

EXPLANATORY MEMORANDUM TO
THE PASSENGER, CREW AND SERVICE INFORMATION (CIVIL PENALTIES)
(AMENDMENT) REGULATIONS 2022

2022 No. 262

1. Introduction

- 1.1 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 The purpose of this instrument is to amend the Passenger, Crew and Service Information (Civil Penalties) Regulations 2015 (SI. 2015 No. 961) (the “2015 Regulations”) by removing a sunset clause whereby the 2015 Regulations will cease to have effect from 31 March 2022. It will also extend the scope of the 2015 Regulations to include Channel Tunnel rail operators.

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 is the United Kingdom.
4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 Damian Hinds, Minister of State for Security, made the following statement regarding Human Rights:

“In my view the provisions of the Passenger, Crew and Service Information (Civil Penalties) (Amendment) Regulations 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Prior to the introduction of the 2015 Regulations, non-compliance with a requirement to provide information about passengers or crew on a ship or aircraft attracted only criminal penalties. Under section 27 of the Immigration Act 1971 (‘the 1971 Act’) the offence is punishable by a fine (not exceeding £5000 pursuant to section 37 of the Criminal Justice Act 1982), by imprisonment of not more than 6 months or both. Under section 34 of the Immigration, Asylum and Nationality Act 2006 (‘the 2006 Act’), the offence is punishable by imprisonment not exceeding 51 weeks in England and Wales, or 6 months in Scotland or Northern Ireland, a fine not exceeding £2,500 or both.
- 6.2 These criminal sanctions apply equally to Channel Tunnel rail operators as section 27 of the 1971 Act is applied, and modified, by the Channel Tunnel (International Provisions) Order 1993 (S.I. 1993/1813).

- 6.3 Part 1 of Schedule 5 to the Counter-Terrorism and Security Act 2015 inserted paragraph 27BB into Schedule 2 to the 1971 Act and inserted section 32B to the 2006 Act, providing for regulations to be made imposing civil penalties on carriers not complying with a requirement to provide information about passengers or crew.
- 6.4 The 2015 Regulations were made in March 2015 under both the 1971 Act and the 2006 Act and set out the civil penalty regime applicable to failures to comply with requirements to provide or receive information. These regulations enabled the Secretary of State to impose a financial penalty when criminal action was not appropriate.
- 6.5 At the time the 2015 Regulations were made, the requirement to provide information about passengers or crew was not imposed on Channel Tunnel rail operators, even though the power to do so had been introduced in 2007 by the application, and modification, of paragraphs 27 and 27B of Schedule 2 to the 1971 Act and section 32 of the 2006 Act. Accordingly, the scope of the 2015 Regulations was limited to ships and aircraft.

7. Policy background

What is being done and why?

- 7.1 All operators of scheduled air passenger, maritime passenger and Channel Tunnel rail services to and from the UK are now required to provide complete, accurate and timely passenger, crew and service information to the Home Office in accordance with paragraphs 27 and 27B of Schedule 2 to the 1971 Act. The same requirements may be made by a constable under section 32 of the 2006 Act. This information allows Border Force and police to carry out checks before departure from the UK for appropriate law enforcement action and before departure to or arrival in the UK which is essential for border security.
- 7.2 The civil penalty regime has provided the Home Office with the important ability to penalise (and to threaten to penalise) carriers for failure to comply with a requirement to provide specified information or to provide information by a specified time or in a specified form and manner. The 2015 Regulations provide for suitable civil sanctions in the event of a carrier's failure to comply with the requirements outlined above. Specifically, they allow the Secretary of State to impose a civil penalty not exceeding £10,000 for each breach.
- 7.3 Proactive engagement with carriers to secure corrective action of failures to comply with requirements is generally undertaken before invoking the civil penalty regime. However, when necessary, notices of potential liability and warning notices have been given. To date no penalties have needed to be enforced. However, the regime remains necessary to provide an effective civil sanction in circumstances where a carrier takes no corrective action and fails to comply repeatedly after being given a warning notice.
- 7.4 As was standard practice at the time, the 2015 Regulations contained a sunset clause which means, without amendment, they will cease to have effect from 31 March 2022. The purpose of this instrument is to remove the sunset clause and preserve the important deterrent effect of the civil penalty regime which, alongside the passenger, crew and service information requirements, is now a permanent element of the UK's border security arrangements.
- 7.5 Passenger, crew and service information requirements are now imposed on Channel Tunnel rail operators. This was not the case in 2015 and, as such, the 2015

Regulations did not include them in the scope of operators on whom penalties could be levied. Extending the civil penalty regime to Channel Tunnel rail operators ensures parity in the application of both the criminal and civil penalties to all carriers operating scheduled international routes to and from the UK and who are required to provide passenger, crew and service information.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 No consolidation is required.

10. Consultation outcome

10.1 A consultation was not conducted as the instrument is intended to maintain the existing civil penalty regime.

11. Guidance

11.1 The existing guidance for carriers will be amended to include, and shared with, Channel Tunnel rail operators.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because one was prepared ahead of the Counter-Terrorism and Security Act 2015 which made reference to these civil penalties. It concluded that the costs to carriers were minimal and would not impose any significant extra net costs on the civil justice system. That assessment has been shown to be accurate. Costs to carriers have been minimal and only relate to administering notices of potential liability or warning notices. To date, no financial penalties have been paid and there have been no costs to the civil justice system. This Statutory Instrument does not introduce any changes that would affect this assessment; it maintains and extends the existing legislative provisions.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that the Home Office will continue to collect and reviews management information on an ongoing basis to assess the extent to which carriers meet their legal obligations and to inform decisions to invoke the civil penalty regime. This instrument will be reviewed as part of that ongoing monitoring process.

15. Contact

15.1 Simon Watkin of the Border Security and Identity Policy Unit at the Home Office can be contacted with any queries regarding the instrument (telephone: 07867 151354 or email:simon.watkin@homeoffice.gov.uk).

- 15.2 Nigel Farminer of the Border Security and Identity Policy Unit at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister of State for Security, Damian Hinds at the Home Office can confirm that this Explanatory Memorandum meets the required standard.