

*Status: Point in time view as at 12/02/2015.*

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## SCHEDULES

### SCHEDULE 5

#### AVIATION, MARITIME AND RAIL SECURITY

#### PART 1

#### PASSENGER, CREW AND SERVICE INFORMATION

##### *Amendments of the Immigration Act 1971*

- 1 (1) Schedule 2 to the Immigration Act 1971 (administrative provisions as to control on entry etc) is amended as follows.
- (2) In paragraph 27 (requirement to provide passenger lists etc), in sub-paragraph (5), after paragraph (b) insert—
- “(ba) may require a responsible person to be able to receive, in a specified form and manner, communications sent by the Secretary of State or an immigration officer relating to the information,”.
- (3) In paragraph 27B (passenger information or service information), after sub-paragraph (8) insert—
- “(8A) The officer may require a carrier to be able to receive communications from the officer in such form and manner as the Secretary of State may direct.”
- (4) After paragraph 27B insert—
- “27BA) The Secretary of State may make regulations requiring responsible persons in respect of ships or aircraft—
- (a) which have arrived, or are expected to arrive, in the United Kingdom, or
- (b) which have left, or are expected to leave, the United Kingdom, to supply information to the Secretary of State or an immigration officer.
- (2) The following information may be required under sub-paragraph (1)—
- (a) information about the persons on board;
- (b) information about the voyage or flight.
- (3) The regulations must—
- (a) specify or describe the classes of ships or aircraft to which they apply;
- (b) specify the information required to be supplied;
- (c) specify the time by which the information must be supplied;
- (d) specify the form and manner in which the information must be supplied.

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- (4) The regulations may require responsible persons to be able to receive, in a specified form and manner, communications sent by the Secretary of State or an immigration officer relating to the information.
- (5) For the purposes of this paragraph, the following are responsible persons in respect of a ship or aircraft—
- (a) the owner or agent, and
  - (b) the captain.
- (6) Regulations under this paragraph may make different provision for different purposes, and in particular may make different provision for different types of carrier, journey or person on board.
- (7) The power to make regulations under this paragraph is exercisable by statutory instrument; but no regulations under this paragraph are to be made unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House.
- 27B(1) The Secretary of State may make regulations imposing penalties for failure to comply with—
- (a) an order under paragraph 27(2) (order requiring passenger list or particulars of member of crew),
  - (b) any request or requirement under paragraph 27B (passenger and service information), or
  - (c) regulations under paragraph 27BA (passenger, crew and service information).
- (2) Regulations under sub-paragraph (1) may in particular make provision—
- (a) about how a penalty is to be calculated;
  - (b) about the procedure for imposing a penalty;
  - (c) about the enforcement of penalties;
  - (d) allowing for an appeal against a decision to impose a penalty;
- and the regulations may make different provision for different purposes.
- (3) Provision in the regulations about the procedure for imposing a penalty must provide for a person to be given an opportunity to object to a proposed penalty in the circumstances set out in the regulations.
- (4) The regulations must provide that no penalty may be imposed on a person for failure to comply with an order under paragraph 27(2), a request or requirement under paragraph 27B or regulations under paragraph 27BA where—
- (a) proceedings have been instituted against the person under section 27 in respect of the same failure; or
  - (b) the failure consists of a failure to provide information that the person has also been required to provide under section 32 or 32A of the Immigration, Asylum and Nationality Act 2006 and—
    - (i) a penalty has been imposed on the person in respect of a failure to provide that information by virtue of regulations made under section 32B of that Act, or

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- (ii) proceedings have been instituted against the person under section 34 of that Act in respect of a failure to provide that information; or
      - (c) the failure consists of a failure to provide information that the person has also been required to provide under an authority-to-carry scheme made under section 22 of the Counter-Terrorism and Security Act 2015 and a penalty has been imposed on the person in respect of a failure to provide that information by virtue of regulations made under section 24 of that Act.
    - (5) Any penalty paid by virtue of this paragraph must be paid into the Consolidated Fund.
    - (6) The power to make regulations under this paragraph is exercisable by statutory instrument; but no regulations under this paragraph are to be made unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House.”
  - (5) Omit paragraph 27C (notification of non-EEA arrivals).
- 2 In section 27 of that Act (offences by persons connected with ships or aircraft or with ports)—
- (a) the existing provision becomes subsection (1);
  - (b) at the end insert—
    - “(2) Proceedings may not be instituted against a person under subsection (1)(a)(i) or (1)(b)(iv) for a failure to provide information or otherwise to comply with a requirement imposed under paragraph 27, 27B or 27BA of Schedule 2 where—
      - (a) the person has paid a penalty in respect of the same failure, or a failure to provide the same information, by virtue of regulations made under—
        - (i) paragraph 27BB of Schedule 2,
        - (ii) section 32B of the Immigration, Asylum and Nationality Act 2006, or
        - (iii) section 24 of the Counter-Terrorism and Security Act 2015 (penalty for breach of authority-to-carry scheme); or
      - (b) proceedings have been instituted against the person under section 34 of the Immigration, Asylum and Nationality Act 2006 in respect of a failure to provide the same information.”

*Amendments consequential upon paragraph 1*

- 3 Omit section 19 of the Immigration and Asylum Act 1999.
- 4 In Schedule 7 to the Terrorism Act 2000 (port and border controls), in paragraph 17 (provision of passenger information), in sub-paragraph (6), for “or 27B” substitute “, 27B or 27BA ”.

