EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (LEAVE TO ENTER AND REMAIN) (AMENDMENT) ORDER 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 Article 8B of the Immigration (Leave to Enter and Remain) Order 2000 ("the 2000 Order") sets out the eligibility requirements for a person to be able to pass through an e-gate and be automatically granted leave to enter. One of the requirements is that a person is 12 years and above. This instrument will amend the age so that it is 10 years and above.

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 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 Immigration has made the following statement regarding Human Rights:

"In my view, the provisions of the Immigration (Leave to Enter and Remain) (Amendment) Order 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument amends the 2000 Order, to provide the legal basis for a proof of concept trial which will assess the viability of lowering the current minimum age at which passengers may obtain permission to enter the UK when entering using an e-gate from 12 to 10.

7. Policy background

What is being done and why?

7.1 The recent Government strategy document, 'New Plan for Immigration: Legal Migration' (published in July 2022) includes a commitment to '…conduct proof of concept trials to see if the age limit for current eligible nationalities that can use the eGates can be lowered from 12 to 10 years'.

7.2 In order to obtain permission to enter using one of the 263 e-gates currently in use at airports in the UK and juxtaposed controls, a passenger must meet criteria set out in secondary legislation. These criteria include being of an eligible nationality and being at least 12 years of age.

7.3 This instrument is a necessary step in law to allow a proof of concept trial to take place. It amends the 2000 Order so that the minimum age for obtaining permission to enter when passing through an e-gate is adjusted from 12 to 10.

7.4 This is in keeping with the Government's wider ambition of increasing the use of automation (that is, entry to the UK facilitated by technology without manual intervention by a Border Force officer). The Government's position is that automated entry to the UK (which is already widely used) has the potential to deliver a wide range of benefits to the UK, including improvements to security, passenger flow and customer experience. The anticipated benefits of allowing younger passengers to enter via an e-gate are likely to be realised most obviously at peak times of travel, including the school summer holidays.

7.5 The proof of concept trial will be limited in time and location, and will test the ability of 10 and 11 year olds to use the gates, examine impacts on border operations and consider the best mechanisms for ensuring that the welfare of those children is safeguarded. The trial will be thoroughly reviewed and, should it be deemed to have been successful, e-gate use for 10 and 11 year olds will be extended to additional ports.

Explanations

What did any law do before the changes to be made by this instrument?

7.6 Article 8B(2) of the 2000 Order sets out the eligibility criteria for people obtaining permission to enter the UK by passing through an automated gate (e-gate). Sub-paragraph (c) requires eligible passengers to be aged 12 or above. This section therefore establishes the legal requirement for an eligible, accompanied passenger to be at least 12 years old in order to obtain permission to enter when using an e-gate.

Why is it being changed?

7.7 The 2000 order is being amended to lower the minimum age of e-gate eligibility from 12 to 10.

What will it now do?

7.8 The instrument will allow eligible passengers aged 10 and above to be granted leave to enter via an e-gate.

8. European Union Withdrawal and Future Relationship

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 No consolidation is being undertaken.

10. Consultation outcome

10.1 This instrument was not subject to a consultation.

11. Guidance

11.1 The Home Office guidance to staff will be updated to reflect these changes. Particular care will be taken to update guidance on the safeguarding of potentially vulnerable young passengers. Ensuring suitable arrangements for safeguarding are in place will be a key part of the proof of concept trial and will feed into the guidance for Border Force should the trial prove successful. Guidance to general members of the public will also be published before any longer-term changes are 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 Home Office will closely monitor the flow of passengers across the UK border at the port(s) chosen to participate in the proof of concept exercise. The trial will test the ability of 10 and 11 year olds to use the gates, examine impacts on border operations and consider the best mechanisms for ensuring that the welfare of those children is safeguarded. The outcome of the pilot will be rigorously reviewed at its conclusion, after which a decision will be made as to whether use of the e-gates should be extended to 10 and 11 year old passengers on a permanent basis.

15. Contact

15.1 Richard O'Connor at the Home Office, Telephone: 07826 549456 or email: Richard.o'connor2@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

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

15.3 Robert Jenrick, Minister for Immigration at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.