

Draft Order laid before Parliament under sections 36(8) and 38(7) of the Immigration, Asylum and Nationality Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2008 No.

IMMIGRATION

POLICE

REVENUE AND CUSTOMS

The Immigration, Asylum and Nationality Act 2006 (Duty to Share Information and Disclosure of Information for Security Purposes) Order 2008

<i>Made</i>	- - - -	***
<i>Coming into force</i>	- -	<i>1st March 2008</i>

The Secretary of State and the Treasury make the following Order in exercise of the powers conferred by sections 36(4) and 38(4) of the Immigration, Asylum and Nationality Act 2006(a).

In accordance with sections 36(8) and 38(7) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

The Secretary of State and the Treasury are satisfied that the sharing of information pursuant to article 2 or 3 of this Order is likely to be of use for immigration purposes, police purposes or Revenue and Customs purposes and that the nature of the information shared pursuant to either of those articles is such that there are likely to be circumstances in which it can be shared without breaching Convention rights (within the meaning of the Human Rights Act 1998(b)).

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Immigration, Asylum and Nationality Act 2006 (Duty to Share Information and Disclosure of Information for Security Purposes) Order 2008 and shall come into force on 1st March 2008.

(2) In this Order—

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- (a) 2006 c. 13. Section 36 of the 2006 Act has been amended by section 14 of, and Schedule 15 to, the Police and Justice Act 2006 (c. 48) but that amendment is not yet in force. Section 38 of the 2006 Act has been amended by section 14 of the Police and Justice Act 2006 but that amendment is not yet in force. Sections 36 and 38 of the 2006 Act apply with modifications in respect of trains arriving and departing the United Kingdom via the Channel Tunnel: articles 4 and 7 of S.I. 1993/1813 and S.I. 1994/1405 (relevant amendments have been made by S.I. 1996/2283; S.I. 2001/1544; S.I. 2006/2627; S.I. 2007/2908; and S.I. 2007/3579) and paragraph 3A of Schedule 4 to S.I. 1993/1813 as inserted by S.I. 2007/3579.
- (b) 1998 c. 42. The requirement set out in the third recital reflects the terms of section 36(5) of the 2006 Act.

“the 2006 Act” means the Immigration, Asylum and Nationality Act 2006; and

“shuttle train”, “through train” and “international service” have the same meanings as in the Channel Tunnel (International Arrangements) Order 1993(a).

(3) Any power specified in this Order for the purposes of section 36(4)(a) or section 38(4)(a) of the 2006 Act should be read as including a reference to that power as modified under section 11 of the Channel Tunnel Act 1987 (regulation of the tunnel system: application and enforcement of law, etc).

Duty to share information obtained or held under specified powers

2.—(1) Subject to paragraphs (2) and (3), the powers contained in the provisions set out in Schedule 1 to this Order are specified for the purposes of section 36(4)(a) of the 2006 Act (duty to share information).

(2) The powers are only specified to the extent to which they relate to—

- (a) passengers on a ship or aircraft or through train or shuttle train;
- (b) crew of a ship or aircraft or through train or shuttle train;
- (c) freight on a ship or aircraft or through train or shuttle train; or
- (d) flights or voyages or international services.

(3) A power shall not be construed as being specified if or in so far as it relates to a matter to which section 7 of the Commissioners for Revenue and Customs Act 2005 (former Inland Revenue matters)(b) applies.

Duty to share information relating to other matters specified in respect of travel or freight

3.—(1) Subject to paragraph (2), the matters in respect of travel and freight set out in Schedule 2 to this Order are specified for the purposes of section 36(4)(b) of the 2006 Act (duty to share information).

(2) A matter shall not be construed as being specified if or in so far as—

- (a) disclosure of information relating to it may prejudice an investigation or prosecution whether in the United Kingdom or elsewhere;
- (b) the consent of a third party is required for disclosure of information relating to it and that consent has not been obtained;
- (c) disclosure of information relating to it is likely to cause loss of life or serious injury to any person;
- (d) non-disclosure of information relating to it is necessary for the purpose of safeguarding national security; or
- (e) disclosure of information relating to it would be in breach of an obligation of the United Kingdom or Her Majesty’s Government under an international or other agreement.

Disclosure of information for security purposes: information obtained or held under specified powers

4.—(1) Subject to paragraphs (2) and (3), the powers contained in the provisions set out in Schedule 1 to this Order are specified for the purposes of section 38(4)(a) of the 2006 Act (disclosure of information for security purposes).

(2) The powers are only specified to the extent to which they relate to—

- (a) passengers on a ship or aircraft or through train or shuttle train;

(a) S.I. 1993/1813; see article 2(1) of, and Schedule 1 to, that instrument for the relevant definitions. S.I. 1993/1813 has been amended by various instruments but none of those amendments are relevant to these definitions.

