EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (PASSENGER TRANSIT VISA) (AMENDMENT) ORDER 2023

2023 No. 824

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. Purpose of the instrument

2.1 This Order amends the Immigration (Passenger Transit Visa) Order 2014.

2.2 The amendment will require nationals or citizens of Dominica, Honduras, Namibia, Timor-Leste, and Vanuatu to hold a transit visa 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 We are departing from the usual convention that a statutory instrument will come into force no earlier than 21 days after it is laid in Parliament for the reasons set out in paragraphs below.

3.2 The usual 21-day scrutiny period before making changes to the Immigration Rules is not being followed after careful consideration. There are concerns that giving notice of introducing a visa regime may trigger a substantial increase in Dominica, Honduras, Namibia, Timor-Leste, and Vanuatu 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 and 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 these nationals to obtain a visa before visiting the UK does not contravene these obligations. As with the visit visa requirement, there will be a transition period until 16 August. This will enable nationals from these countries to transit through the UK without a Direct Airside Transit Visa (DATV), if their travel was booked on or before the date at which the statutory instrument came into force and who arrive on or before 16 August.

3.3 If there is a prolonged gap between the change to the Immigration Rules (imposing the visa regime on Dominica, Honduras, Namibia, Timor-Leste, and Vanuatu) and amending the Immigration (Passenger Transit Visa) Order 2014 (to require these nationals to hold a transit visa) there are concerns that these nationals could travel to the UK on the pretence of transiting and then claim asylum on arrival. In order to align this instrument with the parallel Immigration Rules amendment, we are departing from the usual convention to provide a 21-day scrutiny period and this instrument will be implemented the following day after laying.

4. Extent and Territorial Application

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

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) 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 Dominica, Honduras, Namibia, Timor-Leste, and Vanuatu to the list of countries and territories in Schedule 1.

7. Policy background

What is being done and why?

7.1 The Immigration Rules (Appendix Visitor: Visa national list) are being amended to require nationals of Dominica, Honduras, Namibia, Timor-Leste, and Vanuatu to obtain an entry clearance in advance of travel to the UK as a visitor, or for any other purpose for less than six months where there is no mandatory entry clearance requirement.

7.2 Careful consideration of Dominica's and Vanuatu's operation of a citizenship by investment scheme has shown clear and evident abuse of the scheme, including the granting of citizenship to individuals known to pose a risk to the UK. For Honduras and Namibia, there has been a sustained and significant increase in the number of UK asylum applications being made by these nationals, who have abused the provision to visit the UK for a limited period as non-visa nationals in order to claim asylum. As such, Namibians and Hondurans rank first amongst non-visa nationals for asylum claims. These high numbers are unsustainable, contributing significantly to operational pressures which have resulted in frontline resource being diverted from other operational priorities. Lastly, there has been a sustained increase in the number of Timorese nationals arriving at the UK border as non-genuine visitors, often with the intention to fraudulently claim EU Settlement Scheme status as dependants or to work illegally in the UK. Supporting public access data on asylum claims and refusal of entry at the UK border can be found at: Asylum and resettlement datasets - GOV.UK (www.gov.uk) and Managed migration datasets - GOV.UK (www.gov.uk).

7.3 The amendment to the Immigration (Passenger Transit Visa) Order 2014 is being made so that Dominica, Honduras, Namibia, Timor-Leste, and Vanuatu nationals will also be required to obtain a visa 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 through 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 Ireland or the Schengen area). The amendment will prevent these nationals from travelling to the UK on the pretence of transiting and then claiming asylum on arrival. This would contradict the visit visa requirement as set out in the Immigration Rules.

Explanations

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

7.4 The existing law did not require nationals of Dominica, Honduras, Namibia, Timor Leste and Vanuatu to obtain a Direct Airside Transit Visa in order to transit the UK (i.e. pass through the UK without entering).

Why is it being changed?

7.5 This amendment, requiring nationals of Dominica, Honduras, Namibia, Timor Leste and Vanuatu to obtain a Direct Airside Transit Visa, will prevent these nationals from travelling to the UK on the pretence of transiting and then claim asylum on arrival. Failing to introduce this amendment would contradict the Visit Visa requirement as set out in the Immigration Rules.

What will it now do?

7.6 The amendment will prevent these nationals of Dominica, Honduras, Namibia, Timor Leste and Vanuatu from travelling to the UK on the pretence of transiting and then claiming asylum on arrival. This will align with the Visit Visa requirement as set out in the Immigration Rules.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The Government has committed to the consolidation of the Rules as part of its response to the Law Commission recommendations on simplifying the Immigration Rules.

10. Consultation outcome

10.1 The changes in this Statement have not been the subject of a formal public consultation, as this would be disproportionate given the nature of the changes.

11. Guidance

11.1 Guidance relating to this instrument will be reflected in all relevant guidance. Relevant operational partners and carriers will be informed. Detailed media handling will be provided on the announcement of changes. This handling will be cleared in the usual way. Support will also be provided to Posts and FCDO on communications and handling ahead of changes, including notifying the respective embassies and high commissions.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 The impact on the public sector is positive, as the imposition of these visa regimes will significantly reduce the costs of the asylum system and increase UK security.

12.3 A full Impact Assessment has not been prepared for this instrument because of the low level of impact per business.

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 UK Government keeps visa requirements under regular review.

14.2 The instrument does not include a statutory review clause.

15. Contact

15.1 Amanda Francis at the Home Office (email: amanda.francis@homeoffice@gov.uk) can be contacted with any queries regarding the instrument.

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

15.3 Robert Jenrick, Minister of State for Immigration at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.