



Home Office

# **THE SECURITY AND TRAVEL BANS AUTHORITY TO CARRY SCHEME 2012**

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Presented to Parliament pursuant to section 124(5)(b) of the Nationality, Immigration and Asylum Act 2002

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ISBN: 9780108511592  
Printed in the UK by The Stationery Office Limited on behalf of  
the Controller of Her Majesty's Stationery Office

ID P00200489820 04/12

Printed on paper containing 75% recycled fibre content minimum.

## CONTEXT

1. International terrorism affecting the UK and its interests is identified as a Tier One Priority Risk in the National Security Strategy. As one of the highest priorities for UK national security, the Government is committed to addressing the threat from terrorism and protecting the UK and its interests at home, at our border and internationally.
2. The Strategic Defence and Security Review 2010 included a commitment to make changes to pre-departure checks to better identify people who pose a terrorist threat and prevent them flying to or from the UK<sup>1</sup>. Powers are already available to refuse entrance or admission to the UK to passengers of all nationalities, with the exception of UK nationals – though the circumstances in which entrance or admission can be refused will vary according to the power in question.
3. The Home Secretary has the power to exclude or deport individuals from the UK. For EEA nationals, the power to exclude or deport on the grounds of public security is set out in the Immigration (European Economic Area) Regulations 2006; for third country nationals, the relevant power to exclude or deport is contained in the Immigration Act 1971 and the immigration rules.
4. The visa regime, applicable to those who need a visa to travel to the UK, can be used as a means of preventing the travel of those who pose a terrorist threat. Visa nationals who do not have a visa and are therefore inadequately documented for travel to the UK would be prevented from travelling by a carrier under the Carrier's Liability arrangements set out in sections 40 to 40B of the Immigration and Asylum Act 1999.
5. However, the visa regime is only applicable to those who require a visa to travel to the UK, and despite the existence of an order excluding or deporting a person from the UK or the existence of an UN or EU travel ban, an individual who does not require a visa for the UK and who poses a terrorist threat may still be able to travel. Carriers will not always be aware of an exclusion or deportation order or travel ban and so would not be in a position to deny boarding.
6. Primary legislation<sup>2</sup> has been passed to allow the Secretary of State to introduce an Authority to Carry (ATC) Scheme, which would confer a power to refuse a carrier authority to bring certain passengers to the UK, in accordance with the terms of an ATC Scheme. Where a scheme is in place, carriers are required to seek authority to carry all passengers who fall within the scope of the scheme. If the carrier does not seek such authority, or if the carrier brings to the UK a passenger in respect of whom authority has been denied, the carrier will be liable to a financial penalty.
7. This Scheme is the first scheme to be made under section 124 of the Nationality, Immigration and Asylum Act 2002. The financial penalty regime for failure to comply with the Scheme is set out in the Nationality, Immigration and Asylum Act 2002 (Authority to Carry) Regulations 2012.

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1 Securing Britain in an Age of Uncertainty: The Strategic Defence and security Review (Cm 7498, October 2010, p.54).

2 Section 124 of the Nationality, Immigration and Asylum Act 2002.

## **THREAT**

8. The current UK National Threat level is SUBSTANTIAL, meaning a terrorist attack is a strong possibility.

## **PURPOSE**

9. The purpose of this Scheme is to prevent certain individuals who would be refused entrance or admission at the UK border from travelling to the UK.

## **CLASS OF CARRIER TO WHICH THE SCHEME APPLIES**

10. This Scheme applies to all passenger air carriers operating to the UK that have been issued with an IS72 form. IS72 is a form issued by an Immigration Officer under paragraphs 27 and 27B of Schedule 2 to the Immigration Act 1971 which acts as the written notice requiring submission of passenger data to e-Borders.
11. Where a carrier has been issued with an IS72 form in respect of some of its routes only, this Scheme will only apply to that carrier in respect of those routes.

## **CLASS OF PASSENGER TO WHICH THE SCHEME APPLIES**

12. This Scheme applies to the following passengers travelling on flights to the UK<sup>3</sup>:
  - (i) Third country nationals;
  - (ii) EEA nationals and accompanying/joining third country national family members of EEA nationals who are the subject of an exclusion or deportation order under the Immigration (European Economic Area) Regulations 2006 because they pose a threat to public security; and
  - (iii) Individuals who are the subject of a UN or an EU (AQ list) Travel Ban<sup>4</sup>.
13. In compliance with EU law on the free movement of persons, a carrier is only required to seek authority to carry EEA nationals and their accompanying/joining third country national family members travelling to the UK where they fall within paragraph 12 (ii) or (iii). All other EEA nationals and their accompanying/joining third country national family members do not fall within the scope of this Scheme.
14. This Scheme does not apply to British nationals<sup>5</sup>.

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<sup>3</sup> The Scheme does not apply on any routes from the UK.

<sup>4</sup> UN Security Council Resolution 1267 (1999) and EU: Council Common Position 2002/402/CFSP of 27 May 2002 and Council Decision 2011/487/CFSP of 1 August 2011.

<sup>5</sup> Directions may be given under the Aviation Security Act 1982 in circumstances where a British national is assessed to pose a direct threat to aviation security seeks to fly to the UK.

