

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION (DISPOSAL OF PROPERTY) REGULATIONS 2008

2008 No. 786

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations, made under section 26(5) and (6) of the UK Borders Act 2007, provide for the Secretary of State to dispose of property that has come into the possession of an immigration officer or the Secretary of State in the course of or in connection with, a function under the Immigration Acts.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 The UK Borders Act 2007 received Royal Assent on 30 October 2007 .

4.2 Section 26 of the UK Borders Act 2007 provides powers of disposal for property which is in the possession of an immigration officer, or of the Secretary of State in the course of the exercise of her immigration functions under the Immigration Acts. This includes property which has been forfeited or seized under the Immigration Acts, as well as property acquired in any other way.

4.3 Either the Secretary of State or a claimant of the property may apply to a magistrates' court to dispose of or take ownership of such property (section 26(2)). The magistrates' court may order the delivery of property to the person appearing to the court of be its owner, or if the owner cannot be ascertained, make any other order about property.

4.4 Under subsection (3) an order made by a magistrates' court shall not affect the right of any person to take legal proceedings for the recovery of property, provided that the proceedings are instituted within the period of six months beginning with the date of the order.

4.5 Under Subsection 4 the court may make a disposal order in respect of property which is in the possession of an immigration officer or the Secretary of State because it has been forfeited under Section 25C of the Immigration Act 1971 or section 25 of the UK Borders Act 2007 only if the application to the court is made within the period of six months beginning with the date of the forfeiture order and the applicant (if not the Secretary of State) satisfies the court that the applicant did not consent to the offender's possession of the property, or did not know and had

no reason to suspect that the property was likely to be used, or was intended to be used, in connection with an offence.

4.6 Section 26(5) gives the Secretary of State the power to make Regulations for the disposal of property where an owner has not been ascertained, or a court order cannot be made because it is outside the 6 month period for applying to the court or where the court has declined to make an order because they are not satisfied that the applicant did not consent to the offender's possession of the property or that the applicant did not know and had no reason to suspect that the property was likely to be used, or was intended to be used, in connection with an offence.

4.7 Subsection 6 makes further provision about the Regulations. The Regulations may make provision which is the same as or similar to provision that may be made by Regulations under section 2 of the Police (Property) Act 1897 or any similar enactment which applies in relation to Scotland and Northern Ireland. The Regulations may apply, with or without modification, made under that Act. They may make provision for property to vest in the Secretary of State. They may make provision about the timing of the disposal. The Regulations shall have effect only where this is not inconsistent with any court order.

4.8 Under these Regulations property, other than money, subject to a forfeiture order made under section 25C of the Immigration Act 1971 or section 25 of the UK Borders Act 2007 shall not be disposed of until it has remained in the possession of the Secretary of State for 6 months. Property, other than money, which has not been the subject of a forfeiture order under either section shall not be disposed of until it has remained in the possession of the Secretary of State for 12 months.

4.9 Following the expiration of these time periods, property, other than money, may be sold.

4.10 Any property that is a perishable article, or whose custody involves unreasonable expense or inconvenience may be disposed of or sold at any time.

4.11 Money that is property under these Regulations, and the proceeds of any sales of property, will be paid into the Consolidated Fund as soon as is reasonably practicable.

4.12 The Secretary of State may use the proceeds of sale of property, and money which is property, to defray any reasonable expenses incurred in the storage and disposal of the property and otherwise acting pursuant to these Regulations.

4.13 Once the property has been in the possession of the Secretary of State for 12 months, or 6 months where a forfeiture order has been made, she may determine that the property is retained, if she is of the opinion that the property can be used in the course of or in connection with a function under the Immigration Acts. If the Secretary of State is of the opinion that it is not in the public interest to sell or retain the property, she can direct that it can be destroyed or otherwise disposed of.

4.14 Section 59 of the UK Borders Act 2007 permits regulations made under section 26 to have effect in relation to property that is in the possession of the Secretary of State prior to commencement. This power has been exercised by virtue of Article 4 of The UK Borders Act 2007 (Commencement No. 1 and Transitional Provisions) Order 2008.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1 Border and Immigration Agency staff (UK Border Agency from 1st April 2008) have administrative powers allowing for the seizure of relevant documents in the exercise of functions under the Immigration Acts, and criminal powers allowing for the seizure of relevant evidence in relation to immigration offences, but up until now have had no powers to dispose of such property once in its possession.

7.2 The Border and Immigration Agency (UK Border Agency from 1st April 2008) is in strategic partnership with the Police and other enforcement agencies so any requirement to dispose of property would be implemented in line with existing enforcement agency powers. The Agency has developed its own criminal investigation and enforcement capability, which although in partnership with other agencies, requires independent powers in order to operate alongside our partners equally.

7.3 Immigration officers investigating offences relating to immigration increasingly act in a self-sufficient capacity, where the police are not in attendance. During the exercise of their statutory functions, immigration officers can lawfully seize and retain property. This may include, for example, forged passports, forgery equipment and other evidence of immigration-related criminal offences. At the same time, the Agency is increasing its capacity to investigate immigration-related crime.

7.4 Over the last few years the Border and Immigration Agency (UK Border Agency from 1st April 2008) has accrued property independently of the Police, such as documentation relating to immigration offences, which requires to be disposed of. However, as there has been no provision for such action to be taken, the Agency has to continue to store such property which it has not been able to

return to its rightful owners and is reliant on this primary and secondary legislation to provide the power to dispose of this property.

7.5 The Secretary of State now has powers to make regulations for the disposal of property which may be similar or the same as regulations made under section 2 of the Police (Property) Act 1897, and similar enactments in Scotland and Northern Ireland.

7.6 These Regulations provide for the retention and disposal of property (by sale, destruction or other means) and specify the time periods that the Secretary of State is required to retain property before disposing of it. They also provide that the proceeds of sale and money which is property under the Regulations will be paid into the Consolidated Fund. The Secretary of State may use such money to defray reasonable expenses incurred in the conveyance, storage, and safe custody of the property and in connection with its sale and otherwise in executing the Regulations. Property other than money may be retained by the Secretary of State to use in the course of, or in connection with, a function under the Immigration Acts, with such property vesting in the Secretary of State. Guidance will set out specifically what can be retained by the Secretary of State and the purpose for which that property can be used

8 Impact

8.1 These Regulations have no impact on business, charities or voluntary bodies and the costs of these proposals to the public sector would be minimal, therefore no Impact Assessment has been prepared for them

9 Contact

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or e-mail: Bill.Gill@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.