

**EXPLANATORY MEMORANDUM TO
THE IMMIGRATION (PASSENGER TRANSIT VISA) (AMENDMENT)
(NO. 4) ORDER 2009**

2009 No. 1233

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

2. **Purpose of the instrument**

2.1 This Order amends the Immigration (Passenger Transit Visa) Order 2003 (the 2003 Order) which sets out which persons will need a transit visa to pass through (without entering) the United Kingdom. These changes are being made following the completion of the Visa Waiver Test (VWT), the first global review of the UK's existing short-stay visa regimes that was conducted following the publication of the "Securing the Border" Strategy published by the Home Office in March 2007. These changes follow on from changes made to the transit visa regime in March and May 2009.

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

3.1 This Order is being made to rectify an error made in the Immigration (Passenger Transit Visa) (Amendment) (No. 2) Order 2009 (S.I. 2009/1032) brought to our attention by the Joint Committee on Statutory Instruments. This Order is being made in addition to the Immigration (Passenger Transit Visa) (Amendment) (No. 3) Order 2009 (S.I. 2009/1229) which was also made to rectify the error identified in S.I. 2009/1032. This Order makes a consequential amendment to the 2003 Order to ensure that the amendments made to the 2003 Order by S.I. 2009/1229 are fully operative. The Order breaches the 21 day rule in order to rectify the error as soon as possible.

3.2 The breach is necessary in order to close a gap in legislation that would have been created by the error in S.I. 2009/1032. The policy intention behind this Order is the same as was intended when S.I. 2009/1032 was made.

4. **Legislative Context**

4.1 This Order is made under sections 41 and 166(3) of the Immigration and Asylum Act 1999. It amends the 2003 Order (S.I. 2003/1185 as amended by S.I. 2003/2628, S.I. 2004/1304, S.I. 2005/492, S.I. 2006/493, S.I. 2009/198, S.I. 2009/1032 and S.I. 2009/1229). The 2003 Order requires, subject to certain exemptions, citizens and nationals of countries and territories specified within it, along with holders of specified travel documents, to obtain a transit visa in order to pass through the United Kingdom on their way to another country or territory. This Order implements changes recommended following

completion of the Visa Waiver Test. It follows on from the Immigration (Passenger Transit Visa) (Amendment) Order 2009 (S.I. 2009/198) and S.I. 2009/1229 which revoked S.I. 2009/1032 and made changes to the transit visa regime. S.I. 2009/1229 inserts a definition of a category of Venezuelan national. This Order makes a consequential amendment to S.I. 2009/1229 to ensure that the definition of a transit passenger includes those Venezuelan nationals as defined.

4.2 Changes to the visa regime are also being made as a result of the Visa Waiver Test. The list of countries whose citizens are required to obtain a visa to enter the United Kingdom is set out in Appendix 1 to the Immigration Rules.

5. Territorial Extent and Application

This instrument applies to all 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

What is being done and why

7.1 The UK “Securing the Border” Strategy was published by the Home Office in March 2007 and gave a commitment to conduct a Visa Waiver Test (VWT), the first global review of the UK’s existing short-stay visa regimes. This entailed the UK Border Agency and FCO jointly applying the VWT to every country except those in the EEA and Switzerland.

7.2 Stage One involved a quantitative assessment of the risk posed to the UK by each country on issues such as illegal immigration, crime and security. Stage Two looked in more detail at the economic and political consequences of introducing or lifting visa regimes. At the end of Stage Two, it was agreed that the UK should, in principle, introduce visa regimes on eleven countries unless they could address areas of concern identified during a six month mitigation period (or ‘Stage Three’ of the Test).

7.3 The countries concerned were notified in July 2008. The mitigation period officially ended on 2 January 2009. The VWT Stage Three countries were: Bolivia, Botswana, Brazil, Lesotho, Malaysia, Mauritius, Namibia, South Africa, Swaziland, Trinidad and Tobago and Venezuela. The first changes to the visa regimes consequent to the Visa Waiver Test came into force on 3rd March 2009 in Statement of Changes in Immigration Rules HC 227 and S.I. 2009/198.

