EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND POLICE (PASSENGER, CREW AND SERVICE INFORMATION) (AMENDMENT) ORDER 2022

2022 No. 84

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 The purpose of this Order is to amend the Immigration and Police (Passenger, Crew and Service Information) Order 2008 (S.I. 2008/5) ("the 2008 Order"), removing the sunset clause, inserted in 2015, which would otherwise mean the 2008 Order would cease to have effect from 15th April 2022. This Order also makes minor amendments to the requirements that may be imposed on carriers to ensure the 2008 Order remains fit for purpose.

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 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The 2008 Order was made under paragraphs 27 and 27B of Schedule 2 to the Immigration Act 1971 ("the 1971 Act") and section 32 of the Immigration, Asylum and Nationality Act 2006 ("the 2006 Act"). Modifications to these powers apply in respect of trains entering and leaving the United Kingdom via the Channel Tunnel by virtue of the Channel Tunnel (International Arrangements) Order 1993 (S.I. 1993/1813).

6.2 Paragraph 27 of Schedule 2 to the 1971 Act enables the Secretary of State to, by order, require or enable an immigration officer to require, a carrier to supply a passenger list and particulars of crew in respect of a ship, aircraft, or train arriving or departing the United Kingdom and to specify the form and manner in which this information is to be provided.

6.3 Paragraph 27B of Schedule 2 to the 1971 Act enables the Secretary of State to, by order, specify the passenger and service information that an immigration officer may require from carriers in respect of a ship, aircraft or train arriving or departing the UK.

6.4 Section 32 of the 2006 Act, permits the Secretary of State to, by order, specify the passenger, crew and service information which the police may require from carriers in respect of a ship, aircraft or train arriving or departing the UK and to specify the form and manner in which this information is to be provided.

7. Policy background

What is being done and why?

7.1 Processing of complete, accurate and timely crew and passenger data is essential for border security. Travel document information for passengers and crew processed in advance of travel, known as Advance Passenger Information (API), supports pre-departure watchlisting to prevent travel to (or from) the UK or to alert a port to an arriving (or departing) subject of interest. In addition to the provision of API, Passenger Name Record (PNR) data is also required for all passengers. PNR data is collected for a carrier's own commercial purposes and includes details such as passenger's name, address, telephone number(s), ticketing information and travel itinerary. PNR data is used for targeting purposes for the prevention, detection, and investigation of serious and organised crime and terrorism.

7.2 All carriers operating scheduled services to and from the UK are required to provide passenger, crew, and service information to the Home Office. This information is required in accordance with paragraphs 27 and 27B of Schedule 2 to the 1971 Act and is specified in the 2008 Order. The same information may be required by a constable (of the rank of superintendent or above) under section 32 of the 2006 Act.

7.3 The 2008 Order specifies the information that may be required from ships, aircraft and trains arriving or expected to arrive in, or leaving or expecting to leave the UK as well as specifying the form and manner in which some of this data should be provided. The provision of the specified information enables Border Force and police to carry out checks which allow appropriate law enforcement action to be taken.

7.4 As was standard practice for regulations in 2015, the 2008 Order was amended by the Immigration and Police (Passenger, Crew and Service Information) (Amendment) Order 2015 (S.I. 2015/859) to add a sunset clause. The approach being taken is to remove the sunset clause because requiring passenger, crew, and service information from carriers and specifying which data may be required has been a permanent feature of the UK's border security arrangements since the early 1970s and will be an ongoing and well-established feature of those arrangements into the future.

7.5 In addition to removing the sunset clause, further minor amendments are being made to the 2008 Order to ensure it remains fit for purpose and reflects the changes and progress made in terms of the acquisition of passenger, crew, and service information. These include a requirement for carriers to ensure that they have, prior to departure, sought and received authority to carry for all individuals on board and do not carry anyone for whom authority has been refused in accordance with the requirements of any Authority to Carry Scheme made under section 22 of the Counter-Terrorism and Security Act 2015. This ensures that all individuals have been security checked prior to their departure to or from the UK and those individuals who pose a threat to the UK can be prevented from boarding.

7.6 This Order also amends the existing Schedules to align the information that can be sought by immigration officers and the police and simplify four Schedules into two that apply to both immigration officers and the police.

7.7 Additional amendments will future-proof the 2008 Order by including specific data items that are not routinely collected by all carriers. Although these are not currently international standard data items, these are likely to become so in the future through the continued development of international data standards by the World Customs Organisation in collaboration with the International Civil Aviation Organisation, the International Air Transport Association, and the International Maritime Organisation. These include the additional biographic machine-readable information that may be contained in an individual's passport; for example, national personal identity numbers, where those are included. By incorporating these requirements as amendments to the 2008 Order now, Border Force will be able to require these items as they become standard. Additionally, to facilitate travel by individuals holding dual nationality, it is important to provide for carriers which do record additional document information an individual may use for part of their journey.

7.8 Finally, specific data items have been included to enable Border Force and the police to make better use of the data already being received. This will include a requirement to provide the actual time a flight, voyage, or international service departed (which can differ from the scheduled time of departure) and a requirement to inform Border Force and the police when a flight has been cancelled. Having this information will enable more effective operational decisions when flights or voyages are cancelled, delayed or – in some instances – operate ahead of schedule.

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 A consultation was not conducted as the instrument is intended to maintain the provisions of the 2008 Order. The new data elements will be required only where they are collected in standard across carrier systems.

11. Guidance

11.1 No guidance is required as the instrument is intended to maintain the provisions of the 2008 Order. Guidance on providing the new data elements will be provided at such a time as those elements are standard and are required.

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 A full Impact Assessment has not been prepared for this instrument because this Order relates to the maintenance of existing provisions.

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 continue to collect and review management information on an ongoing basis to assess the extent to which carriers meet their legal obligations as set out in the instrument.

14.2 As part the monitoring approach set out above, the instrument itself and its effectiveness will be subject to review to ensure its continued utility.

15. Contact

15.1 Simon Watkin of the Border Security and Identity Policy Unit at the Home Office can be contacted with any queries regarding the instrument (telephone: 07867 151354 or email: simon.watkin@homeoffice.gov.uk).

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

15.3 Minister of State for Security, Damian Hinds at the Home Office can confirm that this Explanatory Memorandum meets the required standard.