Ro-Ro) ferries. The UK welcomed this specific focus on Ro-Ro services in the Directive, as the protective security regime that has existed in UK ports since 1990 has not always been reciprocated in all other European destinations. The measures of the Directive should move towards a more level playing field and reduce trade distortion across the EU.

9. Notwithstanding the benefits to the UK and to the port industry, there is an obligation upon the Government to fully implement the requirements of the EC Directive. Failure to do so would inevitably lead to infraction proceedings against the UK by the European Commission, and potentially fines of several million pounds.

10. This Draft Regulatory Impact Assessment (RIA) evaluates the options for implementing the requirements of the EC Directive on enhancing Port Security, and provisionally examines the anticipated approximate costs.

Consultation

Within Government

11. Colleagues in other government Departments were consulted as part of a formal consultation exercise for the adoption of the Directive, which ran from 24 February to 23 April 2004. The responses received were supportive of the Directive. This draft RIA forms part of the 12 week consultation exercise for the draft implementing Regulations, and as such offers a further opportunity for consultation on the precise detail of the approach.

Public consultation

12. The Department carried out a formal consultation exercise for the adoption of the Directive which included ports, port representative bodies and trade associations. The public consultation exercise ran from 24 February to 23 April 2004. The ports and their representative bodies, covering ports of all sizes, were generally supportive of the EC Directive although some wanted to be assured that the requirements of the Directive would dovetail rather than duplicate the IMO security regime and the EC Regulation. Some consultees also indicated that they would prefer that the security of ports as a whole was dealt with within the context of the proposed supply chain (freight) security Directive (work on which has subsequently been postponed by the EU). None were against the idea of enhancing the security of ports.

13. We asked the industry for the cost implications of the proposal. While a number of the responses from industry mentioned that the Directive would impose "disproportionate costs" or increase their operational costs significantly, only one response gave a general indication of how much the costs might be. Their estimate, based on operating costs to apply the Aviation and Maritime Security Act in 1990, was in the region of 4-5% of annual turnover.

14. Consultation has been undertaken with industry representatives to consider the impact of implementing the Directive in the UK. A formal Working Group was set up and met regularly. Working Group members include representatives from major ports and

Trade Associations. Trial security assessments were carried out in a representative sample of six UK ports, to ascertain whether additional security measures may be required in order to meet the Directive's requirements. The implementation of the EC Regulation was compared against the new requirements, and assessed for cost implications. These costs were anticipated to be minimal as needs are predominately associated with procedures and administrative systems, rather than physical security measures.

Options

15. Three options have been identified in implementing the EC Directive in the UK. All but option 1 entail introducing secondary legislation to designate port boundaries, appoint port security authorities and port security officers, and establish port security assessments and port security plans. Legislation would also create compliance offences for industry and criminal offences to support port security. The options are as follows:

Option 1 Do nothing and therefore do not implement the Directive: Continue with AMSA 1990 and EC Regulation security regimes.

Option 2 Implement a centralised regime, where the PSA is the Secretary of State, separate from the industry; a single PSP is developed for the entire UK port industry covering baseline measures and response, which would have to be adopted by all ports.

Option 3 Implement a Regionalised regime, establishing 12-15 centrally funded PSAs with Statutory powers, but separate from the industry.

Option 4 Implement a localised regime, with around 150 designated "ports" and each with its own PSA made up of industry representatives, based upon recognisable port or estuary areas, or other identifiable structures such as Police force areas, MCA areas, Geographical boundaries or Unitary Authorities.

Option 5 "Flexible carry over" of existing measures: significant "ports" are designated in their own right, but within a smaller number (circa 30) of more strategic PSAs. Existing lead PFSOs become PSOs, and existing security/response plans become a part of an overall port security plan.

Option 6 "Direct carry over" of existing measures: all existing ISPS port facilities (600) are regarded as their own "port", have their own PSA, and their existing ISPS plans become their port security plans, etc.

Option 1 - Do nothing and do not implement the EC Directive.

Advantages:

There would be no extra financial burden placed on UK ports and their users.

Disadvantages:

Areas of the port that are not subject to existing requirements could potentially be vulnerable to a terrorist attack and other security incidents such as sabotage or vandalism.

