

Draft Order laid before Parliament under section 34(3)(b) of the Channel Tunnel Act 1987, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2001 No.

CHANNEL TUNNEL

**Channel Tunnel (International Arrangements)
(Amendment No. 3) Order 2001**

*Made - - - - 2001
Coming into force in accordance with article 1(2)*

Whereas a draft of this Order has been approved by a resolution of each House of Parliament;
Now, therefore, in exercise of the powers conferred on the appropriate Minister by section 11 of the Channel Tunnel Act 1987(1), the Secretary of State for the Home Department hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Channel Tunnel (International Arrangements) (Amendment No. 3) Order 2001.

(2) This Order shall come into force on the date on which the Additional Protocol between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic enters into force. That date will be notified in the London, Edinburgh and Belfast Gazettes.

(3) In this Order—

“the Additional Protocol” means the Additional Protocol to the Sangatte Protocol on the Establishment of Bureaux Responsible for Controls on Persons Travelling by Train between France and the United Kingdom, signed at Brussels on 29th May 2000(2);

“the principal Order” means the Channel Tunnel (International Arrangements) Order 1993(3).

(4) In this Order, a reference to an article or a Schedule is to an article of or Schedule to the principal Order.

(1) 1987 c. 53.

(2) Cm 5015.

(3) S.I.1993/1813; amendments relevant to this Order are made by S.I. 1994/1405 and 2000/1775.

Amendment of the Channel Tunnel (International Arrangements) Order 1993

2. The principal Order shall be amended as follows.

3.—(1) In article 2(1), after “international articles” insert “or the supplementary articles”.

(2) After article 2(3), insert—

“(4) In this Order “the supplementary articles” means the provisions set out in Schedule 2A (being Articles of the Additional Protocol between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic), and in the supplementary articles “the Protocol signed at Sangatte” and “the Sangatte Protocol” mean the Protocol mentioned in article 1 above.

(5) In paragraph (4) and in the supplementary articles, “Additional Protocol” means the Additional Protocol to the Sangatte Protocol on the Establishment of Bureaux Responsible for Controls on Persons Travelling by Train between France and the United Kingdom, signed at Brussels on 29th May 2000(4).”.

(3) After article 3 insert—

“Application of supplementary articles

3A.—(1) The supplementary articles shall have the force of law in the United Kingdom within a supplementary control zone.

(2) Without prejudice to paragraph (1), officers belonging to the French Republic who are responsible for immigration controls shall to the extent specified in the supplementary articles have rights and obligations and powers to carry out functions in the United Kingdom.

(3) Article 3(3) of this Order shall apply for the purpose of giving full effect to the supplementary articles as it applies for the purpose of giving full effect to Article 34 of the international articles.”.

(4) After article 4(1A) insert—

“(1B) All immigration control enactments shall, for the purpose of enabling immigration officers to carry out immigration controls, extend to France within a supplementary control zone.”.

(5) For article 4(2) substitute—

“For the purposes of section 5 of the Data Protection Act 1998(5) (“the 1998 Act”), data which are—

- (a) processed within a control zone in France in connection with the carrying out of frontier controls by an officer belonging to the United Kingdom, or
- (b) processed within a supplementary control zone in France in connection with the carrying out of immigration controls by an immigration officer,

shall be treated as processed by a data controller established in the United Kingdom in the context of that establishment (and the 1998 Act shall accordingly apply in respect of such data).”.

(6) For article 4(3) substitute—

“For the purposes of section 5 of the 1998 Act, data which are—

- (a) processed within a control zone in the United Kingdom in connection with the carrying out of frontier controls by an officer belonging to the French Republic, or
- (b) processed within a supplementary control zone in the United Kingdom in connection with the carrying out of immigration controls by such an officer,

(4) Cm 5015.
(5) 1998 c. 29.

shall be treated as processed by a data controller established in France in the context of that establishment (and the 1998 Act shall accordingly not apply in respect of such data).”.

(7) In article 5(1), after sub-paragraph (b) insert—

“or any act or omission which—

- (a) takes place outside the United Kingdom in a supplementary control zone, and
- (b) would, if taking place in England, constitute an offence under an immigration control enactment.”.

(8) After article 5, insert—

“Persons boarding a through train

5A. For the purposes of the exercise of any power of an immigration officer in a supplementary control zone in France, any person who seeks to board a through train shall be deemed to be seeking to arrive in the United Kingdom through the tunnel system.”.

(9) In article 7(1)—

- (a) for “articles 4(1) and 5(1)” substitute “articles 4(1), 4(1B) and 5(1)”, and
- (b) in sub-paragraph (a), after “article 4(1)” insert “or article 4(1B)”.

(10) In article 7(2), after “control zone” insert “or a supplementary control zone”, and after “international articles” insert “or functions under Article 3 of the supplementary articles”.

(11) After article 7(3), insert—

“(3A) As respects officers exercising their functions in a supplementary control zone paragraph (2) applies only to the number of specified officers agreed in pursuance of the supplementary articles.”.

