



STATUTORY INSTRUMENTS.

S.I. No. 597 of 2011



EUROPEAN COMMUNITIES (COMMUNICATION OF PASSENGER
DATA) REGULATIONS 2011

(Prn. A11/2121)

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DATA) REGULATIONS 2011

I, ALAN SHATTER T.D., Minister for Justice and Equality, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purposes of giving effect to the Council Directive 2004/82/EC of 29 April 2004¹, hereby make the following regulations:

Citation and commencement.

1. (1) These Regulations may be cited as the European Communities (Communication of Passenger Data) Regulations 2011.

(2) These Regulations come into operation on 1 November 2011.

Interpretation.

2. (1) In these Regulations:

“Council Directive” means Council Directive 2004/82/EC of 29 April 2004¹ on the obligation of carriers to communicate passenger data;

“immigration offence” means an offence under the—

- (a) Aliens Act 1935 (No. 14 of 1935),
- (b) Refugee Act 1996 (No. 17 of 1996),
- (c) Immigration Act 1999 (No. 22 of 1999),
- (d) Illegal Immigrants (Trafficking) Act 2000 (No. 29 of 2000),
- (e) Immigration Act 2003 (No. 26 of 2003), or
- (f) Immigration Act 2004 (No. 1 of 2004);

“Minister” means the Minister for Justice and Equality;

“person of concern” means a person who—

- (a) has committed, or is suspected of having committed—
 - (i) an immigration offence,
 - (ii) an offence in respect of which a European arrest warrant could be issued in the State or a Member State under the European Arrest Warrant Act 2003 (No. 45 of 2003),

¹O.J. No. L261 of 6.8.2004, p.24.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 25th November, 2011.*

- (iii) an offence under the Employment Permits Acts 2003 and 2006 or any other enactment relating to employment in the State,
 - (iv) a revenue offence, or
 - (v) an offence under the Social Welfare Acts,
- (b) has engaged in or facilitated, or is suspected of having engaged in or facilitated, illegal immigration, smuggling of persons or trafficking,
- (c) is a victim, or is suspected of being a victim, of any of the activities referred to in *paragraph (a)* or *(b)* and the retention of the information concerned in accordance with Regulation 6 would assist in the investigation of any offence committed under those paragraphs, or
- (d) on the basis of information available to him or her, the Minister is satisfied should be treated as a person of concern for any purpose mentioned in Regulation 3(1)(a);

“port” has the same meaning as it has in section 1 of the Immigration Act 2004 (No. 1 of 2004);

“revenue offence” means a revenue offence within the meaning of section 2 of the Criminal Justice (Mutual Assistance) Act 2008 (No. 7 of 2008);

“smuggling”, in relation to a person by an individual, means the organisation or facilitation, for gain, of the entry into the State of the person, where the individual knows or has reasonable cause to believe that the person is an illegal immigrant (within the meaning of section 1 of the Illegal Immigrants (Trafficking) Act 2000) or intends to seek asylum, but does not include anything done by an individual, in the course of his or her employment by a *bona fide* organisation the purposes of which include giving assistance to persons seeking asylum, to assist a person seeking asylum;

“trafficking” means—

- (a) trafficking a child for the purpose of the exploitation of the child, or
- (b) trafficking a person for the purpose of the exploitation of that person,

within the meaning of the Criminal Law (Human Trafficking) Act 2008 (No. 8 of 2008).

(2) A word or expression which is used in these Regulations and which is also used in the Council Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Council Directive.

Collection of data.

3. (1) (a) The Minister may, for the purposes of—

- (i) the operation and administration of the law concerning the entry into, presence in, departure and removal from the State of persons,
- (ii) ensuring the orderly regulation of migration, the integrity of the immigration system or the prevention and control of the unlawful presence of persons in the State,
- (iii) combating illegal immigration, smuggling of persons and trafficking,
- (iv) establishing the identity and nationality of persons,
- (v) establishing whether persons are persons of concern,

require a carrier to collect and to transmit to him or her electronically the information specified in paragraph (2) in relation to persons being carried, or about to be carried, by that carrier into the State, other than from the territory of another Member State.

