EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (PASSENGER TRANSIT VISA) (AMENDMENT) (NO. 2) ORDER 2024

2024 No. 1218

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

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 John Brocklehurst, Deputy Director for Visits, Identity, Trade Policy and Enablers, at the Home Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Huw Davies at the Home Office, on email: visapolicyteam@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 adds Colombia to the list of countries or territories whose nationals or citizens need transit visas if they want to pass through the United Kingdom without entering while transiting to another country.

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 Decisions on changes to visa requirements are designed to serve the national interest and are always taken in the round. A range of factors are considered. These will vary globally, but often include security, compliance, returns and prosperity. Following the lifting of the visa requirement in November 2022, there has been a significant and sustained increase in Colombian nationals who have travelled to the UK for the purpose of claiming asylum in the UK. The latest available published statistics

demonstrate this trend with the number of asylum claims rising from 2, 4 and 7 in the first 3 quarters in 2022, to 105 in 2022 quarter 4. There were 211, 176, 173 and 294 asylum claims in the 4 quarters of 2023, and there have been 227 and 241 asylum claims in the first 2 quarters of 2024. This compares to 19 asylum claims in the whole of 2019, 11 in 2020 and 6 in 2021. There have been more asylum claims per quarter in 2023 and 2024 than in the entire 10 years preceding the visa lift.

5.2 A requirement to obtain a visa prior to travelling to the UK as a visitor has therefore been reintroduced for Colombian nationals through an amendment to the Immigration Rules.

5.3 The amendment to the Immigration (Passenger Transit Visa) Order 2014 is being made in parallel so that Colombian nationals will also be required to obtain a Direct Airside Transit Visa (DATV) in advance if they wish to transit the UK (i.e. pass through the UK without entering). If this amendment is not made, these nationals could travel to the UK without a visa if they have booked an onward ticket to another destination where they either hold a visa or they are not required to have one. The amendment will prevent these nationals from travelling to the UK, using transit provisions, as a means of then claiming asylum on arrival (or at their onward destination).

5.4 Not introducing a DATV requirement in parallel to the broader visa requirement would be likely to significantly reduce the intended impact of introducing a visa requirement because visa-free travel would still be available via transit routings. Although this is not an approach that has been used by Colombian nationals so far, it is considered highly likely that this vector would be identified now that visa-free travel has been established as a route for claiming asylum, principally at port. This would materially undermine the intention and impact of the reintroduction of a visa requirement.

5.5 The introduction of a Direct Airside Transit Visa requirement will include a transition period for Colombian nationals to transit the UK without a visa where they hold a confirmed flight booking made prior to the introduction. This period will commence at the same time as the visa requirement is introduced and run until 28 days after the introduction date, to 24 December 2024. During this period, Colombian nationals who hold a confirmed travel booking to transit the UK within the 28-day transition period, will not be required to obtain a Direct Airside Transit Visa before travel. Those who do not meet these conditions during the transition period will require a visa. Colombian nationals who hold confirmed bookings for travel to the UK on a date after the transition period ends will need to obtain a visa in advance of travel. Amending the date of travel on a confirmed booking to an earlier date that falls within the transition period would still require the individual to have a visa.

5.6 This transition period will prevent operational difficulties, general unfairness, and ensure that people who arranged travel before this announcement do not lose money. The length of the period (28 days) has been chosen to give those affected enough time to apply for and receive a visa. The current service-level agreement for processing times for visit visas is 21 working days.

5.7 Consequential to the introduction of the visitor visa requirement for Colombian nationals, a change to the Immigration Rules has been made to remove Colombia from the eligibility list of countries for Electronic Travel Authorisation. Colombian nationals will not be eligible to apply for an ETA and therefore will not be able to use an ETA to transit the UK to an onward destination.

What was the previous policy, how is this different?

5.8 Since 9 November 2022, Colombian nationals have been able to visit the UK and to transit the UK airside through to an onward destination without a requirement to obtain a visa in advance. Prior to November 2022, Colombian nationals were able to transit the UK airside to an onward destination without a visa, but required a visa to enter the UK as a visitor. This instrument will require all Colombian nationals that wish to transit UK airside to have a Direct Airside Transit Visa unless they hold a document listed at Paragraph 4 the Immigration (Passenger Transit Visa) Order 2014.

6. Legislative and Legal Context

How has the law changed?

6.1 Colombian nationals are now required to obtain a transit visa in order to transit airside through the UK to an onward destination.

Why was this approach taken to change the law?

6.2 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 Given the nature of the amendment made by this instrument, a public consultation would not be appropriate.

8. Applicable Guidance

8.1 This change will be reflected in all applicable guidance.[1]

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument, however key considerations are outlined below.

Impact on businesses, charities and voluntary bodies

9.2 There is not expected to be a significant impact on business, charities or voluntary bodies. The Office for National Statistics ("ONS") estimated in 2023 that the typical spend for a transiting passenger from an Electronic Travel Authorisation (ETA) country (i.e. non-visa national countries, upon full scheme rollout) who indicated to the ONS that they intended to leave the UK on the same day as arrival was expected to be £68, while the typical visa national air transit passenger is expected to spend £72. As such the economic impact of this change is not anticipated to be significant.

9.3 The legislation does not impact small or micro businesses.

9.4 There is likely to be a positive impact on the public sector, with savings on the costs of processing asylum applications and providing asylum support and accommodation to those who would seek to use transit provisions as a means of travelling to the UK to claim asylum.

[1] https://www.gov.uk/check-uk-visa

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The UK Government keeps visa requirements under regular review.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 We are departing from the usual convention that a statutory instrument subject to the negative procedure will come into force no earlier than 21 days after it is laid in Parliament. As this instrument is being laid in response to a significant increase in Colombian nationals travelling to the UK and claiming asylum following the lifting of the visa requirement in November 2022, we consider there to be a real risk that giving notice of reintroducing a visa requirement may trigger a further increase before the new requirement comes into force. This would place an unpredictable and potentially unmanageable strain upon the UK's migration and borders system. We therefore assess that bringing this instrument into force as soon as possible is necessary and proportionate.

11.2 Controlling migration and tackling irregular migration are priorities for the Home Office, whilst continuing to respect our international obligations under the Refugee Convention. Requiring Colombian nationals to obtain a visa before visiting or transiting the UK does not contravene these obligations. The department is also facilitating a 28-day transition period until 24 December 2024. This will enable Colombian nationals to transit through the UK without a Direct Airside Transit Visa if their travel was booked before the date at which the statutory instrument came into force and who transit before 24 December. This is to ensure that those with pre-booked travel would not be unreasonably adversely affected by this change economically.

12. European Convention on Human Rights

12.1 The Minister for Migration and Citizenship has made the following statement regarding Human Rights:

"In my view the provisions of the Immigration (Passenger Transit Visa) (Amendment) (No. 2) Order 2024 are compatible with the Convention rights.

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").