EXPLANATORY MEMORANDUM TO

THE AUTHORITY TO CARRY SCHEME AND CIVIL PENALTIES REGULATIONS 2023

2023 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

2.1 The purpose of the Authority to Carry Scheme and Civil Penalties Regulations 2023 is to give effect to a new Authority to Carry Scheme ("the 2023 Scheme") that will replace the Authority to Carry Scheme 2021 ("the 2021 Scheme") and make consequential amendments to the Authority to Carry Scheme (Civil Penalties) Regulations 2015.

2.2 Like the 2021 Scheme, the operation of the 2023 Scheme will prevent or disrupt the exit from, entry to or return to the UK of individuals who pose a terrorism-related or other threat to the UK or to UK interests, and will mitigate the threat of an attack on transport operating to the UK (or onward from the UK). However the 2023 Scheme will include additional classes if individual in respect of whom authority to carry may be refused.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

5.1 The Minister for Security, Tom Tugendhat MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Authority to Carry Scheme and Civil Penalties Regulations 2023 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 2021 Scheme, which was brought into operation on 6 April 2021, specified classes of individuals in respect of whom authority to carry may be refused when necessary in the public interest.

6.2 The Authority to Carry Scheme (Civil Penalties) Regulations 2015 made under section 24 of the Act fixed the penalty for a breach of a Scheme, where a carrier 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, to a sum not exceeding £50,000.

6.3 The 2023 Scheme specifies additional classes of individuals who may be subject of a refusal of authority to carry. In particular the new Scheme will reflect the advent of Electronic Travel Authorisations (ETA), including those within the meaning of section 11C of the Immigration Act 1971, and provide that authority to carry may be refused in respect of individuals who have been or would be refused an ETA or whose ETA has been cancelled.

7. Policy background

What is being done and why?

7.1 Preventing individuals from travelling to or from the UK has been an important part of the UK's border security arrangements since 2015. The operation of each Authority to Carry Scheme prevents certain individuals from travelling to or from the UK when it is necessary in the public interest. This is achieved by requiring carriers to seek authority from the Secretary of State to carry persons on aircraft, ships or Channel Tunnel rail services arriving (or expected to arrive) or leaving (or expected to leave) the UK. When a carrier does not seek such authority or fails to comply with a refusal of authority to carry, a penalty of up to £50,000 may be imposed on the carrier. Under the Authority to Carry Scheme 2015 and the 2021 Scheme, the Home Office has refused carriers authority to carry around 10,900 individuals seeking to travel to the UK. This has included around 270 individuals excluded from the UK, around 4,400 individuals previously deported from the UK, over 5,500 individuals using invalid, lost, stolen or cancelled travel documents, over 600 revoked or cancelled visas or entry clearances and over 40 other individuals who were refused for other reasons such as criminality and being subject to travel bans. 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. To put this into context, in the year ending March 2022, there were c.42.9M arrivals into the UK.[1]

7.2 As was standard practice at the time, the Authority to Carry (Civil Penalties) Regulations 2015 contain a sunset clause which, in effect, means those regulations would cease to have effect when the 2021 Scheme is replaced. One purpose of this instrument is to remove the sunset clause from those regulations because the operation of an Authority to Carry Scheme has become a well-established and permanent element of the UK's border security arrangements. Each Scheme has replaced the preceding Scheme. The first Scheme, made under the Nationality, Immigration and Asylum Act 2002, entered into force in April 2012.

7.3 The 2023 Scheme will replicate the 2021 Scheme and will include additional classes of individuals who the carrier may be refused authority to carry. This approach of

[1] www.gov.uk/government/statistics/immigration-statistics-year-ending-march-2022/how-many-people-come-to-the-uk-each-year-including-visitors. As international travel is still recovering from the covid pandemic, passenger numbers have not reached pre-pandemic levels.

replacing the 2021 Scheme has been chosen so only one Scheme need operate rather than two Schemes covering different classes of individual.

7.4 The 2023 Scheme has been introduced to reflect the advent of Electronic Travel Authorisations within the meaning of section 11C of the Immigration Act 1971. As part of the Government's policy to create a digital border and immigration system which enhances the security of the UK, the Home Office is introducing the concept of Universal Permission to Travel (UPT) and requiring all individuals to have a valid permission before travelling to the UK. One of the key components of UPT is the introduction of ETAs which will require non-visa nationals who are visiting or transiting the UK and who do not already have a valid immigration status to obtain an ETA prior to travelling. The immigration rules will provide that applications for ETAs may be refused, and once granted ETAs may be cancelled in certain circumstances.

7.5 As Authority to Carry is the key mechanism through which individuals may be prevented from travelling to the UK, a new Scheme is being introduced now in readiness for the launch of the ETA Scheme. The 2023 Scheme maintains border security by ensuring the following individuals may be prevented from travelling to the UK:

(a) Individuals who have been or would be refused an Electronic Travel Authorisation under the immigration rules, and have not subsequently been granted entry clearance or a visa;

(b) Individuals whose Electronic Travel Authorisation has been cancelled under the immigration rules and have not subsequently been granted entry clearance, visa or permission to stay.

7.6 In addition, the scope of the 2023 Scheme will provide that authority to carry may be refused in respect of individuals travelling (or expected to travel) to (or from) the UK who are using a document which is not valid for the purposes of international travel. These are documents which purport to be legitimate passports but are not officially issued by a country or an organisation recognised by the UK. As such they do not establish an individual's identity and nationality satisfactorily and are not valid for travel to or from the UK. Authority to carry may also be refused to individuals using a travel document of which they are not the rightful holder.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 No consolidation is required.

10. Consultation outcome

10.1 Informal consultation has been undertaken with UK-based carriers to seek their views on the proposed 2023 Scheme and on the operation of the 2021 Scheme. Their overall experience of the 2021 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 2023 Scheme and the civil penalty regime. The Home Office will continue to engage with industry on the detail of the 2023 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 who are subject of refusals of authority to carry 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, the Minister for Security, Tom Tugendhat MP 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 and Identity Policy Unit (Home Office) Telephone: 020 7035 3752 or email: predeparturechecks@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

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

15.3 The Minister for Security, Tom Tugendhat MP at the Home Office can confirm that this Explanatory Memorandum meets the required standard.