7.4 Bolivia did not mitigate successfully and so a transit visa requirement is being introduced from 18th May 2009 as set out in S.I. 2009/1229.

7.5 Venezuela was partially successful in the mitigation process, due to the fact that it is in the process of rolling out a secure new biometric machine readable passport. As a result the United Kingdom is introducing a transit visa requirement for persons holding a Venezuelan passport that does not contain biometric information held in an electronic chip. Persons holding a Venezuelan passport that contains biometric information held in an electronic chip will be exempt from the requirement to obtain a transit visa in order to enter the United Kingdom. This Order, when read with the amendments to S.I. 2009/1229, gives effect to this objective.

7.6 South Africa did not mitigate successfully and so a visa regime is being introduced. It was also announced that that a full visa regime would be imposed on South Africa in a two stage process. At the first stage (introduced with effect from 3rd March 2009), South African passport holders seeking to enter or transit the United Kingdom who could not show previous travel history to the United Kingdom in their current passport were required to get a visa or a transit visa (as required) in order to travel to the United Kingdom. The second stage of the process (effective from 1st July 2009) will be to impose a full visa and transit visa regime on South Africa, as set out in S.I. 2009/1229.

7.7 A separate Change to the Immigration Rules will amend Appendix 1 of the Rules. These Changes provide for the following changes from 18th May 2009:

- Bolivia to be added to the list of countries whose citizens will be required to obtain a visa in order to enter the United Kingdom;
- those nationals or citizens of Taiwan who do not hold a passport issued by Taiwan that includes the number of the identification card issued by the competent authority in Taiwan in it to obtain a visa in order to enter the United Kingdom;
- persons that hold a passport issued by the Republic of Venezuela that does not contain biometric information held in an electronic chip to obtain a visa in order to enter the United Kingdom.

The Changes provide for the following changes from 1st July 2009:

- Lesotho, South Africa and Swaziland to be added to the list of countries whose citizens will be required to obtain a visa in order to enter the United Kingdom.

7.8 The changes will be of interest in the countries concerned and reflect a need to effectively manage migration to the United Kingdom, specifically reducing the immigration crime and security risks to the UK.

8. Consultation outcome

8.1 The governments of the countries concerned have been involved in the Visa Waiver Test process and are aware of the changes being introduced.

9. Guidance

9.1 Information on the changes made to S.I. 2009/1229 will be made available to UK Border Agency staff, passengers, and airlines through proactive media engagement, updates to websites, letters and briefing packs for airlines and internal UKBA instructions, both in the UK and in the countries concerned. The short delay in the coming into force of the transit visa regime for some Venezuelan nationals which will be given effect to by this Order will be explained to UK Border Agency staff and passengers where appropriate.

10. Impact

10.1 We believe there will be a short term impact on business arising from the loss of airfare revenue to UK carriers and loss of expenditure in the UK by those who would have visited but are deterred from doing so because of the DATV requirement. We do not believe that the impact on genuine transit passengers or airlines will be disproportionate when balanced against the need to reduce current abuse of the United Kingdom's Transit Without Visa concession and subsequent burden on the Exchequer resulting from unfounded asylum applications or other immigration abuse. We do not expect any impact on charities or voluntary bodies.

10.2 The impact on the public sector is related to the costs involved in processing DATV applications. However there will be a number of benefits around security and reduced risks of illegal and criminal activity among the population of travellers coming from the countries concerned.

10.3 An Impact Assessment has been laid alongside the explanatory memorandum for S.I. 2009/1229.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring & review

12.1 The imposition of the DATV requirement on Bolivian, Venezuelan, Lesotho, South African and Swazi nationals and citizens will be continuously monitored as part of the review of progress towards

meeting Public Service Announcement 3: ‘ensure fair, controlled migration that protects the public and contributes to economic growth.’

12.2 Further information on monitoring and implementation review can be found on page 12 of the Impact Assessment.

13. Contact

Queries should be addressed to Michael Tant at the Home Office. Tel: 0208 760 8504 or e-mail: michael.tant3@homeoffice.gsi.gov.uk.