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Home Office

# Authority to Carry Scheme 2021

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# AUTHORITY TO CARRY SCHEME 2021

## Context

1. The Authority to Carry Scheme 2021 is the second authority to carry scheme to be made under the Counter-Terrorism and Security Act 2015. The primary legislation allows the Secretary of State to make authority to carry schemes requiring a carrier<sup>1</sup> to seek authority from the Secretary of State to carry persons on aircraft, ships or trains which are arriving (or expected to arrive) or leaving (or expected to leave) the UK. The Authority to Carry Scheme 2021 (“This Scheme”) replaces the Authority to Carry Scheme 2015.
2. Operating an authority to carry scheme is an important element of the UK’s border security, aviation security and wider transport security arrangements. The threat from terrorism is real and ongoing. There is a need to prevent or disrupt the exit from, entry to or return to the UK of individuals who pose a terrorism-related threat, or other threat to the UK or its interests. This includes mitigating the threat of an attack on aircraft operating to the UK (or onward from the UK) or an attack on a ship or international train operating to the UK.
3. The Home Secretary has the power to exclude or deport individuals from the UK. The legal provisions for excluding and deporting EEA nationals, their non-EEA family members and extended family members will depend on their date of arrival in the UK and their immigration status. For some EEA nationals, their non-EEA national family members and extended family members, the power to exclude or deport on the grounds of public policy or public security has been set out in the Immigration (European Economic Area) Regulations 2016; for other EEA nationals and for third country nationals, the relevant power to deport is contained in the Immigration Act 1971 and the power to exclude is a prerogative power exercised by personal decision of the Home Secretary.
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 threat to the UK. However, it will not always be apparent to a carrier when a visa has been cancelled or revoked. Visa nationals who do not have a visa and are therefore inadequately documented for travel to the UK should be prevented from travelling by a carrier under the Carriers’ Liability arrangements set out in Part 2 of the Immigration and Asylum Act 1999<sup>2</sup>.

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<sup>1</sup> ‘Carrier’ includes a person responsible for an aircraft or boat, including the captain, owner or agent, as defined in paragraph 27BA(5) of Schedule 2 to the Immigration Act 1971 and section 32A(7) of the Immigration, Asylum and Nationality Act 2006.

<sup>2</sup> Sections 40 to 40B of the Immigration and Asylum Act 1999 provide 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 on carrier liability for detention and removal costs is contained in paragraphs 8 to 16 and 19 of Schedule 2 to the 1971 Immigration Act.

5. However, the visa regime is only applicable to those who require a visa to travel to the UK. In the absence of an Authority to Carry Scheme an individual who does not require a visa for the UK may still be able to travel, despite the existence of an order excluding or deporting a person from the UK, the existence of a UK or UN travel ban or a refusal of leave to enter in advance of travel. Carriers will not always be aware of an exclusion or deportation order, travel ban or other restriction on a person's travel and so would not be in a position to deny boarding.

### **Purpose**

6. The purpose of this Scheme is to prevent certain individuals from travelling to or from the UK when it is necessary in the public interest.

### **Class of carrier to which the Scheme applies**

7. This Scheme applies to all carriers operating to and from the UK that have been required by the Secretary of State or an immigration officer under paragraph 27 or 27B of Schedule 2 to the Immigration Act 1971 or by a police officer under section 32 of the Immigration, Asylum and Nationality Act 2006, to submit information comprising passenger or crew information. Where information has been required from a carrier in respect of some of its routes only, this Scheme will only apply to that carrier in respect of those routes.
8. This Scheme also requires carriers to make a request for authority to carry the passengers and crew (and not carry such persons when authority is refused) for whom they have provided information in accordance with regulations made under paragraph 27BA of Schedule 2 to the 1971 Act or section 32A of the 2006 Act, or pursuant to Commissioners Directions given under sections 35 and 64 of the Customs and Excise Management Act 1979.
9. Where carriers provide passenger and crew information voluntarily, the provision of information will be treated as a request for authority to carry and they may be liable to a financial penalty if they carry a person whom they were refused authority to carry.
10. This Scheme requires a carrier, to which paragraphs 7 and 8 apply, to:
  - a) seek authority to carry a person;
  - b) not carry a person they have been refused authority to carry<sup>3</sup>.
11. This Scheme requires a carrier, to which paragraph 9 applies, to not carry a person they have been refused authority to carry.
12. If a carrier breaches a requirement of this Scheme, the carrier may be liable to a financial penalty. The civil penalty regime for failure to comply with this Scheme is set out in the Authority to Carry Scheme (Civil Penalties) Regulations 2015.