4.—(1) In Schedule 1, insert the following definitions—

““Immigration control enactment”	An Act, or an instrument made under an Act, for the time being in force, which contains provision relating to immigration controls.
“Immigration officer”	The same meaning as in the Immigration Act 1971 ⁽⁶⁾ .
“The supplementary articles”	The meaning given by article 2(4) above.
“Supplementary control zone”	An area in which a control bureau is established for the purposes of the supplementary articles.”.

(2) After Schedule 2, insert—

“SCHEDULE 2A

Article 2(4)

SUPPLEMENTARY ARTICLES

Article 1

Any terms defined in Article 1 of the Protocol signed at Sangatte have the same meaning in this Additional Protocol. For the purposes of this Additional Protocol, the following definitions shall be added:

(6) 1971 c. 77; see section 4 of the Act.

“State of departure” means the State in which the persons board the train;

“State of arrival” means the State in which the persons alight from the train.

Article 2

The authorities of the two States shall jointly put in place control bureaux, for persons using through trains and wishing to travel to the State of arrival, in the stations of London–Waterloo, London–St Pancras and Ashford on British territory, and the stations of Paris–Gare du Nord, Calais, and Lille–Europe on French territory.

The provisions of the Protocol signed at Sangatte concerning the officers of the adjoining State shall be applicable, under the same conditions, to the officers of the State of arrival who are on duty in the stations mentioned in the preceding paragraph.

Article 3

The purpose of the controls carried out by the authorities of the State of departure shall be to check whether the person can leave its territory.

The purpose of the controls carried out by the authorities of the State of arrival shall be to check whether the person is in possession of the necessary travel documents and fulfils the other conditions for entry to its territory. If this is not the case, the person shall be immediately handed over to the authorities of the State of departure who shall apply their domestic law procedures.

The authorities of the State of departure and of the State of arrival shall carry out their controls in accordance with this Additional Protocol, with their laws and regulations and with their international obligations.

The controls mentioned in the preceding paragraphs are without prejudice to customs and security controls.

Article 4

Notwithstanding the third paragraph of Article 3 of this Additional Protocol, when a person submits a request for refugee status or any other kind of protection provided for in international law or in the domestic law of the State of departure during a control carried out at the station of the State of departure by the officers of the State of arrival, this request shall be examined by the authorities of the State of departure in accordance with the rules and procedures of its domestic law.

The same provisions shall be applicable when the request is submitted after the person has passed through this control and before the train doors close at the last scheduled stop at a station located in the territory of the State of departure. If such a request is made after the train doors have closed, it shall be processed by the State of arrival in accordance with the rules and procedures of its domestic law.

Article 5

The controls referred to in Article 3 of this Additional Protocol shall be carried out in accordance with Article 12 of the Sangatte Protocol.

Article 6

The procedures for the implementation of this Additional Protocol may, as far as necessary, be the subject of technical or administrative arrangements between the competent authorities of the two States.”

5.—(1) Schedule 3 shall be amended as follows.

(2) In paragraph 1(1)(a), after “United Kingdom” insert “or in a supplementary control zone in the United Kingdom”, and after “international articles” insert “and Article 2 of the supplementary articles”.

(3) In paragraph 1(2)(c), after “international articles” insert “or Article 2 of the supplementary articles”.

(4) In paragraph 2(2)(a), for “section 25(3)” substitute “section 28A(1) and (3)(7)”, and at the end of paragraph 2(2)(a) add—

“and where this sub-paragraph applies, the reference in sub-paragraph (1) to a control zone in France shall be construed as including a reference to a supplementary control zone in France,”.

(5) In paragraph 3(1)(a), after “control zone in France” insert “or in a supplementary control zone in France”.

(6) In paragraphs 5(1) and 6(1), after “control zone” insert “or supplementary control zone”.

6.—(1) In Schedule 4, paragraph 1 shall be amended as follows.

(2) Omit sub-paragraph (8)(a), and insert after sub-paragraph (9)—

“(9A) In section 28A of the 1971 Act (arrest without warrant), in subsection (3) after the words “immigration officer” insert “or a constable”.”.

(3) For sub-paragraph (11)(d) substitute—

“(d) after paragraph 2(1) insert—

“(1A) The power conferred by sub-paragraph (1) is exercisable—

(a) as respects persons who have arrived in the United Kingdom, in a control area, and

(b) as respects persons seeking to arrive in the United Kingdom (who may first be questioned to ascertain whether they are seeking to do so), in a control zone in France or Belgium, or in a supplementary control zone in France.”;”.

(4) In sub-paragraph (11)(e), after “paragraph 2(3)” insert—

“after the words “further examination” insert “(or, if examined by an immigration officer in a supplementary control zone, may be required to submit to a further examination after arrival in the United Kingdom)” and”.

