

COUNTER-TERRORISM AND SECURITY ACT 2015

EXPLANATORY NOTES

PART 4: AVIATION, SHIPPING AND RAIL

Commentary on Sections

Section 22: Authority-to-carry schemes

100. *Subsection (1)* enables the Secretary of State to operate an authority-to-carry (ATC) scheme or schemes whereby a carrier must seek authority to carry persons on inbound or outbound journeys who come within the scope of a scheme. An ATC scheme may apply to travel to or from the UK and may apply to aircraft, ships or trains.
101. *Subsection (2)* sets out what any ATC scheme must specify or describe. Any ATC scheme must state the classes of carriers to which it applies, the passengers and crew in respect of whom authority must be requested and the classes of passengers or crew in respect of whom a carrier may be refused authority to carry.
102. *Subsection (3)* provides that a scheme may specify or describe the categories of passengers or crew in respect of whom authority to carry may be refused only if it is necessary in the public interest.
103. *Subsection (4)* allows for different schemes to be made for different purposes, including different types of carrier, journey or person.
104. *Subsection (5)* requires that any scheme sets out the process for carriers to request authority to carry and the process for authority to carry to be granted or refused. This may include requirements for carriers to provide specified passenger or crew information by a specified time before travel, to provide that information in a specified manner and form or to be able to receive communications in a specified manner from the Secretary of State, relating to the information or granting or refusing authority to carry.
105. *Subsection (6)* makes further provision about the information that may be required to be provided by carriers in order for an ATC scheme to work, such as information that a carrier could be required to provide under other statutory provisions (specifically 27 to 27BA of Schedule 2 to the Immigration Act 1971 and sections 32 or 32A of the Immigration, Asylum and Nationality Act 2006 (“IANA 2006”)), or it could specify information without reference to those statutory provisions.
106. *Subsection (7)* provides that a decision about whether to grant authority under the scheme does not indicate whether the person is entitled or permitted to enter the United Kingdom.
107. *Subsections (8) and (9)* provide that an ATC scheme applies to Scotland or to Northern Ireland only to the extent that it is made for purposes that are, or relate to, reserved matters in Scotland or excepted or reserved matters in Northern Ireland.

108. *Subsection (10)* repeals the existing authority to carry provision at section 124 of the Nationality, Immigration and Asylum Act 2002. The Security and Travel Bans Authority to Carry Scheme 2012 (“the 2012 Scheme”) and the Nationality, Immigration and Asylum Act 2002 (Authority to Carry) Regulations 2012 (“the 2012 Regulations”) made under section 124 will also cease to have effect when *subsection (10)* is brought into force (which will be done by commencement regulations: see section 52(3)(b)).

Section 23: Authority-to-carry schemes: entry into force etc

109. *Subsections (1) and (2)* provide that any new authority-to-carry scheme, made by the Secretary of State under section 22, would be subject to direct Parliamentary scrutiny and brought into force by regulations subject to the affirmative procedure.
110. *Subsections (3) and (4)* provide that any revised authority-to-carry scheme, made by the Secretary of State under section 22, would equally be subject to direct Parliamentary scrutiny and brought into force by regulations subject to the affirmative procedure.
111. *Subsection (5)* provides that any regulations made to bring an authority-to-carry scheme into force under this section may include transitional or saving provision.

Section 24: Penalty for breach of authority-to-carry scheme

112. *Subsection (1)* allows the Secretary of State to make regulations imposing penalties on carriers for breach of the requirements of an ATC scheme. An ATC scheme may be breached in various ways, such as by a carrier failing to provide the required information, or failing to provide it by the required time, or by carrying a person following a refusal of authority to carry.
113. *Subsection (2)* requires that regulations must identify the scheme to which they refer.
114. *Subsection (3)* 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 allow for an appeals process. It also states that the regulations may make different provision for different purposes. Regulations made under this section will adopt a similar approach to the 2012 Regulations that provide for penalties to be imposed for breach of the 2012 Scheme.
115. *Subsection (4)* requires that provision about the procedure for imposing a penalty in the regulations must include provision allowing a carrier the opportunity to object to a proposed penalty.
116. *Subsection (5)* requires that the regulations must provide that a carrier cannot be penalised for breach of the requirements of an ATC scheme if the breach is a failure to provide information under sections 27, 27B or 27BA of Schedule 2 to the Immigration Act 1971 and the carrier is already being prosecuted under section 27 of that Act or has been penalised under paragraph 27BB of Schedule 2 to that Act for the same breach. Similarly, where the breach is a failure to provide information under section 32 or 32A of IANA 2006 and the carrier has already been penalised for the same breach under section 32A or is being prosecuted under section 34 of that Act, they cannot be penalised for the breach under these regulations.
117. *Subsection (6)* requires that any penalties paid must go to the Consolidated Fund.
118. *Subsection (7)* requires that regulations made under this section are subject to the affirmative procedure.

Section 25: Aviation, shipping and rail security

119. This section introduces Schedule 5, which makes amendments about passenger, crew and service information in relation to aircraft and ships, and makes amendments to existing aviation, maritime and rail security legislation.

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.
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.
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.