(b) 2005 c. 11. Former Inland Revenue Matters are listed in Schedule 1 to the 2005 Act. Paragraph 26 of Schedule 1 was amended by section 11 of, and paragraph 61 of Schedule 1 to, the Work and Families Act 2006 (c.18).

- (b) crew of a ship or aircraft or through train or shuttle train;
- (c) freight on a ship or aircraft or through train or shuttle train; or
- (d) flights or voyages or international services.

(3) A power shall not be construed as being specified if or in so far as it relates to a matter to which section 7 of the Commissioner for Revenue and Customs Act 2005 (former Inland Revenue matters) applies.

Disclosure of information for security purposes: information relating to other matters specified in respect of travel or freight

5. The matters in respect of travel and freight set out in Schedule 2 to this Order are specified for the purposes of section 38(4)(b) of the 2006 Act (disclosure of information for security purposes).

Signed by authority of the Secretary of State

Home Office
Date

Minister of State

Treasury
Date

Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE 1

Articles 2(1) and 4(1)

Powers specified for the purposes of sections 36(4)(a) and 38(4)(a) of the 2006 Act

1. The provisions are—

- (a) an order made under paragraph 27(2) of Schedule 2 to the Immigration Act 1971 (power to require provision of information in respect of a ship or an aircraft)(a);
- (b) paragraph 27B of Schedule 2 to the Immigration Act 1971 (passenger information)(b);
- (c) paragraph 27C of Schedule 2 to the Immigration Act 1971 (notification of non-EEA arrivals on a ship or aircraft)(a);

(a) 1971 c. 77. Paragraph 27(2) of Schedule 2 to the Immigration Act 1971 has been substituted by section 31 of the 2006 Act. Paragraph 27 of Schedule 2 to the 1971 Act applies with modifications in respect of trains arriving and departing the United Kingdom via the Channel Tunnel: articles 4 and 7 of S.I. 1993/1813 and S.I. 1994/1405 (relevant amendments have been made by S.I. 1996/2283; S.I. 2001/1544; S.I. 2006/2627; S.I. 2007/2908; and S.I. 2007/3579) and paragraph 1(11)(r) of Schedule 4 to S.I. 1993/1813 as amended by S.I. 1994/1405 and S.I. 2007/3579.

(b) Paragraph 27B of Schedule 2 to the Immigration Act 1971 was inserted by section 18 of the Immigration and Asylum Act 1999 (c. 33) and subsequently amended by section 16 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c. 19) and section 31 of the 2006 Act. Paragraph 27B of Schedule 2 to the 1971 Act applies with modifications in respect of trains arriving and departing the United Kingdom via the Channel Tunnel: articles 4 and 7 of S.I. 1993/1813 and S.I. 1994/1405 (relevant amendments have been made by S.I. 1996/2283; S.I. 2001/1544; S.I. 2006/2627; S.I. 2007/2908; and S.I. 2007/3579) and paragraph 1(11)(s) of Schedule 4 to S.I. 1993/1813 as inserted by S.I. 2000/913 and subsequently amended S.I. 2007/3579.

- (d) section 32 of the 2006 Act (passenger and crew information: police powers)(b);
- (e) section 35 of the Customs and Excise Management Act 1979 (report inwards)(c) and any directions or regulations made under that provision;
- (f) section 64 of the Customs and Excise Management Act 1979 (clearance outwards of ships and aircraft)(d) and any directions made under that provision;
- (g) section 77 of the Customs and Excise Management Act 1979 (information in relation to goods imported or exported)(e);
- (h) section 9 of the Commissioners for Revenue and Customs Act 2005 (ancillary powers); and
- (i) Articles 181b (entry summary declaration) and 842a (exit summary declaration) and Annex 30A of Regulation (EEC) No 2454/93(f).

2. Until 1st July 2009 paragraph 1 shall have effect as if sub-paragraph (i) were omitted.

SCHEDULE 2

Articles 3(1) and 5

Other matters in respect of travel and freight specified for the purposes of sections 36(4)(b) and 38(4)(b) of the 2006 Act

3. The matters are—

- (a) the behaviour or suspected behaviour of a passenger, member of crew or person involved in the supply chain of a freight movement, whether already undertaken or anticipated, and including any possible connection with another person held by that passenger, member of crew or person;
- (b) the behaviour or suspected behaviour of a person connected or possibly connected to a passenger, member of crew or person involved in the supply chain of a freight movement,

