

**EXPLANATORY MEMORANDUM TO  
THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002 (JUXTAPOSED  
CONTROLS)(AMENDMENT) ORDER 2006**

**2006 No. 2908**

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

The current draft of the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) (Amendment) Order 2006 which is before Parliament supersedes the draft published on 9 October 2006, which was withdrawn due to typographical errors. This Explanatory Memorandum replaces the Memorandum which referred to that superseded draft.

2. **Description**

- 2.1 The purpose of this Order is to enable the Secretary of State to authorise suitably qualified persons to search vehicles in a UK control zone at a juxtaposed control at Calais, Dunkerque or Boulogne, and to physically search, detain and escort any persons concealed in a vehicle to an immigration officer. It also will provide for the taking of fingerprints under section 141 of the Immigration and Asylum Act 1999 in a UK control zone at these same locations.

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

- 3.1 None

4. **Legislative Background**

- 4.1 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 only juxtaposed controls governed by this section are those at the Ports of Calais, Dunkerque and Boulogne. The French and British Governments agreed to these juxtaposed controls, and Dover in the UK for the French authorities in the Le Touquet Treaty which was signed on 4 February 2003.

This Order amends the 2003 Order to provide the following shall have effect in the juxtaposed controls at the specified French ports.

(i) the application of Sections 40 and 41 of the Immigration, Asylum and Nationality Act 2006 enabling the Secretary of State to deploy Authorised

Search Officers(ASOs)and

(ii) the application of Section 141 of the Immigration and Asylum Act 1999 enabling the taking of fingerprints at the juxtaposed controls.

- 4.2 The Order also provides for the power to take fingerprints, in the control zone, of certain persons under Section 141 of the Immigration and Asylum Act 1999. In practice, this will allow Immigration Officers to take the prints of anyone who is detained at the control zones, anyone who fails to produce a valid passport or other satisfactory ID document or anyone who is subject to Regulations regarding the taking of physical data.
- 4.3 The Order makes two consequential amendments to the 2003 Order. The first is to provide that an act or omission which would be an offence under section 41 of the Immigration, Asylum and Nationality Act 2006 shall also be an offence if it takes place in a control zone. The second provides for certain modifications in the application of section 141 of the Immigration and Asylum Act 1999 in the control zones.
- 4.4 This Order is linked to The Channel Tunnel (International Arrangements)(Amendment)Order 2006 (SI 2006/2626) and The Channel Tunnel (Miscellaneous Provisions)(Amendment)Order 2006 (SI 2006/2627) which provide for the power to take fingerprints at juxtaposed controls at Coquelles and the Eurostar stations in both France and Belgium.

## **5. Extent**

- 5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

The Home Secretary Dr John Reid 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 2006 are compatible with the Convention rights.

## **7. Policy background**

### **7.1 Freight searching**

Freight searching forms a crucial layer in the security of the border and prior to the commencement of sections 40 and 41 of the Immigration, Asylum and Nationality Act 2006 only an immigration officer had the power to search a vehicle. The effect of this Order is to apply these sections to the juxtaposed controls so as to enable the UK Immigration Service to employ suitably qualified and trained personnel through a private contractor to perform this important but straightforward function allowing redeployment of warranted immigration officers to other areas of more complex work for which they have

undergone considerable training eg forgery detection, debriefing, application of civil penalty.

