

**EXPLANATORY MEMORANDUM TO
THE PORT SECURITY REGULATIONS 2009**

2009 No. 2048

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

These Regulations transpose into UK law the requirements of Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 (the “Directive”) on enhancing port security. As explained in paragraph 4 below, the Directive extends previous EU security requirements beyond the “ship-port interface” further into relevant areas within the port itself. A Transposition Note, detailing how the main provisions of the Directive have been transposed by these Regulations, is attached to this Memorandum.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None

4. **Legislative Context**

4.1 Following the events of September 11th 2001, the International Maritime Organisation (IMO) amended the International Convention on the Saving of Life at Sea (SOLAS) 1974 by the addition of a new Chapter XI-2. The amendments to SOLAS were supported by the introduction of a new International Ship and Port Facility Security Code (“the ISPS Code”). Certain provisions of the ISPS Code were adopted by the EU and transposed into European Community law by EC Regulation 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security (the “EC Regulation”). The EC Regulation was implemented in the United Kingdom, insofar as it was necessary to do so, by the Ship and Port Facility (Security) Regulations 2004 (SI 2004/1495) and the Ship and Port Facility (Security) (Amendment) Regulations 2005 (SI 2005/1434). The effect of the EC Regulation is to apply a mandatory security regime to around 600 separate port facilities (as defined by the EC Regulation) in the UK, which are subject to compliance activity by the Department for Transport and scrutiny by the EC maritime security inspectorate.

4.2 The ISPS Code and the IMO are limited in their jurisdiction to maritime matters and shipping, and have little or no jurisdiction over ports. Because the ISPS Code effectively stopped at the “ship-port interface”, a further measure was generally felt to be needed that would apply security measures in ports themselves. The IMO’s sister organisation, the International Labour Organisation (ILO), devised a Port Security Code aimed at supporting the ISPS Code. The ILO code initiated discussions at the EU Parliament which eventually gave rise to the EC Directive on enhancing port security (2005/65/EC). This legislation is aimed at complementing the arrangements made under the EC Regulation, and extending across the EU measures to include protection of relevant port areas other than just where the ship-port interface takes place. The Directive came into force on 15 December 2005.

4.3 The main aim of the Directive is to complement the security requirements that were introduced by the EC Regulation. While the EC Regulation focussed on the ship/port interface (i.e. port facility), the Directive focuses on transport-related areas of the port. In implementing the EC Regulation, the UK sought to ensure that the anticipated requirements of the Directive were already being met by requiring port facility security assessments and port facility security plans to cover all commercial maritime transport operations on port estates (as required by the Directive), pushing security measures beyond the ship/port facility interface. Thus the majority of existing "Port Facility Security Plans" for ISPS already cover the essential areas of the port that are concerned with commercial maritime transport activity.

4.4 Prior to the EC Regulation coming into force on 1st July 2004, the UK maintained a comprehensive security compliance regime under the Aviation and Maritime Security Act 1990 (AMSA). This was a threat based system, whereby legal Directions mandating certain measures were served upon those sites or operators that were risk assessed into the regime by the Department for Transport. The EC Regulation and EC Directive are criteria based, which means they are applied to one extent or another to all qualifying operations, irrespective of the prevailing threat.

4.5 The proposal which resulted in Directive 2005/65/EC was the subject of EM 6363/04. The House of Commons European Scrutiny Committee considered the EM on 10 March 2004, recommending the document to be politically important and requesting further information (Report 12 - Session 2003/04, 25377). The House of Lords Select Committee on the European Union referred the EM to Sub-Committee B (1172nd sift). Sub-Committee B considered the proposal on 15 March 2004. The Chairman wrote to the Minister on 17 March welcoming the Directive and asked to be kept informed of the outcome of the industry consultation, and for a Regulatory Impact Assessment (RIA) in due course. The Minister wrote to the Chairmen of both Scrutiny Committees on 20 May 2004 informing them of the outcome of the consultation exercise and promising a RIA in due course. The House of Commons European Scrutiny Committee cleared the proposal at their meeting on 9 June 2004, requesting to see a RIA once produced (Report 22 - Session

2003/04, 25377). The Chairman of the House of Lords Select Committee on the European Union wrote to the Minister on 8 June 2004 clearing the proposal and also requested to see the RIA in due course.

4.6 An amended proposal was the subject of EM 10124/04. The House of Commons European Scrutiny Committee considered the EM on 30 June 2004. The Committee recommended that the document was politically important and cleared it but requested to see the RIA in due course (Report 25, Session2003/04, 25717). The House of Lords Select Committee on the European Union referred the EM to Sub-Committee B. The Chairman wrote to the Minister on 13 July 2004, clearing the document. A Ministerial letter and partial RIA was sent to both Committees on 14 June 2005.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The policy objectives of the Directive 2005/65/EC are to introduce basic common measures across the EC to enhance port security, and to ensure that the measures taken in Regulation (EC) No. 725/2004 on ship and port facility security apply to the wider port area.

