

2021 No. 1190

CHANNEL TUNNEL

The Channel Tunnel (Arrangements with the Kingdom of the Netherlands) (Amendment) Order 2021

Made - - - - - *26th October 2021*

Laid before Parliament *28th October 2021*

Coming into force in accordance with article 1(2)

The Secretary of State makes the following Order in exercise of the powers conferred by section 11 of the Channel Tunnel Act 1987(a).

Citation, commencement and extent

1.—(1) This Order may be cited as the Channel Tunnel (Arrangements with the Kingdom of the Netherlands) (Amendment) Order 2021.

(2) This Order comes into force—

- (a) for the purpose of article 2(6)(a), on the date on which the Agreement between the Government of the French Republic, the Government of the Kingdom of Belgium, the Government of the Kingdom of the Netherlands and the Government of the United Kingdom of Great Britain and Northern Ireland amending and supplementing the Agreement between the Government of the Kingdom of Belgium, the Government of the French Republic and the Government of the United Kingdom of Great Britain and Northern Ireland, concerning Rail Traffic between Belgium and the United Kingdom using the Channel Fixed Link with Protocol, done at Brussels on 15 December 1993, done at Brussels on 7 July 2020(b) enters into force(c);

(b) for all other purposes on 1st December 2021.

(3) This Order extends to England and Wales, Scotland and Northern Ireland.

Amendment of the Channel Tunnel (Arrangements with the Kingdom of the Netherlands) Order 2020

2.—(1) The Channel Tunnel (Arrangements with the Kingdom of the Netherlands) Order 2020(d) is amended as follows.

(2) In article 1—

- (a) for the heading, substitute “Citation, commencement and revocation”;

(a) 1987 c. 53. There is an amendment to section 11 that is not relevant to this Order. See section 13(1) for the definition of “the appropriate Minister” for making orders under section 11.

(b) Cmd. 283.

(c) That date will be notified in the London, Edinburgh and Belfast Gazettes.

(d) S.I. 2020/916, to which there are amendments not relevant to this Order.

- (b) after paragraph (3), insert—
“(4) Article 5A and Schedule 2 to this Order cease to have effect on the date on which the Quadripartite Agreement enters into force.”.
- (3) In article 2, in the definition of “the international articles”, for “the Schedule”, substitute “Schedule 1”.
- (4) After article 5, insert—

“Powers of officers

5A. Schedule 2 (which contains provisions as to powers exercisable by constables and other officers) shall have effect.”.

- (5) The existing Schedule becomes Schedule 1.
- (6) In that Schedule—
- (a) omit Articles 12, 13, 14 and 16 and the Protocol to the Agreement;
- (b) after Article 15, insert—

“ARTICLE 16
Entry into Force

...

3. Part II of this Agreement shall cease to have effect on the date upon which the Quadripartite Agreement enters into force.

4. The Protocol to this Agreement shall cease to have effect on the date upon which the Quadripartite Agreement enters into force.”.

- (7) After Schedule 1, insert the Schedule set out in the Schedule to this Order.

26th October 2021

Damian Hinds
Minister of State
Home Office

SCHEDULE

Article 2(7)

“SCHEDULE 2

Article 5A

POWERS OF OFFICERS

Power to assist Dutch authorities

- 1.**—(1) Where—
- (a) an officer belonging to the Kingdom of the Netherlands has in a control zone in the United Kingdom arrested or detained a person for a relevant offence as permitted by Article 5(1) of the international articles, and
- (b) such an officer so requests,
- a constable may make arrangements for the person to be taken into temporary custody.

- (2) A person taken into temporary custody under sub-paragraph (1)—
- (a) shall be treated for all purposes as being in lawful custody, and
 - (b) may be taken to a police station or such other place as may be appropriate in the circumstances, and shall in that case be treated as being a person in whose case sections 36(7) and (8), 54 to 56 and 58 of the Police and Criminal Evidence Act 1984(a) (in this Schedule referred to as “the 1984 Act”), and in the case of a child or young person section 34(2) to (9) of the Children and Young Persons Act 1933(b), apply, and
 - (c) must be returned, before the end of the period for which the person could in the circumstances be detained in the United Kingdom under Article 5(1) of the international articles, to a place where detention under that Article could be resumed.

