EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (PASSENGER TRANSIT VISA) (AMENDMENT) ORDER 2011

2011 No. 1553

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order amends the Immigration (Passenger Transit Visa) Order 2003 ("the 2003 Order"). The Order adds Yemen to the list of countries whose nationals and citizens will require a transit visa to pass through (without entering) the United Kingdom.

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

3.1 None.

4. Legislative Context

4.1 This Order is made under section 41 of the Immigration and Asylum Act 1999 and amends the Immigration (Passenger Transit Visa) Order 2003. The 2003 Order requires, subject to certain exemptions, citizens and nationals of countries and territories specified within it, along with holders of specified travel documents, to obtain a transit visa when passing through the United Kingdom on their way to another country or territory.

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

What is being done and why

7.1 The Direct Airside Transit Visa (DATV) is an additional visa regime which permits certain nationals to travel via the UK on their way to another country. DATV nationals are not able to pass through UK Immigration Control or collect any luggage on a journey through the UK. The UK "Securing the Border" Strategy was published by the Home Office in March 2007 and gave a commitment to conduct a review of the transit regime operated by the United Kingdom. This review was completed in June 2010 and contained a number of recommendations for improving and simplifying the

existing regime. It recommended that DATV should be reassessed as part of the next Visa Waiver Test (VWT). This will be a global review of the UK's existing short-stay visa regimes. As part of this, UK Border Agency is working closely with Home Office, Foreign & Commonwealth Office and the Joint Terrorism Analysis Centre (JTAC) to assess the need to impose new DATV regimes in response to identified threats.

7.2 Al Qaeda in the Arabian Peninsula (AQ-AP) claimed responsibility for the failed aviation attack plots of 25 December 2009 and 29 October 2010. These plots coupled with other security concerns; including the increasing volatile situation in Yemen, highlight a threat which is evolving geographically and in terms of technique. These plots, together with the current situation in Yemen have been the impetus for considering the DATV with Yemen. DATVs are considered a valuable tool to help mitigate threats to global aviation networks, emanating from Yemen. The introduction of a DATV regime is an essential part of a raft of measures being sought by HMG.

7.3 Because Yemeni passport holders do not currently need to obtain a DATV, we have no statistics on transit numbers. However in 2009, 4,490 Yemeni citizens arrived in the United Kingdom indicating a small but steady flow to the United Kingdom. Since January 2010 there have been no direct flights from Yemen to the UK.

7.4 The changes will be of interest to Yemenis. The current situation reinforces the need to manage effectively travel to the United Kingdom, specifically reducing the security risks.

8. Consultation outcome

8.1 Visa regimes may be lifted or imposed depending on the level of threat to the UK. We are not required to consult with the countries concerned before making changes to our visa requirements.

9. Guidance

9.1 Information on the changes will be made available in the UK, Yemen and globally in order to alert the Yemeni passport holders to the new visa requirement. This will be shared with UK Border Agency staff, passengers, and airlines through proactive media engagement, updates to websites, letters and briefing packs for airlines and internal UKBA instructions.

10. Impact

10.1 Following the introduction of DATV, we believe there *might* be a short term economic impact in terms of loss of airfare revenue to UK carriers as DATV may deter travellers from transiting through a UK airport. We do not believe that the impact on genuine transit passengers or airlines will be disproportionate when balanced against the need to reduce security threats from transit passengers. The impact is likely to be minimal towards Yemeni citizens as they already need visit visas for the UK, the USA and Canada (the two most likely destinations for transit passengers). When considered against the cost of long haul flights necessitating transiting of the UK the DATV fee of £47 is negligible.

10.2 The impact on the public sector is related to the costs involved in processing DATV applications. However there will be a number of benefits around security and

reduced risks of illegal and criminal activity among the population of travellers coming from Yemen.

10.3 An Impact Assessment is attached to this memorandum

11. Regulating small business

11.1 There are not expected to be any impact on small businesses in the UK.

12. Monitoring & review

12.1 As with all visitor visa regimes the imposition of the DATV requirement on Yemeni nationals and citizens will be continuously monitored.

