

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT AUTHORITY TO CARRY SCHEME AND
CIVIL PENALTIES REGULATIONS 2023

Tuesday 7 February 2023

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The Committee consisted of the following Members:

Chair: †SIR ROBERT SYMS

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| † Aldous, Peter (<i>Waveney</i>) (Con) | † Henry, Darren (<i>Broxtowe</i>) (Con) |
| † Bailey, Shaun (<i>West Bromwich West</i>) (Con) | † Lynch, Holly (<i>Halifax</i>) (Lab) |
| † Baynes, Simon (<i>Clwyd South</i>) (Con) | † Mak, Alan (<i>Havant</i>) (Con) |
| Bradshaw, Mr Ben (<i>Exeter</i>) (Lab) | † Mann, Scott (<i>Lord Commissioner of His Majesty's Treasury</i>) |
| † Dines, Miss Sarah (<i>Parliamentary Under-Secretary of State for the Home Department</i>) | † Mullan, Dr Kieran (<i>Crewe and Nantwich</i>) (Con) |
| Dixon, Samantha (<i>City of Chester</i>) (Lab) | † Smith, Greg (<i>Buckingham</i>) (Con) |
| Doyle-Price, Jackie (<i>Thurrock</i>) (Con) | † Western, Andrew (<i>Stretford and Urmston</i>) (Lab) |
| † Elmore, Chris (<i>Ogmore</i>) (Lab) | |
| † Grady, Patrick (<i>Glasgow North</i>) (SNP) | William Opposs, Guy Mathers, <i>Committee Clerks</i> |
| Hamilton, Mrs Paulette (<i>Birmingham, Erdington</i>) (Lab) | † attended the Committee |

Fourth Delegated Legislation Committee

Tuesday 7 February 2023

[SIR ROBERT SYMS *in the Chair*]

Draft Authority to Carry Scheme and Civil Penalties Regulations 2023

9.25 am

The Parliamentary Under-Secretary of State for the Home Department (Miss Sarah Dines): I beg to move,

That the Committee has considered the draft Authority to Carry Scheme and Civil Penalties Regulations 2023.

It is a pleasure to serve under your chairmanship, Sir Robert.

The purpose of the regulations, laid under sections 23(2) and 24(7) of the Counter-Terrorism and Security Act 2015, is to give effect to the Authority to Carry Scheme 2023, otherwise known as “the 2023 scheme”; to make consequential amendments to the Authority to Carry Scheme (Civil Penalties) Regulations 2015 and to revoke the Authority to Carry Scheme and Civil Penalties Regulations 2021.

Once given effect, the 2023 scheme will, in turn, revoke and replace the Authority to Carry Scheme 2021. Authority to carry is, in effect, the UK’s “No Fly” scheme. It is operated to prevent individuals, including known terrorists, serious criminals and those subject to sanctions, from being able to travel to and from the UK.

The scheme is operated by the National Border Targeting Centre, which processes information about individuals - both passengers and crew - intending to travel to or from the UK. Where an individual is identified who is in a class of person described in the scheme, the carrier may be refused authority to carry the individual to or from the UK.

The 2023 scheme applies to aircraft, ships and trains that have been required by law to provide passenger and crew information before departure. It applies on all international routes including journeys within the Common Travel Area where advance passenger and crew information is received from a carrier.

The Authority to Carry Scheme continues to be extremely successful. Since its introduction in March 2015, the National Border Targeting Centre has refused carriers authority to carry more than 11,200 individuals seeking to travel to the UK. That is a daily occurrence. This has included around 270 individuals excluded from the UK; about 4,500 individuals previously deported from the UK; over 5,500 individuals using invalid documents; over 720 individuals seeking to use revoked or cancelled entry clearances or visas; and some 23 individuals who have been refused leave to enter prior to their departure to the UK. These are all individuals who would otherwise have arrived in the UK and been refused leave to enter by Border Force officers.

The primary reason we are introducing the 2023 Scheme is to account for the introduction of electronic travel authorisations - a key component of universal permission to travel. Universal permission to travel will

require all individuals to have a valid permission before travelling to the UK. There will be some individuals who apply for an electronic travel authorisation but whose application is refused. Others may be granted an ETA that is subsequently cancelled, for example if it is established a false declaration was made about their previous good conduct. It is important that those individuals are prevented from travelling to the United Kingdom. Through the inclusion of those classes of individuals in the 2023 scheme we can ensure they are prevented from travelling to the UK.