7.2 The key requirements of the instrument are to establish port security authorities, to designate a port security officer, to carry out a port security assessment and to implement a port security plan. Under the instrument each port will be the subject of a “designation order” which will allow for further consultation at a local level. The designation orders will specify the boundary of the port, and establish a port security authority for that port. The orders will allow for flexibility in that they can define the boundaries of a port for the purposes of the Regulations to include one or more port facilities. There is no presumption on the number of orders that will be required but there would appear to be economies of scale with bringing together a number of port facilities into one port security authority, notwithstanding the commercial and competitive pressures.

7.3 The Government needs to legislate in this area to fulfil our Community obligation to implement the Directive 2005/65/EC. The possibility of relying on the current security schemes was assessed but it was felt the UK would not meet the obligations under the Directive which would lead to a gap in UK security measures.

7.4 There has not been a high level of public or media interest in the policy.

7.5 The change in legislation is politically and legally important as the Department for Transport advocates good security practice and this instrument increases that security for ports beyond the “ship/port interface”.

8. Consultation outcome

8.1 The public consultation on the draft regulations ran from 18 April through to 11 July 2008. The consultation papers were published on the Department for Transport website and those directly affected by the Directive were contacted by email and letter to notify them. That included the “port facility security officers” representing 600 regulated port facilities. In addition 17 Government Departments, 5 port industry associations/groups, 11 wider transport associations/groups, 2 trade unions, all EU member states, and the European Commission were also consulted.

8.2 There was generally broad support for the draft Regulations recognising that they would improve port security whilst providing some flexibility over the designation of the port security authorities following local consultation.

8.3 However, the consultation responses raised concerns with the proposal to mandate setting up a port security authority as a “body corporate”, including the costs and administrative burden this might entail. There was also concern that incorporating port security authorities would diminish the accountability of those individuals and organisations that have prime operational responsibility for security at ports. The Department has therefore reviewed this issue and members of each port security authority will now be allowed to make an informed decision on incorporation. In addition, the Department has concluded that the most effective way of ensuring that port security authorities duly carry out their obligations under the Directive and these Regulations is to provide for compliance action (enforcement notices backed by criminal sanction for non-compliance) to be taken against the individual members of port security authorities and the organisations that they represent. Schedule 2 paragraph 3 accordingly contains a provision that will impose a duty on these parties to ensure that the functions of the port security authority under the Regulations are carried out.

8.4 Further analysis of the consultation responses can be found on the Department for Transport website and in the attached Impact Assessment.

9. Guidance

9.1 The Department will publish a Port Security Officers’ Handbook for guidance on dealing with the port security assessment and port security plan. The guidance will be structured in a manner to reflect each of the stated

requirements of the Directive: these are given as objectives, with subsequent paragraphs indicating how they should be met.

10. Impact

10.1 The impact on business is not high as the UK implementation of the EC Regulation has in practice already met the majority of the provisions of the Directive in operational terms and therefore we anticipate that the coming into force of these Regulations will have minimal operational impact on UK ports and does not pose a major policy change. There will be no impact on charities and voluntary bodies.

10.2 The additional impact on the public sector is not anticipated to be high as the police are already engaged in activity around assisting ports to undertake “Multi-agency threat and Risk assessments”.

10.3 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 Implementation of the Directive is likely to apply to some small businesses. The UK has a large number of ports that handle ships engaged on international voyages and as such would be covered by the EC Directive. These ports vary considerably in size and include some which may be classified as small businesses. Additionally, some small businesses may operate within larger ports and be affected by the EC Directive.

11.2 This variation amongst port operations makes it difficult to quantify the impact of additional requirements on small businesses. The Directive (and the Regulations) recognises the need to avoid overburdening smaller ports by allowing a number of ports to combine under the umbrella of a single port security authority, thereby taking advantages of economies of scale. Other than this, there are no specific exemptions or variations for smaller port operations under the terms of the Directive. However, the individual risk assessments which will be completed for each designated port under the terms of the Regulations will provide more precise assessment of the risks associated with each individual port. They may also lead to a reduced impact on smaller operations to the extent that they are found to pose less of a security risk. As explained in section 4 above, the Directive builds on security measures already applying to around 600 UK port facilities under the EC Regulation: in the case of many smaller ports the port facility boundary for the purposes of the Regulation will encompass the whole port in which case there may be few or no additional security obligations under the Directive.

11.3 As indicated in section 8 above, the Department undertook a full consultation on the Regulations in 2008, including all port operations of which many would be classified as small businesses. No particular concerns emerged

from these operations. There was support for the combination of smaller ports under single umbrella port security authorities.

12. Monitoring & review

12.1 Once the Directive is transposed, and subsequently the port security authorities established, the Department will continue its enforcement programme to ensure port authorities comply with the UK Regulations. In the meantime the current compliance and enforcement programmes will continue.

12.2 The Department has a dedicated team of Compliance (TRANSEC) Security Inspectors who regularly monitor and review their respective port areas according to Departmental policy.

13. Contact

Simon Goodwin at the Department for Transport (Tel: 020 7944 5148 or e-mail: Simon.Goodwin@dft.gsi.gov.uk) can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency:
Department for Transport

Title: Impact Assessment of the
“Port Security Regulations 2009”

Stage: Final Impact Assessment

Version: 0.1

Date: 10 July 2009

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/archivedconsultations>

Contact for enquiries: Simon Goodwin

Telephone: 020 7944 5148

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.

