EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND POLICE (PASSENGER, CREW AND SERVICE INFORMATION) ORDER 2024

2024 No. 1227

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. Declaration

2.1 Seema Malhotra, Minister for Migration and Citizenship at the Home Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Nigel Farminer, Deputy Director for Passenger Policy and Border Transformation at the Home Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Simon Watkin at the Home Office, telephone: 0300 073 2438 or email: simon.watkin@homeoffice.gov.uk, can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Order revokes and replaces the Immigration and Police (Passenger, Crew and Service Information) Order 2008 (SI. 2008/5). It clarifies the categories of specified passenger, crew and service information which may be required from owners and agents of aircraft and ships, and operators of international rail services ("carriers") reflecting development in carriers' business practice. The instrument also aligns with current international standards.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 The purpose of this instrument is to update the specification of information which may be required from carriers, taking account of the development of carriers' business practices and the development of international guidelines which have evolved since

2008. By not proceeding with this legislation the Home Office would be reliant upon the specification in the 2008 Order which no longer aligns with industry practice or with international guidelines.

5.2 All carriers operating scheduled flights, voyages and Channel Tunnel rail services to and from the UK are required to provide information to the Home Office about the flight, voyage or service and all persons on board.

5.3 The information which may be required from carriers must be specified by Order. This instrument specifies the information that may be required in respect of ships, aircraft and Channel Tunnel trains arriving (or expected to arrive) in the UK or leaving (or expected to leave) the UK. The instrument also specifies the form and manner in which some data should be provided. The provision and subsequent processing of the specified information is essential for border security, immigration, customs and other law enforcement purposes.

5.4 Information about passengers and crew processed in carriers' departure control systems and required in advance of travel is known as Advance Passenger Information (API). Processing of API enables the operation of the Authority to Carry Scheme 2023[1] (the UK's "No-Fly" Scheme) and enables officers at ports to be alerted to the anticipated arrival or departure of subjects of interest. It also enables the operation of eVisas and the Electronic Travel Authorisation scheme, where passengers' information provided by carriers is checked to ensure individuals have valid permission to travel to the UK.

5.5 Information about passengers' bookings generally collected in carriers' reservation systems known as Passenger Name Record (PNR) data may also be required for passengers on scheduled and commercial services. PNR data is processed for carriers' commercial purposes to facilitate bookings and reservations. It can include details such as the passenger's name, address, contact details, ticketing information and travel itinerary. PNR data is required only to the extent the carrier collects it. PNR data is subject to specific safeguards and may only be used for the prevention, detection, investigation and prosecution of terrorist offences or serious crime.

5.6 Since the introduction of the 2008 Order, there have been significant developments in international guidelines and standards for API and PNR data. This includes specific safeguards for the processing of PNR data reflected in the Passenger Name Record Data and Miscellaneous Amendments Regulations 2018 (SI. 2018/598) ('the PNR Regulations') and the specification of API in the international *Guidelines on Advance Passenger Information (API)* (June 2022)[2] adopted jointly by the World Customs Organisation (WCO), the International Civil Aviation Organization (ICAO) and the International Air Transport Association. The UK is a member state of both WCO and ICAO.

5.7 The 2008 Order did not use the terms API or PNR data. It specified information in two Schedules: "information specified" which must be provided, and "information specified to the extent known by the carrier" which must be provided where known. For the purpose of the PNR Regulations, all information required to the extent known by the carrier was considered as PNR data. However, carriers' business practice means some information which may be processed in a reservation system (and provided as PNR data) is also processed in the departure control system (and provided

[1] https://www.gov.uk/government/publications/authority-to-carry-scheme-2023
[2] www.icao.int/Security/FAL/Documents/API%20Guidelines.EN.June2022.pdf

as API) for example, reference numbers used to identify passengers, baggage information, seating information, ports of embark and port of disembarkation.

5.8 To reflect current business practice and international standards, the 2024 Order specifies passenger, crew and service information in three Schedules: Schedule 1 specifies information which is required (API); Schedule 2, reflecting the 2022 *Guidelines on API*, specifies information provided with information specified in Schedule 1 which may be required to the extent known by the carrier (API); and Schedule 3 specifies information which is required to the extent known by the carrier and is subject to the specific safeguards in the PNR Regulations (PNR data). All information is subject to safeguards in the Data Protection Act 2018.

5.9 The 2024 Order also makes necessary consequential amendments to the PNR Regulations.

What was the previous policy, how is this different?

5.10 The 2008 Order provided only for two types of information: specified information, and specified information to the extent known to the carrier. In 2008, less was known about the range of information which would be provided from different carrier systems. This legislation reflects more precisely which information is provided, and which information is subject to the specific safeguards in the PNR Regulations.

6. Legislative and Legal Context

6.1 Paragraphs 27 and 27B of Schedule 2 to the Immigration Act 1971 provide that an immigration officer can require an operator of international flights, voyages and Channel Tunnel rail services to and from the UK to provide specified information. The same requirements may be made by a police constable (of the rank of superintendent or above) in accordance with section 32 of the Immigration, Asylum and Nationality Act 2006.

How has the law changed?

6.2 The 2024 Order specifies three categories of information whereas the 2008 Order, which it revokes and replaces, specified only two. They are:

i. in Schedule 1 – Specified information which can be required.

ii. in Schedule 2 – Specified information which can be required to the extent known by the carrier when provided with information in Schedule 1.

iii. in Schedule 3 – Specified information which can be required to the extent known by the carrier, is not provided by the carrier with the information specified in Schedule 1 and is subject to the specific safeguards in the PNR Regulations.

Why was this approach taken to change the law?

6.3 Consideration was given to amending the 2008 Order. As the policy objective is to clarify the law, the approach taken is to revoke and replace the 2008 Order.

7. Consultation

Summary of consultation outcome and methodology

7.1 The 2024 Order changes the specification of information requirements which may be placed on carriers but only to the extent which reflects the international *Guidelines on*

API adopted in 2022 and the current business practices of some carriers. As such, there is expected to be no practical impact to carriers. When they are required to provide information, they will continue to provide the same information in the same way they do now, but the specification of the information will be more precise. Consequently, no formal consultation has been undertaken, because the instrument will have no practical impact on carriers' current practices of complying with information requirements. The Home Office engages regularly with carriers to manage their obligations to provide passenger, crew and service information.

8. Applicable Guidance

8.1 No specific guidance has been prepared for this instrument. Guidance is available in the international Guidelines on API as well as in technical documentation specified in the Immigration (Form and Manner of Passenger Information) Direction 2023[3].

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared because this instrument relates to maintenance of existing regulatory standards and as such there is no impact to business to be assessed.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this legislation does not place any additional practical requirements on carriers. It specifies the information required to be provided more precisely. It also clarifies for those using the information which safeguards apply to which information.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because the changes introduced by the 2024 Order clarify how data is categorised and safeguarded, there are no costs associated with it.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is the Home Office will continue to review, on an ongoing basis, the information provided by carriers when meeting their legal obligations and to ensure appropriate safeguards and protections are afforded to personal information.

10.2 As part the monitoring approach set out above, the instrument itself and its effectiveness will be subject to review to ensure its continued utility and ongoing compliance with international standards and data protection safeguards.

10.3 The instrument does not include a statutory review clause.

[3] https://www.gov.uk/government/publications/the-immigration-form-and-manner-of-passenger-information-direction-2008--2

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").