

EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (DISPOSAL OF PROPERTY) (AMENDMENT) REGULATIONS 2021

2021 No. 1007

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 Regulation 5 of the Immigration (Disposal of Property) Regulations 2008 (No. 786) currently allows for the immediate sale of items seized by an Immigration Officer in the course of their duties if they are considered perishable or their storage is an unreasonable expense or inconvenience. This SI expands the options available for the disposal of items they have seized under immigration law beyond selling, to include the destruction (including recycling) and donation of items, where specific criteria are met (detailed in para 7.3 below).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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

6. Legislative Context

- 6.1 Section 26 of the UK Borders Act 2007 provides the power for the Secretary of State to make regulations for the disposal of property that has come in to 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, where the owner has not been ascertained, or a court order in respect of the property has not been made. That power was exercised to make the Immigration (Disposal of Property) Regulations 2008.
- 6.2 Disposal of an item, under the Immigration (Disposal of Property) Regulations 2008, is not permitted until the item has been stored for at least 12 months. An application on the disposal of property may be made to the Magistrates' Courts if an owner cannot be ascertained and comes at additional cost due to the preparation of and making the court application.
- 6.3 The Immigration (Disposal of Property) Regulations 2008, provide Immigration Officers with the ability to sell or dispose of items in certain circumstances with

regulation 3 setting out that they apply to property where the owner has not been ascertained or the court cannot or will not make an order under section 26(2) UK Borders Act 2007.

- 6.4 Regulation 4 puts in place restrictions on property which prevents disposal until the item has been retained for six to twelve months. Regulation 5 permits the sale of property and it sets out that after the periods in regulation 4 have expired property can be sold. Regulation 5(2) provides an exception to this so that where items are perishable, or their storage is unreasonably expensive or inconvenient they may be sold at any time. Regulation 6 provides that the Secretary of State may retain property if it can be used in the course of, or in connection with, a function under the Immigration Acts, and regulation 7 provides for other disposal of property if the Secretary of State is satisfied that the nature of any property to which the regulations apply is such that it is not in the public interest that it should be sold or retained.

7. Policy background

What is being done and why?

- 7.1 Items seized by immigration Officers in the course of their duties under the Immigration Acts are placed into storage facilities. Where there is no need to retain such items for investigatory purposes, and an owner has not been identified, there is a requirement to store such items for 12 months until they can be disposed of. The number of items required to be stored has been exacerbated recently by the use of small boats by organised migrant smugglers and irregular migrants to facilitate illegal entry to the UK across the Channel Strait. This increase in items being stored and the period of time that items are required to be stored for, has resulted in the capacity at HMG storage facilities being exceeded.
- 7.2 Whilst current Section 26 of the UK Borders Act 2007 allows an application to the Magistrates' Courts to dispose of items before 12 months, this generally only shortens the length of storage to 9 months and comes at additional cost due to making the court application. The Immigration (Disposal of Property) Regulations 2008 also provide the ability to sell items which are an unreasonable expense or inconvenience to store. However, there is no power to dispose of items before 12 months from seizure has passed where they are not suitable for sale but meet the threshold of being an unreasonable expense or inconvenience to store.
- 7.3 This SI expands the options for disposal beyond selling to include the destruction (including recycling) and donation of items seized under immigration law where: an owner has not been ascertainable; the item is not needed for investigatory purposes; but is an unreasonable expense or inconvenience to store. Immigration Officers will continue to seek to ascertain the owners of any item seized before consideration of disposal.
- 7.4 This will alleviate current capacity issues of storing such items and remove the associated costs of additional storage requirements. It will also permit the consideration of items for donation to charity or not-for-profit organisation where it is considered appropriate.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

9.1 No consolidation will be undertaken.

10. Consultation outcome

10.1 A public consultation has not been conducted in the preparation of this instrument given the limited and specific nature of items impacted by this amendment in that this will apply where an owner has not been ascertainable; the item is not needed for investigatory purposes and is an unreasonable expense or inconvenience to stored.

11. Guidance

11.1 Internal Home Office disposal of property guidance for Immigration Officers will be updated to reflect the changes made by this SI. Guidance on the disposal of property through donation will be produced and made available where applicable.

12. Impact

12.1 There is no significant impact on business. Charities or voluntary bodies may see a positive impact through being able to benefit in the future from the receipt of donated equipment.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because there is no significant impact on business.

13. Regulating small business

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

14. Monitoring & review

14.1 Current internal Home Office systems used to monitor the seizure, storage and disposal of property will be used to monitor the impact of the SI.

14.2 The instrument does not include a statutory review clause and in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Minister Chris Philp has made the following statement: "I can confirm existing systems in place for the monitoring of seized and stored equipment as well as their disposal will be used for monitoring purposes."

15. Contact

15.1 Sarah Hunt at the Migration and Borders Group (Telephone: 07471 711336 or email: sarah.hunt3@homeoffice.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Nigel Farminer, Deputy Director for Border Security, Visa and Identity policy, at the Migration and Borders Group can confirm that this Explanatory Memorandum meets the required standard.

15.3 Chris Philp MP, Minister for Immigration Compliance and Justice, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.