The costs of human injury and environmental impacts of security incidents fall more widely than just the port owners who are faced with the immediate risks and consequences of the security threats. Therefore Government intervention is necessary to ensure that consistent and proportionate port security measures are in place, as otherwise port owners may under invest in such measures.

What are the policy objectives and the intended effects?

The purpose of the Directive, and transposing Regulations, is to introduce common basic 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 apply to the wider port area.

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

1. Do nothing: continue with Aviation and Maritime Security Act 1990 (AMSA) and EC Regulation security regimes.
2. Implement a centralised regime where the PSA is Secretary of State, separate from industry.
3. Implement a regionalised regime, establishing 12-15 centrally funded PSAs with statutory powers, but separate from industry.
4. Implement a localised regime, with around 50 designated ports each with its own PSA made up of industry representatives.
5. Build on existing measures – with significant ports being designated in their own right and with a number of strategic PSAs covering other port areas (estimated at 100 PSAs in total).
6. ‘Direct carry over’ of existing measures; all facilities to which the International and Ship and Port Security regulations (ISPS) apply (600) are regarded as a ‘port’ in their own right and have their own PSA, with their existing ISPS port facility plans becoming port security plans.

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

The EU Commission reviewed the Directive 2005/65/EC on 15 December 2008 as required in the Directive. The report did not include conclusive figures as the Directive has not been implemented for a sufficient time across the EU to assess. A further review will take place every five years after that date. We will use the 2013 EU review as an opportunity to establish actual costs and benefits.

Ministerial Sign-off For final proposal/implementation 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:

Andrew Adonis.....Date: 21st July 2009

Summary: Analysis & Evidence

Policy Option: 5	Description: Flexible carry over of existing measures.
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ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' PSA required: £685,000 over 5 years PSO required: £1,484,000 over 5 years PSP required: £143,000 over 5 years			
One-off (Transition) Yrs				
£ nil (part of PSO costs)				1
Average Annual Cost (excluding one-off)				5
£ 0.462m	Total Cost (PV)		£ 2.312 m	
Other key non-monetised costs by 'main affected groups' Conducting a dynamic security risk assessment for each port: this is a collaborative exercise between the port and TRANSEC/the police. In some cases this has already been conducted as part of a trial of the Home Office/DfT "MATRA" project.				

ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' PFSCs not required -£0.295m pa/ £1.48 over 5 years (assumes same number of PFSCs as PSAs, in fact likely to be more, so benefits are conservative) No infraction fines but difficult to quantify monetary benefit			
One-off Yrs				
£ 0				0
Average Annual Benefit (excluding one-off)				5
£ 0.295m	Total Benefit (PV)		£ 1.480m	
Other key non-monetised benefits by 'main affected groups': The costs caused by one major security incident at a key port will be many magnitudes greater than the costs of the preventative measures in the Directive. PSAs may incorporate port areas not presently covered by a security regime thus leading to enhanced security; there will be economies of scale for port operators by collaborating and pooling resources within the PSA.				

Key Assumptions/Sensitivities/Risks

Costs per man hours and that man hours per work is the same for all ports.
 The number of port areas that will have a designation order (number of PSAs).
 Incremental designation of PSAs: 2 in Year 1; 10 in Year 2; 50 in Year 3; 70 in Year 4; 100 in Year 5
 DfT/TRANSEC and Police costs met from existing resource, through re-prioritisation where necessary.

Price Base Year 2007	Time Period Years 5	Net Benefit Range (NPV) - £ 0.832m	NET BENEFIT (NPV Best estimate) - £0.832m
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What is the geographic coverage of the policy/option?			UK		
On what date will the policy be implemented?			September 2009		
Which organisation(s) will enforce the policy?			DfT (TRANSEC)		
What is the total annual cost of enforcement for these organisations?			£ 0 additional		
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?			£0		
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 £500 pa	Small £500 pa	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)

(Increase - Decrease)

Increase of £ 0

Decrease of £ 0

Net Impact £ 0

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

1. Title of Proposal

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

2. Purpose and intended effect of measure

2.1 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.”

2.2 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, co-ordinating level than that of a simple port facility.

2.3 A ‘port’ for the purpose of this Directive is the UN Location Port Code System (LOCODE) which is already used to identify ISPS facilities.

3. Background

3.1 The attacks in the US (2001), Madrid (2004) and London (2005) highlighted both the vulnerability of and threat to transport systems world-wide. Following the attacks in the US 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.

3.2 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 Labour Organisation working group on drafting a Port Security Code (akin to the ISPS Code) which was eventually adopted in March 2004.

3.3 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.

4. Rational for government intervention

4.1 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.

4.2 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 other European states. The requirements of the Directive should move Europe towards a more level playing field and reduce trade distortion across the EU.

4.3 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 to date has led to infraction proceedings being commenced against the UK by the European Commission. Continued failure to implement could result in fines of several million pounds.