An attack on vulnerable areas could lead to the closure of the entire port while the UK reacts to put in place appropriate security measures. This could lead to the stoppage of not only maritime activity but could affect other legitimate business/activities that occur on some port estates.

To do nothing would isolate and weaken UK's influence at European level.

To do nothing would be of significant political embarrassment to the Government which supported the EC Regulation and its accompanying Communication (COM(2003) 229 final)

where port security was identified as a necessary second step in the broader programme on maritime security.

To do nothing could also cause political embarrassment to the Secretary of State who supported the proposal at the Council of Transport Ministers' meeting in June 2004 where a general approach was reached.

To do nothing would likely result in severe criticism for the Government as it would be seen as failing to adequately respond to the changing threat to the transport sector. This would only be exacerbated further should an incident occur.

Infraction proceedings would be commenced by the European Commission against the UK for non-compliance with the Directive, which may attract fines of several Million pounds. Hence option 1 is not viable.

Option 2 - Implement a centralised regime, where the PSA is the Secretary of State, separate from the industry; a single PSP is developed for the entire UK port industry covering baseline measures and response, which would have to be adopted by all ports.

Advantages:

Existing security plans could be consolidated into a new statutory document, with one body ultimately responsible for all aspects of port security.

Would not require industry to take on board any more roles. Requires little effort on part of industry apart from implementing baseline measures dictated by Government.

Disadvantages:

This approach would be insensitive to the cost on the industry for implementing baseline measures across the industry.

The Secretary of State would be responsible for security, and at the same time responsible for regulating provision of security.

Port Security Plans would not adequately reflect local nuances in port operations, become overly prescriptive.

This approach would not easily harmonise with the work and initiatives of other Government Departments, or recognise existing work by the industry.

There would be a conflict between the primacy of the EC Regulation requirements (where the PFSO and PFSP are prime) and the Directive, with a central PSA and PSP.

The passing of responsibility for security in ports from the operators to the Secretary of State would also be inconsistent with the established policy that "the user pays", and an unprecedented interference by the State in private commerce. This model takes the responsibility for security furthest from the point of delivery.

The highest risk, costly option other than Option 1 which is not viable.

Option 3 - Implement a Regionalised regime, establishing 12-15 centrally funded PSAs with Statutory powers, but separate from the industry.

Advantages:

Introduces an intermediate tier of tactical communication between strategic Department level as focal point/competent authority, and port facilities at operational level.

Allows for greater coordination of Government/agency activities in port security.

Would provide a level of independence from both industry and the Department in responsibility for port security in regions.

Disadvantages:

Would require complicated funding arrangements, possibly from the exchequer.

Introduces an additional tier of bureaucracy, in a quasi-governmental sense.

would require statutory powers to influence ports/port facilities which may go beyond scope of Directive and veer towards “gold plating”,

May not adequately reflect local nuances, and be separate from the industry.

Difficult to forecast the potential cost to and ensure consistent approach across regions.

Could result in people without direct maritime or ISPS knowledge/experience having key roles.

The passing of responsibility for security in ports from the operators to the appointed PSA members would also be inconsistent with the established policy that “the user pays”, and an unprecedented interference by the State in private commerce. This option also takes responsibility for security further from the point of delivery.

Option 4 - Implement a localised regime, with around 150 designated “ports” and each with its own PSA made up of industry representatives, based upon recognisable port or estuary areas, or other identifiable structures such as Police force areas, MCA areas, Geographical boundaries or Unitary Authorities.

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Advantages:

Would introduce intermediate communication tier between strategic Department level as focal point/competent authority, and port facilities at operational level.

Allows for some coordination of Government/agency activities in port security.

More suitable for integration with other response plans (i.e. Civil Contingencies etc) many of which operate at local level.

Closer to the industry, so not requiring powers/legislation to exert influence.

Disadvantages:

Could require complicated funding arrangements, probably from the industry.

Could be an additional tier of bureaucracy, in a quasi-governmental sense.

Might require statutory powers to influence ports/port facilities which may go beyond scope of Directive and veer towards “gold plating”,

May not adequately reflect local nuances, and be separate from the industry.

