

EXPLANATORY MEMORANDUM TO
THE GENERAL AVIATION (PERSONS ON BOARD, FLIGHT INFORMATION
AND CIVIL PENALTIES) REGULATIONS 2024

2024 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

- 2.1 The purpose of the General Aviation (Persons on Board, Flight Information and Civil Penalties) Regulations 2024 is to require responsible persons in respect of General Aviation aircraft to submit information online and in advance about international flights (including within the Common Travel Area) and persons on board for immigration and policing purposes. The information must be supplied no earlier than 48 hours and no later than 2 hours prior to departure to or from the United Kingdom.
- 2.2 These regulations will be underpinned by a civil penalty regime with a maximum penalty of £10,000 for non-compliance.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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 the United Kingdom.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Minister for Immigration, the Rt. Hon. Robert Jenrick MP, has made the following statement regarding Human Rights:

“In my view the provisions of the General Aviation (Persons on Board, Flight Information and Civil Penalties) Regulations 2024 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Paragraph 27BA of Schedule 2 to the Immigration Act 1971 provides that the Secretary of State may make regulations requiring responsible persons in respect of aircraft which have arrived, or are expected to arrive, in the United Kingdom, or which have left, or are expected to leave, the United Kingdom, to supply information about the flight and persons on board to the Secretary of State or an immigration officer.

6.2 Paragraph 27BB of Schedule 2 to the Immigration Act 1971 provides that the Secretary of State may make regulations imposing penalties for failure to comply with regulations made under paragraph 27BA in respect of passenger, crew and service information.

7. Policy background

What is being done and why?

- 7.1 General Aviation (GA) refers to any aircraft whether operated commercially or privately, not operating to a specific and published schedule. The sector is broad, ranging from small piston engine aircraft flown for leisure purposes through to wide body business jets. It also includes military flights with non-military personnel on board.
- 7.2 Key to the UK's border security strategy is the ability to know in advance who is arriving (or is expected to arrive) in the UK or departing (or is expected to depart) from the UK. Through the processing of advance passenger information (API), Border Force and the police can quickly determine who does and does not pose a threat to the UK or to UK interests and importantly, prevent them from travelling.
- 7.3 All airlines operating scheduled commercial international flights to and from the United Kingdom (other than for some flights within the Common Travel Area) are served with a written requirement to provide API for those flights in respect of all individuals (crew and passengers) on board in accordance with paragraphs 27 and 27B of Schedule 2 to the Immigration Act 1971. Serving a written requirement on all pilots or operators of international GA flights would be impractical and often impossible, particularly on those travelling infrequently to or from the UK or who are resident outside the UK. Additionally, all arriving passengers arriving on scheduled international flights are subject to full passport control checks at the border.
- 7.4 In contrast to scheduled aviation, there are approximately 124,000 international GA flights in and out of the UK every year. These operate into over 400 airfields approved by Border Force to receive international GA flights in the UK. Given the volumes, these airfields cannot be staffed routinely by Border Force or police officers. This poses a significant challenge in securing complete physical coverage of the border. To fully assess the risk posed by individuals arriving or departing in unscheduled and private aircraft, authorities need to know who is intending to travel before they do so.
- 7.5 Individuals operating GA flights are currently directed to provide data for customs purposes about the flight and persons on board in advance of departure in accordance with HMRC Commissioners' Directions made under sections 35 and 64 of the Customs and Excise Management Act 1979. However, the information required under those Directions does not have to be submitted online, preventing Border Force and the police from processing it as efficiently as possible.
- 7.6 The receipt of API, submitted online and in advance for all international GA flights, allows Border Force and other law enforcement authorities to monitor and quantify the extent of the potential threat and level of risk. It enhances watchlisting and intelligence-led analysis and improves the effectiveness with which resources are deployed to meet those flights. This information is processed to identify individuals of interest to law enforcement authorities, including those excluded from the UK, who have been previously deported from the UK or are using documents reported lost or stolen.