Part 2: Directions etc relating to aviation, shipping and rail

Amendments to the Aviation Security Act 1982: information and directions

158. *Paragraph 9* of Part 2 of Schedule 5 provides for amendments to information requirement and direction making powers conferred on the Secretary of State by the Aviation Security Act 1982 (“ASA”).
159. *Paragraph 9(2)* removes the requirement in section 11 of ASA for the Secretary of State or the Civil Aviation Authority to provide 7 days’ notice when making a request for information for the purposes of aviation security from aircraft operators, aerodrome managers and certain other categories of person involved in the aviation industry.
160. *Paragraph 9(3)* amends the Secretary of State’s direction making power in section 12 of ASA so as to enable directions to be made to aircraft operators and/or UK aerodrome managers that aircraft may not fly in or into the UK unless specified searches have been carried out.
161. *Paragraph 9(4)* is an amendment to section 16 of ASA. Section 16 limits the scope of directions under sections 12 to 14. *Subsection (5)* of section 16 is amended to provide that directions may require things to be done outside the UK only where they relate to a UK-registered aircraft or they impose a requirement that an aircraft may not fly in or into the UK unless certain actions (such as conducting specified searches) have been taken.
162. *Paragraph 9(5)* amends section 24 of ASA in order to give the Secretary of State the power to make further regulation in relation to electronic service of directions or information requests made under the ASA.
163. *Paragraph 9(6)* amends the definition of “registered or operating in the United Kingdom” in section 38 of ASA so as to include an aircraft which is assigned to a flight which will fly in UK airspace.

164. *Paragraph 10* makes repeals consequential upon the amendments made to section 11 of ASA by *paragraph 9(2)*.

Amendments to the Aviation Security Act 1982: civil penalties for breach of directions

165. *Paragraph 11* inserts a new section 22A into the ASA giving the Secretary of State the power to make a civil sanctions scheme in lieu of criminal proceedings when a directed person does not comply with an aviation security direction or information request. It also makes amendments to the ASA to prevent criminal proceedings from being brought against a person where a civil penalty has been imposed on the person for the same breach.

Amendments to the Aviation and Maritime Security Act 1990: information and directions

166. *Paragraph 12* provides for amendments to information requirement and direction making powers conferred on the Secretary of State by the Aviation and Maritime Security Act 1990 (“AMSA”). They largely mirror the amendments made to the Aviation Security Act 1982 by *paragraph 9*.
167. *Paragraph 12(2)* amends section 19(2) and (4) of AMSA so as to extend the existing right of the Secretary of State to require information to provide that such information requests may be made subject to a period for response of any length that the Secretary of State may determine. The amendments achieve this by removing the prescribed seven day minimum period allowed for response.
168. *Paragraph 12(3)* amends section 21(1) of AMSA so as to extend the existing provision allowing the Secretary of State to issue search directions to ships in harbour areas, to ships which appear to the Secretary of State to be likely to enter harbour areas. The amendments to this section also broaden the ambit of directions by allowing them to be made so as not to permit a ship to enter or leave a harbour area unless the searches specified in the Secretary of State’s direction have been carried out. This extends the present position that allows directions to be made preventing ships in UK harbours from going to sea so that directions may in future also be made to prevent ships from entering UK harbours unless specified searches have been undertaken. *Paragraph 12(4)* amends section 26(5) of AMSA so as to remove limitations to the geographic scope of a direction so that those directions containing a requirement not to cause or permit a ship to enter a harbour area unless certain things have, or have not, been done, will have effect even if they require action to be taken outside the UK (i.e. in a third country).
169. *Paragraph 12(5)* amends section 45 of AMSA, which relates to the service of documents, including directions. The amendments mean that regulations may require a person to accept electronic service in a specified manner and form (such as by means of a specified computer system).

Amendments to the Channel Tunnel (Security) Order 1994: information and directions

170. *Paragraph 13* provides for amendments to information requirement and direction making powers conferred on the Secretary of State by the Channel Tunnel (Security) Order 1994 (“CTSO”). They largely mirror the amendments made to ASA by *paragraph 9* and those made to AMSA by *paragraph 12*.
171. *Paragraph 13(2)* removes the requirement in article 11 of the CTSO for the Secretary of State to provide 7 days’ notice when making a request for information for the purposes of Channel Tunnel security from the Concessionaires of the Tunnel, the owners, operators and managers of Channel Tunnel trains and certain other categories of person connected to the operation of the Tunnel.

*These notes refer to the Counter-Terrorism and Security Act
2015 (c.6) which received Royal Assent on 12 February 2015*

172. *Paragraph 13(3)* amends the Secretary of State's direction making power in article 13 of the CTSO so as to enable directions to be made to owners, operators and managers of Channel Tunnel trains that trains may not be moved in or into the UK unless specified searches have been carried out.
173. *Paragraph 13(4)* amends article 36, which relates to the service of documents, including directions. The amendments mean that regulations may require a person to accept electronic service in a specified manner and form (such as by means of a specified computer system).
174. *Paragraph 14* provides that, although the above amendments have been made by an Act of Parliament, any power to amend or revoke any provision of the CTSO by secondary legislation is unaffected, and can, therefore, apply to them.