Difficult to forecast the potential cost to and ensure consistent approach between locales.

Potentially overwhelming demand on the limited resources of Government agencies to support the port security assessment work.

Option 5 - “Flexible carry over” of existing measures: significant “ports” are designated in their own right, but within a smaller number (circa 30-50) of more strategic PSAs. Existing lead PFSOs become PSOs, and existing security/response plans become a part of an overall port security plan.

Advantages:

Maintains independence of Port Facilities and the importance of PFSOs to the ISPS/EC Regulation regime.

, minimises additional bureaucracy and further administrative burden.

PSA able to exert some influence over its 'port' possibly backed up by statutory powers or the Department.

Existing activity on Port Security Committees can be redirected towards new PSAs.

Existing PFSPs and other response/emergency plans become part of the port security plan.

Will provide a focus for the activity of Government agencies in promoting joined-up security initiatives.

Disadvantages:

Will require a high degree of collaboration between PFSOs and industry, and may require arbitration by TRANSEC.

Issues around recovery of costs incurred by PSO/PSA, possibly addressed through system of security levies or charging.

Will require some effort by the industry in reorganising existing structures/bodies to align with Directive requirements.

Option 6 - "Direct carry over" of existing measures: all existing ISPS port facilities (600) are regarded as their own "port", have their own PSA, and their existing ISPS plans become their port security plans, etc.

Advantages:

Maintains independence and primacy of ISPS Port Facilities.

Minimises additional bureaucracy and further administrative burden.

PSA able to exert full influence over its 'port'.

Requires Minimal effort on part of industry.

Brings responsibility for security closest to the point of delivery.

Disadvantages:

Misses opportunity for formal co-operation at local level and harmonisation of ISPS and AMSA regimes.

Results in potentially 600 'port security authorities' in UK.

does not bring anything new to port security

Will not achieve integration with other plans etc.

Potentially unable to fully implement the Directive, and runs risk of infraction proceedings

OPTION 5 is the approach that is currently favoured by the Department, which has the most to offer in recognising work already undertaken, incorporating other security initiatives, promoting joined-up Government, and meeting the objectives of the Directive.

Costs and Benefits

(i) Sectors and groups affected

16. The sectors and groups affected are:

Port operators

Port users

The Department

The police and other control authorities

Associated transport industry sectors

17. PORT OPERATORS: In line with established UK Government policy (“the user pays” principle), the costs of implementing the port security Directive regime would fall in the first instance on the industry, rather than the tax payer. See paragraph 37 below for a general view of anticipated costs, but costs of establishing the Directive’s requirements are considered to be scalable and dependant on the number of Ports/Port Security Authorities that are eventually established- for this reason a lesser number is desirable to achieve economies of scale.

18. PORT USERS: It is expected that the costs of implementation would be passed on to the customers or port users, as have ISPS implementation costs. The United Nations Conference on Trade and Development estimate that the costs of ISPS implementation equated to an increase in cost of \$0.03 per tonne, which given the UK port industry handles around 573M tonnes of cargo per year may indicate costs to the port consumers of around £8.6M, or about £1 (\$2.03 UNCTAD figures) per TEU (twenty foot equivalent container). However these figures are based on global averages (perhaps skewed by the inclusion of large USA expenditure) and the actual cost of implementing the Directive are anticipated to be less in the UK than those for implementing the ISPS code on which the UNCTAD figures are based, but an average can only be taken across the EU rather than the world. If the ISPS costs are indicative, the £8.6M figure represents the cost to the consumer, and an offset value to the transport industry in recovering costs from the port security directive. The counter balance of potentially increased consumer costs will be intangible improvements in the security of persons and property, and public confidence.

