

EXPLANATORY MEMORANDUM TO
THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002
(JUXTAPOSED CONTROLS) (AMENDMENT) ORDER 2011

2011 No. 1786

1. This explanatory memorandum has been prepared by Home Office and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The purpose of the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) (Amendment) Order 2011 (“2011 Order”) is to enable biometric information to be taken from persons accredited for the 2012 London Olympic and Paralympic Games who apply for leave to enter the UK in the control zone of the UK’s juxtaposed immigration controls in Calais, Boulogne and Dunkirk, who would normally be required apply for a visa and therefore have their biometric information taken as visa nationals. However due to their holding an Olympic or Paralympic Identity and Accreditation card “accreditation card” they do not require a visa to enter the UK and so the normal powers to take biometrics will not apply.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 The Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003 (“2003 Order”) gives effect to the Treaty between the United Kingdom and France providing for the exercise of immigration control by the authorities of each State in the sea ports of the other State. The sea ports in question are designated in Schedule 1 of the 2003 Order. Within each port the two States have delimited an area comprising a Control Zone within which the immigration authorities of each State are empowered to exercise immigration control.
 - 4.2 Article 11 of the 2003 Order sets out the UK legislation which has effect in a Control Zone in France. This Order would enable an amendment contained in the draft Immigration (Provision of Physical Data) (Amendment) Regulations 2011¹ to have an effect in a Control Zone in France. However, this would only have effect in so far as it relates to an application for leave to enter from persons accredited for

¹ These Regulations amend the Immigration (Provision of Physical Data) Regulations 2006.

the London 2012 Olympic and Paralympic Games. These people would usually be required to apply for a visa and therefore have their biometric information taken as visa nationals. When Her Majesty's Government signed the Host City Contract for the Games it gave a commitment that in specified circumstances there would be no requirement for certain holders of the accreditation card to apply for a visa before travelling to the UK. Once amended the Immigration (Provision of Physical Data) Regulations 2006 ("2006 Regulations") will enable the UK Border Agency to maintain current level of checks of biometric information on all visa nationals.

- 4.3 Similar amendments are intended to be made to the Channel Tunnel (International Arrangements) Order 1993 and the Channel Tunnel (Miscellaneous Provisions) Order 1994 to allow an authorised person to collect the fingerprints and facial image of the same category of OPIAC holder when they apply for leave to enter at the other the UK's other juxtaposed controls in France and Belgium.
- 4.4 An amendment to the immigration rules will be made to allow certain holders to use the accreditation card in lieu of a visa. The card will also have to be used for entry by a specified time in order for holders to continue to be entitled a visa waiver. The Immigration rules will also be amended to create a new category of leave to facilitate accreditation card holders entry into the UK during the Accreditation Period of the Games.

5. Territorial Extent and Application

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

6. European Convention on Human Rights

Damian Green, Minister for Immigration has made the following statement regarding Human Rights:

In my view the provisions of 2011 Order are compatible with the Convention rights.

7. Policy background

- 7.1 The purpose of the 2011 Order is to help the UK deliver a safe and secure Olympic and Paralympic Games. It does this by enabling the UK Border Agency to undertake the usual security checks made on visa national accreditation card holders arriving between the 30 March 2012 and 8 November 2012.
- 7.2 Visa nationals are nationals of specified countries who require a visa to lawfully enter the UK. Since 2008, visa nationals have been required to provide fingerprints and a facial image as part of the visa application process. The fingerprints are checked against Government databases

and verified when the visa national seeks entry at the border control of an equipped UK port to ensure the person seeking entry is the same person who applied for the visa.

- 7.3 The London Organising Committee for the Olympic and Paralympic Games (LOCOG) will issue the accreditation card to individuals associated with the Games such as athletes, umpires, technical and support staff and broadcasters and other individuals. These people are referred to as Games Family Members (GFM).
- 7.4 Approximately 20,000 visa national GFM will be able to use their accreditation card instead of applying for a visa. It is estimated that up to a further 2,000 visa nationals GFM's whilst having an accreditation card will not be entitled to use the card as a visa waiver and will need to apply for a visa before travelling to the UK. As part of the usual visa application process, applicants would normally be required to provide their fingerprints and a facial image to the UK Border Agency prior to travelling to the UK.
- 7.5 Visa national GFM requiring leave to enter the UK travelling via a port in the UK Juxtaposed Controls make their applications for leave to enter the UK to UK Border Agency Officers within the Control Zones of the ports and are not routinely subject to further immigration control when they arrive in the UK.
- 7.6 To address this and to maintain a business as usual approach for visa nationals and preserve its security checks, the UK Border Agency needs to be able to collect the fingerprints and facial images of visa national GFM at the UK's juxtaposed controls.
- 7.7 The 2011 Order provides for this by allowing persons authorised under the 2006 Regulations to request a visa national GFM to provide their fingerprints and facial image when they apply for leave to enter the UK in the control zone of the UK's juxtaposed immigration controls in Calais, Boulogne and Dunkirk between 30 March 2012 and 8 November 2012.
- 7.8 The UK Border Agency will use the provisions of the 2011 Order to collect the fingerprints and facial images of only those visa national GFM who are identified as not having previously provided them to the UK Border Agency.

8. Consultation outcome

- 8.1 The UK Border Agency has consulted the London Organising Committee for the Olympic Games (LOCOG) who have not objected to the collection of visa national GFM fingerprints and facial images, provided that the process for doing so is communicated very clearly to applicants in advance.

- 8.2 The UK Border Agency has consulted senior French Officials, including the Director of Immigration within the French Interior Ministry who have also not objected to the collection of visa national GFM's fingerprints and photographs at the UK's Juxtaposed Controls in France.
- 8.3 A full consultation exercise has not been undertaken because the 2011 Order does not place a new requirement on arriving visa nationals to provide fingerprints and facial images to the UK Border Agency. Visa nationals already have to provide their fingerprints and photograph when they apply for a visa. The 2011 Order essentially changes the locations where a limited group of visa national fingerprints and facial images can be collected for a restricted period for a one-off event.

9. Guidance

- 9.1 The UK Border Agency will provide instructions and guidance to its officers to ensure the fingerprints and facial images are efficiently collected. The Agency will also engage with LOCOG to ensure countries' National Organising Committee (NOCs) for the Olympics and Paralympics Games are aware of the collection prior to the commencement of the Accreditation Period.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies
- 10.2 There is an impact on the public sector. An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk

11. Regulating small business

- 11.1 The legislation does not apply to small business

12. Monitoring & review

- 12.1 The UK Border Agency will keep the impact of the collection of visa national GFM's fingerprints and facial images under review and will evaluate the collection at the end of the accreditation period. This Order will cease to have effect on 9 November 2012.

13. Contact

The following UK Border Agency official is able to answer queries regarding the instrument

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