

COUNTER-TERRORISM AND SECURITY ACT 2015

EXPLANATORY NOTES

PART 4: AVIATION, SHIPPING AND RAIL

Commentary on Sections

Schedule 5: Aviation, Maritime and Rail Security

Part 1: Passenger, Crew and Service Information

Amendments to the Immigration Act 1971

120. *Paragraphs 1(2) to (5)* of this Schedule amend Schedule 2 to the Immigration Act 1971. These amendments relate to requirements on carriers to provide passenger, crew and service information and provide for civil penalties for failure to comply.
121. *Paragraph 1(2)* amends paragraph 27, which relates to crew information and passenger lists, to introduce a requirement for a carrier to be able to receive communications from the Secretary of State or an immigration officer relating to the information provided in a form and manner specified in regulations.
122. *Paragraph 1(3)* amends paragraph 27B, which relates to passenger and service information, to enable an immigration officer to require a carrier to be able to receive communications from the officer in the form and manner that the Secretary of State directs. In relation to this paragraph and the preceding paragraph, this will enable the Secretary of State to specify the functionality of the system a carrier should install in order to receive messages about the information provided. Such a system may, for example, enable the Secretary of State to communicate to a carrier whether information has been received and whether it is incomplete or inaccurate.
123. *Paragraph 1(4)* inserts new paragraphs 27BA and 27BB in Schedule 2 to the Immigration Act 1971. New paragraph 27BA is a power to make regulations requiring information from responsible persons (as defined in sub-paragraph (5)) regarding ships or aircraft which have arrived or are expected to arrive in or have left or are expected to leave the United Kingdom. This new paragraph enables a standing requirement for passenger, crew and service information to be imposed on specified categories of aircraft and shipping operators. This requirement is intended to apply to non-scheduled traffic where the Secretary of State is unlikely to have significant advance warning of their intention to travel. Aircraft and shipping operators subject to a requirement to provide the same information under paragraphs 27 or 27B will not routinely be subject to this requirement.
124. New paragraph 27BA(2) specifies that the information referred to in sub-paragraph (1) may include information about the persons on board the ship or aircraft and information relating to the voyage or flight undertaken.

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2015 (c.6) which received Royal Assent on 12 February 2015*

125. New paragraph 27BA(3) provides that the regulations must specify the classes of ships or aircraft to which they apply, the detail of what information is required, as well as the time by which it must be supplied and the form and manner in which it must be supplied.
126. New paragraph 27BA(4) provides that the regulations may require responsible persons in respect of ships or aircraft to be able to receive communications sent by the Secretary of State or an immigration officer in a specified form and manner relating to the information sent. Such communications may be about the information itself and the form in which it was provided.
127. New paragraph 27BA(5) defines a “responsible person” in respect of a ship or aircraft as the owner or agent, or the captain.
128. New paragraph 27BA(6) provides that the regulations may make different provision for different purposes and may make provision for different types of carrier, journey or person on board.
129. New paragraph 27BA(7) provides that the regulations are subject to the affirmative procedure.
130. New paragraph 27BB provides for the Secretary of State to make regulations imposing a penalty on a carrier for failure to comply with requirements to provide passenger, crew or service information under paragraphs 27(2), 27B or 27BA of Schedule 2 to the Immigration Act 1971.
131. New paragraph 27BB(2) states that regulations may make provision about how a penalty is to be calculated, the procedure for imposing the penalty, how the penalty will be enforced, and may allow for an appeals process. The regulations may make different provision for different purposes.
132. New paragraph 27BB(3) requires that provision is included in the regulations for a carrier to object to a proposed penalty.
133. New paragraph 27BB(4) prevents a person from being penalised twice (whether by civil or criminal sanctions) for the same failure. Failure to comply with a requirement under Schedule 2 is also a criminal offence under section 27 of the Immigration Act 1971, but if proceedings have been instituted against a person in respect of the failure, a civil penalty may not be imposed. Similarly, a person may be required to provide the same information under other statutory provisions (namely sections 32 and 32A of Immigration, Asylum and Nationality Act 2006 (“IANA 2006”)) or under an ATC scheme (see section 22). The effect of new sub-paragraph (4) is that if a person has already been penalised (or proceedings have been instituted against him) for failure to provide the same information, a civil penalty may not be imposed under these regulations. There are various other paragraphs in this schedule making equivalent provision in relation to those other statutory provisions to prevent a person being penalised twice (see the amendments to section 27 of the Immigration Act 1971 inserted by *paragraph 2* and subsection (4) of new section 32B of IANA 2006 inserted by *paragraph 7* and the amendments to section 34 of that Act made by *paragraph 8(3)*). There is also similar provision in section 24(5) as regards civil penalties for breaching an ATC scheme.
134. New paragraph 27BB(5) requires that any penalties paid must go to the Consolidated Fund.
135. New paragraph 27BB(6) provides that the regulations are made by statutory instrument subject to the affirmative procedure.
136. *Paragraph 1(5)* repeals paragraph 27C of Schedule 2 to the Immigration Act 1971.
137. *Paragraph 2* amends section 27 of the Immigration Act 1971 to ensure that criminal proceedings may not be instituted against a captain of a ship or aircraft for failure to comply with the requirement to furnish a passenger list or particulars of a member of

the crew under *subsection (1)(a)(i)* or a failure to comply with a requirement imposed by paragraphs 27, 27B or 27BA of Schedule 2 under *subsection (1)(b)(iv)* where the person has paid a penalty for failure to comply with the same requirement, by virtue of regulations under paragraph 27BB of Schedule 2 to the Immigration Act 1971, under section 32B of the Immigration, Asylum and Nationality Act 2006 or under section 24 relating to the requirements of an ATC scheme or where proceedings have been instituted against the person under section 34 of IANA 2006.

