

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION (PASSENGER TRANSIT VISA) (AMENDMENT)
ORDER 2015

2015 No. 657

1. This explanatory memorandum has been prepared by the Home Office 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**

2.1 This Order amends the Immigration (Passenger Transit Visa) Order 2014. The amendments are principally to clarify the scope of certain exemptions from the requirement to hold a transit visa and to implement changes as a result of revised risk assessments.

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

3.1 Article 2(13) comes into force on 17 March – within 21 days of the Order being laid. This provision removes the exemption from the requirement to hold a transit visa in respect of citizens or nationals of Syria who hold a B1 or B2 visa for entry to the United States of America. This change is in response to the detection of significant abuse of the transit without visa provisions with such individuals using the exemption from the requirement to hold a transit visa to travel to the UK in order to claim asylum, rather than to pass through the United Kingdom without entering. The Government considers it is necessary to introduce this change with the minimum of notice in order to prevent a significant influx of citizens and nationals of Syria travelling to the United Kingdom, with the associated heavy burden on public resources which might ensue as a result. Accordingly, the Government considers this is a proportionate and appropriate response to protect the United Kingdom and will work with airlines to implement the changes within the short notice period.

3.2 Articles 2(5) and (16) of the Order address a point concerning the territory of Taiwan which was previously raised by the Joint Committee on Statutory Instruments in its 14th Report of Session 2014-15 (HL Paper 69 / HC 332-xiv) in relation to the Immigration (Passenger Transit Visa) Order 2014 (S.I. 2014/2702). The Government is grateful to the Committee for its observations regarding possible ambiguity as to whether citizens or nationals of the territory of Taiwan are exempt from the requirement to hold a transit visa. The amendment in articles 2(5) and (16) are intended to put beyond doubt that citizens and nationals of the territory of Taiwan are not subject to the requirement to hold a transit visa when passing through the United

Kingdom without entering. Furthermore, article (2)16 addresses the issue of inconsistent terminology within the 2014 Order.

4. Legislative Context

4.1 The Order amends the Immigration (Passenger Transit Order) 2014 which consolidated and amended the Immigration (Passenger Transit Visa) Order 2003. Whilst the majority of the amendments are specific to airside transit, other amendments are being made to align airside transit more closely with similar provisions in Part 2 of the Immigration Rules which govern landside transit.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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 Order requires all passengers holding a travel document which does not establish citizenship or nationality to also hold a transit visa to pass through the United Kingdom without entering. This is to ensure that certain travel documents not recognised by the UK cannot be used to transit the UK. The Order preserves exemptions for certain documents which do not have a nationality field, for example where the holder is assessed to present a low risk to the UK or where the document has sufficient security features to guard against improper use. Documents within these categories include those issued to stateless persons and certain documents issued by international organisations.

7.2 As explained at paragraph 3.2 above, the Government is amending the 2014 Order in response to observations by the Joint Committee on Statutory Instruments. Citizens and nationals of the territory of Taiwan do not require a transit visa to pass through the United Kingdom without entering.

7.3 Under the Immigration Rules, holders of Turkish diplomatic passports do not require a visa for official or tourist visits to the United Kingdom. However, such individuals would require a transit visa were they merely passing through the United Kingdom without entering. The Government therefore considers it appropriate to resolve this anomaly by amending the 2014 Order to enable Turkish diplomatic passport holders to transit the UK airside without a visa.

7.4 To align with the Immigration Rules for landside transit without a visa, the Order exempts holders of an expired visa for entry to Australia, Canada, New Zealand or the United States of America from the requirement to hold a transit visa, provided it is less than six months since the transit passenger last entered that country with a valid visa.

7.5 Additionally this order clarifies that a person must be travelling to the same Schengen Acquis State which issued the visa to a Chinese tour group under the Approved Destination Status Scheme in order to benefit from this exemption from the requirement to hold a transit visa.

7.6 This Order clarifies that electronic format transit visa exemption documents are only acceptable where the airline can verify the electronic version of the transit visa exemption document and that only a machine readable version of a USA I-551 temporary immigrant visa is acceptable as a visa exemption document. In both cases these changes are due to difficulties in verifying the authenticity of such documents. There is also a minor amendment to ensure it is clear that all exemption documents must be valid, unless it is expressly stated that an expired version is acceptable.

7.7 As explained at paragraph 3.1 above, the Government is limiting the exemptions available to citizens and nationals of Syria to prevent abuse. Transitional arrangements are not considered appropriate for passengers who may already have pre-booked travel to the UK; the profile of Syrian nationals seen to abuse the transit without visa scheme is not limited to those who make last-minute airline bookings. Additionally the impact on both carriers and genuine travellers can be mitigated through other means; airlines may be able to rebook passengers on to other transit routes.

- Consolidation

7.8 As this is the first time the 2014 Order has been amended and the amendments are relatively few in number, consolidation is not thought to be appropriate on this occasion.

8. Consultation outcome

8.1 There has been no public consultation.

9. Guidance

9.1 This change will be reflected in guidance on the gov.uk website and on UK embassies' local websites. Relevant operational partners and carriers will be informed.

10. Impact

10.1 The impact on business, charities or voluntary bodies is considered minimal and indirect.

10.2 The impact on the public sector is not significant.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Home Office regularly reviews the UK's visa regime.

13. Contact

Alex Burbidge at the Home Office Tel: 02070358720 or email:
Alex.Burbidge2@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.