## **PERSONS IN RESPECT OF WHOM AUTHORITY TO CARRY WILL BE REFUSED**

15. Authority to carry will be refused in respect of the following persons, who would be refused leave to enter at the border:
- (i) EEA nationals and accompanying/joining third country national family members of EEA nationals who are the subject of an exclusion or deportation order under the Immigration (European Economic Area) Regulations 2006 because they pose a threat to public security;
  - (ii) Third country nationals who have been excluded from the UK by the Secretary of State under rule 320(6) of the immigration rules on grounds of national security;
  - (iii) Third country nationals whom the Secretary of State is in the process of excluding under rule 320(6) of the immigration rules on grounds of national security;
  - (iv) Individuals who are the subject of a UN or EU (AQ list) Travel Ban;
  - (v) Third country nationals who are the subject of a deportation order on grounds of national security.
  - (vi) Third country nationals who have been or would be refused a visa because of national security.
16. The operation of the Scheme is without prejudice to any in-country right of appeal an individual may have and separate arrangements would be made enabling such an individual to travel to the UK.

## **PROCESS**

17. Where a carrier has been served with an IS72 form, the carrier will be required to provide passenger data to e-Borders at least 30 minutes before departure. The submission of this information will constitute a request by the carrier for authority to carry all the passengers on the flight who come within the scope of the Scheme as set out in paragraph 12.
18. Carriers will be informed by the Home Office if they do not have authority to carry any of those passengers. Those passengers should not be brought to the UK.
19. Carriers will be refused authority to carry any of the following passengers:
- (i) EEA nationals and accompanying/joining third country national family members of EEA nationals who are the subject of an exclusion or deportation order under the Immigration (European Economic Area) Regulations 2006 because they pose a threat to public security;
  - (ii) Third country nationals who have been excluded from the UK by the Secretary of State under rule 320(6) of the immigration rules on grounds of national security;
  - (iii) Third country nationals whom the Secretary of State is in the process of excluding under rule 320(6) of the immigration rules on grounds of national security;

- (iv) Individuals who are the subject of a UN or EU (AQ list) Travel Ban;
  - (v) Third country nationals who are the subject of a deportation order on grounds of national security;
  - (vi) Third country nationals who have been or would be refused a visa because of national security.
20. The carrier will be notified by the Home Office via telephone of the details of any individual whom they do not have authority to carry to the UK. The initial phone message will be relayed in English and be followed up with an email in English confirming details of the denial of authority to carry the passenger to the UK. Carriers are responsible for providing contact details and ensuring that they are kept up to date.
  21. If no notification is received by 15 minutes before scheduled time of departure, carriers will automatically have authority to carry all persons on the flight who come within the scope of the Scheme as set out in paragraph 12.
  22. If, due to technical failure, the carrier is unable to send the data required by the IS72, and all other options for providing the data have been exhausted, the carrier should decide if it wishes to carry passengers who have not been subject to pre-departure checks. The Home Office will liaise with the carrier to discuss appropriate next steps should the carrier have boarded an individual whom they would have been denied authority to carry. The carrier should be aware though that if it does not seek authority to carry in accordance with this Scheme, it will be liable to a financial penalty – unless the carrier can establish that it has a reasonable excuse for avoiding liability.
  23. Any passenger in respect of whom the carrier is denied authority to carry will be informed of that decision by the carrier. The passenger will be referred to the UK Border Agency website or, where appropriate, to Home Office staff working locally as is normal procedure following a decision overseas.

## **LIABILITY**

24. A carrier is liable to a civil penalty if it brings to the UK a passenger in respect of whom either (i) it was required to seek authority to carry under the terms of this Scheme but failed to do so; or (ii) it was denied authority to carry. The level of such a penalty will be an amount not exceeding £10,000. The full details of this financial penalty regime are set out in the Nationality, Immigration and Asylum Act 2002 (Authority to Carry) Regulations 2012.
25. A Code of Practice has been produced which sets out the factors that may be considered when determining the level of penalty to be imposed in each case.
26. A carrier will have a defence to the payment of a penalty where the carrier shows that it has a reasonable excuse for any liability for a penalty under the Regulations.

27. This Scheme does not affect any other obligations of carriers. Carriers will continue to be responsible for any detention and removal costs should any of their passengers outside the scope of this Scheme be refused leave to enter the UK. Carriers will also be liable to a financial penalty under carriers' liability legislation where a passenger who is inadequately documented<sup>6</sup> is carried to the UK.

Secretary of State for the Home Department  
April 2012

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<sup>6</sup> Section 40 of the Immigration & Asylum Act 1999 provides for a charge to be imposed on the owner of a ship or aircraft where a person requiring leave to enter arrives in the UK and fails to produce a valid "immigration document" which satisfactorily establishes identity and nationality or citizenship, and if the individual requires a visa, a visa of the required kind. Legislation Secretary of State for the Home Department on detention and removal cost is contained in paragraphs 8(1) and 19(1) in Schedule 2 of the 1971 Immigration Act.



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ISBN 978-0-10-851159-2



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