

2015 No. 957

IMMIGRATION

PREVENTION AND SUPPRESSION OF TERRORISM

**The Authority to Carry Scheme (Civil Penalties) Regulations
2015**

Made - - - - - *24th March 2015*

Coming into force - - - - - *31st March 2015*

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 24 of the Counter-Terrorism and Security Act 2015(a).

In accordance with section 24(7) of that Act, a draft of these Regulations was laid before and approved by a resolution of each House of Parliament.

Citation, commencement and expiry

1.—(1) These Regulations may be cited as the Authority to Carry Scheme (Civil Penalties) Regulations 2015.

(2) These Regulations come into force on the seventh day after the day on which they are made.

(3) These Regulations cease to have effect at the end of the period of seven years beginning with the day on which these Regulations come into force.

Interpretation

2. In these Regulations—

“authority-to-carry scheme” means the scheme, under section 22 of the Counter-Terrorism and Security Act 2015, that was laid before Parliament in draft on 2nd March 2015;

“carrier” has the meaning given in regulation 3(1);

“IA 1971” means the Immigration Act 1971(b);

“notice of objection” has the meaning given in regulation 5;

“penalty notice” has the meaning given in regulation 4.

Penalty for breach of an authority-to-carry scheme

3.—(1) This regulation applies to a person (a “carrier”) who is required by the authority-to-carry scheme to seek authority from the Secretary of State to carry persons on aircraft, ships or trains.

(a) 2015 c. 6.
(b) 1971 c. 77.

(2) The Secretary of State may require the carrier to pay a penalty if satisfied that the carrier has breached any of the following requirements of the scheme—

- (a) a requirement to seek authority to carry a person;
- (b) a requirement to provide specified information by a specified time before travel;
- (c) a requirement to provide information in a specified manner and form;
- (d) a requirement to be able to receive, in a specified manner and form, communications from the Secretary of State;
- (e) a requirement not to carry a person where the Secretary of State has refused authority to carry the person.

(3) Separate penalties may be imposed under sub-paragraphs (a), (b) and (e) of paragraph (2) for breaches relating to different people travelling on the same aircraft, ship or train.

(4) In paragraph (2) “specified” means specified in the authority-to-carry scheme.

(5) The Secretary of State may not require a carrier to pay a penalty if—

- (a) the carrier shows that there was a reasonable excuse for the breach, or
- (b) paragraph (6) applies.

(6) This paragraph applies where—

- (a) the breach consists of a failure to comply with a requirement that the carrier is also obliged to comply with by virtue of paragraph 27, 27B(a) or 27BA(b) of Schedule 2 to IA 1971 and—
 - (i) a penalty has been imposed on the carrier, under regulations made under paragraph 27BB of that Schedule, in respect of the same failure, or
 - (ii) proceedings have been instituted against the carrier, under section 27 of IA 1971, in respect of the same failure;
- (b) the breach consists of a failure to comply with a requirement that the carrier is also obliged to comply with by virtue of section 32 or 32A of the Immigration, Asylum and Nationality Act 2006(c) and—
 - (i) a penalty has been imposed on the carrier, under regulations made under section 32B of that Act, in respect of the same failure, or
 - (ii) proceedings have been instituted against the carrier, under section 34 of that Act, in respect of the same failure; or
- (c) in the case of a failure consisting of the provision of false information, proceedings have been instituted against the carrier, under section 5 of the Perjury Act 1911(d), in respect of the same failure.

(7) A penalty imposed under this regulation may not exceed £50,000.

(8) The penalty is payable to the Secretary of State on demand.

Notification of penalty decision

4.—(1) If the Secretary of State decides to require a carrier to pay a penalty under these Regulations, the Secretary of State must give the carrier a penalty notice.

(2) A penalty notice must—

- (a) be in writing,
- (b) state the Secretary of State’s reasons for deciding to require the carrier to pay a penalty,

(a) Paragraph 27B was inserted by the Immigration and Asylum Act 1999 (c. 33), section 18.

(b) Paragraph 27BA was inserted by the Counter-Terrorism and Security Act 2015, paragraph 1 of Schedule 5.

(c) 2006 c. 13.

(d) 1911 c. 6 (1 & 2 Geo 5); section 5 was amended by the Criminal Justice Act 1948 (c. 58), section 1(2).

- (c) state the amount of the penalty,
- (d) specify the date on which it is given,
- (e) specify the date, at least 28 days after the date specified in the notice as the date on which it is given, before which the penalty must be paid,
- (f) specify how a penalty must be paid,
- (g) include an explanation of the steps that the carrier may take if the carrier objects to the penalty (including specifying the manner and form in which any notice of objection must be given to the Secretary of State), and
- (h) include an explanation of the steps the Secretary of State may take to recover any unpaid penalty.

Objection to penalty decision

5.—(1) A carrier which receives a penalty notice may object to the penalty notice by giving a notice of objection to the Secretary of State.

(2) A notice of objection must—

- (a) be in writing,
- (b) give the reasons for the objection,
- (c) be given to the Secretary of State in the manner and form specified in the penalty notice, and
- (d) be given before the end of the period of 28 days beginning with the date specified in the penalty notice as the date on which it is given.