4.4 This Impact Assessment (IA) appraises the options for implementing the requirements of the EC Directive on enhancing Port Security, and examines the anticipated approximate costs.

5. Public consultation

5.1 The consultation papers were published on the DfT website in April 2008 and those directly affected by the Directive were contacted by email and letter. That included the "port facility security officers" representing some 600 regulated UK port facilities. In addition, 17 Government Departments, 5 port industry associations/groups, 11 wider transport associations/groups, 2 trade unions, all EU member states, and the European Commission were consulted directly. The main issues are set out below.

5.2 There was controversy over mandating a PSA to be a 'body corporate.' Concerns were raised over the administrative burden of establishing such a formal structure including writing constitutions or similar documents, the costs of obtaining public liability insurance, and the conflict of interests it could create between a member of a PSA and his/her employer. As a result a change to the Regulations is proposed to the effect that PSA members will be allowed to make an informed decision on incorporation.

5.3 Regulation 7 stated that anyone with an objection to a decision made by the PSA could serve notice in writing on the Secretary of State. This is now changed to 'A person affected by a decision of a port security authority'.

5.4 At the suggestion of the Ministry of Defence 'visiting forces' was added and clarified in Regulation 3.

5.5 The requirement for searches in private (Regulation 25) raised several concerns, largely as it was interpreted by respondents as meaning that they must increase their establishment of female security staff. However the regulations simply require the availability of female staff to assist in such searches, and that they need not necessarily be security staff - any existing suitably trained staff may suffice in the rare occasions such circumstances may arise.

5.6 A 28 day time limit referred to in Regulation 18 of the Draft Regulations was changed to 30 days to allow for consistency within the Regulations.

5.7 Three respondents queried the costs of the Port Security Regulations 2008 as presented in the public consultation impact assessment. One estimated additional costs of £5k -£40k per year and two estimated additional costs at £50k per year.

6. Options

6.1 Six options have been identified for 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. Build on existing measures – with significant ports being designated in their own right and with a number of strategic PSAs covering other port areas (estimated 100 PSAs in total). Existing lead PFSOs are likely to become PSOs, and existing security/response port facility plans become a part of an overall port security plan.

Option 6. 'Direct carry over' of existing measures; all facilities to which the International and Ship and Port Security regulations (ISPS) apply (600) are regarded as a 'port' in their own right and have their own PSA, with their existing ISPS port facility plans becoming port security plans.

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 given the UK support of 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 sizeable fines. 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 and would become overly prescriptive.
- This approach would not easily harmonise with the work and initiatives of other Government Departments or the police, 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 Secretary of State’s position as the regulator of port security is incongruous with being made port security authority, as he cannot regulate himself.
- The highest risk, most costly option other than Option 1, and 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 would 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 boundaries such as Police force areas, MCA areas, Geographical boundaries or Unitary Authorities.

Advantages:

- Would introduce an intermediate communication tier between strategic Department level as focal point/competent authority, and port facilities at operational level.
- Allows for some co-ordination of Government/agency activities in port security.
- More suitable for integration with other response plans (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.

Option 5 - Build on existing measures – with significant ports being designated in their own right and with a number of strategic PSAs covering other port areas. Existing lead PFSOs are likely to become PSOs, and existing security/response port facility 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' 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 others in industry, and may require arbitration by TRANSEC.
- Possible issues around recovery of costs incurred by PSO/PSA.
- Will require some effort by the industry in reorganising existing structures/bodies to align with Directive requirements.
- Resource needed by industry to carry out duties of the PSA.

Option 6 - 'Direct carry over' of existing measures; all facilities to which the International and Ship and Port Security regulations (ISPS) apply (600) are regarded as a 'port' in their own right and have their own PSA, with their existing ISPS port facility plans becoming port security plans. 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.
- Arguably doesn't fully implement the Directive, and runs risk of infraction proceedings

Conclusion

Option 5 is the approach that is favoured by the Department. It is the option that 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.

7. Costs and Benefits.

(i) Sectors and groups affected

7.1 The sectors and groups affected are:

- Port operators/users
- The Department
- The police and other control authorities
- Associated transport industry sectors

7.2 These sectors and groups are considered in detail for option 5, which is the approach that is favoured by the Department. It 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.

(ii) Costs -

Option 1: Do nothing and not fully implement the Directive

7.3 It is likely that the EC would continue with infraction proceedings which may result in sizeable fines 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 pounds 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

7.4 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.

7.5 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.

7.6 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. This option is similar to option 5, but probably with more designated ports, more PSOs and therefore higher costs overall.

Option 5: (Preferred option) Build on existing measures – with significant ports being designated in their own right and with a number of strategic PSAs covering other ports. Existing lead PFSOs are likely to become PSOs, and existing security/response port facility plans become a part of an overall port security plan.

PORT OPERATORS/USERS (Option 5)

7.7 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 Table 1 below for a general view of anticipated ports industry

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.

7.8 Costs would be born directly by the industry, with each PSA being able to recover 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 existing constituent port facility documents, negating the need for a new substantial piece of work, and port security assessments will be produced using a multi-agency approach and a tried methodology.

