

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT GENERAL AVIATION (PERSONS ON BOARD, FLIGHT INFORMATION AND CIVIL PENALTIES) REGULATIONS 2024

Tuesday 5 March 2024

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Saturday 9 March 2024

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The Committee consisted of the following Members:

Chair: DR RUPA HUQ

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| † Bell, Aaron (<i>Newcastle-under-Lyme</i>) (Con) | † Quince, Will (<i>Colchester</i>) (Con) |
| † Blake, Olivia (<i>Sheffield, Hallam</i>) (Lab) | † Sunderland, James (<i>Bracknell</i>) (Con) |
| † Blomfield, Paul (<i>Sheffield Central</i>) (Lab) | † Thewliss, Alison (<i>Glasgow Central</i>) (SNP) |
| † Bristow, Paul (<i>Peterborough</i>) (Con) | † Timms, Sir Stephen (<i>East Ham</i>) (Lab) |
| † Butler, Rob (<i>Aylesbury</i>) (Con) | † Villiers, Theresa (<i>Chipping Barnet</i>) (Con) |
| † Clark, Feryal (<i>Enfield North</i>) (Lab) | † Wakeford, Christian (<i>Bury South</i>) (Lab) |
| † Gideon, Jo (<i>Stoke-on-Trent Central</i>) (Con) | † Whittingdale, Sir John (<i>Maldon</i>) (Con) |
| † Lopresti, Jack (<i>Filton and Bradley Stoke</i>) (Con) | |
| † Owen, Sarah (<i>Luton North</i>) (Lab) | Sara Elkhawad, <i>Committee Clerk</i> |
| † Pursglove, Tom (<i>Minister for Legal Migration and the Border</i>) | † attended the Committee |

Fourth Delegated Legislation Committee

Tuesday 5 March 2024

[DR RUPA HUQ *in the Chair*]

Draft General Aviation (Persons on Board, Flight Information and Civil Penalties) Regulations 2024

2.30 pm

The Minister for Legal Migration and the Border (Tom Pursglove): I beg to move,

That the Committee has considered the draft General Aviation (Persons on Board, Flight Information and Civil Penalties) Regulations 2024.

It is a pleasure to serve under your chairmanship, Dr Huq. The purpose of the regulations, which were laid under sections 27BA and 27BB(6) of schedule 2 to the Immigration Act 1971 and section 32B(6)(b) of the Immigration, Asylum and Nationality Act 2006, is to require owners, agents or captains of international general aviation flights to submit information about the flight and the persons on board online and in advance of the flight. General aviation flights are those that do not operate to a schedule. They include large commercially operated business jets, air taxis and private pilots in light aircraft. The regulations also amend the Passenger, Crew and Service Information (Civil Penalties) Regulations 2015, thereby making a failure to comply with the requirements of the new regulations liable to a civil penalty of up to £10,000.

The safety and security of our citizens is the Government's top priority. We are committed to implementing resilient border security processes for all modes of international transport for counter-terrorism, policing and immigration purposes. A key part of our border security strategy is the ability to know who is travelling or intending to travel to and from the UK's border before they arrive or depart. Through the provision of advance passenger information, known as API, our border officers can quickly determine who does and does not pose a threat to the UK or to UK interests and, importantly, prevent travel in accordance with the authority to carry scheme 2023.

All airlines that operate scheduled commercial international flights to and from the UK, apart from some flights within the common travel area, are required to provide API for all individuals on board their aircraft. In addition, all passengers who arrive on scheduled international flights are subject to full passport control checks at the border. Individuals who arrive in or leave the UK on international general aviation flights are not all subject to the same checks. They can arrive and depart at major airports where Border Force officers are located, but also at small airports with no permanent Border Force presence. Many international general aviation flights operate out of private airfields and landing strips where there is no permanent border control or police presence.

I reassure the Committee that all crew and passengers who arrive on international general aviation flights have their details checked. Border Force and the police use

intelligence to address a series of security, policing, immigration and customs matters, then determine an appropriate operational response based on an assessment of the risk that each flight poses. That combination of intelligence assessment, expert judgment and spot checks means that we can provide an appropriate operational response.

The requirement to provide API forms a key part of our approach to managing international general aviation flights and the individuals on board. Currently, those who operate international general aviation flights are required to provide data in advance of departure for customs purposes and, on some routes, for security purposes, but they are not required to provide the information electronically in a way that enables law enforcement to process it efficiently.

To effectively assess the risk posed by individuals on board international general aviation flights, our border control authorities need not only to know who intends to travel in advance of their commencing their journey to or from the UK, but to receive the information in a way that supports effective processing to clear individuals who raise no concerns and to focus on subjects of interest. The submission of flight information, online and in advance, will allow Border Force and other law enforcement authorities to analyse and quantify the extent of the potential threat and level of risk. It will enhance automated checking and intelligence-led decision making to improve the effectiveness with which resources are deployed to meet flights.

