EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (PASSENGER TRANSIT VISA) (AMENDMENT) ORDER

2006 No. 493

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

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

2. Description

2.1 This Order is to come into force on 2nd March 2006 and amends the Immigration (Passenger Transit Visa) Order 2003[1] ("the 2003 Order") by adding Malawi to the list of countries the nationals or citizens of which require a transit visa to pass through, without entering, the United Kingdom.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Home Office intends to depart from the standard period of 21 days between laying and coming into force, as it is intended that the provisions of the Order will come into force on 2nd March 2006. This is the earliest possible implementation date after an announcement has been made on 1st March 2006 that nationals or citizens Malawi who wish to pass through the United Kingdom, without entering, must have a transit visa in order to do so.

3.3 If the Order does not come into force on 2nd March there is a strong possibility that the period between the announcement and implementation of the policy will see a considerable increase in nationals or citizens of Malawi, who are inadmissible, travelling to the United Kingdom as purported transit passengers. There may also be an increase in the number of nationals of other countries using Malawi documents to come to the United Kingdom as purported transit passengers, who are seeking to circumvent the UK immigration controls.

3.4 This imposition of a new transit visa requirement on nationals or citizens of Malawi is designed to tackle this abuse. The Home Office therefore considers it necessary to depart from the 21-day rule.

4. Legislative background

4.1 This Order is made under section 41 of the Immigration and Asylum Act 1999 ("the 1999 Act"). Section 41 of the 1999 Act allows the Secretary of State by order to require transit passengers to hold a transit visa. This power has previously been exercised to make the 2003 Order, the Immigration (Passenger Transit Visa) (Amendment) Order 2003[2], the Immigration (Passenger Transit Visa) (Amendment

[1] S.I. 2003/1185.

[2] S.I. 2003/1598; this Order has subsequently been revoked.

No. 2) Order 2003[3], the Immigration (Passenger Transit Visa) (Amendment) Order 2004[4] and the Immigration (Passenger Transit Visa) (Amendment) Order 2005[5].

4.2 The 2003 Order requires both nationals or citizens of countries or territories specified by list and holders of specified travel documents to hold a transit visa when passing through, without entering, the United Kingdom to another country or territory. It also provides certain exemptions to these requirements. The four subsequent amending Orders referred to above have made a number of amendments to these requirements and exemptions.

5. Extent

The provisions of this Order will apply to transit passengers coming to all parts of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 The introduction of a transit visa requirement for nationals of Malawi reflects the rising trend in asylum applications and other immigration abuse by Malawian nationals. Intelligence also suggests that third country nationals of neighbouring countries are using passports issued by the Malawian authorities to travel to the United Kingdom in order to circumvent the United Kingdom's immigration controls.

7.2 Effective from the same date, a separate Rules change will also add Malawi to Appendix 1 of the Immigration Rules (HC395 of 2004, as amended) which lists the countries the nationals or citizens of which need a visa to come to the United Kingdom. The DATV Order will also serve to minimize any displacement effect arising from passengers attempting to circumvent immigration controls to reach the UK, once the visa requirement is introduced for Malawi nationals.

7.3 These changes are likely to be of limited public interest in the United Kingdom although they are of importance to some airlines as they will have an impact on their business. The changes will be of interest in the countries concerned.

7.4 These changes reflect a need to effectively control immigration to the United Kingdom, specifically those seeking to come to the United Kingdom to make unfounded asylum claims.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument. It is believed that this Order may have some impact in the short-term on the volume of

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[3] S.I. 2003/2628.
[4] S.I. 2004/1304.
[5] S.I. 2005/492

nationals or citizens of Malawi travelling to the United Kingdom in order to transit to other destinations. It is not considered that this effect will be sustained in the long-term. Furthermore it is not considered that the impact on genuine transit passengers or airlines will be disproportionate to the likely reduction in abuse of the United Kingdom's transit arrangements and subsequent burden on the Exchequer resulting from unfounded asylum applications or other immigration abuse.

8.2 In order to avoiding treating unfairly those who have made travel plans prior to the announcement of the new requirements, but are now subject to the requirement to hold a transit visa, there will be administrative arrangements in place. These arrangements will ensure that a transit passenger who is a national or citizen of Malawi will not be refused permission to transit the United Kingdom solely for the lack of a transit visa if he purchased tickets on or before 23:59 hours on 1st March 2006 and arrives to transit the United Kingdom on a direct journey from Malawi on or before 23:59 hours on 8th March 2006. Furthermore, a transit passenger who is a national or citizen of Malawi and who is transiting the United Kingdom as part of his journey back to his point of origin, will be allowed to do so without a visa until 23:59 hours on 29th March 2006, providing he can demonstrate that he bought his ticket on or before 1st March 2006 and transited the United Kingdom on the outward leg of his journey on or before 8th March 2006.

9. Contact

9.1 Queries should be addressed to the Home Office's Immigration and Nationality Enquiry Bureau on telephone: 0870 606 7766 or by e-mail: indpublicenquiries@ind.homeoffice.gsi.gov.uk