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<sup>3</sup> This Scheme does not include a requirement to provide specified information by a specified time before travel, a requirement to provide information in a specified form and manner, or a requirement to be able to receive, in a specified form and manner, communications from the Secretary of State. However, failure to provide such information may, depending upon the circumstances, incur a penalty under the Passenger, Crew and Service Information (Civil Penalties) Regulations 2015.

### **Classes of passenger to which the Scheme applies**

13. This Scheme applies to all passengers and crew travelling, or expected to travel, to or from the UK on a class of carrier to which this scheme applies, except for carriers providing information voluntarily. Where passenger and crew information is provided voluntarily, this Scheme applies to all passengers and crew in respect of whom information is provided.

### **Persons in respect of whom authority to carry may be refused**

14. Authority to carry to the UK may be refused in respect of the following persons:

- a) Individuals who are assessed by the Secretary of State to pose a direct threat to the security of any aircraft, ship or train or persons or property on board;
- b) Individuals who are the subject of a Temporary Exclusion Order made under Chapter 2 of Part 1 of the Counter-Terrorism and Security Act 2015;
- c) Individuals who are the subject of UK or UN travel restrictions and are excluded persons for the purposes of section 8B of the Immigration Act 1971 (unless, by virtue of either an exemption (in respect of a section 8B(5) instrument), or an exception granted or direction given under Regulations made under section 15(4) of the Sanctions and Anti-Money Laundering Act 2018, the individual is permitted to make the journey in respect of which authority is sought);
- d) Individuals who are the subject of an exclusion order under the Immigration (European Economic Area) Regulations 2016;
- e) Individuals who have been excluded from the UK by the Secretary of State, or in relation to whom the Secretary of State is in the process of making a decision that the individual be excluded from the UK;
- f) Individuals who are the subject of a deportation order or whom the Secretary of State is in the process of making the subject of a deportation order under the Immigration Act 1971;
- g) Individuals who have been or would be refused a visa or entry clearance on non-conducive grounds;
- h) Individuals whose visa or entry clearance has been cancelled or revoked under the immigration rules;
- i) Individuals who have been refused leave to enter the UK before their departure for, or in the course of their journey to, the UK under article 7 of the Immigration (Leave to Enter and Remain) Order 2000;
- j) Individuals who are using an invalid travel document that is, or appears to be, a passport or other document which has been lost, stolen or cancelled, has expired, was not issued by the government or authority by which it purports to have been issued or has undergone an unauthorised alteration, and

- k) Individuals whose travel document includes, or the Secretary of State has reasonable grounds to believe includes, visa or entry clearance, a permission or an endorsement that is false or was not issued by the government or authority by which it purports to have been issued or has undergone an unauthorised alteration.