Last April, the Home Office undertook an eight-week consultation, targeted at the general aviation sector, on regulations to require information about general aviation flights and persons on board to be submitted electronically in a manner that enables automated watchlisting. Respondents to the consultation understood the reasons for doing this, and most were supportive of the introduction of the regulations.

To be clear, the regulations will not require the provision of information over and above what is already required. They simply specify the manner in which the information must be supplied: it must be provided online. Already more than 50% of submissions are made electronically, and the regulations will have no impact them. For the pilots and operators who submit their flight information via email, or even fax, there will be a small impact. Border Force has introduced the free-to-use web service "Submit a General Aviation Report", hosted on gov.uk, which general aviation owners, agents or captains can use to comply with the regulations.

For individuals arriving and departing in private aircraft, the requirements reflect and support the Government's intention to have a fully digitised border system and allow us to know about and have control over who is travelling to, entering and leaving the UK. The draft regulations will ensure that information about general aviation flights and the people on board is submitted consistently, meaning that Border Force will be able to better assess any risks.

The Government recognise the significant economic benefit that the general aviation sector provides to the country and that the majority of owners, agents or captains make available to border authorities and the police information about their international flights and the people on board. The changes are a necessary and proportionate

step in our continuing efforts to secure the border and keep our country safe. I commend the regulations to the Committee.

2.36 pm

Feryal Clark (Enfield North) (Lab): It is a pleasure to serve under your chairmanship this afternoon, Dr Huq. I welcome the regulations. I am not here to stand in the way of measures to assist Border Force, police forces and other agencies to do their job and, once implemented, the regulations should ensure that they have complete and timely access to a range of advance passenger information to ensure that immigration controls are properly enforced. The requirements for flight operators to submit advance passenger information online should promote compliance with immigration law across the general aviation sector.

The statutory instrument establishes that failure to comply with the requirements will be subject to financial penalties of up to £10,000. I am interested to know how the decision to set £10,000 as the maximum amount for civil penalties was arrived at and what specific steps the Home Office and other Government Departments plan to take to monitor the implementation of and compliance with the rules. Will the Minister ensure that Parliament and the public will be kept up to date on how effectively the rules are enforced?

I am concerned about the capacity of Home Office officials, particularly Border Force, to adequately police compliance with the new rules. At present, only around 50% of advance passenger information is submitted electronically. To ensure that the remaining 50% or so of flights have correctly submitted the required information, there may well be a need for Border Force to maintain a significant presence at several airfields where there are typically no officers stationed.

Home Office data provided to the independent chief inspector of borders and immigration, David Neal, showed that last year UK Border Force failed to check the occupants of hundreds of private jets arriving at just one airport. The Minister told the shadow Home Secretary, my right hon. Friend the Member for Normanton, Pontefract and Castleford (Yvette Cooper), that the Home Office cleared 100% of high-risk general aviation flights either remotely or in person. Will he confirm what percentage were in person?

Will the Minister provide reassurances on the levels of Border Force funding and personnel that the Home Office plans to allocate to supervising the roll-out of and subsequent level of compliance with the regulations across the general aviation sector? There has been a decade of cuts to immigration enforcement. With that in mind, will he confirm what the total budget and headcount of Border Force have been in every financial year since its establishment as its own command in 2012? Of the total headcount, how many officers in each year were engaged specifically in monitoring and enforcing compliance with immigration controls in the aviation sector? If the Minister has that information, he can give it to us in Committee, but I understand that he might not have it all to hand so am happy for him to write to me.

2.40 pm

Alison Thewliss (Glasgow Central) (SNP): It is a pleasure to see you in the Chair, Dr Huq.

I will not oppose the draft regulations, but I have some questions for the Minister, certainly about their timing, coming as they do on the back of the sacking of David Neal as the independent chief inspector of borders and immigration. I understand that on the day the reports came out about the misuse of London City airport flights by private jets, David Neal had a meeting scheduled with the Minister that was cancelled that morning. That is what David Neal told the Home Affairs Committee. If the Minister cared to enlighten us a little about the circumstances of the cancelling of that meeting, that would be useful.

I wish to put a number of concerns on the record. This statutory instrument puts the onus on the pilot to comply with the rules, rather than on UK Border Force. Given the nature of the accusations about some flights coming into UK airports, I am concerned that people who are not keen to comply with the rules in the first place will be even less likely to comply with the rules that the Minister is bringing in under the regulations. What consultation has the Minister had with the British Airline Pilots' Association and other pilot representative organisations? Are they happy enough to take on the additional responsibility of ensuring that passengers on such flights are registered in the system?

