

EXPLANATORY MEMORANDUM TO
THE PASSENGER, CREW AND SERVICE INFORMATION (CIVIL PENALTIES)
REGULATIONS 2015

2015 No. 961

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 The purpose of this instrument is to create a civil penalty regime whereby the Secretary of State may require a carrier to pay a penalty if the carrier fails to provide an immigration officer or police officer with information about passengers or crew on board a ship or aircraft when required to do so.

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

- 3.1 This instrument is being laid before Parliament less than 21 days before the proposed date it is due to come into force. The Department apologises for this breach of convention, which has occurred to avoid delay to the coming into force of this instrument and the associated civil penalties. The urgency of these measures, and the fact that the primary legislation itself was expedited, is a result of the existing high likelihood of a terrorist attack and the consequent UK national terrorist threat level having been raised to SEVERE in August 2014. Parliament agreed to the provisions at Part 4 and Schedule 5 to the Counter-Terrorism and Security Act 2015 coming into force on Royal Assent. This was with a view to the new civil penalties regime coming into force as soon as possible.

- 4. Legislative Context**

- 4.1 Under the Immigration Act 1971 a person is guilty of a criminal offence punishable by a fine (not exceeding £5000 pursuant to section 37 of the Criminal Justice Act 1982) and/or with imprisonment of not more than 6 months when failing to provide an immigration officer with information about passengers or crew onboard a ship or aircraft when required to do so. Under the Immigration, Asylum and Nationality Act 2006, a person is guilty of a criminal offence punishable by imprisonment not exceeding 51 weeks in England and Wales, or 6 months in Scotland or Northern Ireland, and a fine not exceeding £2,500 when failing to provide a police officer with information about passengers or crew onboard a ship or aircraft when required to do so.

4.2 Provisions in Schedule 5 to the Counter-Terrorism and Security Act 2015 (which amend Schedule 2 to the Immigration Act 1971 and insert section 32B of the Immigration, Asylum and Nationality Act 2006) provide the opportunity to extend the sanctions to include civil penalties. The purpose of these Regulations is to allow the Secretary of State to impose a financial penalty on the carrier when criminal action is not appropriate. The pre-dating criminal sanctions will be reserved for the most serious offences.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 James Brokenshire, Minister of State for Immigration and Security, Home Office, has made the following statement regarding Human Rights:

“In my view the provisions of the Passenger, Crew and Service Information (Civil Penalties) Regulations 2015 are compatible with the Convention rights.”

7. Policy background

7.1 In August 2014 the Independent Joint Terrorism Analysis Centre raised the UK national terrorist threat level from SUBSTANTIAL to SEVERE meaning that a terrorist attack is ‘highly likely’. On 1 September 2014 the Prime Minister announced that legislation would be brought forward in a number of areas to stop people travelling overseas to fight for terrorist organisations and subsequently returning to the UK as well as to deal with those already in the UK who pose a risk to the public.

7.2 Obtaining complete, timely and accurate passenger information in advance of travel allows police and immigration officers to carry out checks before a passenger departs, which can help to secure the aircraft and allow for appropriate action by law enforcement prior to entry to or departure from the UK. Linked to this is the Authority to Carry Scheme 2015 (the “Scheme”), which will require carriers to seek authority to carry persons on aircrafts, ships or trains, and the Authority to Carry (Civil Penalties) Regulations 2015, which allow the Secretary of State to impose a penalty not exceeding £50,000 where a carrier to whom the Scheme applies breaches certain requirements of the Scheme.

7.3 The UK Government’s clear preference is for carriers to comply with the legal requirements to provide adequate passenger information in advance of travel. The Border Force and the police work closely with industry to ensure carriers meet these standards and the introduction of a civil sanction will assist in enforcing these requirements if engagement fails. The Passenger, Crew and Service Information (Civil Penalties) Regulations 2015 provide for suitable civil sanctions in the event of a carrier’s failure to comply with the requirements outlined above. Specifically, they allow the Secretary of State to impose a civil penalty not exceeding £10,000 for each breach. A defence of

'reasonable excuse' will apply and draft guidance has been prepared on how the level of penalty may be determined.

8. Consultation outcome

- 8.1 Following engagement with the airline and maritime industries at the pre-consultation stage, a targeted industry consultation exercise ended on 16 February 2015. Twenty-eight responses were received.
- 8.2 In respect of the replies to the passenger data questions, there were common themes. Carriers are concerned about their ability to ensure the quality of passenger information supplied by third parties and they were also consistent in their willingness to work with UK authorities to protect their passengers and assets. The UK Government's approach to date has been to work with carriers to ensure data is accurate and received in a timely manner and this is the approach that will continue to be adopted under the new legislation. Draft guidance on how the civil penalties will be applied has been shared with industry and the comments received from the consultation will be reflected in the final version. The Government's position however remains that carriers must provide accurate, complete and timely information. Not only is this a legal requirement but they also have a responsibility to ensure adequate steps are taken to protect against threats to their assets, passengers and crew.
- 8.3 In response to the question of whether fines should be fixed or indexed-linked, there was a unanimous view from those who provided a response that it should be fixed. It was felt that index-linked fines would add complexity to the scheme with little benefit. This point is duly noted.

9. Guidance

- 9.1 Full updated guidance will be provided to industry on the application of the new regulations, a draft copy of which was attached to the consultation document. We will continue to engage with industry to ensure awareness of the new measures.
- 9.2. Records of the Guidance will be provided to libraries of both Houses.

10. Impact

- 10.1 In summary, the costs of implementing the Regulations are nominal. Carriers must already provide passenger information when required to do so. Carriers may appeal the fine to the County Court (Sheriff Court in Scotland). It is anticipated that the cost of pursuing civil action will be less than pursuing a criminal sanction under existing legislation.
- 10.2 Impacts on the public sector will be delivered from within existing resource allocations.

- 10.3 An Impact Assessment was prepared ahead of the Counter-Terrorism and Security Act 2015, which makes reference to the proposals for these civil sanctions (page 11). The assessment concludes that the cost is nominal. A court fee would be payable which has been set to cover the costs of the court system although there would appear to be a slight shortfall here in the fee paid to the County Court and the costs of actually handling the case. As the expected number of appeals is minimal, the proposal is unlikely to impose any significant extra net costs on the civil justice system. The Impact Assessment is published at: <http://www.parliament.uk/documents/impact-assessments/IA14-22A.pdf>

11. Regulating small business

- 11.1 The legislation does not apply to small business.

12. Monitoring & review

- 12.1 The introduction of a civil penalty regime is intended to assist the UK Government to better regulate the complete, accurate and timely provision of passenger, crew and service information. Management Information will be collected and reviewed by the Home Office on an ongoing basis to ensure carriers meet these criteria and to inform future Impact Assessments that review this policy. The data will also be used to inform the ongoing engagement with the industry to ensure data quality for the law enforcement purposes described within this memorandum.
- 12.2 A formal review will take place 12 months after these Regulations come into force and these Regulations contain a provision with the effect that they will cease to have effect seven years after they come into force.

13. Contact

Simon Watkin at the Home Office Tel: 020 7035 3572 or email: predeparturechecks@homeoffice.x.gsi.gov.uk can answer any queries regarding the instrument.