- (b) The information specified in paragraph (2) shall be transmitted to the Minister by the end of passenger check-in.
- (c) Where a carrier notifies the Minister that it is impossible for the information to be transmitted electronically, the Minister may agree to accept the transmission of the information in another way, so long as the information is received by the Minister in accordance with subparagraph (b).

(2) The information referred to in paragraph (1) in relation to each person carried or to be carried on board the vehicle is as follows—

- (a) the number and type of the travel document used by him or her, as provided to the carrier concerned,
- (b) his or her nationality, as provided to the carrier concerned,
- (c) his or her full names, as provided to the carrier concerned,
- (d) his or her date of birth, as provided to the carrier concerned,
- (e) the port at which the person is to arrive in the State,
- (f) the code of transport used,
- (g) the scheduled departure and arrival times of the aircraft concerned,
- (h) the total number of passengers carried on that aircraft, and

- (i) the initial point of embarkation.
- (3) A requirement under paragraph (1) may relate to—
- (a) a journey from a destination or destinations specified in the requirement,
 - (b) a series of journeys from the specified destination or destinations, or
 - (c) all journeys from the specified destination or destinations within a period specified in the requirement.
- (4) It is a defence for a person charged with an offence of failure to comply with a requirement under paragraph (1) to show that he or she took all reasonable steps to ensure compliance with the provision.

Notice to display.

4. Where a carrier is the subject of a requirement under Regulation 3(1), it shall ensure that, no later than when the information concerned is transmitted to the Minister pursuant to that Regulation, the passengers concerned are, so far as practicable, provided with, or have made readily available to them, the following information:

- (a) the identity of the carrier;
- (b) the information, specified in Regulation 3(2), that has been or, as the case may be, is to be transmitted to the Minister;
- (c) the purposes for which the information may be used or retained under these Regulations.

Deletion of data.

5. A carrier on whom a requirement under Regulation 3(1) has been imposed shall cause the information collected and transmitted to the Minister pursuant to that Regulation to be deleted from that carrier's records within 24 hours of transmission.

Retention of data.

6. (1) The Minister shall, subject to paragraph (2), cause the information transmitted to him or her pursuant to Regulation 3(1) to be stored in a temporary file and deleted within 24 hours of receipt.

(2) Where the information referred to in paragraph (1) relates to a person of concern and is required for any of the purposes referred to in Regulation 3(1)(a), the Minister may store that information in accordance with paragraphs (3) and (4).

(3) The Minister shall cause to be established and maintained, for the purposes of storage and comparison, a record of information to which paragraph (2) applies.

(4) The information referred to in paragraph (3) shall be destroyed—

- (a) not later than 3 years after it was received under Regulation 3(1), if the person to whom the information relates is lawfully present in the State at that time, or
- (b) when the person to whom the information relates ceases to be a person of concern,

whichever is the earlier.

Offences and penalties.

7. (1) A person who fails to comply with a requirement under Regulation 3(1), or who contravenes Regulation 4 or 5, is guilty of an offence and is liable—

- (a) on summary conviction, to a Class A fine or to imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to a fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years or both.

(2) Where an offence under these Regulations is committed by a body corporate or by a person purporting to act on behalf of a body corporate or an unincorporated body of persons and is proved to have been committed with the consent, connivance or approval of, or to have been attributable to any wilful neglect on the part of, any person who, when the offence was committed, was a director, a member of the committee of management or other controlling authority of the body concerned, or the manager, secretary or other officer of the body or a person who was purporting to act in any such capacity, that person shall also be guilty of an offence and shall be liable to be proceeded against and punished as if guilty of the first-mentioned offence.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.



GIVEN under my Official Seal,
26 October 2011.

ALAN SHATTER,
Minister for Justice and Equality.

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