COSTS PER PORT/PORT SECURITY AUTHORITY (Option 5)

7.9 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 port's security risks and issues that informs the development of the port security plan.

7.10 Each of the requirements in paragraph 7.9 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 we hope 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 offset 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 principal PFSOs to support those committees will go into supporting the new PSAs. Industry will have some control over the level of costs as by working in partnerships to set up larger PSAs should result in lower costs.

ESTIMATION OF COSTS PER PORT (Option 5):

PORT SECURITY OFFICER (PSO) (Option 5):

7.11 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 (£82.00 per day.) Allowing for additional on-costs to employ someone on £30K it is estimated that costs for the port to employ a PFSO/PSO would be £45K p.a. (£123.00 per day). 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. Some ports may already have a dedicated security resource so would not face additional costs but they may be able to share this resource with other ports within the PSA. Costs have been calculated on the assumption that the PSO will spend 1 day per week on port security matters: $£123 \times 52 = \mathbf{£6396.00 \text{ pa}}$

PORT SECURITY AUTHORITY (PSA) (Option 5):

7.12 These costs are estimates for what it might cost to establish and operate a PSA where there are currently no pre-existing structures (i.e the worst case scenario). In most cases the structures are in place so the ports will not be forming the PSA from scratch and the costs will be similar to those already being borne. Costs may in fact reduce if PSOs represent more than one port.

- The PSA meets twice p.a., and the estimate is (typically) 6 persons for 24 days work (assuming 2 days work per person per meeting): $24 \times \text{£}123 = \text{£}2952.00$ p.a. per port.

Legislation will provide for the PSA to be able to recoup reasonable operating costs. Ultimately the costs may be passed on to the consumer.

PORT SECURITY PLAN (PSP) (Option 5):

7.13 The PSP is intended to be a compilation of existing security and emergency response plans that exist within the wider port area. 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 IA 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 this was based on the assumption that external consultants might be used. The current assumption is that the plans will be produced by the PSO with support from TRANSEC and, in some cases, the police.

7.14 We assume there are 100 “ports”, already with constituent “port facility security plans” and that the estimated time is 5 days to produce a consolidated Port Security Plan. Cost per port per plan is therefore **£615.00** ($\text{£}123.00 \times 5$). For the purpose of this IA we have assumed that this initial cost will be repeated each year to update the plan; in practice the time taken for updates is likely to be less than this.

PORT SECURITY ASSESSMENT (Option 5):

7.15 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 for PSAs to use the “Multi-Agency Threat Risk Assessment” methodology which is provided free of charge by the Department. Government and, where appropriate, the police, will also offer support free of charge to the PSOs in completing the assessments. Although alternative methodologies that might be in use in the port industry may be considered, 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 are included in the costs of the PSO and the PSA.

Table 1: Summary of Costs: port operators.

Option 5	Cost per Port (£ p.a.)	Cost, UK (£ p.a.) Once fully implemented across all 100 ports	Cost (£ over 5 years)*
PSA	£2952	0.295m	0.685m
PSO	£6396	0.640m	1.484m
PSP	£615	0.062m	0.142m
Risk assessment	Included above	Included above	Included above
Port Facility Security Committees	(-£2952) (conservative figure – assumes the same number of PFSCs as PSAs)	(-0.295m)	(-1.48m)

* assumes incremental implementation as follows: year 1, 2 ports; year 2, 10 ports; year 3, 50 ports; year 4, 70 ports; year 5, 100 ports.

(N.B. From the public consultation on Port Security Regulations 2009 only 3 industry replies passed comment on costs. One estimated additional costs of £5k -£40k pa and two estimated additional costs at £50k p.a.) however neither respondent gave details of calculations. Furthermore attempts at ascertaining how much ISPS measures have cost has failed to illicit any information, as ports regard this as commercially sensitive data and therefore withhold it.

THE DEPARTMENT (Option 5):

7.18 The EC Regulation/ISPS implementation costs to the Department have been £7M to date (5 years), against a forecast in the IA 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 Department's transport security 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. However, additional costs arising from implementation and subsequent compliance monitoring of the Regulations will be found from within existing resources, by re-prioritising work where necessary. There are therefore no direct additional costs arising, though there will be some (unspecified) opportunity costs.

Under option 5, once transposing regulations have come into force, we will avoid the risk of infraction for categorical failure to implement the Directive, and possible resulting fines.

THE POLICE (Option 5):

7.19 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. There are not anticipated to be any additional costs to the police from the Regulations.

ASSOCIATED TRANSPORT SECTORS (Option 5):

7.20 The Directive may have a long term effect of extending the port security regime to other businesses not currently covered by the Department's 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, however the costs are currently unquantifiable.

Option 6: 'Direct carry over' of existing measures; all facilities to which the International and Ship and Port Security regulations (ISPS) apply (600) are regarded as a 'port' in their own right and have their own PSA, with their existing ISPS port facility plans becoming port security plans.

7.21 The integration and collaboration that is required from the Directive would not be met, and may result in 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 – possibly resulting in sizeable fines.

(iii) Benefits

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

7.22 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.

7.23 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.

7.24 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.