12.2 Further information on monitoring and implementation review can be found on page 10 of the Impact Assessment.

13. Contact

Queries should be addressed to Ann Williams at the Home Office.

Tel: 020 7035 4235 or e-mail: Ann.Williams@homeoffice.gsi.gov.uk

Title:	Impact Assessment (IA)
Impact Assessment for the introduction of a Direct Airside Transit Visa regime on Yemen	**IA No:** HO0029
Lead department or agency: UKBA	**Date:** 03/03/2011
Other departments or agencies:	**Stage:** Final
	Source of intervention: Domestic
	Type of measure: Secondary legislation
	Contact for enquiries: Ann Williams - 020 7035 4235

Summary: Intervention and Options

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

Following the completion of the recent Direct Airside Transit Visa (DATV) regime review it has been decided that visitor visa regimes and DATV regimes should be more closely aligned.

Events over the past year have highlighted Yemen in particular as being of real and pressing concern to the international community. While there are currently no direct flights to the UK from Yemen it has been decided that the UK should introduce a DATV regime as soon as practicable in order to address a growing threat.

What are the policy objectives and the intended effects?

We intend to impose a Direct Airside Transit Visa regime on Yemen in order to reduce the potential security risk to the UK.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

i) Do nothing – do not impose a visa regime, contingent on further monitoring and other safeguards

ii) Impose a DATV regime:

Option ii) applies to the Yemen. This decision is proportionate to the risk posed by this country.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 3/2014	
What is the basis for this review? Duty to review. **If applicable, set sunset clause date:** Month/Year	
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

SELECT SIGNATORY Sign-off For final proposal stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister: Date: June 20th 2011

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Summary: Analysis and Evidence

Policy Option 1

Description:

Impose a Direct Airside TransitVisa on tranistting passengers from Yemen

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£0.036	**High:** -£0.048	**Best Estimate: -£0.039**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	1	£0.01	**£0.072**
High	0		£0.01	**£0.077**
Best Estimate	0		£0.01	**£0.073**

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

Passenger numbers are expected to be small, thus visa applications will be manged at existing facilities. No set up costs are expected.
There are no direct air routes between the UK and Yemen, thus UK carrier costs will be small.
Passengers on DATV will have limited spending opportunities in the UK. Lost revenue will be small.
UKBA incur costs to process DATV visa applications.

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

Costs to migrants prevented from travelling through the UK;
Wider risks of displacement of immigration abuse.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	1	£0.005	**£0.036**
High	0		£0.004	**£0.029**
Best Estimate	0		£0.004	**£0.034**

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

UKBA - Increased fee revenue, although this will only partially offset the cost of processing visa applications.

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

UK economy/public: reduction in immigration abuse, criminality and terrorist threat due to visa refusals preventing high-risk individuals travelling through the UK.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5%

UKBA expects to recieve around 120 transit visa applications from Yemen. We belive that DATV applications will also be very small.
Expenditure in the UK by passengers with a transit visa is estimated to be £42 per trip and £21 for passengers with a DATV.

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0.0m	**Benefits:** £0	**Net:** -£0.0m	Yes	IN

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?			06/04/2011		
Which organisation(s) will enforce the policy?			UK Border Agency		
What is the annual change in enforcement cost (£m)?			Neg		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** 0	**Non-traded:** 0	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:**	**Benefits:**	
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	**Micro** 0	**< 20** 0	**Small** 0	**Medium** 0	**Large** 100
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties[1] Statutory Equality Duties Impact Test guidance	No	10
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	
Small firms Small Firms Impact Test guidance	No	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[1] Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

No.	Legislation or publication
1	
2	
3	
4	

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y_0	Y_1	Y_2	Y_3	Y_4	Y_5	Y_6	Y_7	Y_8	Y_9
Transition costs	0									
Annual recurring cost	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01
Total annual costs	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01
Transition benefits	0									
Annual recurring benefits	0.004	0.004	0.004	0.004	0.004	0.004	0.004	0.004	0.004	0.004
Total annual benefits	0.004	0.004	0.004	0.004	0.004	0.004	0.004	0.004	0.004	0.004

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

A. Strategic Overview

A.1 Background

The UK plans to impose a Direct Airside Transit (DATV) regime on Yemeni citizens who wish to transit through a UK airport.

