

**EXPLANATORY MEMORANDUM TO THE
IMMIGRATION (PASSENGER TRANSIT VISA) (AMENDMENT) ORDER 2005
2005 No.492**

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description of the Order**

This Order is to come into force on 9th March 2005 and amends the Immigration (Passenger Transit Visa) Order 2003¹ (“the 2003 Order”) by:

- a) adding Congo, Guinea, Guinea-Bissau and Mongolia to the list of countries the nationals or citizens of which require a transit visa to pass through, without entering, the United Kingdom;
- b) amending existing exemptions, and adding a new exemption, from the requirement for certain passengers passing through the United Kingdom, without entering, to have a transit visa.

3. **Matters of special interest to the JCSI**

3.1 The Home Office intends to depart from the standard period of 21 days between laying and coming into force, as it is intended that the provisions of the Order will come into force on 9th March 2005. This is the earliest possible implementation date after an announcement has been made on 8th March 2005 that nationals or citizens of Congo, Guinea, Guinea-Bissau and Mongolia who wish to pass through the United Kingdom, without entering, must have a transit visa in order to do so.

3.2 If the Order does not come into force on 9th March there is a strong possibility that the period between the announcement and implementation of the policy will see a

considerable increase in nationals or citizens of these four countries, particularly potential asylum-seekers, travelling to the United Kingdom as purported transit passengers. There may also be an increase in the number of people using Congo, Guinea, Guinea-Bissau and Mongolia documents to come to the United Kingdom as purported transit passengers, who apply for asylum claiming to be nationals of the Democratic Republic of Congo, Sierra Leone, Liberia or China. This imposition of a new transit visa requirement is designed to tackle this abuse. The Home Office therefore considers it necessary to depart from the 21-day rule.

4. Legislative background

4.1 This Order is made under section 41 of the Immigration and Asylum Act 1999 (“the 1999 Act”). Section 41 of the 1999 Act allows the Secretary of State by order to require transit passengers to hold a transit visa. This power has previously been exercised to make the 2003 Order, the Immigration (Passenger Transit Visa) (Amendment) Order 2003², the Immigration (Passenger Transit Visa) (Amendment No. 2) Order 2003³ and the Immigration (Passenger Transit Visa) (Amendment) Order 2004.

4.2 The 2003 Order requires both nationals or citizens of countries or territories specified by list and holders of specified travel documents to hold a transit visa when passing through, without entering, the United Kingdom to another country or territory. It also provides certain exemptions to these requirements. The three subsequent amending Orders referred to above have made a number of amendments to these requirements and exemptions.

5. Extent

The provisions of this Order will apply equally to transit passengers coming to all parts of the United Kingdom (including Northern Ireland).

6. European Convention on Human Rights

The Minister of State is satisfied that the Order is compatible with the European Convention on Human Rights.

¹ S.I. 2003/1185.

² S.I. 2003/1598; this Order has subsequently been revoked.

³ S.I. 2003/2628.

7. Policy background

7.1 The introduction of a transit visa requirement for nationals of Congo, Guinea, Guinea-Bissau and Mongolia reflects intelligence that suggests individuals are using passports issued by those authorities to travel to the United Kingdom, disposing of the documents en route, then claiming asylum as nationals or citizens of the Democratic Republic of Congo, Sierra Leone, Liberia and China.

7.2 The amendment of the existing exemptions, and the addition of a new exemption, from the requirement for certain passengers passing through the United Kingdom, without entering, to have a transit visa, means the following individuals are now exempt from the requirement to hold a transit visa:

(a) a person ('A') who holds a valid visa for entry to Australia or New Zealand, as well as a valid airline ticket for travel via the United Kingdom as part of a journey from another country or territory to the country in respect of which the visa is held (i.e. Australia or New Zealand). This applies irrespective of the route that A takes to get to Australia or New Zealand, provided that he passes through the United Kingdom on his way. The exemption also applies where a person with whom A arrives in the United Kingdom holds the relevant documents on his behalf;

(b) a person ('B') who holds a valid visa for entry to Australia, Canada, New Zealand or the United States of America, as well as a valid airline ticket for travel via the United Kingdom as part of a journey from the country in respect of which the visa is held (i.e. Australia, Canada, New Zealand or the United States of America) to another country or territory. This applies irrespective of the route that B takes to get from Australia, Canada, New Zealand or the United States of America, provided that he passes through the United Kingdom on his way. The exemption also applies where a person with whom B arrives in the United Kingdom holds the relevant documents on his behalf; and

(c) a person ('C') who holds a valid airline ticket for travel via the United Kingdom as part of a journey from Australia or New Zealand to another country or territory, provided he does not seek to travel via the United

Kingdom on a date more than six months from the date he last entered Australia or New Zealand with a valid visa for entry to that country. Once again, this applies irrespective of the route that C takes to travel from Australia or New Zealand, provided that he passes through the United Kingdom on the way. The exemption also applies where a person with whom C arrives in the United Kingdom holds the relevant document on his behalf.

7.3 The list of exemptions is being amended as indicated above in order to reflect concerns expressed by carriers that the existing exemptions are restrictive and are having an adverse impact on their business. The passengers who will benefit from the amendments to the list of exemptions made by this Order are low risk in terms of abuse of immigration control and the greater number of exemptions is not expected to have an adverse impact on United Kingdom immigration control. The holding of the documentation referred to in the exemptions is regarded as an indication that the holder is genuinely in transit and is unlikely to seek to remain in the United Kingdom.

7.4 These changes are likely to be of limited public interest in the United Kingdom although they are of importance to some airlines as they will have an impact on their business. The changes will be of interest in the countries concerned.

7.5 These changes reflect a political need to effectively control immigration to the United Kingdom, specifically those seeking to come to the United Kingdom to make unfounded asylum claims.

8. Impact

8.1 It is believed that this Order may have some impact in the short-term on the volume of nationals or citizens of Congo, Guinea, Guinea-Bissau and Mongolia travelling to the United Kingdom in order to transit to other destinations. It is not considered that this effect will be sustained in the long-term. Taken together with the widened and new exemptions, it is not considered that the impact will be disproportionate to the likely reduction in abuse of the United Kingdom's transit arrangements and subsequent burden on the Exchequer resulting from unfounded asylum applications.

8.2 In order to avoiding treating unfairly those who have made travel plans prior to the announcement of the new requirements, but are now subject to the requirement to hold a transit visa, there will be administrative arrangements in place for those who purchased their air ticket on or before 8th March. These arrangements will ensure that a transit passenger who is a national or citizen of Congo, Guinea, Guinea-Bissau or Mongolia will not be refused permission to transit the United Kingdom solely for the lack of a transit visa if he arrives to transit the United Kingdom on or before 23.59 hours on 15th March. Equally, a transit passenger who is a national or citizen of Congo, Guinea, Guinea-Bissau or Mongolia who transited the United Kingdom on the outward leg of a journey commencing on or before 8th March and is transiting the United Kingdom as part of his journey back to his point of origin, will be allowed to do so without a visa until 23:59 hours on 5th April 2005.

9. Contact

Kevin Egan at the Home Office Tel: 020 8760 8784 or e-mail: Kevin.Egan@homeoffice.gsi.gov.uk can answer any queries regarding this instrument.