(3) Where a person falls to be treated as mentioned in sub-paragraph (2)(b), section 56 of the 1984 Act shall be taken to apply as if the person were detained for an indictable offence.

(4) For the purpose of this Schedule, a “relevant offence” is one of the criminal offences listed in Annex A to the Agreement for which officers of either Contracting Party may arrest.

Powers of arrest and detention outside United Kingdom

2.—(1) A constable may in a control zone in the Netherlands—

- (a) exercise any power of arrest conferred by a frontier control enactment or conferred by section 24 of the 1984 Act(c) in respect of a relevant offence under such an enactment,
- (b) make any arrest authorised by a warrant issued by a court in the United Kingdom in respect of a relevant offence, and
- (c) arrest any person whose name or description or both, together with particulars of a relevant offence of which there are reasonable grounds for suspecting that person to be guilty, have been made available by a chief officer of police to other such officers.

(2) For the purposes of sub-paragraph (1)(a), the reference in sub-paragraph (1) to a constable shall be construed in relation to the powers of arrest conferred by section 28A(1) and (3) of, and paragraph 17(1) of Schedule 2 to, the Immigration Act 1971(d), as including a reference to an immigration officer appointed for the purposes of that Act under paragraph 1 of that Schedule.

-
- (a) Amendments were made by section 32(1) and (2) of the Drug Trafficking Offences Act 1986 (c. 29), sections 147 and 170(1) of, and paragraph 99 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), paragraph 55 of Schedule 10 to the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 36 of Schedule 7 to the Police Act 1996 (c. 16), paragraph 5(5) and (6) of Schedule 15 to the Terrorism Act 2000 (c. 11), sections 74 and 79 of the Criminal Justice and Police Act 2001 (c. 16), section 90(1) of the Anti-terrorism, Crime and Security Act 2001 (c. 24), paragraph 14(2) and (3) of Schedule 11 to the Proceeds of Crime Act 2002 (c. 29), paragraph 9(2) of Schedule 7 to the Police Reform Act 2002 (c. 30), section 169(2) of the Extradition Act 2003 (c. 41), section 8(2) of, and paragraph 1 of Schedule 37 to, the Criminal Justice Act 2003, section 121(5)(a) of, and paragraph 43(9) and (10) of Schedule 7 to, and Part 2 of Schedule 17 to, the Serious Organised Crime and Police Act 2005 (c. 15), sections 3(2) to (6) and 5(1) of the Drugs Act 2005 (c. 17), section 46(6) of the Police and Justice Act 2006 (c. 48), section 108(1) of the Coroners and Justice Act 2009 (c. 25), Part 13 of Schedule 8 to the Policing and Crime Act 2009 (c. 26), paragraph 7(2) of Schedule 12 to the Policing and Crime Act 2017 (c. 3) and paragraph 18(3) and (4) of Schedule 4 to the Counter-Terrorism and Border Security Act 2019 (c. 3).
 - (b) 1933 c. 12; relevant amendments were made by section 25(1) of the Children and Young Persons Act 1963 (c. 37), section 57 of the Police and Criminal Evidence Act 1984, paragraph 6(2) and (3) of Schedule 13 to, and Schedule 15 to, the Children Act 1989, paragraph 2(3) of Schedule 4 to, and Part 1 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4), paragraph 1 of Schedule 24 to the Sentencing Act 2020 (c. 17), and S.I. 2016/413.
 - (c) Amendments were made by section 110(1) of the Serious Organised Crime and Police Act 2005.
 - (d) 1971 c. 77; section 28A was inserted by section 128 of the Immigration and Asylum Act 1999 (c. 33) and amended by section 144(3)(a) of the Nationality, Immigration and Asylum Act 2002 (c. 41), section 111 of, and paragraph 53 of Schedule 7 to, the Serious Organised Crime and Police Act 2005, sections 34(4) and 94(1) of, and paragraph 6 of Schedule 14 to, the Immigration Act 2016 and S.I. 2020/1309.