The Minister talked about only 50% of passengers being registered by electronic submission at the moment. Will he tell us how long he will give people to comply with the regulations? Is he expecting instant compliance? People might not be familiar with electronic submission—the Minister suggested that they are faxing passenger information to UK Border Force—so will they be set up to do it in the way that he expects?

Who will check compliance with the system? The Minister talked about spot checks to ensure compliance with the regulations, but there are lots of small private airfields around the UK. When I tried to establish exactly how many small private airfields there are in the UK, the figure I found was around 144. Will the Minister assess the risk of particular airports? Is it likely that if compliance becomes heavier at London City airport, people will move their private flights elsewhere? It feels to me like a population who will, if they seek to evade Border Force, have at their disposal lots of means by which to do so. The Government are quite good at bringing forward laws, but not so good at implementation, so may I ask whether any additional staff will be put on to monitor electronic submissions, to spot check and to seek compliance on the submissions?

Is what is actually happening here that the Minister is legislating ahead of the April publication of what we expect to be David Neal's damaging report on London City airport? David Neal also suggested to the Home Affairs Committee that the big delays in the release of his reports were to allow the Home Office time to find sticking-plaster solutions, so that the reports were not quite as bad by the time they came out because the Government could say, "No, we've fixed this. We're doing something about it." Is this the Government doing something about it eight weeks ahead of the promised publication of the report?

The accusations are serious: that UK Border Force failed to check hundreds of private jets. The potential was for criminals, trafficking victims and all kinds of people to be able to come into the country. That has been the allegation. The *Daily Mail* is not a publication

[Alison Thewliss]

I generally refer to in this place, but it cited the fact that at London City airport last year just 21% of general aviation flights were inspected by immigration officers. The airport handled 1,305 general aviation flights, with 687 categorised as high risk. Only 144 of those were checked by Border Force, and 543 had no passport inspections whatsoever. That is really quite worrying given the potential for people to come through.

I understand that the definition of high and low risk is part of the dispute here. The Minister has said previously in the House that it is about the persons on board, intelligence and things like that, but if someone was of a mind to try to circumvent UK border security rules, they would be able to find their way around this legislation quite easily. Instead of flying from an airport in Moscow, they might fly from an airport in the south of France, or they might try to find other ways so that their flight appears to be quite low risk. It would be interesting to hear an understanding of what that risk is and how the Government assess it.

I am also concerned about how the information made it to the press. I appreciate that the report is yet to come out, so the Minister may not want to comment on this, but the independent chief inspector of borders and immigration was also quite concerned about the insider threat to Border Force—about people becoming employees of Border Force and then using their role to allow people in and things to happen that should not. Could the Minister tell us anything more about that?

As I said, I will not oppose this statutory instrument, but I do have concerns about the manner in which this change is being brought forward. I would be interested to know more about the consultation process, and I am concerned about how the independent chief inspector of borders and immigration has been treated for trying to do his job in alerting Ministers to his concerns. He felt he was getting no response from Ministers, hence the situation he ended up in. It is unfortunate that this is the case, because he has been a diligent and fearless advocate for what he is trying to do.

2.47 pm

Tom Pursglove: I appreciate the broad support for the measure from colleagues from across the Committee. On the point about year-to-year staffing in Border Force, I will happily write to the hon. Member for Enfield North with that information. It is worth saying that there is a degree of day-to-day flexibility, in operational terms, around the work of Border Force. Staff are surged in to deal with particular and competing pressures. This really goes to the heart of why the change we seek to introduce today is so important, because it will help us to respond operationally to the challenges of general aviation in a more targeted way. Where there are no risks or low risks, that can be dealt with accordingly, and we can then channel greater resource at dealing with higher-risk general aviation matters. That goes to the heart of what we seek to achieve. I will happily provide the hon. Lady with the information.

On the question about the former chief inspector of borders and immigration and the meeting that was organised with me, I had accepted that meeting as a matter of priority. It was organised but did not go

ahead because of the information that was supplied to journalists. As I have said now several times in the House, that was done outside the proper process and was not respectful of the confidentiality requirements associated with such reports. The Home Secretary had been very clear with Mr Neal, as had I and the Minister for Countering Illegal Migration, that we would respond to the outstanding reports as a priority. We have now subsequently seen, as a House, the way in which we have gone about that.

I also refer the Committee to the commitment I made yesterday that the report on general aviation relating to London City airport will be responded to in the proper way within eight weeks. I undertake to make that commitment again today. I do not intend to deal with that report in a piecemeal manner. It is important that we have the chance to reflect properly on Mr Neal's recommendations and the statistics included, with proper assurance and fact checking, and are able to respond in the usual way to the recommendations, but that will be done in a timely way. I give that undertaking again to the Committee.