- 7.7 As well as providing key border security benefits, the requirement for information about international GA flights and persons on board to be submitted online will support the Government's Universal Permission to Travel Programme. It will enable Border Force to determine quickly and easily who has the required permission to travel to the UK and to communicate to the GA pilot or operator in advance of travel who may not be carried to or from the UK and who may need a permission to travel to the UK. It will also enable Border Force to establish an individual's status in the UK and whether they require leave to enter or to be met on arrival for further examination, as well as confirming if an individual has left the UK and in doing so complied with the terms of their permission to enter.
- 7.8 To enable all GA pilots to submit API for international GA flights online the Home Office launched a free-to-use online portal, 'Submit a General Aviation Report' (sGAR), hosted on gov.uk in March 2019. This now has more than 9,000 registered users. Pilots, owners or operators of GA flights can also submit API online in compliance with the regulations by using third-party systems connected to the Government's border systems. The systems which are approved and compatible for these regulations are listed on the gov.uk General Aviation web page.
- 7.9 An estimated 10% of the GA sector do not comply with the Commissioners' Directions. This is a significant proportion. Having a robust but fair civil penalty regime is a key component of our approach to managing international GA flights as it will drive up compliance. The Home Office intends to replicate the collaborative approach to civil penalties taken with scheduled aviation but tailored to account for GA operations. This would involve working with GA pilots, owners and operators to identify failings in order to encourage compliance and improvement. Penalties are always seen as a last resort where all reasonable engagement has failed to achieve the necessary compliance.

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 No consolidation is required.

10. Consultation outcome

- 10.1 On 24 April 2023 the Home Office launched an eight-week targeted consultation on a proposal to introduce regulations that would require persons responsible for international GA flights to submit information online and in advance about flights and persons on board for immigration and policing purposes. GA associations and trade bodies, as well as government departments and agencies, were invited to respond with their views. The Home Office received 199 responses to the consultation. The Government response to the consultation was published on 22 November 2023 and can be found on gov.uk.
- 10.2 Whilst the regulations relate to immigration, which is a reserved matter, the Devolved Administrations (DAs) were invited to respond to the consultation as there could be impact on devolved matters in Scotland, Northern Ireland and Wales, such as policing, tourism and economic development. None of the DAs noted any concerns about the regulations.

- 10.3 Overall, most respondents supported the Government’s proposal to introduce regulations, seeing them as a necessary for border security purposes. Many said they already submitted the required information using compatible third-party applications or the Government’s s-GAR portal, so the regulations would have no impact on how they currently report their flights and the details of persons onboard.
- 10.4 Some concerns about the proposed civil penalty regime which will underpin the regulations were raised. Many respondents felt that a maximum penalty of £10,000 was too much for an individual leisure pilot who may make a genuine mistake submitting API. Conversely law enforcement authorities were concerned that the penalty would be an insufficient deterrent to high-net worth individuals.
- 10.5 Clear guidance on the operation of the civil penalty regime will be published by the Home Office which accounts for genuine mistakes as well as a robust assurance process to ensure consistency across all regions. In the event of a breach of the regulations, Border Force will collaborate with the GA pilot, owner or operator to identify failings in order to encourage compliance and improvement. Repeated or deliberate breaches will be penalised.

11. Guidance

- 11.1 The Home Office will provide guidance to the GA sector prior to the regulations entering into force and the operation of the civil penalty regime. The Home Office will continue to engage with industry to assist implementation and ensure compliance.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is estimated to be between £0.3 and £1.0 million with a central estimate of £0.6 million in year 1. Over 10 years, the ongoing costs to business were in a range of £0.0 to £1.2 million (PV), with a central estimate of £0.3 million (PV).
- 12.2 There is no significant impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because a consultation-stage impact assessment of the regulations was carried out and published alongside the consultation document. There were no responses or challenges raised during the consultation that would alter the assessment summarised above and as such the estimates remain the same.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise the regulatory burden on small businesses as the regulations are not expected to have a significant impact.

14. Monitoring & review

- 14.1 Monitoring of this legislation will be carried out by Border Force. Records on compliance will be kept by Border Force. To ensure the civil penalty regime is operated consistently and fairly across all regions the Border Force GA National Operations team will monitor the warning and penalty notices that are issued. The civil penalty regime will be reviewed in line with existing practices to ensure the maximum penalty is sufficient and that the regime achieves its objectives.

- 14.2 The regulations do not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Minister for Immigration, the Rt. Hon. Robert Jenrick MP has made the following statement:

“In my view, there is no expected significant annualised net impact on business (greater than +/- £5 million net annualised). There are no other factors that would make it particularly desirable to include a review clause.”

15. Contact

- 15.1 Simon Watkin at the Passenger Policy and Border Transformation Unit (Home Office) Telephone: 020 7035 3752 or email: simon.watkin@homeoffice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Nigel Farminer at the Passenger Policy and Border Transformation Unit (Home Office) can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister for Immigration, Rt. Hon. Robert Jenrick MP at the Home Office can confirm that this Explanatory Memorandum meets the required standard.