19. THE DEPARTMENT: The EC Regulation/ISPS implementation costs have been £7M to date, against a forecast in the RIA for the EC Regulation of £3.75M over 3 years. Although most of the administrative work for EC Regulation implementation has finished, the work of the Departments’ compliance organisation (TRANSEC) is now focussed on maintaining compliance inspections of ships and ports, and also moving towards the complete review of Port Facility Security Plans that will be required (by the EC Regulation) no later than 2009. The Directive will bring an additional burden, which will be largely dependant on the number of Port Security Authorities which will require support. Based on the known figures for ISPS expenditure, and the anticipated increase in resources required to produce around 150 Port Designation Orders and support 50 PSA’s, it is anticipated that the Department will need to allow around £2.25M per to fulfil obligations under both the EC Regulation and the EC Directive, and a further £0.25M to accommodate an anticipated 20% increase in land transport sites requiring Dangerous Goods regulation.

20. THE POLICE: The police are already engaged in activity around assisting ports to undertake “Multi-agency threat & Risk assessments” of their ports, and in rolling out a National program of “Police Strategic Partnerships”, on which the industry security representatives are already participants. In due course, these groups are seen as being a “one stop shop” for expertise and advice relating to security, and their ongoing resource needs to be considered as industry participation from the new “Port Security Authorities” increases.

21. ASSOCIATED TRANSPORT SECTORS: The Directive may have a long term effect of extending the port security regime to other businesses not currently covered by the Departments regulatory regime: these will be as a result of a clear link or benefit being identified in a Port Security Assessment, which may result in designation of a “port related area” or perhaps service of AMSA Directions. There may also be an indirect effect: proliferation of other transport security regimes such as those for Dangerous Goods or Approved Economic Operators. Although expected to be small in number and exceptional in nature, costs could be around £10K in compliance for such sites that may be identified- but there may be off setting benefits to this expense. Such costs of complying with freight transport security regulations could be offset if the sites are given a “trusted” status with port operators, and their goods given priority movement through a port given that they originate from a statutory security regime. Examples where this already operates are in the Air Freight and Channel Tunnel freight security accredited forwarding schemes.

(ii) Costs -

Option 1: Do nothing and not fully implement the Directive

22. It is likely that the EC would continue with infraction proceedings which may result in fines of several Million pounds, and intangible damage to the UK port industry if there is a consequential loss of world confidence in the UK’s port security regime that could lose the UK hundreds of millions of trade with the USA and the EU.

Option 2: Implement a centralised regime, where the PSA is the Secretary of State, separate from the industry; a single PSP is developed for the entire UK port industry covering baseline measures and response, which would have to be adopted by all ports

24. The cost to the tax payer would be significant, and also to the industry who would be required to adhere to a security baseline that would probably be inflexible, disproportionate and less sustainable than at present.

Option 3: Implement a Regionalised regime, establishing 12-15 centrally funded PSAs with Statutory powers, but separate from the industry.

25. There would be some financial burden placed on Government in financing regional Port Security Authorities, either as a quasi-government body or as public appointees. There would be considerable cost to the industry in complying with the directions or port security plans of such bodies, who may be far removed from the industry itself and less empathetic to their business needs, and as public appointees there would be an expectation for expenses if not pro-rata salaries to be paid to members.

Option 4: Implement a localised regime, with around 150-200 designated “ports” and each with its own PSA made up of industry representatives, based upon recognisable port or estuary areas, or other identifiable structures such as Police force areas, MCA areas, Geographical boundaries or Unitary Authorities.

26. Each Port Security Authority would need a Port Security Officer and its meetings serviced, which may represent a significant cumulative overhead to the industry as structures and initiatives would be duplicated.

Option 5: “Flexible carry over” of existing measures: significant “ports” (150+) are designated in their own right, but within a smaller number (circa 30-50) of more strategic, larger PSAs. Existing lead PFSOs become PSOs, and existing security/response plans become a part of an overall port security plan.

27. Costs would be born directly by the industry, with each PSA recovering its costs from its constituent port facilities/ports. Each Port would need a Port Security Officer, but one PSO might represent more than one Port on the larger PSA’s. Fewer PSAs would mean economies of scale which may represent a lesser cumulative overhead to the industry. Port Security Plans will be made up of constituent documents, negating need for a new substantial piece of work, and port security assessments will be multi-agency approach using tried methodology.

Option 6: “Direct carry over” of existing measures: all existing ISPS port facilities (600) are regarded as their own “port”, have their own PSA, and their existing ISPS plans become their port security plans, etc.

