EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (PASSENGER TRANSIT VISA) (AMENDMENT) ORDER 2022

2022 No. 524

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the instrument

2.1 This Order amends the Immigration (Passenger Transit Visa) Order 2014. This amendment is in relation to a separate amendment to the Immigration Rules which requires El Salvador nationals to obtain a visit visa to enter the UK.

2.2 The amendment will require nationals of El Salvador to hold a Direct Airside Transit Visa (DATV) if they want to pass through the United Kingdom without entering whilst transiting to another country.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This Order comes into force with immediate effect, and we are therefore departing from the usual convention that a statutory instrument will come into force no earlier than 21 days after it is laid in Parliament.

3.2 The Government considers this departure from that convention to be necessary and proportionate for the operation of the immigration system, and to be consistent with the imposition of a visa regime on El Salvador delivered by amending the Immigration Rules. It is anticipated that closure of the route with 21-days' notice, or less, would trigger a "closing down sale" effect, resulting in substantial increase in El Salvador nationals travelling to the UK and potentially claiming asylum on arrival, before the Visa regime comes into force. This would place an unpredictable and potentially unmanageable strain upon the UK's Migration & Borders system.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is all the United Kingdom.

4.2 The territorial application of this instrument is all 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 Order amends the Immigration (Passenger Transit Visa) Order 2014 by adding El Salvador to the list of countries and territories in Schedule 1.

7. Policy background

What is being done and why?

7.1 The Order requires nationals or citizens of El Salvador to hold a transit visa to pass through the United Kingdom without entering whilst transiting to another country.

Explanations

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

7.2 El Salvador was previously a non-visa national country and therefore El Salvador nationals did not require a DATV to transit through the United Kingdom.

Why is it being changed?

7.3 The amendment to the Immigration (Passenger Transit Visa) Order 2014 is being made to align with the Immigration Rules under which El Salvador nationals will require a Visit Visa to enter the UK from 11 May 2022. If this amendment is not made, El Salvador 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 (for example the Schengen area).

What will it now do?

7.4 The amendment will require nationals of El Salvador to hold a DATV if they want to pass through the United Kingdom without entering whilst transiting to another country. This Order comes into force with immediate effect, and we are therefore departing from the usual convention that a statutory instrument will come into force no earlier than 21 days after it is laid in Parliament.

7.5 The Government considers this departure from that convention to be necessary and proportionate for the operation of the immigration system, and to be consistent with the imposition of a visa regime on El Salvador delivered by amending the Immigration Rules. It is anticipated that closure of the route with 21-days' notice, or less, would trigger a "closing down sale" effect, resulting in substantial increase in El Salvador nationals travelling to the UK and potentially claiming asylum on arrival, before the Visa regime comes into force.

7.6 This would place an unpredictable and potentially unmanageable strain upon the UK's Migration & Borders system. Controlling migration and tackling illegal migration are one of the Home Office's priorities, whilst continuing to respect our international obligations under the Refugee Convention. Requiring El Salvador nationals to obtain a Visa before visiting the UK does not contravene these obligations.

7.7 If there is a gap between the change to the Immigration Rules (imposing a visa regime on El Salvador) and amending the Immigration (Passenger Transit Visa) Order 2014 (to require El Salvador nationals to hold a DATV) there are concerns that El Salvador nationals could travel to the UK on the pretence of transiting and then claim asylum

on arrival. Departing from the usual 21-day scrutiny period aligns this amendment to the Immigration (Passenger Transit Visa) Order 2014 with the related Immigration Rules amendment and therefore closes the gap in border security.

7.8 There is a transitional provision disapplying the requirement for a transit visa to El Salvador nationals who at the time the Order comes into force had already booked travel to the United Kingdom to arrive before 9 June 2022.

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 As this instrument makes relatively limited amendments to existing legislation, consolidation is not considered appropriate on this occasion.

10. Consultation outcome

10.1 There has been no public consultation.

11. Guidance

11.1 This change will be reflected in all relevant guidance.

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 SI is not considered to have any significant impact on businesses.

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 this legislation is aligned to the UK Government approach to keep visa requirements under regular review.

14.2 The instrument does not include a statutory review clause.

15. Contact

15.1 Talia Keen at the Home Office Telephone: 07787000264 or email: talia.keen@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Nick Jariwalla, Deputy Director for Visas, Visitors and Clandestine Entry at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kevin Foster, Parliamentary Under Secretary of State at the Home Office can confirm that this Explanatory Memorandum meets the required standard.