(5) For sub-paragraph (11)(ea) substitute—

“(ea) after paragraph 2A(1) insert—

“(1A) This paragraph also applies to a person who seeks to arrive in the United Kingdom and who is in a control zone in France or Belgium, or in a supplementary control zone in France.”, and after paragraph 2A(5) insert—

“(5A) A person examined by an immigration officer under this paragraph in a supplementary control zone may be required to submit to a further examination after arrival in the United Kingdom.”;”.

(6) At the beginning of sub-paragraph 11(eb)(i), insert

“after the words “sub-paragraph (5)” insert “or sub-paragraph (5A)”, and”.

7. In Schedule 4, for paragraph 4 substitute—

“**4.** In the Immigration (Leave to Enter and Remain) Order 2000(**8**)—

(a) in article 4(2)—

(7) Section 28A of the Immigration Act 1971 is inserted by section 128 of the Immigration and Asylum Act 1999 (c. 33), and section 25(3) is repealed by paragraph 51 of Schedule 14 to that Act.

(8) S.I. 2000/1161.

- (i) after the words “arrives in the United Kingdom”, insert “or enters a control zone in France or Belgium, or a supplementary control zone in France, seeking to arrive in the United Kingdom through the tunnel system”;
 - (ii) after the words “before arrival”, insert “or entry into the control zone or supplementary control zone”; and
 - (iii) after the words “date of arrival”, insert “or entry into the control zone or supplementary control zone”;
- (b) in article 4(3)—
- (i) after the words “on arrival in the United Kingdom”, insert “or entry into a control zone in France or Belgium, or a supplementary control zone in France, seeking to arrive in the United Kingdom through the tunnel system”; and
 - (ii) after the words “before arrival”, insert “or entry into the control zone or supplementary control zone”; and
- (c) in article 6(2)(a) after the words “arrives in the United Kingdom”, insert “or enters a control zone in France or Belgium, or a supplementary control zone in France, seeking to arrive in the United Kingdom through the tunnel system”.”.
- 8.** In Schedule 5, for paragraph 5 substitute—
- “**5.** The Immigration (Places of Detention) (No. 2) Direction 2000 is amended—
- (a) in article 2, by inserting after the words “control zone” the words “, supplementary control zone”; and
 - (b) in article 3(2)(a)(i) by inserting after the words “control zone” the words “or supplementary control zone”.”.

Home Office

Minister of State

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Channel Tunnel (International Arrangements) Order 1993 (“the principal Order”), to give effect to material provisions (“the supplementary articles”) of the Additional Protocol mentioned in article 1(2) of this Order. Those provisions supplement the provisions of the international articles set out in Schedule 2 to the principal Order, being provisions of the Protocol (“the Sangatte Protocol”) mentioned in article 1 of that Order to which it gives effect. The system of juxtaposed frontier controls set up under the Sangatte Protocol is supplemented by the Additional Protocol, under which supplementary control zones are accorded to France in the United Kingdom, and to the United Kingdom in France, for the purposes of the carrying out, respectively, of French and United Kingdom immigration controls.

Article 3(3) of this Order inserts a new article 3A in the principal Order which gives the supplementary articles the force of law in the United Kingdom within such a supplementary control zone. The new article 3A provides that French officers responsible for immigration controls may go about their business in the United Kingdom, and ensures that they can be provided with the necessary facilities. Article 3(4), by inserting a new paragraph (1B) in article 4 of the principal Order, extends enactments containing provision relating to immigration controls to any supplementary control zone accorded to the United Kingdom in France. Article 3(5) and (6) amend article 4(2) and (3) of the principal Order, to take account of the repeal of the Data Protection Act 1984 (c. 35) and the enactment of the Data Protection Act 1998 (c. 29). Article 3(7) extends to a supplementary control zone in France the provisions of article 5(1) of the principal Order concerning English criminal jurisdiction in a control zone, in so far as the conduct constitutes an offence under an enactment containing provision relating to immigration controls.

Article 3(8) inserts a new article 5A in the principal Order which would permit United Kingdom immigration officers in a supplementary control zone in France to exercise their functions in relation to all persons seeking to board a through train to the United Kingdom. Article 3(10) and (11) extend the provisions of article 7(2) and (3) of the principal Order, relating to the carriage of firearms by French officers, to such officers exercising functions under the supplementary articles.

Article 4(1) makes additions to the definitions contained in Schedule 1 to the principal Order, and article 4(2) inserts a new Schedule 2A setting out the supplementary articles.

Article 5 extends to a supplementary control zone in France provisions in Schedule 3 to the principal Order which relate to immigration officers' powers of arrest in France, and amends those provisions to include the power of arrest given by section 28A(1) of the Immigration Act 1971 (c. 77), in addition to the power given by section 28A(3) (the provisions of which were formerly contained in section 25(3)).

Articles 6 and 7 make further consequential modifications of the provisions of the Immigration Act 1971 (and of delegated legislation) which are modified by Schedule 4 to the principal Order. In addition, article 6(4) and (5) amend paragraph 1(11)(e) and (ea) of Schedule 4, to give immigration officers the power to examine a person who has arrived in the United Kingdom after already having been examined in a supplementary control zone.