28. The integration and collaboration that is required from the Directive would not be met, and may result in as many more of the 600 or so sites being subject to the security regime if, by lack of cooperation through a broad PSA membership, other sites need to be brought into the regime as “port related areas” or AMSA directed parties. The cost to the tax payer of communicating and liaising directly with 600+ stakeholders is significant, and the risk of EC infraction is possibly as great as Option 1- several Million pounds.

OPTION 5 is the approach that is currently favoured by the Department, which has the most to offer in recognising work already undertaken, incorporating other security initiatives, promoting joined-up Government, and meeting the objectives of the Directive.

(iii) Benefits

Option 1: Do nothing and not fully implement the Directive.

29. Will maintain the status quo with regard to the costs for UK port operators and users. There would be no extra financial or administrative burden placed on UK ports and their users as they would not be asked to do anything other than what they have done in implementing the EC Regulation.

Option 2 Implement a centralised regime, where the PSA is the Secretary of State, separate from the industry; a single PSP is developed for the entire UK port industry covering baseline measures and response, which would have to be adopted by all ports.

30. The scheme is simple in that it has a single PSO and PSA for the entire UK, and limited initial costs to industry in meeting the aims of the Directive.

Option 3: Implement a Regionalised regime, establishing 12-15 centrally funded PSAs with Statutory powers, but separate from the industry.

31. This system would bring benefits in greater liaison with local Government, emergency services and other official agencies that are by and large organised around a regional level and whose input is required to achieve the aims of the Directive. With public appointees as PSA members with a degree of independence and impartiality, it would free up industry figures to focus on commercial activity.

Option 4: Implement a localised regime, with around 150-200 designated “ports” and each with its own PSA made up of industry representatives, based upon recognisable port or estuary areas, or other identifiable structures such as Police force areas, MCA areas, Geographical boundaries or Unitary Authorities.

32. The PSA would be made up of industry representatives for their respective ports, and costs would be born directly by the industry, with the relevant ports carrying their own costs of compliance making recovery straightforward. The responsibility for security would be closer to the point of delivery.

Option 5: “Flexible carry over” of existing measures: significant “ports” (150+) are designated in their own right, but within a smaller number (circa 30-50) of more strategic, larger PSAs. Existing lead PFSOs become PSOs, and existing security/response plans become a part of an overall port security plan.

33. This option achieves the best compromise between regional liaison and support, and placing responsibility on those closest to the point of delivery. It should achieve economies of scale whilst retaining a sense of identity and franchise for the ports concerned, and build on existing best practice where principal PFSOs represent many separate port facilities within an area, and composite plans made up of existing documents are developed using a port security assessment methodology that has already been developed. This means minimal initial costs to the industry.

Option 6: “Direct carry over” of existing measures: all existing ISPS port facilities (600) are regarded as their own “port”, have their own PSA, and their existing ISPS plans become their port security plans, etc. This model brings responsibility for security closest to the point of delivery.

34. The costs of this approach are the least to the industry (assuming that “do nothing and not implement the Directive” is not a viable option), essentially requiring them to do little more than re-badge their existing structures/documents.

COSTS PER PORT/PORT SECURITY AUTHORITY

35. The Directive requires each port that has one or more ISPS port facilities within it to adopt certain measures. These can be summarised as:

A Port Security Officer, to act as a point of contact;

A Port Security Authority, responsible for implementing the security measures of the plan;

A Port Security Plan, integrating with all other relevant plans and developed through an assessment process;

A Port Security Assessment, a comprehensive review and assessment of the ports security risks and issues that informs the development of the port security plan.

36. Each of the requirements in paragraph 35 will have a cost attached to it, and although difficult to quantify there are expected to be significant economies of scale by striving for larger, strategic organisations rather than many parochial ones. In addition, by aiming at fewer, larger, port security authorities an object will be to be able to make more efficient use of available Government resources and in doing so minimising the costs to industry of engaging contractors or consultants. The costs of achieving the requirements of the Directive will also be off set against some of the existing costs of security administration and organisation in the port sector: for example, activity on port security committees will be replaced by activity on Port Security Authorities, and the efforts of principle PFSOs to support those committees will go into supporting the new PSAs.