- 7.2 The Immigration, Asylum and Nationality Act 2006 received Royal Assent on 30 March 2006. During its passage through Parliament there was some opposition stemming from the Public Commercial and Services Union, a union representing immigration officers, believing that the privatisation of freight searching was the tip of the iceberg in the outsourcing of the immigration control. The then Minister Tony McNulty gave an assurance to them that only freight searching at berthside in Calais would be established and that there would be no expansion of this for at least twelve months. There was also considerable concern expressed by Lord Avebury on the competence and suitability of a foreign contractor performing these tasks but Baroness Ashton of Upholland offered considerable reassurance as to the checks and training that would be obligatory prior to any third party being authorised by the Secretary of State. Lords report 7 February 2006 column 571 to 579 refer.
- 7.3 Immigration officers have the power to search vehicles, vessels, and trains in both the UK and juxtaposed control zones in Northern French Sea Ports and at the French end of the Channel Tunnel. Sections 40 and 41 of the Immigration, Asylum and Nationality Act 2006 allow these powers to be transferred to authorised and properly trained private contractors, who will be known as Authorised Search Officers (ASO), and will operate under individual certification of the Secretary of State. It is envisaged that private freight searching will commence in November 2006.
- 7.4 In August 2005 the UK Immigration Service implemented an interim measure where private contractors (employed by UKIS) work alongside and under the direct supervision of immigration officers. Using detection technology in the berth side area of Calais port, they identify clandestine activity immediately prior to boarding. This has been very successful and, in co-operation with the French police and the authorities for Calais port, has contributed to the significant reduction of the dangerous and illegal crossings of the channel by migrants.
- 7.5 The new legislation will allow for a firm of private contractors to act independently of warranted immigration officers to search vehicles and any person they detect, and to detain and escort such persons to the nearest immigration detention facility. There are strict limitations to the powers, particularly regarding length of detention; Sections 40(c) and (d) Immigration, Asylum and Nationality Act 2006 state; “to detain the individual, for a period which is as short as is reasonably necessary and which does not exceed three hours, pending the arrival of an immigration officer to who the individual is to be delivered” and (d) “take the individual, as speedily as is reasonably practicable, to a place for the purpose of delivering him to an immigration officer there”.
- 7.6 The ASOs will be directed and supervised by the UK Immigration Service on site .The use of private contractors to undertake this valuable work will provide us with a flexible solution to meet a pressing resource demand. Warranted immigration officers receive extensive training which enables them to be directed to other equally important, but more complex, areas such as

forgery detection, examination of applications to enter the United Kingdom, intelligence debriefing of illegal entrants and the application of civil penalty legislation. Freight searching in the United Kingdom control zones abroad (juxtaposed controls) in Calais Port, Coquelles and Dunkerque is already being undertaken by Immigration officers; the installation of ASO searching activity in Calais Port will thus support existing measures and ensure that we maintain the integrity and security of our borders.

#### 7.7 Fingerprinting

When the immigration controls at the juxtaposed controls in France were initially established, no provision was made for the application of Section 141 of the Immigration and Asylum Act 1999 - fingerprinting. At the time it was felt that it would not be necessary to take fingerprints as all persons refused entry to the United Kingdom at a UK control zone are handed over to the French authorities and thus they should not enter the UK and so there would be no need for UK authorities to have information to manage their movements. However it has become apparent that there is a real need for identification of certain persons and that we should have the same powers as at UK mainland ports to take fingerprints; particularly of those persons detected concealed in vehicles, usually without documentation, and those with false documentation. This will provide a bank of physical data that can be used to identify previous offenders who are without paper documentation. Fingerprinting will support an intelligence led approach to border security, providing information regarding its efficiency and the level of displacement between ports.

- 7.8 Both these measures – the use of contractors and the power to fingerprint – at juxtaposed controls will increase the security of the border, allowing warranted immigration staff to concentrate on more complex work and ensuring that all those intent on circumventing the control have physical data recorder for future identification.

### **8. Impact**

- 8.1 An initial Regulatory Impact Assessment consideration concluded that it has no impact on business, charities or voluntary bodies and therefore a full RIA was not undertaken.
- 8.2 However a full Consultation has been conducted in accordance with Cabinet Office guidelines and responses have been mostly positive. There has been concern that searching of vehicles should not impact adversely on traffic flow and also that the taking of fingerprints will be routine, even for legitimate passengers.
- 8.3 These searches are currently carried out by immigration officers. When private contractors take over this responsibility no area of the business should notice any difference in operator. The taking of fingerprints will focus on clandestine persons and those with invalid documentation who will have the ‘prints taken as part of an existing process to prepare paperwork relating to the refusal of entry.

## **9. Contact**

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