15. Authority to carry from the UK may be refused in respect of the following persons:

- a) Individuals who are assessed by the Secretary of State to pose a direct threat to the security of any aircraft, ship or train or persons or property on board;
- b) Individuals listed by the United Nations as being subject to travel restrictions (to the extent the individual is seeking to travel in breach of those restrictions);
- c) Children<sup>4</sup> whom the Secretary of State has reasonable grounds to believe are intending to leave the UK for the purposes of involvement in terrorism-related activity;
- d) Individuals whose travel documents are being retained under powers exercised under Schedule 1 to the Counter-Terrorism and Security Act 2015;
- e) Individuals who are the subject of post-custodial licence conditions preventing travel from the UK following a conviction for a terrorism-related offence;
- f) Individuals who are the subject of a travel measure preventing their travel outside the UK under the Terrorism Prevention and Investigation Measures Act 2011;
- g) Individuals in respect of whom the Secretary of State has cancelled a passport issued to the person or has not issued a passport on the basis that the person to whom the passport was issued or who applied for the passport has or may have been, or will or may become, involved in activities so undesirable that it is contrary to the public interest for the person to have access to passport facilities, and
- h) Individuals who are using an invalid travel document that is, or appears to be, a passport or other document which has been lost, stolen or cancelled, has expired, was not issued by the government or authority by which it purports to have been issued or has undergone an unauthorised alteration.

## **Process**

16. Where a carrier, to which paragraphs 7 and 8 apply, is required to provide passenger, crew and service information, or information about a flight or voyage and persons on board, this will constitute a request by the carrier for authority to carry passengers and crew or persons on board and a failure to provide this information at all will constitute a breach of the Scheme.

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<sup>4</sup> Children means persons under the age of eighteen years

17. Where a carrier, to which paragraph 9 applies, voluntarily provides passenger, crew and service information, or information about a flight or voyage and persons on board, they are also required to seek authority to carry in respect of those individuals about whom they provide information. The submission of this information will constitute a request for authority to carry passengers and crew.
18. All carriers will be informed by the Home Office if they do not have authority to carry any person. Those persons should not be carried to or from the UK, as appropriate.
19. A carrier required under paragraph 27, 27B or 27BA of Schedule 2 to the Immigration Act 1971 or under section 32 or 32A of the Immigration, Asylum and Nationality Act 2006 to send information in an electronic form compatible with the Government's Border System should seek authority to carry using such a system. A carrier required under any of these powers to be able to receive communications from the recipient of the data should have a system in place to receive notification of the grant or refusal of authority to carry.
20. For carriers which do not have a compatible information system, the carrier will be notified by telephone of the details of any individual in respect of whom authority to carry is refused. The initial message will be relayed in English and be followed up with an email in English confirming details of the refusal of authority to carry the individual concerned. All carriers are responsible for providing contact details and ensuring that they are kept up to date. Refusal of authority to carry may also be communicated by other means in appropriate circumstances.
21. If, due to technical failure, the carrier is unable to send the required information, and all other options for providing the information have been exhausted the Home Office will liaise with the carrier to discuss appropriate next steps. If the carrier 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.
22. Any person in respect of whom the carrier is refused authority to carry should be informed of that decision by the carrier. The carrier will be provided with a form of words to be provided to the individual to explain that the Home Office has refused authority to carry them. This will include a contact telephone number and email address at the Home Office should the individual wish to make further enquiries.

### **Liability**

23. A carrier may be liable to a civil penalty if it is a carrier to whom the Scheme applies and it has breached a requirement to seek authority to carry a person or a requirement not to carry a person when authority to carry has been refused. The level of such a penalty will be an amount not exceeding £50,000 for each breach. The penalty regime is set out in The Authority to Carry Scheme (Civil Penalties) Regulations 2015.



24. A penalty will apply in respect of:

- a) Every person on the aircraft, ship or train for whom authority to carry was not sought as required.
- b) Every person carried to or from the UK whom the carrier was refused authority to carry.

25. A penalty will apply to a carrier required to seek authority to carry in respect of passenger and crew information provided voluntarily, but only where it carries a person in respect of whom authority to carry to or from the UK was refused.

26. A carrier will have a defence to 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 on carriers. Carriers will continue to be responsible for detention and removal costs should any of their passengers be refused leave to enter the UK on arrival. Carriers will also be liable to a financial penalty under carriers' liability legislation when an inadequately documented person is carried to the UK.

28. This Scheme will come into force on the same day as The Authority to Carry Scheme and Civil Penalties Regulations 2021.

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