

**EXPLANATORY MEMORANDUM TO**  
**THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002 (JUXTAPOSED**  
**CONTROLS) (AMENDMENT) ORDER 2021**

**2021 No. XXXX**

**1. Introduction**

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

**2. Purpose of the instrument**

- 2.1 The purpose of this order is to harmonise the legislative regimes across the juxtaposed controls, thereby also extending the power to use reasonable force, set out in s.146 of the Immigration and Asylum Act 1999, to the juxtaposed controls at the Northern French sea ports.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.3 While the international sea traffic to which this Order applies currently terminates in England, the territorial application remains the whole of the United Kingdom

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

**5. European Convention on Human Rights**

- 5.1 The Secretary of State for the Home Department has made the following statement regarding Human Rights:

“In my view the provisions of The Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) (Amendment) Order 2021 are compatible with the Convention rights.”

**6. Legislative Context**

- 6.1 Section 141 of the Nationality, Immigration and Asylum Act 2002 permits an Order to be made to provide for a law of England and Wales to have effect, with or without modification, at a juxtaposed control at an EEA port. Pursuant to this, the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003 was made (“the 2003 Order”); at present, the juxtaposed controls locations governed by the 2003 Order are those at the ports of Calais and Dunkirk in France and, for the French

authorities, at the port of Dover in the UK. These juxtaposed controls are provided for under the Le Touquet Treaty (2003).

- 6.2 In addition to the sea ports, juxtaposed controls also currently operate in Coquelles as set out in The Channel Tunnel (International Arrangements) Order 1993, and in Eurostar terminals in France, Belgium and the Netherlands as set out in The Channel Tunnel (International Arrangements) (Amendment No 3) 2001, The Channel Tunnel (Miscellaneous Provisions) Order 1994 and The Channel Tunnel (International Arrangements and Miscellaneous Provisions) (Amendment) Order 2020 respectively. These Orders extend all immigration enactments to the juxtaposed controls across the rail network, giving immigration officers access to the full range of powers allocated to them under the immigration acts.
- 6.3 The 2003 Order did not follow this model, and instead, stipulated a list of specific immigration enactments to be extended to the control zones in French sea ports. This instrument amends the 2003 Order to extend all current immigration enactments, without specificity, to the sea ports and makes the necessary modifications to the relevant enactments to enable these controls to operate correctly. This amendment will bring uniformity to the operation of controls across all juxtaposed locations in line with operations across the UK.
- 6.4 This Order will have the practical effect of extending ‘use of force’ power as set out in s.146 of the Immigration and Asylum Act 1999. This will allow Border Force officers to use reasonable force, if necessary, to enforce compliance with immigration processes.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The UK currently operates border controls at ports in France, Belgium and the Netherlands. This allows Border Force officers to conduct immigration, and in some locations, policing and goods checks, on passengers and freight destined for the UK before they begin their journey. This is a reciprocal arrangement, with French officers completing entry checks at ports in the UK on passengers and freight destined for continental Europe. By enabling officers to assess and clear passengers, private vehicles and freight on key routes prior to embarkation, juxtaposed controls not only optimise the efficiency of border processes, they provide earlier intervention to prevent those who seek to do harm from reaching the UK, and are a crucial tool in tackling irregular migration and disrupting organised immigration crime.
- 7.2 For ferry services specifically, Border Force officers currently work at juxtaposed controls at the Northern French sea ports of Calais and Dunkirk to conduct immigration checks only (i.e. not customs controls), and the French Police aux Frontières currently undertake Schengen entry checks (immigration checks) at the UK port of Dover.
- 7.3 Unlike their counterparts at UK ports and other juxtaposed controls locations, Border Force officers working at the juxtaposed controls at the Northern French seaports have not been explicitly empowered under domestic law to use reasonable force, if necessary, when carrying out their duties. This is because when these maritime controls were first established in 2003, Border Force officers deployed to the seaports were provided with specified immigration powers, considered at the time to be

sufficient to effectively administer immigration controls at these locations. Currently, this means Border Force officers deployed to the sea ports who are suitably trained to exercise force, are not empowered in English law to do so.

- 7.4 With thousands of attempts made by persons seeking to enter the UK illegally via the Northern French seaports every year, and with many of these individuals not complying with immigration processes once intercepted, it is necessary to grant Border Force officers at the juxtaposed seaports the power to use reasonable force, where necessary, to enforce compliance with UK immigration controls and to intervene, where strictly necessary, where non-compliant persons present a danger to themselves or others. To this end, this Order will grant Border Force officers working at the juxtaposed sea ports the full range of immigration powers currently available to them under the immigration acts, including the power to use force, as is available to their counterparts at other Border Force locations.
- 7.5 Granting trained Border Force officers the power to use reasonable force, if necessary, will enable them to better support the Police aux Frontières when dealing with serious breaches of security at these ports, such has been the case in recent years with incidents of migrant incursions at the juxtaposed seaports, and to act more independently of Police aux Frontières. The latter will minimise the risk of disruption to legitimate port traffic by giving Border Force the power to quickly contain incidents.
- 7.6 This Order will have the effect of aligning the regime at the sea ports of Northern France with the regime currently in operation at the juxtaposed locations in Coquelles and at Eurostar terminals in France, Belgium and the Netherlands, where the full range of immigration powers are available to fully trained officers.
- 8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**
- 8.1 This instrument does not relate to withdrawal from the European Union.
- 9. Consolidation**
- 9.1 There are no plans to consolidate the legislation amended by this Order.
- 10. Consultation outcome**
- 10.1 The Home Office has consulted with operational partners, as the persons most likely to be affected by the matters in this instrument, and are continuing to work with them to implement this instrument.
- 11. Guidance**
- 11.1 There are no plans to issue specific guidance for this instrument.
- 12. Impact**
- 12.1 There is no direct regulatory impact on business, charities or voluntary bodies. This policy is not expected to significantly impact on the flow of legitimate traffic through ports.
- 12.2 There is no, or no significant, impact on the public sector.

- 12.3 An Impact Assessment has not been prepared for this instrument because there is no, or no significant, impact on the private or public sector.
- 12.4 An outline of expected benefits, costs and risks of this policy are outlined below. A full cost-benefit analysis has not been possible at this stage.
- 12.5 The intended impact of this policy is to align the regimes across the juxtaposed controls, thereby making available the power to use force to Border Force officers at the seaports. This instrument will allow Border Force officers to be deployed flexibly across Border Force locations by providing greater operational clarity as there will no longer be disparity in the powers available to them at different locations in Northern France.
- 12.6 The provision of the use of force power will allow Border Force officers to more effectively mitigate non-compliance, including non-compliant conduct that has the potential to cause harm, and strengthen the legal basis upon which Border Force officers operate at the juxtaposed controls at the seaports.
- 12.7 The reaction of those against whom reasonable force is being used may result in a high-risk situations, however, Border Force officers are trained to handle and de-escalate such incidents. Border Force officers are appropriately trained in the exercise of force as standard, and in line with current practice, this training will continue to be refreshed annually.

### **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

### **14. Monitoring & review**

- 14.1 Impacts will be monitored through regular collection and analysis of use of force data as well as the existing internal review system.

### **15. Contact**

- 15.1 Sonia Baig at the Home Office (Telephone: 0207 035 3058 or email: [Sonia.Baig5@HomeOffice.gov.uk](mailto:Sonia.Baig5@HomeOffice.gov.uk)) can be contacted with any queries regarding the instrument.
- 15.2 Stuart Ison at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Chris Philp, Minister for Immigration Compliance and the Courts at the Home Office can confirm that this Explanatory Memorandum meets the required standard.