(3) An immigration officer may exercise the power of detention conferred by section 2(1) of the UK Borders Act 2007(a) in a control zone in the Netherlands in respect of—

- (a) an individual who the immigration officer thinks might be liable to arrest by a constable under section 24(1), (2) or (3) of the 1984 Act for an act or omission which would constitute an offence under a frontier control enactment if it had taken place in England, or
- (b) an individual subject to a warrant for arrest who is sought by the United Kingdom authorities.

(4) For the purpose of enabling constables to make arrests for a relevant offence in the Netherlands, section 24 of the 1984 Act shall extend to the Netherlands.

(5) Where an arrest has been made for a relevant offence, the person arrested shall be treated as continuing to be under arrest while in the Netherlands until the person is presented to the Dutch authorities as required by Article 5(2)(b) of the international articles.

(6) Any power conferred by an enactment to search an arrested person may be exercised following an arrest authorised by this paragraph as if the person had been arrested in the United Kingdom.

Arrested persons held in the Netherlands

3.—(1) Where—

- (a) an arrest of any kind authorised by paragraph 2 has been made in a control zone in the Netherlands, or
- (b) an arrest of any such kind has been made in the United Kingdom and the person arrested enters such a control zone while under arrest,
the person arrested shall be handed over immediately, along with any seized goods, to the Competent authorities of the Host State.

(2) The person arrested shall be treated as if the place where the person is held were for the purposes of the provisions mentioned in paragraph 1(2)(b) and those of sections 61 to 64A of the 1984 Act(b) a police station in England, not being a police station designated under section 35 of the 1984 Act(c).

(a) 2007 c. 30; relevant amendments were made by section 2(4) of, and paragraph 28 of the Schedule to, the Extradition (Provisional Arrest) Act 2020 (c. 18).

(b) Amendments were made by paragraph 27(4) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54), section 54 (2) to (4) of, and paragraph 24 of Schedule 9, paragraphs 56 and 58 of Schedule 10 and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 1 of Schedule 1 and paragraph 37(b) of Schedule 7 to the Police Act 1996 (c. 16), section 64 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 3 of the Criminal Evidence (Amendment) Act 1997 (c. 17), paragraph 97 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraph 5(7) to (9) of Schedule 15 to the Terrorism Act 2000 (c. 11), section 57(2) and (3)(a) of, and paragraph 78 of Schedule 7 to, the Criminal Justice and Court Services Act 2000 (c. 43), sections 78(3) and (4), 80(1) and (3), 81(1) and (2) and 82(3) of the Criminal Justice and Police Act 2001 (c. 16), section 92 of the Anti-terrorism, Crime and Security Act 2001 (c. 24), sections 53(2) and (b) and 54(1) of, and paragraph 9(4) and (5) of Schedule 7 to the Police Reform Act 2002 (c. 30), section 169(3) to (5) of the Extradition Act 2003 (c. 41), sections 5(3)(b) to (d), 9(2) to (4) and 10(2) and (3) of, and paragraph 56(2)(b) of Schedule 3 and Parts 1 and 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), Part 4 of Schedule 5 to the Children Act 2004 (c. 31), sections 59, 116(2) to (5), 117(2) to (10), 118(2) to (4) and 178 of, and paragraph 64 of Schedule 4 to, the Serious Organised Crime and Police Act 2005 (c. 15), sections 7(2) to (11) of, and paragraph 4 to Schedule 1 to, the Drugs Act 2005 (c. 17), paragraph 11 of Schedule 14 to, the Police and Justice Act 2006 (c. 48), paragraph 100 of Schedule 16 and Schedule 17 to the Armed Forces Act 2006 (c. 52), Part 13 of Schedule 8 to the Policing and Crime Act 2009 (c. 26), sections 2(1) to (8)(b), 3(1) to (4), 4(1) to (5), (7) and (8), 5(1), 6(1) and 14 of the Crime and Security Act 2010 (c. 17), sections 1 to 17, 23 and 24 of, and paragraph 3(2) of Schedule 9 and Part 1 of Schedule 10 to, the Protection of Freedoms Act 2012 (c. 9), paragraph 186 of Schedule 8 to the Crime and Courts Act 2013 (c. 22), paragraphs 7(2)(a) to (c) and (3), 8(2)(a) to (c) and (3), 9(a) and (b), 10 and 13 of Schedule 23 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), sections 144, 145(1) and 146(1) of, and paragraph 4 of Schedule 11 to, the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), sections 59(2) and (3), 70(2) to (11) and 73(3)(a) and (b) of, and paragraph 7(3)(a) and (b) of Schedule 12 to, the Policing and Crime Act 2017 (c. 3), paragraphs 2(2) to (5), 3(2) to (4) and 4 of Schedule 2, and paragraph 18(5) to (9) of Schedule 4, to the Counter-Terrorism and Border Security Act 2019 (c. 3), and paragraphs 78 and 79 of Schedule 24 to the Sentencing Act 2020 (c. 17) and S.I. 2013/602.

