EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (LEAVE TO ENTER AND REMAIN) (AMENDMENT) ORDER 2018

2018 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 enable a specified cohort of low-risk individuals to use the ePassport gates as standard when crossing the UK border. It will apply to nationals from Australia, Canada, Japan, New Zealand, Singapore, South Korea and the United States. Automating the clearance of these nationalities through the border is part of a long-term programme of work to develop a new global border and immigration system that will improve both security and fluidity across the border.

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) Order 2018 are compatible with the Convention rights."

6. Legislative Context

6.1 Under existing legislation, an individual who is not required to hold an entry clearance and who arrives in the UK seeking leave to enter as a visitor would ordinarily be granted leave by an immigration officer following examination. This does not apply in the case of Registered Traveller Service visitor members, who (pursuant to the Immigration (Leave to Enter and Remain) (Amendment) Order 2010/957) may be

approved as individuals who can obtain leave by going through an ePassport gate. This instrument (made under section 3A of the Immigration Act 1971) will allow additional cohorts of individuals without leave to be granted leave to enter as a visitor automatically when they pass through an ePassport gate.

7. Policy background

What is being done and why?

7.1 The UK already leads the world in automated passenger clearance via ePassport gates, allowing more nationalities than anywhere else to use them.

7.2 The extension of ePassport gates to new cohorts of passengers is part of a long-term programme to develop a new global border and immigration system that makes better use of data, biometrics, analytics and automation to improve both security and fluidity across the border.

7.3 This instrument will enable a specified cohort of low-risk individuals to use the ePassport gates as standard when crossing the UK border. It will apply to nationals from Australia, Canada, Japan, New Zealand, Singapore, South Korea and the United States.

7.4 This change will benefit the vast majority of these nationals arriving at airports with ePassport gates. They will experience much shorter queue times and faster entry into the UK. Some limited categories of these travellers will be ineligible to use the ePassport gates. These include those without biometric passports, those travelling with children aged 11 and under, and those not travelling as visitors within the meaning of the immigration rules. Members of these groups will require specific grants of leave from a Border Force officer.

7.5 The change will also benefit other nationalities who are not eligible to use the ePassport gates, as moving high volumes of nationals from Australia, Canada, Japan, New Zealand, Singapore, South Korea and the United States out of the non-EEA queue at ports will result in shorter queue times in the non-EEA queue for those who are still required to see a Border Force Officer.

7.6 The change will mean that British and EEA nationals may experience slightly longer queue times when using ePassport gates. The Government believes any such impact will be limited and reasonable.

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

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

9. Consolidation

9.1 The Immigration (Leave to Enter and Remain) (Amendment) Order 2018 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 approach to monitoring of this legislation is that the Home Office will monitor the impact of the instrument.

15. Contact

15.1 Helen Gray at the Home Office Telephone: 020 7035 0187 or email: Helen.Gray@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 Immigration Minister at the Home Office can confirm that this Explanatory Memorandum meets the required standard.