37. Estimation of costs per Port:

PORT SECURITY OFFICER: The Office of National Statistics publishes figures on the Annual Survey of Hours and Earnings, which suggests that £30K a year might be a reasonable wage for a full time PFSO/PSO. Whilst not every “port” will need to appoint a full time port security/contingency planning professional to be the PSO, each PSA will probably need someone who is a dedicated security resource. The cost of achieving this may be around £60,000 taking into account capital costs of employment including welfare, pension, accommodation/facility costs, and training. This is of course a worse case scenario, as for many ports the existing principle PFSO will likely take on the mantle of PSO.

PORT SECURITY AUTHORITY:

(i) The PSA will comprise at least 3 members and must meet at least 3 times a year. Not including the leader or PSO, the personnel costs of attending the PSA meetings could be estimated at 5 days (3 days of meetings and 2 days of preparation or actions) for three persons. Assuming an average salary of £30K, that might indicate around £250 per person per day, or £1,250 per member per year.

(ii) The PSA will possibly need a Secretariat to ensure that its documents are maintained, meetings are serviced, and correspondence dealt with. Whilst this might form some of the work of a full time professional PFSO/PSO, there may also be a need for administrative staff and so a secretary or clerk with a salary of, say, £18K may be needed. Taking into account facility/welfare costs this might represent a cost of £27,000 per year.

(iii) The PSA is made up of members who are collectively responsible for security matters in the Port, but who have their own areas of specific responsibility. However it is conceivable that in the future a joint liability might arise, and the PSA is proposed to be a body corporate. For these reasons it might be necessary for the PSA to have its own public liability insurance, over and above any insurance its members may have through their respective organisations. It has not been possible to establish what the costs of such insurance might be, but a nominal £5K per annum might be realistic.

(iv) The PSA will need to communicate with internal and external stakeholders, and whilst email and the internet will no doubt offer cost effective means, traditional costs of stationery and postage will no doubt be incurred. £150 per member, per year could be a realistic cost of corresponding and disseminating minutes, papers etc.

Total estimated annual cost of PSA: circa £97,000 plus £1,400 per member

These costs are estimates for what it might cost to establish a PSA where there are no pre-existing structures, however there are already Port Security Committees (which PSAs are intended to replace) whose operating costs are not dissimilar to those outlined above, and so this may not be new expenditure for most ports. There are also economies of scale proposed:

600+ ISPS port facilities/AMSA Directed operations, within;

150+ “ports” (average of 4 ISPS facilities per port), arranged in;

50 “port security authorities”, (average 3 PSO’s per PSA, one of whom is the leader, and 9 other PFSOs);

Gives a forecast cost of:

PSA full time staff costs: £97,000

PSA members time (11 x 5 days): £13,750

Administration/communication costs: £1,650

Public liability insurance: £5,000

Total annual cost of implementing one PSA: £117,400 (£9,783 per port facility). It is anticipated that these costs will be passed on by the PSA to its constituent members, and legislation will provide for the ability to recoup reasonable operating costs. Ultimately the costs will be carried on to the consumer.

The approximation of £10K per port facility per year for compliance is commensurate with previous estimates the Department has made for sites to comply with other security regimes, such as the Dangerous Goods security scheme. It is also a worse case cost on a best case structure basis, and does not take into account that the 600+ port facilities should already be allocating resource to service port security committee meetings, at least 3 days a year, and that a great many of these may not need to continue to do so if they are represented by PSO’s in the future.

PORT SECURITY ASSESSMENT:

This is intended to be the principal activity of the PSA during its meetings, and that of the PSOs outside of those meetings. Although this is new activity that is not currently conducted under the existing regime apart from on a voluntary basis, the preferred option is utilising the “Multi-Agency Threat Risk Assessment” methodology which is provided free of charge by the Department, and is assistance provided by Government and the police to the PSOs in completion. Although alternative methodologies that might be in use in the port industry may be considered for approval, there is no intention at present to allow the use of Consultants (or “Recognised Security Organisations” as they are defined in the Directive) to complete these assessments. Hence the costs of the assessments should be absorbed within the operating costs of the PSA.

