EXPLANATORY MEMORANDUM TO

THE AUTHORITY TO CARRY SCHEME AND CIVIL PENALTIES REGULATIONS 2021

2021 No. 323

1. Introduction

1.1 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 The purpose of the Authority to Carry Scheme and Civil Penalties Regulations 2021 is to give effect to a new Authority to Carry Scheme ("the 2021 Scheme") that will replace the Authority to Carry Scheme 2015 ("the 2015 Scheme") and make consequential amendments to the Authority to Carry Scheme (Civil Penalties) Regulations 2015.

2.2 The operation of the 2021 Scheme will prevent or disrupt the exit from, entry to or return to the UK of individuals who pose a terrorism-related threat, or other threat to the UK or its interests, and mitigate the threat of an attack on transport operating to the UK (or onward from the UK).

2.3 The 2021 Scheme may be breached by a carrier failing to seek authority to carry a person to or from the UK, or by carrying a person after being refused authority to carry that person.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see Part 4, section 22, subsections 8 and 9 of the Counter-Terrorism and Security Act 2015) and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 The Minister for Future Borders and Immigration, Kevin Foster, has made the following statement regarding Human Rights:

"In my view the provisions of the Authority to Carry Scheme and Civil Penalties Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 Section 22 of the Counter-Terrorism and Security Act 2015 provides that the Secretary of State may make authority to carry schemes. The 2015 Scheme, which was brought into operation on 31 March 2015 specified classes of individuals in respect of whom authority to carry may be refused when necessary in the public interest. The Authority to Carry Scheme (Civil Penalties) Regulations 2015 made under section 24 of the Act, fixed the penalty to a sum not exceeding £50,000 where a carrier to whom the Scheme applies breaches a requirement to seek authority to carry a person or a requirement not to carry a person when authority to carry has been refused.

6.2 The 2021 Scheme specifies additional classes of individuals who may be subject to a refusal of authority to carry. In particular the new Scheme will reflect the changes to the deportation and exclusion of EEA nationals following the end of free movement and the introduction of travel-related sanctions under the Sanctions and Anti-Money Laundering Act 2018.

7. Policy background

What is being done and why?

7.1 Preventing individuals from travelling to or from the UK is an important part of the UK's border security arrangements. The ability to intervene, pre-departure and prevent travel has meant that, under the 2015 Scheme, the Home Office has refused carriers authority to carry around 8,000 individuals seeking to travel to the UK. This has included over 180 individuals excluded from the UK, around 3,000 individuals previously deported from the UK and over 4,600 individuals using invalid, lost stolen or cancelled travel documents. It also included one member of a flight crew who had been previously deported. These are all individuals who would otherwise have travelled to the UK and would have been dealt with at the border, with the resulting financial and time implications associated with processing, detaining and removing that individual.

7.2 The 2015 Scheme has a sunset clause, meaning that it would cease to have effect from April 2022. The introduction of the 2021 Scheme has been expedited as a result of the UK's withdrawal from the EU. The 2015 Scheme only includes EEA nationals deported or excluded under the Immigration (European Economic Area) Regulations 2016 and not those EEA nationals who, post transition, will be deported under the Immigration Act 1971 or excluded by a personal decision of the Home Secretary. In practice this means that certain high-harm individuals would fall out of scope of the 2015 Scheme, with the risk that they could arrive into the UK to be dealt with at the border rather than being subject of a refusal of authority to carry to the UK. The 2021 Scheme ensures that the UK can protect its border and continue to prevent such individuals from travelling.

7.3 The 2021 Scheme also includes additional classes of individuals with visas that have been cancelled or revoked; individuals subject to travel-related UK sanctions; individuals who have been refused leave to enter the UK before their departure for, or in the course of their journey to, the UK under article 7 of the Immigration (Leave to

Enter and Remain) Order 2000 and those intending to leave the UK using an invalid travel document.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the United Kingdom from the European Union because changes made by the Immigration Social Security and Co-ordination Act 2020 (and secondary legislation made under that Act) affect the status of EEA nationals and their family members after the end of the transition period; this requires that a new Scheme be brought into operation to reflect those changes.

9. Consolidation

9.1 No consolidation is required.

10. Consultation outcome

10.1 Informal consultation has been undertaken with UK-based air carriers to advise them of the proposed changes and seek their views on the operation of the Scheme. Their overall experience of the 2015 Scheme is positive. No objections were made to extending the scope of the classes of individuals, in respect of whom authority to carry may be refused, under a new Scheme.

11. Guidance

11.1 Updated guidance will be provided to industry on the operation of the 2021 Scheme and penalty regime. The Home Office will continue to engage with industry on the detail of the 2021 Scheme to assist implementation.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because an impact assessment was conducted prior to the introduction of the 2015 Scheme, which concluded that the costs to carriers were minimal and the impact to small businesses would be even less. This Statutory Instrument does not introduce any changes that would affect this assessment, it replaces and enhances existing legislative provisions.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise the regulatory burden on small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that the number of individuals within the additional classes of individual that are prevented from travel will be collected by the Home Office to inform future development of this policy.

14.2 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, James Brokenshire, Minister of State for Security has made the following statement:

"In my view, there is no expected significant annualised net impact on business (greater than +/- £5 million net annualised). As this Statutory Instrument replaces and enhances existing legislative provisions, there are no other factors that would make it particularly desirable to include a review clause."

15. Contact

15.1 Simon Watkin at the Border Security, Visa, Identity and Policy Unit (Home Office) Telephone: 07867 151354 or email: predeparturechecks@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Nigel Farminer at Border Security, Visa, Identity and Policy Unit (Home Office) can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister for Future Borders and Immigration, Kevin Foster, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.