(c) Amendments were made by paragraph 12 of Schedule 7 to the Anti-terrorism, Crime and Security Act 2001 (c. 24), paragraph 6 of Schedule 1 to the Criminal Justice Act 2003 (c. 44) and sections 54(2) and (3) and 66(2) of the Policing and Crime Act 2017 (c. 3).

Arrests of Dutch officers

4.—(1) This paragraph applies where an officer belonging to the Kingdom of the Netherlands (“the officer”) is arrested for an act performed in the United Kingdom in a control zone.

(2) If the officer enters the Netherlands while under arrest—

- (a) the officer shall without delay be handed over for custody to the competent Dutch authorities and shall be treated as continuing to be under arrest until the officer has been handed over, and
- (b) if after consultation with those authorities it is then determined that the act was not performed by the officer whilst in the exercise of the officer’s functions and the officer accordingly does not by virtue of Article 14(2) to the Protocol to the Agreement come under Dutch jurisdiction, the officer shall be treated as having continued to be under arrest until sub-paragraph (3) has been complied with.

(3) Where—

- (a) sub-paragraph (2)(b) applies, or
- (b) the officer does not enter the Netherlands while under arrest,
the officer shall be taken to a police station designated under section 35 of the 1984 Act.

(4) Sub-paragraphs (5) to (9) apply in a case falling within sub-paragraph (3)(b).

(5) The custody officer at the police station to which the officer is taken shall after consultation with the competent Dutch authorities determine whether the act was performed by the officer whilst in the exercise of the officer’s functions.

(6) Subject to sub-paragraph (8), the officer shall be treated—

- (a) as not being detained at the police station for the purposes of section 37 of the 1984 Act(a), and
- (b) as not being in police detention for the purposes of sections 40 to 43 of the 1984 Act(b).

(7) Where the custody officer determines that the act was performed by the officer whilst in the exercise of the officer’s functions and the officer accordingly comes under Dutch jurisdiction by virtue of Article 14(2) to the Protocol to the Agreement, the custody officer shall immediately inform the competent Dutch authorities and shall arrange for the officer to be transferred to the Netherlands immediately.

(8) In any other case—

- (a) the custody officer shall immediately inform the officer of his determination,

(a) Amendments were made by Schedule 15 of the Children Act 1989 (c. 41), Schedule 13 of the Criminal Justice Act 1991 (c. 53), Schedule 11 of the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 2(2) to (4) of Schedule 2 to the Criminal Justice Act 2003 (c. 44), paragraph 2 of Schedule 1 to the Drugs Act 2005 (c. 17), section 11 of, and paragraph 9 of Schedule 14 to, the Police and Justice Act 2006 (c. 48), section 42 of the Criminal Justice and Courts Act 2015 (c. 2) and sections 54(5) to (8) and 66(4) and (5) of the Policing and Crime Act 2017 (c. 3).