PORT SECURITY PLAN:

The PSP is intended to be a composition of existing security and emergency response plans that exist within the wider port area, comprising at least the 12 constituent port facility security plans in the model set out above. Although a new document will need to be written setting out the roles and responsibilities of the PSA and listing the constituent plans and other documents that comprise the port security plan, this is anticipated to be

a relatively small document and to be completed by the PSO. The RIA for the Directive estimated that the cost of a PSP would be between £4,000 and £25,000 per port, dependant on the size and complexity- however was based on the presumption that external consultants might be used.

Assuming 150 “ports”, each with a “port security plan” and an average cost of £10,000 : £1,500,000 (an initial cost of £2,500 per port facility).

38. Summary of Costs:

Using the above as a basis, this gives estimated start up costs of around £7.5M to the industry, and ongoing costs of around £6M but the total cost of the Directive will not be experienced for some 2-5 years as the Designation Order process and roll-out of the regime will take some time. Compare these figures with the estimates for roll-out of ISPS (which had to be done within 12 months) of £16M and ongoing costs of £1.6M.

One-off cost:

£17.5M port industry

£2.5M Department for Transport (maritime & land compliance)

Annual Cost:

£ 6M port industry

£2.5M Department for Transport (maritime & land compliance)

Total costs: £ £118,000 (£10,000 per port facility).

OTHER KEY NON- MONITISED BENEFITS

Port operators: economies of scale by rechanneling existing activities into the new security structure, intangible benefit of global recognition of UK security regime, benefits of comprehensive security risk management, access to more Government security advice/support.

Port users: increased public and commercial confidence in safety of persons and property, protection of UK economic interests.

The Department: compliance with EC Directive will avoid infraction proceedings which may attract a fine of several Million pounds and accumulate further fines as non-compliance continues.

The police/control authorities: increased interest and support in joined-up Government initiatives e.g. “police strategic partnership” and “MATRA” projects; long term justification for resource review as benefits manifest.

Associated transport industry sectors: ease of movement of goods from secure locations through sea ports, competitive edge through speedier clearance of goods and higher consumer confidence.

Small Firms Impact Test

39. Implementation of the Directive is likely to have an impact on small businesses. The UK has around 600 port facilities that will be affected by the EC Directive. These ports vary considerably in size, but a significant proportion of them could be considered as

“small businesses”. Such variation makes it difficult to quantify the impact of additional requirements on small businesses, but it is estimated that compliance costs will be around £10K per site initially and £2-3K per year there after.

40. The proposed approach for implementation focuses on strategic groupings of port facilities, regardless of other competitive factors, for mutual benefit through collective security measures and economies of scale. Where an approach that focussed entirely on the base unit of the individual port facility to be recommended, the potential impact to the small business would be much greater.

Competition Assessment

41. The Directive aims to provide a consistent approach to maritime security across Europe, which would reduce the potential for trade and competition distortion. The requirements of the Directive to extend its provisions to domestic ports further neutralises the possibility of the Directive distorting the balance of commitments between those industries involved in international trade and those trading purely on a domestic basis.

42. Within the UK, the Directive is not expected to make a significant difference on modal and route competition. The approach in the UK is, and will continue to be, for the user to pay for security measures. Additional costs incurred by the ports to meet the requirements of the Directive may be passed on in some form to their customers. We believe that this approach leads to the most efficient provision and operation of security measures.

43. The “user pays” approach for the port industry is consistent with previously adopted security methods in the maritime passenger sector, the aviation industry and the Channel Tunnel. As this approach is multilateral, there is not expected to be any change in the level of competition.

44. The costs of implementing the security requirements of this Directive are likely to affect some firms more than others depending on how the ports had chosen to implement the EC Regulation and therefore whether additional security measures are needed in their case. The Directive is unlikely to affect the market structure, change the size or number of firms in the ports industry. The Directive is unlikely to lead to substantially higher set-up costs for new or potential firms, or lead to higher ongoing costs for new or potential firms, that existing firms do not have to meet.