7.25 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: Build on existing measures – with significant ports being designated in their own right and with a number of strategic PSAs covering other port areas. Existing lead PFSOs are likely to become PSOs, and existing security/response port facility plans become a part of an overall port security plan.

7.26 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 facilities to which the International and Ship and Port Security regulations (ISPS) apply (600) are regarded as a ‘port’ in their own right and have their own PSA, with their existing ISPS port facility plans becoming port security plans.

7.27 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.

OTHER KEY NON- MONETISED BENEFITS

7.28 Non-monetised benefits of option 5 include:

- Port operators: economies of scale by re-channeling 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 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, and 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.

7.29 Although expected to be small in number, and exceptional in nature, there could be costs that may be identified in compliance for some sites, but there may also be offsetting 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.

8. Small Firms Impact Test

8.1 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 additional costs will be around £500.00 p.a for each facility, to contribute to the production of a Port Security Plan (PSP). Ports with only one ISPS facility will not require a PSP, therefore there should be no additional costs.

8.2 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. Were 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.

9. Competition Assessment

9.1. 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.

9.2 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.

9.3 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.

9.4 The costs of implementing the security requirements in these Regulations are likely to affect some firms more than others depending on how the ports choose to implement the EC Regulation and therefore whether additional security measures are needed. The Regulations are unlikely to affect the market structure, or change the size or number of firms in the ports industry. The Regulations are 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.

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

10. Enforcement, sanctions and monitoring

10.1 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.

10.2 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 the vast majority of breaches will be resolved without recourse to the courts.

10.3 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.

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

10.5 As under AMSA and the EC Regulation/IMO Regime, the Department’s Transport Security Inspectors will be duly authorised to carry out compliance inspections of all UK ports under the Directive. The European Commission will also undertake visits to monitor compliance with the Directive.

10.6 Member States must ensure that a review of port security plans and port security assessments is carried out 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 EHCR 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 capable of use for 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.

Transposition Note for Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security

The Port Security Regulations 2009 (the "Regulations")

These Regulations do not go beyond what is necessary to implement the Directive.

Article or Annex	Objective	Implementation	Responsibility
1	Provides that the objective of the Directive is to introduce Community measures to enhance port security in the face of threats of security incidents.	No implementation required.	n/a
2.1	Permits the application of the Directive to port related areas	<p>Regulation 3(2) provides for the definition of "port" to include a port related area.</p> <p>Regulation 4 and Schedule 1 provide that the Secretary of State must notify the relevant port security officer and the principal operator (or owner, if no principal operator) of a port related area of its designation as a port related area. The principal operator (or owner) must appoint a security manager, who must then develop and implement a port related area security plan.</p>	<p>Secretary of State ("SoS")</p> <p>SoS</p> <p>Principal operators/owners of port related areas</p> <p>Security managers of port related areas</p>
2.2	Specifies that the Directive shall apply to all ports in which a port facility is situated.	Regulation 3(2) provides that for the definition of a port a "port" must contain at least one port facility covered by an approved port facility security plan.	SoS
2.2	Provides that the Directive shall not apply to military installations in ports.	Regulation 3(3) provides that the Regulations do not apply to installations used by Her Majesty's armed forces or members of a visiting force, in ports.	SoS

2.3	Requires Member States to define the boundaries of the port for the purposes of the Directive.	Regulation 3(2) provides that a port's boundaries will be identified in an Order made by the Secretary of State under section 2(2) European Communities Act 1972.	SoS
2.4	Specifies when Regulation (EC) 725/2004 takes precedence	Regulation 3(5) ensures compliance with Article 2(4).	SoS
3	Defines the meaning of some of the terms used in the Directive.	Regulation 2 defines terms used in the Regulations. Regulation 3(2) – defines the meaning of a “port”.	SoS
4	Requires port security measures introduced by the Directive to be closely coordinated with measures taken as a result of Regulation (EC) No 725/2004.	The Regulations as a whole have been drafted in compliance with this obligation. By way of example, regulation 6 provides that members of the Port Security Authority must include the port facility security officer appointed under Regulation (EC) 725/2004 (or his/her nominee) and regulation 13 provides that Port Security Officers (appointed under regulation 12) are required to co-operate with port facility security officers. In addition, regulation 15(2)(b) requires port security plans to have approved port facility security plans (developed under Regulation (EC) 725/2004) integrated into them.	SoS Port facility security officers, Port Security Authorities and port security officers. Port Security Authorities
5.1	Requires the designation of Port Security Authorities (which can be designated for more than one port)	Regulation 5(1) permits a body to be designated as the Port Security Authority for more than one port.	SoS