Britain is a major hub for transit passengers travelling on long haul flights. The volume of traffic passing through the UK has drawbacks as well as advantages and since 2003 the UK have required certain nationalities to obtain a visa (DATV) before they travel even if they are arriving into and leaving from the same airport. Initially this was introduced to combat a trend of people arriving in a UK airport and destroying their documents before claiming asylum (possibly in a false identity or nationality).

The implementation of the first DATV regime helped to export the UK border and allowed us to run checks on people transiting the UK. Since the original introduction of the DATV there has been a noticeable fall in transit passengers destroying their travel documents before claiming asylum. And where they do the information UKBA has collected as part of the application process (including biometrics) makes identifying and re-documenting them simpler.

Since the introduction of the DATV regime a number of countries have been added to the list of those required to obtain clearance before transiting the UK. This has been done in response to emerging threats. The UK Border Agency will review the whole of the DATV regime as part of the next Visa Waiver Test.

Events over the last year have highlighted Yemen as being of real and pressing concern to the international community. It was in Yemen that the Detroit bomber received his training and most recently it was the source of the bombs disguised as toner cartridges. We therefore feel that imposing a DATV regime on those Yemeni citizens who are transiting the UK is a sensible and proportionate response to ensure the UK border is secure and there are measures in place to prevent harm.

A.2 Groups Affected

Yemeni nationals transiting through the UK

B. Rationale

The Home Office is committed to defending the country against terrorism and securing our borders. The Government's approach to counter-terrorism will continue to keep people safe under powers that are proportionate, focused and transparent.

C. Objectives

The key objectives include:

1. Enable UKBA to target our DATV regime more effectively in order to minimise harm to the UK.

2. Implement a visa regime that support delivery of key benefits – namely by generating tighter security through the visa screening process which will in turn have a positive impact on countering any terrorist threat.

From past experience (for example with Jamaica) the Border Agency is aware that not requiring a DATV is exploited by those seeking to avoid UK immigration and security controls. DATVs are therefore a necessary extra immigration control.

The DATV requirement will not stop genuine passengers from transiting the UK, but ensure that those intent on abusing the Transit With Out Visa (TWOV) concession are prevented from doing so. A DATV costs £47 - this is cheaper than a visit visa (currently £68) but it does not entitle the holder to enter the UK.

D. Options

The two options considered are set out below:

- Option 1 – do nothing: Not impose a visa regime, contingent on further monitoring and other safeguards.
- Option 2 – a) impose Visitor Visa and DATV regimes on Yemen. This decision is proportionate to the current risk posed by this country

E. Appraisal (Costs and Benefits)

General Assumptions and Data

Imposing a visa regime on potential high risk passengers will have both direct and indirect impacts:

- **Direct** – screening of visa applicants will allow refusal of the most high-risk visitors, therefore reducing the level of travel to the UK of travellers who might engage in illegal activities in the UK.
- **Indirect** – if a visa regime exists it may also discourage potential travellers from coming to the UK due to the higher expected costs (higher costs of the visa application and the lower probability of approval).

We expect a reduction in volumes of visitors coming to the UK from Yemen, and costs associated with this reduction. In 2009, approximately 120 Yemeni Nationals entered transited through the UK to another destination. It is anticipated that around 20% will qualify for a DATV. The remaining transit passengers will need to apply for a transit visa as they will no longer be able to take advantage of the TWOV (Transit without Visa) system. Given the small passenger numbers, associated costs will be small.

There will also be a number of benefits around security and reduced risk of illegal activity amongst the population of travellers coming to the UK from these countries.

The key impacts on both the Public and Private sectors are summarised in more detail below. It is not expected that there will be any impacts on the Third sector.

