EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (LEAVE TO ENTER AND REMAIN) (AMENDMENT) (EU EXIT) ORDER 2020

2020 No. [XXXX]

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 This instrument will ensure that the UK can continue to utilise electronic passport gates (e-Gates), a secure and efficient mechanism for travellers to cross the border, to process the arrival of citizens of current EU and EEA member states and Switzerland entering the UK as visitors after the end of the transition period on 31 December 2020. This amendment also allows for leave to be granted to those who enter through an e-Gate and qualify for status under the S2 Healthcare Visitor cohort, and provides for Service Providers from Switzerland to use multi-entry visas. These groups' rights to enter the UK are protected by the Withdrawal Agreement, the EEA European Free Trade Association (EFTA) Separation Agreement and the Swiss Citizens' Rights Agreement ('the withdrawal agreements'). The instrument also provides for leave received by a person who enters through an e-Gate to be treated in the same way as leave obtained by the operation of an entry clearance, giving Immigration Officers the power to cancel such leave where necessary. This SI is important to maintain security and fluidity across the UK border, and forms part of long-term plans to develop a new global border and immigration system that will be digital by default.

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 section 37 of the Immigration Act 1971) 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 whole of the United Kingdom.

5. European Convention on Human Rights

5.1 The Immigration Minister has made the following statement regarding Human Rights:

"In my view the provisions of the Immigration (Leave to Enter and Remain) (Amendment) (EU Exit) Order 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 Until free movement (as given domestic effect in the Immigration (European Economic Area) Regulations 2016) is ended, EU, EEA and Swiss citizens (hereafter collectively referred to as EEA citizens) do not require leave to enter or remain in the UK. They can, however, be admitted to the UK by passing through an e-Gate. After free movement is ended, EEA citizens arriving in the UK with no existing status, or eligibility to apply for status under the EU Settlement Scheme (EUSS), will need to obtain leave to enter in the same way as those without EEA rights do at present. This instrument (made under section 3A of the Immigration Act 1971) will allow those EEA citizens without existing status to be granted leave to enter automatically when they pass through an e-Gate. Additionally, this instrument allows any EEA or B5JSSK citizen travelling to the UK as an S2 Healthcare Visitor to be granted leave to enter by passing through an e-Gate in those categories where appropriate. It also allows Service Providers from Switzerland to use multi-entry visas to enter the UK. These two groups are protected by the withdrawal agreements.

7. Policy background

What is being done and why?

7.1 The four overall objectives of this instrument are:

a) To allow for EEA citizen visitors to obtain be able to obtain leave to enter by passing through an e-Gate.

b) To allow EEA or B5JSSK citizens arriving in the UK under the S2 Healthcare Visitor Route to be able to obtain leave to enter by being granted verbally by a Border Force officer, or by passing through an e-Gate.

c) To allow those holding a Service Provider from Switzerland entry clearance to enter the UK on an unlimited number of occasions during its validity, issuing 90 days leave to enter upon each entry (and allowing EEA or B5JSSK citizens to enter using e-Gates).

d) To provide for leave obtained by a person passing through an e-Gate to be treated in the same way as leave deriving from a visa, thus enabling Border Force officers to examine such persons and to cancel their leave where necessary and appropriate.

7.2 Upon the end of free movement, EEA citizens will require leave to enter or remain in the UK. Those coming to the UK to work or live, or for periods over 6 months, will require permission in advance of travel, but those coming as visitors will be able, like other non-visa nationals, to obtain leave to enter at the border for six months. This instrument is required to allow EEA citizen visitors to obtain leave by going through an e-Gate. This leave will be granted for six months in the same way as it is granted to nationals of Australia, Canada, Japan, New Zealand, Singapore, South Korea and

the USA (known as the B5JSSK nationals) who have been able to obtain leave to enter by passing through an e-Gate since 2019.

7.3 The change will benefit the operation of the UK border as a whole by ensuring that the large number of EEA citizen visitors are able to cross the border in the most secure and efficient manner possible. The smooth operation of the border is beneficial to the travelling public, carriers, port operators, government and the UK economy.

7.4 The continued use of e-Gates by EU, EEA and Swiss nationals is in line with our long-term programme to develop a new global border and immigration system that makes better use of data, biometrics, analytics and technology to improve both security and fluidity across the border.

7.5 This change will enable EEA citizens to continue to use e-Gates to enter the UK as visitors. It will ensure that the border security and efficiency benefits of e-Gates can be maintained when processing this cohort of travellers after the end of the transition period. It will also ensure that EEA citizens and citizens of B5JSSK countries can use e-Gates when entering the UK as S2 Healthcare Visitors, a new route created in the Immigration Rules which implements part of the withdrawal agreements.

7.6 There are also minor amendments to allow for implementation of the Service Providers from Switzerland (SPS) route – a cohort which implements one of the UK's commitments under the UK-Switzerland Citizens' Rights Agreement. These amendments allow for the cohort to enter the UK on multiple occasions throughout the validity period of their entry clearance, and for the holder to have 90 days leave to enter upon each entry. Allowing for multiple entries avoids eligible service providers from having to submit repeated applications for entry clearance before each planned business visit to the UK. This is especially important because an application under this route requires attending a Visa Application Centre to give biometrics.

7.7 Limited numbers of travellers from the EU, EEA and Switzerland will be ineligible to use the e-Gates. These include those travelling with national identity cards, or non-biometric passports as well as children aged under 12 and their accompanying adults – this is because the e-Gates cannot process these documents or children under 12 years of age. Likewise, those who do not have existing status and are not travelling as visitors, or S2 Healthcare Visitors, within the meaning of the immigration rules will require specific grants of leave from a Border Force officer and will be unable to obtain such leave by passing through an e-Gate. Those unable to use the eGates will include individuals who are coming to the UK to undertake Permitted Paid Engagements or with a Tier 5 Creative and Sporting Certificate of Sponsorship, but who do not have an accompanying entry clearance.

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

8.1 This instrument is not being made to address a deficiency in retained EU law but relates to the withdrawal of the United Kingdom from the European Union because it enables the border to continue to flow smoothly once free movement ends, and gives effect to the rights of two protected cohorts.

9. Consolidation

9.1 The Immigration (Leave to Enter and Remain) (Amendment) (EU Exit) Order 2020 makes only a limited amendment to the Immigration (Leave to Enter and Remain) Order 2000, and so consolidation is not considered to be appropriate.

10. Consultation outcome

10.1 This instrument was not subject to a consultation exercise because the Government judges that significant numbers of passengers will benefit, with only very limited impact on the experience of others.

11. Guidance

11.1 The Home Office guidance to staff will be updated to reflect these changes. Guidance to general members of the public will also be published before the change is implemented.

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 there is no significant impact on business.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The use of e-Gates will be monitored and reviewed by the Home Office following the implementation of this instrument.

15. Contact

15.1 Andrew Tulett at the Home Office Telephone: 0300 0711715 or email: andrew.tulett@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Nigel Farminer at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Future Borders & Immigration Minister at the Home Office can confirm that this Explanatory Memorandum meets the required standard.