5.2	Requires Port Security Authorities to be responsible for the preparation and implementation of port security plans based on the findings of port security assessments.	<p>Regulation 6 prescribes who must apply for membership of, or be nominated to, the Port Security Authority.</p> <p>Regulation 7 sets out the process for objecting to decisions of a Port Security Authority.</p> <p>Regulation 8 permits a Port Security Authority to charge fees in connection with, or incidental to, the carrying out of any function under the Regulations.</p> <p>Schedule 2 - contains provisions regarding information which the Port Security Authority must retain and the need to keep proper audited accounts.</p> <p>Regulation 15 requires the Port Security Authority to develop, maintain and update the port security plan for the port for which it has been designated.</p> <p>Regulation 17(1) requires Port Security Authorities to satisfy themselves that the port security plan is implemented.</p> <p>Schedule 2 contains a duty on the members of Port Security Authorities and the organisations that they represent to ensure that the functions of the Port Security Authority are carried out.</p>	Port Security Authorities
5.3	Permits member states to designate a “competent authority for maritime security” (provided under Regulation (EC) 725/2004) as port security authority	This optional provision has not been implemented	
6.1	Requires port security assessments to be carried out for ports covered by the Directive and provides	<p>Regulation 14 - requires Port Security Authorities to carry out port security assessments.</p> <p>Regulation 14(3) allows for</p>	Port Security Authorities

	that such assessments, where applicable, shall take account of areas adjacent to the port.	adjacent areas to be considered in the port security assessment that the Secretary of State considers could have an impact on the security of the port.	
6.2 and Annex I	Requires each port security assessment to comply with the requirements in Annex I.	Regulation 14(2) and Schedule 3 (which contains the provisions of Annex I) set out what must be taken into account when the port assessment is carried out.	Port Security Authorities
6.3	Permits port security assessments to be carried out by a recognised security organisation (as detailed in Article 11).	Regulation 14(5) provides that the Port Security Authority may appoint a recognised security organisation to carry out the port assessment on its behalf.	Port Security Authorities
6.4	Requires port security assessments to be approved by the Member State.	Regulation 14(6) requires the Secretary of State to approve the port security assessment.	SoS
7.1	Requires port security plans to be developed, maintained and updated.	Regulation 15(1) requires port security authorities to develop, maintain and update port security plans.	Port Security Authorities
	Requires port security plans to address the specificities of different sections of the port and to integrate port facility security plans for port facilities within their boundaries established pursuant to Regulation (EC) 725/2004.	Regulation 15(2) requires the port security plan to address the specificities of different sections of the port and to integrate port facility security plans.	Port Security Authorities
7.2	Requires port security plans to identify the procedures, measures and actions to be in place at security levels 1, 2 and 3	Regulation 15(2)(d) provides that the Port Security Authority must ensure that the port security plan identifies for each of the security levels set out in	Port Security Authorities

<p>7.3 and Annex II</p>	<p>Requires port security plans to take into account the detailed requirements specified in Annex II (including requirements for access control) and where appropriate security measures relating to embarkation on seagoing vessels.</p>	<p>regulation 20:(i) the procedures to be followed, (ii) the measures to be put in place, and (iii) the actions to be taken for the port, or where appropriate, for each part of the port.</p> <p>Regulation 20 requires Port Security Authorities to ensure that appropriate security levels are in place.</p> <p>Regulation 15(2)(e) requires the Port Security Authority to ensure that the port security plan takes into account the requirements of, and contains any information and documentation required by, Schedule 4.</p> <p>Schedule 4 sets out the detailed requirements specified in Annex II.</p> <p>Regulation 24 contains provisions in respect of controlled buildings.</p> <p>Regulation 25 provides for the search of people entering, or in, controlled buildings or restricted areas.</p> <p>Regulation 15(2)(c) requires the port security plan to include appropriate security measures relating to embarkation.</p>	<p>Port Security Authorities</p> <p>Port Security Authorities</p>
<p>7.4</p>	<p>Permits recognised security organisations to develop port security plans (as detailed in Article 11).</p>	<p>Regulation 15(4) provides that the Port Security Authority may appoint a recognised security organisation to develop the port security plan on its behalf.</p>	<p>Port Security Authorities</p>
<p>7.5</p>	<p>Requires port security plans to be approved by the Member State before implementation.</p>	<p>Regulation 16 requires Port Security Authorities to obtain the Secretary of State's approval for the port security plan and certain types of amendments to the plan before those amendments are implemented.</p>	<p>Port Security Authorities/ SoS</p>

<p>7.6</p>	<p>Requires Member States to monitor implementation of port security plans.</p>	<p>Regulation 22 contains powers for transport security inspectors to monitor the implementation of port security plans.</p> <p>Regulation 9 provides the Secretary of State with the power to obtain information from Port Security Authority relating to the security of the port and the proceedings and membership of the Authority.</p>	<p>Transport security inspectors</p> <p>SoS</p>
<p>7.7 and Annex III</p>	<p>Requires Member States to ensure that adequate exercises are performed, taking into account the security training requirements in Annex III.</p>	<p>Regulation 19 provides that a Port Security Authority must ensure that adequate training exercises are carried out that take into account the requirements of Schedule 5. Schedule 5 contains the basic security training exercise requirements listed in Annex III.</p>	<p>Port Security Authorities</p>
<p>8.1 and 8.2</p>	<p>Requires Member States to introduce a system of security level system for ports (levels 1, 2 and 3)</p>	<p>Regulation 20 sets out security levels 1,2 and 3 and when they are to be complied with.</p>	<p>SoS and Port Security Authorities</p>
<p>8.3 and 8.4</p>	<p>Requires Member States to determine the security level applicable to each port or part of a port and to communicate those levels.</p> <p>At each security level Member States may determine that different security measures are to be implemented in different parts of the port depending on the findings of the port security assessment.</p>	<p>Regulation 20(1) requires Port Security Authorities to implement the required security measures when notified of a given security level by the Secretary of State.</p> <p>Regulation 20(1) allows the Secretary of State to determine that different security measures are to be implemented in different parts of the port.</p>	<p>SoS and Port Security Authorities</p>
<p>9.1</p>	<p>Requires a port security officer for each port to be</p>	<p>Regulation 12 requires a Port Security Authority to appoint a</p>	<p>Port Security Authorities and</p>