138. *Paragraphs 3 and 4* make amendments that are consequential upon the amendments to the Immigration Act 1971 made by *paragraph 1*.

Amendments to the Immigration, Asylum and Nationality Act 2006

139. *Paragraphs 5 to 8* amend the Immigration, Asylum and Nationality Act 2006 (“IANA 2006”). Section 32 of IANA 2006 provides information acquisition powers for the police in respect of ships or aircraft arriving (or expected to arrive) or leaving (or expected to leave) the UK.
140. *Paragraph 6* amends subsection (6) of section 32 of IANA 2006 so that any requirement imposed on an owner or agent of a ship or aircraft by a constable under subsection (2) of that section may include a requirement for them to be able to receive communications relating to the information in a specified form and manner.
141. *Paragraph 7* inserts a new section 32A into IANA 2006 which provides a power to make regulations requiring information for police purposes from responsible persons in relation to ships or aircraft (defined at section 32A(7)) which have arrived or are expected to arrive in or which have left or are expected to leave the UK. This new section enables a standing requirement to be imposed on specified modes and categories of non-scheduled traffic. This requirement is intended to apply to non-scheduled traffic where the Secretary of State is unlikely to have significant advance warning of their intention to travel. Aircraft and shipping operators subject to a requirement to provide the same information under section 32 will not routinely be subject to this requirement. In new section 32A, *subsection (1)* provides that the Secretary of State may make regulations requiring owners, agents or captains of ships or aircraft arriving in or departing from the UK to provide information to the police.
142. New section 32A(2) specifies that the information required by *subsection (1)* may include information about the persons on board the ship or aircraft and information relating to the voyage or flight undertaken.
143. New section 32A(3) restricts information that can be required by the regulations to information that is necessary for police purposes (which would cover the prevention, detection, investigation and prosecution of criminal offences and safeguarding national security). The regulations may require information to be given to the police in England and Wales for any police purposes but may only require information to be given to the police in Scotland for purposes that relate to reserved matters or to the police in Northern Ireland for purposes that related to excepted or reserved matters.
144. New section 32A(4) provides that the regulations must specify the classes of ships or aircraft to which they apply, the detail of what information is required, as well as the time by which it must be supplied and the form and manner in which it must be supplied.
145. New section 32A(5) provides that the regulations may require responsible persons to be able to receive communications relating to the information provided, sent by the police, the Secretary of State or an immigration officer in a specified form and manner. This will enable the Secretary of State to specify the functionality of the system a carrier should have to receive those messages. Such a system may, for example, enable the Secretary of State to communicate to a carrier about whether information has been received and whether it is incomplete or inaccurate.

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146. New section 32A(6) provides that the regulations may apply generally or to specific cases, may make different provision for different cases or circumstances, and shall be made by statutory instrument subject to the affirmative procedure.
147. New section 32A(7) defines “responsible persons in respect of a ship or aircraft” for the purposes of new section 32A as the owner or agent, or the captain.
148. *Paragraph 7* also inserts new section 32B in IANA 2006. This is a power to make regulations imposing penalties for failure to comply with requirements to provide passenger, crew or service information under section 32(2) of that Act or by virtue of regulations made under section 32A of that Act.
149. New section 32B(2) states that regulations may in particular make provision about how a penalty is to be calculated; the procedure for imposing the penalty; how the penalty will be enforced, and may allow for an appeals process. The regulations may make different provision for different purposes.
150. New section 32B(3) requires that provision is included in the regulations for a carrier to object to a proposed penalty.
151. New section 32B(4) prevents a person from being penalised twice for the same failure (see above).
152. New section 32B(5) requires any penalties to be paid into the Consolidated Fund.
153. New section 32B(6) provides that the regulations are to be made by statutory instrument subject to the affirmative procedure.
154. *Paragraph 8* amends section 34 of IANA 2006, which provides that breach of certain preceding provisions, including section 32, is a criminal offence.
155. *Paragraph 8(2)* amends section 34(1) to make failure to comply with obligations imposed by regulations under section 32A without reasonable excuse an offence.
156. *Paragraph 8(3)* inserts a new subsection (1A) into section 34, which prevents a person from being prosecuted for failing to provide information where they have had a civil penalty imposed on them under new section 32B or where the information was also required under an ATC scheme or under Schedule 2 to the Immigration Act 1971 and a civil penalty has been imposed on, or criminal proceedings instituted against, the person in respect of that failure.
157. *Paragraph 8(4)* inserts new paragraph (c) into subsection (2) of section 34. This provides that a person will not be treated as having committed an offence in Scotland or Northern Ireland where the breach consists of a failure to provide information required by regulations under new section 32A to the police in England or Wales and it does not relate to a reserved (in Scotland, as defined by the Scotland Act 1998) or excepted or reserved (in Northern Ireland, as defined by the Northern Ireland Act 1998) matter.