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- (a) Paragraph 27C of Schedule 2 to the Immigration Act 1971 was inserted by section 19 of the Immigration and Asylum Act 1999. Paragraph 27C of Schedule 2 to the 1971 Act applies with modifications in respect of trains arriving and departing the United Kingdom via the Channel Tunnel: articles 4 and 7 of S.I. 1993/1813 and S.I. 1994/1405 (relevant amendments have been made by S.I. 1996/2283; S.I. 2001/1544; S.I. 2006/2627; S.I. 2007/2908; and S.I. 2007/3579) and paragraph 1(11)(t) of Schedule 4 to S.I. 1993/1813 as inserted by S.I. 2000/913.
 - (b) Section 32 of the 2006 Act has been amended by section 14 of, and Schedule 15 to, the Police and Justice Act 2006 (c. 48) but that amendment is not yet in force. Section 32 of the 2006 Act applies with modifications in respect of trains arriving and departing the United Kingdom via the Channel Tunnel: articles 4 and 7 of S.I. 1993/1813 and S.I. 1994/1405 (relevant amendments have been made by S.I. 1996/2283; S.I. 2001/1544; S.I. 2006/2627; S.I. 2007/2908; and S.I. 2007/3579) and paragraph 3A of Schedule 4 to S.I. 1993/1813 as inserted by S.I. 2007/3579.
 - (c) 1979 c. 2. Section 35 of the 1979 Act has been amended by: section 13 of, and Schedule 1 to, the Isle of Man Act 1979 (c. 58); sections 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48); section 3 of, and paragraph 4 of Schedule 1 to, the Territorial Sea Act 1987 (c. 49); section 35 of the 2006 Act; and S.I. 1992/3095. Section 35 of the 1979 Act (and directions and regulations made under that provision) applies with modifications in respect of through trains arriving and departing the United Kingdom via the Channel Tunnel: articles 3 and 4 of, and the Schedule to, S.I. 1990/2167. See also article 4 of S.I. 1993/1813 and 1994/1405 (relevant amendments have been made by S.I. 1996/2283 and S.I. 2001/1544).
 - (d) Section 64 of the 1979 Act has been amended by: section 13 of, and Schedule 1 to, the Isle of Man Act 1979; sections 37, 38 and 46 of the Criminal Justice Act 1982; section 114 of the Police and Criminal Evidence Act 1984 (c. 60); section 3 of, and paragraph 4 of Schedule 1 to, the Territorial Sea Act 1987; and S.I. 1992/2095. Section 64 of the 1979 Act (and directions made under that provision) applies with modifications in respect of trains arriving and departing the United Kingdom via the Channel Tunnel: articles 3 and 4 of, and the Schedule to, S.I. 1990/2167. See also article 4 of S.I. 1993/1813 and 1994/1405 (relevant amendments have been made by S.I. 1996/2283 and S.I. 2001/1544).
 - (e) Section 77 of the 1979 Act has been amended by: sections 37, 38 and 46 of the Criminal Justice Act 1982; sections 10 and 72 of, and Part 3 of Schedule 16 to, the Finance Act 1987 (c. 11); and S.I. 1992/3095. Section 77(1)(b) of the 1979 Act applies with modifications in respect of trains arriving and departing the United Kingdom via the Channel Tunnel: articles 3 and 4 of, and the Schedule to, S.I. 1990/2167. See also article 4 of S.I. 1993/1813 and 1994/1405 (relevant amendments have been made by S.I. 1996/2283 and S.I. 2001/1544).
 - (f) OJ L 253, 11.10.1993 as last amended by Regulation (EC) No 402/2006 (OJ L 70, 9.3.2006). Articles 181b and 842a and Annex 30A were inserted by Regulation (EC) No 1875/2006 (OJ L 360, 19.12.2006) and are applicable from 1st July 2009. Articles 181b and 842a apply in respect of trains arriving and departing the United Kingdom via the Channel Tunnel: article 3 of S.I. 1990/2167. See also article 4 of S.I. 1993/1813 and 1994/1405 (relevant amendments have been made by S.I. 1996/2283 and S.I. 2001/1544).

whether already undertaken or anticipated, and including any possible connection with another person held by him;

- (c) any action taken, considered or planned in relation to a passenger, member of crew, person involved in the supply chain of a freight movement or any person connected or possibly connected to any of those persons by—
 - (i) the Secretary of State in so far as he has functions under the Immigration Acts;
 - (ii) a chief officer of police; or
 - (iii) Her Majesty's Revenue and Customs.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under sections 36 and 38 of the Immigration, Asylum and Nationality Act 2006 and includes provision made under those provisions as applied with modifications under section 11 of the Channel Tunnel Act 1987. This Order makes provision in respect of information which is to be, or may be, shared by the Secretary of State (in so far as he has functions under the Immigration Acts), a chief officer of police and Her Majesty's Revenue and Customs under sections 36 and 38 of the Immigration, Asylum and Nationality Act 2006 ("the 2006 Act"). Articles 2 and 3 of this Order make provision in respect of the information that must be shared between those persons under section 36 of the 2006 Act. Articles 4 and 5 of this Order make provision in respect of information held by those persons that may be shared with the Security Service, Intelligence Service and the Government Communications Headquarters where the information is likely to be of use for certain security purposes. In either case, the information is defined by reference to the powers under which it is obtained, the relevant provisions being specified in Schedule 1, and by reference to the matters to which it relates, specified in Schedule 2.

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