<p>9.2 and 9.3</p>	<p>approved by the relevant Member State. Ports may if appropriate share port security officers.</p> <p>Requires port security officers to be the point of contact for port security related issues and stipulates close co-operation between port security officers and port facility security officers where these are not the same people.</p>	<p>port security officer who must then be approved by the Secretary of State. A port security officer can be appointed for more than one port.</p> <p>Regulation 13 sets out the functions of the port security officer. Port security officers are the point of contact for port security related issues and must co-operate with port facility security officers, directed parties of AMSA facilities and security managers of port related areas.</p>	<p>SoS</p>
<p>10.1</p> <p>10.2</p>	<p>Requires port security assessments and port security plans to be reviewed as appropriate and at least once every five years</p> <p>Requires that the scope of such reviews must be similar to the scope of the original assessments (Article 6) and plans (Article 7).</p>	<p>Regulation 18 sets out when and how reviews of port security assessments and port security plans should be conducted.</p>	<p>Port Security Authorities</p>
<p>11 and Annex IV</p>	<p>Permits the appointment of recognised security organisations which must fulfil the conditions in Annex IV.</p> <p>A recognised security organisation must not develop or review a port security plan for a port if it carried out a port security assessment for that port (Annex IV).</p>	<p>Regulation 23 provides that the Secretary of State may appoint a recognised security organisation for the purposes of these Regulations and Schedule 6, which contains the provisions of Annex IV, sets out the conditions which must be satisfied by any recognised security organisation which is appointed.</p> <p>Regulation 15(5) provides that port security authorities must ensure that if a recognised security organisation has carried out, or reviewed, a port security assessment for a port, it must not develop or review the port security plan for that port.</p>	<p>n/a</p>
<p>12</p>	<p>Requires the appointment</p>	<p>Regulation 38 designates the</p>	<p>n/a</p>

	of a focal point for port security.	Secretary of State as the focal point for port security.	
13	Requires Member States to set up a system ensuring adequate and regular supervision of port security plans and their implementation.	<p>Regulation 17(1) requires a Port Security Authority to satisfy itself that the port security plan has been implemented.</p> <p>Regulation 17(2) requires any person identified under Regulation 15(2)(f) as responsible for taking security measures contained in a port security plan to implement those measures.</p> <p>Regulation 18 requires review of the port security plan by the Port Security Authority every 5 years and at certain specified times.</p> <p>Regulation 22 provides for monitoring of the implementation of port security plans by transport security inspectors.</p> <p>Regulations 26 to 29 set up a system of enforcement notices for non compliance with various provisions in the Regulations.</p>	<p>Port Security Authorities</p> <p>Various persons</p> <p>Port Security Authorities</p> <p>Transport security inspectors</p> <p>Transport security inspectors</p>
14	Adaptations to Annex I to IV	No implementation required	n/a
15	Committee procedure	No implementation required	n/a
16	Requires personnel carrying out security inspections or handling confidential information to have appropriate security vetting and also requires appropriate measures to protect confidential information.	<p>Regulation 21(1) requires a person involved in port security inspections or who handles relevant confidential information to be approved for such work by the Secretary of State.</p> <p>Regulation 21(2) requires documents that relate to the security of a port to be clearly marked to indicate the degree of sensitivity with which they are to be handled.</p>	<p>SoS</p> <p>Various persons</p>
17	Requires Member States to introduce suitable penalties for contravention of the requirements of the Directive.	<p>Regulations 26 to 29 introduce offences relating to enforcement notices and in relation to transport security inspectors.</p> <p>Regulations 24 and 34 introduce offences of unauthorised presence in a controlled building.</p> <p>Regulation 30 introduces an</p>	<p>Transport security inspectors/SoS/ police</p> <p>Police</p> <p>Police</p>

		<p>offence of possessing a prohibited article when entering or in a controlled building or restricted area.</p> <p>Regulation 31 introduces an offence of making a false statement in connection with baggage, cargo or stores.</p> <p>Regulation 32 introduces an offence of making a false statement in connection with the issue or holding of identity documents.</p> <p>Regulation 33 introduces an offence of interference with security measures required by a port security plan.</p>	<p>Police</p> <p>Police</p> <p>Police</p>
18	Implementation provisions	These Regulations implement Directive 2005/65/EC within the United Kingdom.	SoS
19	Evaluation report	No implementation required	n/a
20	Entry into force	No implementation required	n/a
21	Addresses	No implementation required	n/a