(3) Where the Secretary of State receives a notice of objection, the Secretary of State must consider it and—

- (a) cancel the penalty,
- (b) reduce the penalty,
- (c) increase the penalty, or
- (d) determine not to alter the penalty.

(4) After reaching a decision as to how to proceed under paragraph (3), the Secretary of State must notify the carrier of the decision in writing.

(5) A notification under paragraph (4) must be given before the end of the period of 70 days beginning with the date specified in the penalty notice as the date on which it is given, or such longer period as the Secretary of State may agree with the carrier.

(6) A notification under paragraph (4), other than one notifying the carrier that the Secretary of State has decided to cancel the penalty, must—

- (a) state the amount of the penalty following the Secretary of State's consideration of the notice of objection,
- (b) state the Secretary of State's reasons for the decision under paragraph (3),
- (c) specify the date, at least 28 days after the date on which the notification is given, before which the penalty must be paid,
- (d) specify how the penalty must be paid,
- (e) include an explanation of the carrier's rights of appeal, and
- (f) include an explanation of the steps the Secretary of State may take to recover any unpaid penalty.

Appeals

6.—(1) A carrier may appeal to the court against a decision to require the carrier to pay a penalty under these Regulations.

(2) An appeal may be brought only if the carrier has given a notice of objection and the Secretary of State has—

- (a) reduced the penalty under regulation 5(3)(b),
- (b) increased the penalty under regulation 5(3)(c), or
- (c) determined not to alter the penalty under regulation 5(3)(d).

(3) An appeal must be brought within the period of 28 days beginning with the date on which the carrier is notified of the Secretary of State's decision on the notice of objection under regulation 5(4).

(4) On appeal, the court may—

- (a) allow the appeal and cancel the penalty,
- (b) allow the appeal and reduce the penalty, or
- (c) dismiss the appeal.

(5) An appeal—

- (a) is to be a re-hearing of the Secretary of State's decision to impose a penalty, and
- (b) may be determined having regard to matters of which the Secretary of State was unaware.

(6) Paragraph (5)(a) has effect despite any provision of rules of court.

(7) In this regulation, a reference to “the court” is a reference—

- (a) in England and Wales, to the county court,
- (b) in Scotland, to the sheriff, and
- (c) in Northern Ireland, to a county court.

(8) But—

- (a) the county court in England and Wales, or a county court in Northern Ireland, may transfer proceedings under this regulation to the High Court, and
- (b) the sheriff may transfer proceedings under this regulation to the Court of Session.

Enforcement of penalty decision

7.—(1) This regulation applies where a sum is payable to the Secretary of State as a penalty under these Regulations.

(2) In England and Wales the penalty is recoverable as if it were payable under an order of the county court in England and Wales.

(3) In Scotland the penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

(4) In Northern Ireland the penalty is recoverable as if it were payable under an order of a county court in Northern Ireland.

(5) Where action is taken under this regulation for the recovery of a sum payable as a penalty under these Regulations, the penalty is—

- (a) in relation to England and Wales, to be treated for the purposes of section 98 of the Courts Act 2003(a) (register of judgments and orders etc) as if it were a judgment entered in the county court;
- (b) in relation to Northern Ireland, to be treated for the purposes of Article 116 of the Judgments Enforcement (Northern Ireland) Order 1981(b) (register of judgments) as if it were a judgment in respect of which an application has been accepted under Article 22 or 23(1) of that Order.

(a) 2003 c. 39.

(b) S.I. 1981/226 (N.I. 6).

Service

8.—(1) This regulation applies where a document is authorised or required to be given to a carrier for the purpose of these Regulations.

(2) A document may be given to a carrier—

- (a) by delivering it to the carrier,
- (b) by leaving it at the carrier's address,
- (c) by sending it by post to the carrier at that address, or
- (d) by means of electronic communication.

(3) Where a document is given to a carrier outside the United Kingdom by post, it is to be taken to have been received on the fourth day after the day on which it was sent.

Home Office
24th March 2015

James Brokenshire
Minister of State

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the civil penalty regime that applies for the purposes of an authority-to-carry scheme under section 22 of the Counter-Terrorism and Security Act 2015. The authority-to-carry scheme to which these Regulations refer is the Authority to Carry Scheme 2015, brought into force on the same day as these Regulations.

Regulation 3 applies to carriers who are required by the scheme to seek authority to carry from the Secretary of State. Where a carrier breaches a requirement of the authority to carry scheme of the kind specified in regulation 3, the Secretary of State may require the carrier to pay a penalty. Such a penalty may not exceed £50,000. Regulation 4 contains provision about the contents of a penalty notice. Regulations 5 to 8 deal with matters relating to objection, appeals, enforcement and service of documents.

© Crown copyright 2015

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£4.25

UK2015032619 04/2015 19585

<http://www.legislation.gov.uk/id/uksi/2015/957>

ISBN 978-0-11-113586-0



9 780111 135860