We are also taking the opportunity to make additional amendments to existing classes of individual in the 2021 scheme to include namely: individuals who were subject to deportation proceedings but left the UK before those proceedings concluded; individuals who have been or would be refused entry clearance or a visa under the immigration rules—not only on non-conducive grounds as in the 2021 scheme; individuals who are using an invalid travel document that was not issued to them, or is otherwise not valid for international travel—that will include documents being misused but not reported, or not yet reported, lost or stolen and so called “fantasy documents” not issued by a recognised national or international authority; and as an additional class, individuals whose indefinite leave to enter or remain has been revoked under section 76 of the Nationality, Immigration and Asylum Act 2002.

It is important to note that the Crown Dependencies are aligning with the UK by introducing their own ETA schemes and collectively we will recognise each other’s schemes. Therefore, authority to carry refusals may be issued to carriers operating to the UK where an individual’s ETA has been, or would be, refused or has been issued and subsequently cancelled under any of the ETA schemes of the Crown Dependencies.

The additions to the 2023 scheme that I have outlined will ensure the authority to carry policy continues to operate effectively and will reflect the wider development of the UK’s border security measures through the advent of the universal permission to travel, and, particularly, the introduction of the ETA for non-visa nationals.

Like the previous Authority to Carry Schemes, the proposed 2023 scheme will be an important element of our multi-layered approach to border security, alongside universal permission to travel, the visa regime, the ETA and our checks at the border.

The Government are committed to ensuring the continued safety and security of the UK border. This new Authority to Carry Scheme is central to that effort. I commend the regulations to the Committee.

9.30 am

Holly Lynch (Halifax) (Lab): It is a pleasure to serve under you, Sir Robert. I thank the Minister for her opening remarks.

As the Minister has outlined, the draft statutory instrument would implement the Authority to Carry Scheme 2023, which, as the hon. Lady said, replaces the 2021 scheme. As highlighted by the explanatory notes, the 2023 scheme would extend the range of individuals who carriers may be refused authority to carry to include people refused an ETA and people travelling on a document that is not valid for international travel, or a document of which the person is not the rightful owner.

Additionally, the SI would amend the Authority to Carry Scheme (Civil Penalties) Regulations 2015 to remove the sunset clause. As of yet, I do not believe we know when the ETA scheme will be introduced, or details as to who exactly will be required to have an ETA or how much it will cost to secure. Those are significant outstanding questions when we consider how the regulations will work.

The Opposition certainly do not oppose the measures, which are very much part of the package of terrorism laws sadly necessary to help keep people safe. There is a need to have safeguards on the exit from, entry to or return to the UK of individuals who pose a terrorism-related threat. We recognise that those checks assist hard-working UK border officials and other operational partners in their vital work by streamlining much of that electronic process.

In 2021, a Home Office Minister stated that since its introduction, the scheme had refused carriers the authority to carry individuals seeking to travel to the UK on more than 8,200 occasions. I listened carefully to the figures that the Minister cited, and I would be interested to know how many people the scheme has refused authority to carry in the past 12 months. It would be useful if the Minister could update the Committee to give us a sense of those numbers, although I appreciate that the topic is not part of her usual brief.

I am also mindful that the scheme carries a maximum penalty of £50,000. I would be interested to know how many times breaches of the scheme by carriers have been identified, leading to a penalty being imposed, and the value of those fines. That would be an indication of the seriousness of those breaches.

I had a local case in 2021 of an individual who had committed serious and violent sexual offences who was deported to Pakistan. Once there, he was able to change his name and come right back again. We absolutely cannot afford to let such mistakes happen, and I hope that the enhanced measures we are discussing cannot be cheated in such a basic way.

Other than the queries I have outlined, the Opposition very much welcome the regulations, which mitigate the risk posed by those who, sadly and dangerously, seek to do us harm. We will not seek to divide the Committee on the measure.

9.33 am

Patrick Grady (Glasgow North) (SNP): It is a pleasure to serve under your chairmanship, Sir Robert.

I do not think anyone is disputing the need for sensible border security and counter-terrorism provisions. Obviously, they already exist in the preceding regulations, and of course the SNP understand the need to update them to reflect the technological developments to which the Minister referred. Concerns arise when there is a risk of ministerial overreach or the acquisition of powers that stretch beyond the intention of the original primary legislation.