It is important to say that there is no change to what is required in terms of the information that people are asked to provide. What is different is the manner and the way in which we are asking for it to be presented, through the online means, which will ensure that, for the reasons I touched on earlier, we are better able to respond to risk and to be in receipt of that information in a more timely and co-ordinated way. That should, of course, help to manage border security challenges more effectively.

On the point about the maximum penalty level, the figure is up to £10,000. That was adopted in 2015 as an appropriate and proportionate level, and we will keep the number and level of penalties under close review. It is important to recognise that there is a graduated approach. I hope that we do not have to resort to using the penalties, because I hope that people will want to engage properly with the process, recognising the imperative of ensuring our border security, but there is a graduated approach and we will keep the level of the penalty under review.

Alison Thewliss: I thank the Minister for that clarification. Why is it being levelled particularly at the pilot, rather than at the person who chartered the plane or the person who owns it?

Tom Pursglove: The reason is that there is clear accountability around an individual piloting a plane. The hon. Lady will appreciate that the legislation is relevant to a number of different types of individuals or operators, right the way through from individual private pilots to small businesses that fly people around. There is an obvious, clear line of accountability and sight when it comes to the way in which the penalty is issued and subsequently levied.

The hon. Lady was right to ask her fair and legitimate question about consultation and engagement. The Home Office has a good working relationship with representatives of the leisure and business general aviation sectors. Regular meetings are held, and invitees include the British Business and General Aviation Association, the Light Aircraft Association and the Aircraft Owners and Pilots Association.

To support the launch of the regulations, the Home Office has planned a comms campaign to ensure that all general aviation operators, agents or captains are aware of the changes that will come into force on 6 April, and the underpinning civil penalty regime, which we anticipate starting by the middle of February. It will consist of detailed guidance as well as high-level top lines that can be included in GA publications or mailshots. We will keep under review what more we can do to try to help to generate awareness, which is important because we want people to be compliant. In fact, I would go as far as saying that I want people to provide the data that is being asked of them, rather than having to resort to fines and extracting money from them for non-compliance.

On the related issue of compliance monitoring, the civil penalty regime will be applied consistently across all Border Force regions. To ensure that that happens, comprehensive guidance will be provided to all frontline Border Force officers. Each region will have a single point of contact for officers to approach regarding the process. In the event that a breach is identified, the GA owner, agent or captain will be served with an initial notice of potential liability setting out the breach that has occurred. The notice will then be reviewed by a central Border Force team, which will make the final determination on whether there is a liability, at which point the penalty notice will be served.

Understandably, there were also questions about what more we can do to try to improve the situation when it comes to the security of our border and the approach in relation to general aviation. Working with His Majesty's Revenue and Customs, the Home Office has reduced the number of airfields into which an international GA flight can arrive, from more than 3,000 to 400. That is a result of the UK's departure from the European Union, which has meant that to continue to receive international flights airfields have had to apply for a certificate of agreement. That is another significant step taken to manage the risk posed by GA flights, and it means that 16% of the GB aerodromes total will be approved to handle CTA and international flights from 1 January 2024, so that change has come about. The remaining 84% of aerodromes will be classed as undesignated and restricted to domestic movements only, which is helpful when it comes to being able to surge our Border Force resources to respond to issues and ensure we have the appropriate oversight of general aviation.

On the point about what is required, it is worth saying that more than 50% of the general aviation sector submits information using online methods. There will be no change and no impact for those people, as they are already complying. Yes, for those who submit via email, or even by fax, there will be a change, but we consider that to be a small change in behaviour and have provided a free-to-use web service through which to submit information, with a view to making it as easy as possible. The Home Office has drafted guidance for the sector that will be published in advance of the regulations coming into force. That will give the sector adequate time to understand its obligations and the penalties should it fail to comply.

A question was asked, understandably, about the speed at which and the timetable by which the reform is being brought to fruition. It is worth saying that this change has been in the making for some time; I am pleased that we are now bringing it forward. In saying that, it is worth making the point that this change is not related to the ICIBI report, in the sense that we have only just received that report and I will respond to it within eight weeks. This workstream has been ongoing for some considerable time in advance of that. We have not long been in receipt of the ICIBI report.

A point was made about a willingness to be scrutinised in relation to general aviation. I have said this in the House before, but it bears repeating: this was an area in relation to which senior leadership in the Home Office, on the officials side, had invited scrutiny from the ICIBI. Far from trying to be evasive on the issue of general aviation, there is most definitely a willingness to look carefully at it. There is most definitely a willingness to learn. There is always an opportunity to get ahead and advance recommendations in responding to them and getting on and doing the work ahead of publication. I want to do this work properly. I want to provide greater detail to the House, and to people further afield, about that report, by responding to it properly in the usual way, with proper responses to the recommendations, but I give an undertaking to do that in a timely way. We treat this issue with the utmost seriousness.

Question put and agreed to.

2.57 pm

Committee rose.