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*Amendments of the Immigration, Asylum and Nationality Act 2006*

5 The Immigration, Asylum and Nationality Act 2006 is amended as set out in paragraphs 6 to 8.

6 In section 32 (passenger and crew information: police powers), at the end of subsection (6) insert—

“(e) may include a requirement for the owner or agent of a ship or aircraft to be able to receive, in a specified form and manner, communications relating to the information.”

7 After that section insert—

**“32A Regulations requiring information to be provided to police**

(1) The Secretary of State may make regulations requiring responsible persons in relation to ships or aircraft—

(a) which have arrived, or are expected to arrive, in the United Kingdom, or

(b) which have left, or are expected to leave, the United Kingdom, to provide information to the police.

(2) The following information may be required under subsection (1)—

(a) information about the persons on board;

(b) information about the voyage or flight.

(3) Regulations may impose a requirement to provide the information only if the Secretary of State thinks it necessary—

(a) in the case of a requirement to provide information to the police in England and Wales, for police purposes;

(b) in the case of a requirement to provide information to the police in Scotland, for police purposes which are or relate to reserved matters (within the meaning of the Scotland Act 1998);

(c) in the case of a requirement to provide information to the police in Northern Ireland, for police purposes which are or relate to excepted or reserved matters (within the meaning of the Northern Ireland Act 1998).

In this subsection “police purposes” has the same meaning as in section 32.

(4) The regulations must—

(a) specify or describe the classes of ships or aircraft to which they apply;

(b) specify the information required to be provided;

(c) specify the time by which the information must be provided;

(d) specify the form and manner in which the information must be provided.

(5) The regulations may require responsible persons to be able to receive, in a specified form and manner, communications sent by the police, the Secretary of State or an immigration officer relating to the information.

(6) Regulations under this section—

(a) may apply generally or only to specified cases or circumstances,

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- (b) may make different provision for different cases or circumstances,
  - (c) shall be made by statutory instrument, and
  - (d) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (7) For the purposes of this section, the following are responsible persons in respect of a ship or aircraft—
- (a) the owner or agent, and
  - (b) the captain.

### **32B Penalty for breach of section 32 or 32A**

- (1) The Secretary of State may make regulations imposing penalties for failure to comply with a requirement imposed—
- (a) under section 32(2) (provision of passenger, crew or service information), or
  - (b) by regulations made under section 32A (regulations requiring information to be provided to police).
- (2) Regulations under subsection (1) may in particular make provision—
- (a) about how a penalty is to be calculated;
  - (b) about the procedure for imposing a penalty;
  - (c) about the enforcement of penalties;
  - (d) allowing for an appeal against a decision to impose a penalty;
- and the regulations may make different provision for different purposes.
- (3) Provision in the regulations about the procedure for imposing a penalty must provide for a person to be given an opportunity to object to a proposed penalty in the circumstances set out in the regulations.
- (4) The regulations must provide that no penalty may be imposed on a person for failure to comply with a requirement imposed under section 32(2) or by regulations made under section 32A where—
- (a) proceedings have been instituted against the person under section 34 in respect of the same failure, or
  - (b) the failure consists of a failure to provide information that the person has also been required to provide under paragraph 27, 27B or 27BA of Schedule 2 to the Immigration Act 1971 and—
    - (i) a penalty has been imposed on the person in respect of a failure to provide that information by virtue of regulations made under paragraph 27BB of that Schedule, or
    - (ii) proceedings have been instituted against the person under section 27 of that Act in respect of a failure to provide that information, or
  - (c) the failure consists of a failure to provide information that the person has also been required to provide under an authority-to-carry scheme made under section 22 of the Counter-Terrorism and Security Act 2015 and a penalty has been imposed on the person in respect of a failure to provide that information by virtue of regulations made under section 24 of that Act.

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- (5) Any penalty paid by virtue of this section must be paid into the Consolidated Fund.
- (6) Regulations under this section—
- (a) must be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.”
- 8 (1) Section 34 (offence of failure to provide passenger information etc) is amended as follows.
- (2) In subsection (1), for “imposed under section 32(2) or (3) or 33(2)” substitute “imposed—
- (a) under section 32(2) or (3) or 33(2), or
  - (b) by regulations made under section 32A”.
- (3) After subsection (1) insert—
- “(1A) Proceedings may not be instituted against a person under subsection (1) for a failure to comply with a requirement imposed under section 32(2) or by regulations made under section 32A where—
- (a) the person has paid a penalty in respect of the same failure, or a failure to provide the same information, by virtue of regulations made under—
    - (i) section 32B,
    - (ii) paragraph 27BB of Schedule 2 to the Immigration Act 1971, or
    - (iii) section 24 of the Counter-Terrorism and Security Act 2015 (penalty for breach of authority-to-carry scheme); or
  - (b) proceedings have been instituted against the person under section 27 of the Immigration Act 1971 in respect of a failure to provide the same information.”
- (4) In subsection (2), at the end insert “, and
- (c) where a person fails without reasonable excuse to comply with a requirement imposed by regulations made under section 32A to provide information to the police in England and Wales—
    - (i) if the required information does not relate to a reserved matter (within the meaning of the Scotland Act 1998), the person shall not be treated as having committed the offence in Scotland (but has committed the offence in England and Wales);
    - (ii) if the required information does not relate to an excepted or reserved matter (within the meaning of the Northern Ireland Act 1998), the person shall not be treated as having committed the offence in Northern Ireland (but has committed the offence in England and Wales).”

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