Costs

Requiring visitors transiting through the UK to apply for a transit visa will increase the costs associated with travel; this is expected to reduce the volume of people travelling. There will also be an impact on visitor volumes from the expected visa refusal rate. Estimated visitor demand volumes are adjusted for the expected refusal rate to give an estimate of the visitor volumes that will actually come to the UK.

Visa refusals could be seen as beneficial to the UK as they prevent the high-risk type of people from travelling to the UK, and hence generate benefits from reducing illegal activity in the UK and its associated costs.

Private Sector Costs

This Impact Assessment aims to provide an estimate of the likely impact of imposing a Visa regime on visitor volumes and thus the costs associated, including: **reduced visitor expenditure in the UK** and **reduced airfare revenue to UK carriers.**

The International Passenger Survey suggests that transiting passengers from the Middle East and North Africa spend around £42 per visit. We expect passengers travelling on a DATV to spend less. Evidence on airfares suggests that return airfares to the Middle East are on the region of £450. As there are no direct flights between the UK and Yemen we assume that only a quarter of the journey is made on a UK airline. These costs to the tourism industry are considered transitional costs as in the longer term, the tourism industry will adjust to absorb the effects of the demand shock and supply will adjust so there will be no long-term impact on UK economic output.

UKBA Costs

The very small expected number of transit visa applications will be dealt with in existing visa application and processing centres. The cost of UKBA making a transit visa decision is £70, compared to the visa cost of £44. Thus there will be a small processing cost to UKBA.

Benefits

Impact on Terrorist Threat and Criminal Behaviour in the UK

Imposing a visa regime is expected to reduce the volume of high-risk individuals who would engage in criminal behaviour gaining entry to the UK due to the screening process established by a visa regime. It is expected that the screening process will also reduce the risk of a terrorist incident. Given the lack of robust evidence on these issues it is not possible to quantify the impact of visa regimes on criminal activity or on the terrorist threat

Table 2-

	Low Impact Estimate	Central Estimate	High Impact Estimate
Transition Costs			
Set Up	-	-	-
Annual Costs			
Processing costs	- 56,000	- 52,000	- 48,000
Carriers	- 22,000	- 27,000	- 33,000
Expenditure	- 6,000	- 7,000	- 9,000
Total	- 84,000	- 86,000	- 90,000
NPV Costs	**- 72,000**	**- 73,000**	**- 77,000**
Transition benefits			
Set Up	-	-	-
Annual benefits			
Visa revenue	42,000	40,000	35,000
Total	42,000	40,000	35,000
NPV Benefits	**36,000**	**34,000**	**29,000**
Overall NPV	**- 36,000**	**- 39,000**	**- 48,000**

F. Risks

Risks of Displacement

There is a risk that both the increased price of travel to the UK, and the possibility of being refused visitor visas, may displace immigration abuse – either to other countries or to other possible routes of entry to the UK.

G. Summary and Recommendations

The table below outlines the costs and benefits of the proposed changes.

Table H.1 Costs and Benefits

Option	Costs	Benefits
2	£9,000 per year	£4,000 per year

Source: UKBA Internal Analysis

The preferred option is option 2 as this meets the objectives of the policy.

H. Implementation

The change will be implemented by UKBA in January 2011.

I. Monitoring and Evaluation

The effectiveness of the policy will be reviewed by UKBA when the next review of the visa waiver test is undertaken.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review , or there could be a political commitment to review (PIR)];
Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]
Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]
Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]
Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]
Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]
Reasons for not planning a review: [If there is no plan to do a PIR please provide reasons here]

Annex 2. Specific Impact Tests

Statutory Equality Duties

Race

The UK already requires visas from 75% of the world's population. Some people living in the UK – for example those with relatives in the countries concerned – will be indirectly affected. But given that the overall cost of a visa will be only a small proportion of the cost of visiting the UK, it is not considered that the policy has a negative equality impact.

Gender, gender identity, disability, religion/belief, age, sexual orientation

No significant issues are raised (other than issues that arise with all visa requirements, the operation of which are conducted to global UK standards).

Review

The need for a full equality impact assessment as part of the Visa Waiver Test will be considered when the Visa Waiver Test is reviewed.