There are particular concerns that some of the provisions we are discussing may become a vehicle for enforcing a hostile immigration environment by stealth or, indeed, quite blatantly rather than acting purely as the counter-terrorism provisions which the Minister outlined. That includes the extension of the regulations governing no-fly orders to individuals who have been or would be refused entry clearance on a visa under the immigration

rules. That means the relevant definition then suddenly becomes very wide. I can think of constituents who have acquired visas quite legitimately. What happens if they have to return home or to their country of origin for family reasons when their visas start to expire and they are in the process of applying for a new one? Will such individuals be stopped at the border and sent back until they can regularise their paperwork? If so, where is the capacity in the Home Office to sort out such regularisation? We all have countless examples of people who cannot get their paperwork processed in time. That is particularly true among the academic community, which represents a significant proportion of the Glasgow North constituency as well as in other parts of Scotland.

I seek a key assurance that the proposed rules will not prevent any individual from claiming asylum on presentation at the UK border, whether that is an airport, seaport or the channel tunnel terminals. That is very important. I hope that the Minister, unlike many of her colleagues who seem to refuse to answer the question, will confirm that the ability to claim asylum is a human right. I hope she will confirm that there is no such thing as an illegal asylum seeker. If the provisions in the SI are used to enforce the Government's hostile environment and their intention to stop people coming here and seeking refuge, we should be concerned. I will be very interested to hear the Minister's response to that.

9.35 am

Miss Sarah Dines: I am grateful for the points that have been raised by hon. Members.

In response to the questions from the hon. Member for Halifax on behalf of the Opposition, the ETA scheme will be introduced later this year. The price of it, which will be announced soon, will be similar to other schemes such as those operated in the USA and the EU. I appreciate that issues have been raised by Members about the imposition of penalties. As I said, civil penalties of up to £50,000 will be imposed on carriers who breach the requirements of the scheme. We appreciate that that is large penalty, particularly at a time when the travel industry is facing global economic pressures. We recognise that, and I can reassure Members that we will not increase the maximum penalty amount. Although the regulations set out that a financial penalty may be applied, we have a dedicated team in Border Force who engage with carriers to resolve issues about timelines and the quality of data submissions to the Government's border systems, which may result in non-compliance with the scheme.

Our approach is one of collaborative working, but where a breach of the scheme occurs, it is only right and proper that we should penalise that carrier. In seven years of operating the Authority to Carry Schemes only 23 penalties totalling £352, 500 have been imposed. There have been one or two occasions when the penalty was £50,000.

The numbers of those apprehended have been consistent. As I said earlier, since 2015, more than 11,200 individuals have been prevented from travelling. In 2021-22, 1,197 individuals were stopped; in 2022-23, that number was 1,700. In the year 2016-17, the number was 1,702. It is clear that those figures are pretty consistent.

The hon. Member for Glasgow North, who spoke on behalf of the SNP, suggested that the scheme could be part of a hostile immigration environment. He

[Miss Sarah Dines]

fundamentally misunderstands the nature of the scheme. It is not designed to enable the blatant disregard of people's rights, nor is it part of the means to create a hostile environment. People will not be stopped at the border in the UK, rather they will not be allowed to be carried if they are those whom we know should not be coming to the UK. The scheme does not affect the classic asylum claims.

The Government are committed to ensure the continued safety and security of our UK border. The authority to carry is an integral part of that policy, and has been since 2015. Consistency of support from the official Opposition is gratefully received, and such consistency from all the opposition would be gratefully received if offered.

The Authority to Carry Scheme is essentially the UK's "no fly" scheme, and is similar to those operated across the world. It is designed to ensure that the citizens of the UK are safe. It is intended to prevent certain individuals from travelling to the UK when necessary in the public interest. It is operated by the

National Border Targeting Centre, the multi-agency operational hub within Border Force. It is an important part of our border security arrangements, which prevents individuals who are known terrorists, serious criminals and those subject sanctions from being able to travel to the UK. I do not apologise for it or accept in any way the suggestion that the scheme is part of fostering a hostile immigration environment. It is about keeping our citizens safe.

I thank all hon. Members for their participation. The adoption of the regulations and giving effect to the Authority to Carry Scheme 2023 will underpin the operation of a critical element of our future border and immigration system, namely, universal permission to travel. It will build on the successful operation of the existing policy, which prevents individuals from travelling to or from the UK, and will maintain and develop that important part of our security arrangements.

Question put and agreed to.

9.39 am

Committee rose.