45. There is a slight risk that through close collaboration on Port Security Authorities, some commercially sensitive information may become known to colleagues from other port facilities, who might otherwise be competitors. The draft regulations have provisions that seek to ensure confidentiality of information, as well as offences for misusing information and a system of declaration of PSA member’s interests. These measures are intended to protect port business from anti-competitive behaviour.

Enforcement, sanctions and monitoring

66. The Directive requires that Member States put in place effective, proportionate and dissuasive sanctions for breach of the requirements of the security regime. Enforcement regimes for maritime security already exist under the Aviation and Maritime Security Act of 1990 (AMSA) and the Ship and Port Facility (Security) Regulation 2004 (UK Regulations) which provides for the enforcement of the EC Regulation in the UK. Both security regimes are based on a stepped approach whereby administrative procedures and dialogue are entered into to try and secure compliance or rectification, before an Enforcement Notice is issued. Failure to comply with the Enforcement Notice would be followed by a criminal prosecution. However, depending on the particular circumstances, for example where a more serious non-compliance or offence has taken place, an

Enforcement Notice could be issued immediately. We propose that this approach should be replicated for enforcement of the Directive.

67. Adopting the existing approach to enforcement will also ensure that the offences under all the maritime security regimes (i.e. AMSA, the EC Regulation/IMO regime and port security regime) are the same, namely failure to comply with an Enforcement Notice, and are therefore handled in the same way and with the same penalties being meted out. Although the ultimate sanction of a criminal prosecution exists, this stepped approach should mean that most breaches could be resolved without recourse to the courts.

68. As is often the case when implementing EC obligations, section 2(2) of the European Communities Act 1972, (“ECA”) is the enabling power that is expected to be used to implement the requirements of the Directive.

69. Responsibility for security matters has not been devolved to Scotland, Wales or Northern Ireland, so the Directive will apply to the whole of the UK.

70. As under AMSA and the EC Regulation/IMO Regime, The Departments’ Transport Security Inspectors will be duly authorised to carry out compliance inspections of all UK ports under the Directive. In accordance with Article 14 of the Directive, the European Commission will commence a series of visits six months after the Directive comes into force to monitor compliance with the Directive.

71. Member States are required to carry out a review of port security plans at least once every five years.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

Annexes

Legal Aid

There are considered to be no legal aid implications resulting from these proposals.

Sustainable Development

There are considered to be no sustainable development implications as a result of these proposals.

Carbon Assessment

There are considered to be no carbon implications of these proposals.

Other Environment

There are considered to be no other environmental implications of these proposals.

Health Impact Assessment

There are considered to be no health implications of these proposals.

Race Equality

These proposals are to be applied to all port operators and users in the UK, consequently these proposals do not discriminate on the grounds of race.

Disability Equality

These proposals do not discriminate on the grounds of disability as these proposals are to be applied to all port operators and users in the UK.

Gender Equality

These proposals are to be applied to all port operators and users in the UK. These proposals do not discriminate on the grounds of gender.

Human Rights

Article 8 of the European Convention on Human Rights (ECHR) guarantees the right to respect for private and family life, home and correspondence. Article 8, as incorporated by the Human Rights Act 1998 makes it clear that public authorities must not interfere with the exercise of this right except "such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Secondary legislation that forms the subject of this impact assessment raises potential issues under Article 8 of the ECHR as it allows for the searching of persons and property. We

believe however, that the potential interference with Article 8 falls within the exceptions set out within the same Article for the following reasons:

The potential interference is in accordance with the law for the following reasons:

Some searches are already carried out under the Aviation and Maritime Security Act 1990;

The searches which may be carried out are limited as specified in the Regulations;

The potential interference pursues a legitimate objective. It will mean that people, property, baggage, cargo and vehicles can be searched to ensure that articles made or adapted to causing injury to or incapacitating a person or for destroying or damaging property, or intended for such use are not introduced into security sensitive areas of ports. The secondary legislation can therefore be said to be in the interests of national security, prevention of crime, public safety and economic well-being of the country and the potential interference with Article 8 can be justified on these grounds.

The potential interference can be said to be proportionate to that legitimate aim since the extent to which it will be applied will be dependant upon the security level applied to the port.

Rural Proofing

There are considered to be no rural implications.