EXPLANATORY MEMORANDUM TO

THE AUTHORITY TO CARRY SCHEME (CIVIL PENALTIES) REGULATIONS 2015

2015 No. [XXXX]

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 breaches any requirement of the Authority to Carry Scheme 2015 (the "Scheme"), which is brought into force by the Counter-Terrorism and Security Act 2015 (Authority to Carry Scheme) Regulations 2015.

2.2 The Scheme may be breached by a carrier in various ways, such as failing to provide the required passenger and crew information in the required manner and form by the required time, or 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 the Joint Committee on Statutory Instruments

3.1 This instrument breaches the "21-day rule". The Department apologises for this breach, which has occurred because the Department wishes to avoid delay to the coming into force of this instrument and the associated civil penalties. Parliament approved the provisions at Part 4 and Schedule 5 to the Counter-Terrorism and Security Act 2015 coming into force on Royal Assent with a view to a new Scheme and related civil penalties coming into force as soon as possible. The urgency of these measures, and the fact that the primary legislation itself was expedited, is a result of the UK national terrorist threat level having been raised to SEVERE in August 2014.

3.2 Public consultation on the introduction of an Authority to Carry Scheme originally took place in 2011, preceding the introduction of the 2012 Scheme. To allow the opportunity for carriers' scrutiny of the changes to the scope of the Scheme, in a further consultation launched in January and concluding on 16 February 2015, the Department sought views from carriers and their representative bodies on the proposed scope of a new Authority to Carry Scheme.

4. Legislative Context

4.1 The first Authority to Carry Scheme was made under section 124 of the Nationality, Immigration and Asylum Act 2002 and introduced in July 2012. It requires a carrier which has been issued with a written requirement to provide advance passenger information to the Border Force to seek authority to carry to the UK all persons who come within the scope of the Scheme. The Nationality, Immigration and Asylum Act 2002 (Authority to Carry) Regulations 2012 allow the Secretary of State to impose a penalty not exceeding £10,000 for failure to seek authority to carry or bringing to the UK a person for whom they are refused authority to carry.

4.2 Section 22 of the Counter-Terrorism and Security Act 2015 extends the potential scope of any Scheme. The Authority to Carry Scheme 2015 covers a broader range of individuals who are subject to restrictions on travel. . In particular, the new Scheme will capture outbound travel and those passengers with a right of abode in the UK who are subject to a temporary exclusion order under Part 1 of the Act. The Authority to Carry Scheme (Civil Penalties) Regulations 2015, made under section 24(7) of the Act, raise the penalty to a sum not exceeding £50,000 where a carrier to whom the Scheme applies breaches (i) a requirement to seek authority to carry a person, (ii) a requirement to provide specified information by a specified time, (iii) a requirement to provide information in a specified manner and form, (iv) a requirement to be able to receive communications in a specified manner and form, or (v) a requirement not to carry a person when authority to carry has been refused. Each individual breach of the Scheme may result in a fine of up to £50,000. A defence of 'reasonable excuse' will apply.

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 Authority to Carry (Civil Penalty) 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 the UK and to deal with those already in the UK who pose a risk to the public.

7.2 The new Scheme expands to include a broader range of individuals who may be included where it is in the public interest. It also applies to journeys from as well as to the United Kingdom.

8. Consultation outcome

8.1 Following engagement with the airline and maritime industries at the pre-consultation stage, a consultation with air, maritime and rail carriers operating into the United Kingdom on the proposed penalties ended on 16 February 2015. A total of 28 responses were received.

8.2 Nearly all respondents emphasised that the size of the penalty made no difference to the intent of carriers to comply with the Authority to Carry Scheme. One carrier stated that the size of the penalty helped to underline the seriousness of the Scheme. The majority of carriers felt, however, that a proposed maximum fine of £50,000 was excessive and disproportionate, especially when compared to the possible fines imposed by other countries. A number of respondents stated that a 'reasonable excuse' for failure to comply with the requirements of the Scheme should include factors outside carrier control, such as technical failure or system outage. A carrier can have a reasonable excuse where they could show 'best endeavours' to comply with the Scheme.

9. Guidance

9.1 Full guidance will be provided to industry on the operation of the Scheme. The Home Office and other agencies will continue to engage with industry on the detail of the Scheme to assist implementation.

10. Impact

10.1 In summary, the costs to carriers in operating the Scheme may be minimal. It has not been necessary to impose penalties under the 2012 Regulations.

10.2 Impacts on the public sector will be delivered from within existing resource allocations.

10.3 A final Impact Assessment is published online 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 Management Information will be collected by the Home Office to inform future Impact Assessments that review this policy. 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 3752 or email: predeparturechecks@homeoffice.x.gsi.gov.uk can answer any queries regarding the instrument.