(b) Amendments were made by section 29(4)(b) of the Criminal Justice and Public Order Act 1994, section 72(3) of the Criminal Justice and Police Act 2001, section 52(1) to (4) of the Police Reform Act 2002, sections 4, 6 and 7 of, and paragraph 8 of Schedule 1 and paragraph 4 of Schedule 2 to, the Criminal Justice Act 2003, paragraph 43(7) and (8) of Schedule 7 to the Serious Organised Crime and Police Act 2005 and sections 56(1), (3) and (4), 57(2) and (3), 65(3) to (5), 67(2) to (4), 74(5) of the Policing and Crime Act 2017.

- (b) the officer shall be treated as being in police detention for all purposes of Part 4 of the 1984 Act(a), and
- (c) that Part shall have effect in relation to the officer as if the relevant time mentioned in section 41(2)(b) were the time at which the officer is informed of the determination.

Arrests of United Kingdom officers

5.—(1) This paragraph applies where an officer belonging to the United Kingdom (“the officer”) is arrested for an act performed in the Netherlands in a control zone.

(2) If—

- (a) the officer does not enter the United Kingdom while under arrest, and
- (b) the competent Dutch authorities determine that the act was performed by the officer whilst in the exercise of the officer’s functions and the officer accordingly comes under United Kingdom jurisdiction by virtue of Article 14(2) to the Protocol to the Agreement,
the officer shall on being handed over immediately by those authorities to a constable be treated as having been arrested by the constable.

(3) Where—

- (a) sub-paragraph (2)(b) applies, or
- (b) the officer enters the United Kingdom while under the original arrest,
the officer shall be taken to a police station designated under section 35 of the 1984 Act.

(4) Sub-paragraphs (5) to (8) apply in a case falling within sub-paragraph (3)(b).

(5) The custody officer at the police station to which the officer is taken shall—

- (a) immediately invite the competent Dutch authorities to determine whether the act was performed by the officer whilst in the exercise of the officer’s functions, and
- (b) afford those authorities any assistance they may require in determining that question.

(6) Subject to sub-paragraph (8), the officer shall be treated—

- (a) as not being detained at the police station for the purposes of section 37 of the 1984 Act, and

(a) Amendments were made by paragraph 27(3) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988, Schedules 13 and 15 to the Children Act 1989, section 59 of, and Schedule 13 to, the Criminal Justice Act 1991, sections 24, 27(1), 28(2) to (4), 29(2), (4) and (5) of, and paragraph 54 of Schedule 10 and Schedule 11 to, the Criminal Justice and Public Order Act 1994, section 103 of the Police Act 1996, section 46(1) and (2) of the Crime and Disorder Act 1998 (c. 37), paragraph 5(4) of Schedule 15 to the Terrorism Act 2000, section 57(2) to (4) of the Criminal Justice and Court Services Act 2000, paragraphs 12 and 13(2) and (3) of Schedule 7 to the Anti-terrorism, Crime and Security Act 2001, section 72(3) of the Criminal Justice and Police Act 2001, section 52(1) to (4) and 53(1) of the Police Reform Act 2002, paragraph 12 of Schedule 7 to the Railways and Transport Safety Act 2003 (c. 20), paragraphs 282 and 283 of Schedule 8 to the Courts Act 2003 (c. 39), sections 5(2)(a)(ii), 6 and 7 of, and paragraphs 5 to 10 of Schedule 1, paragraphs 2(2) to (4) and 3 to 6 of Schedule 2, paragraph 42 of Schedule 32 and paragraph 5 of Schedule 36 to, the Criminal Justice Act 2003, section 121(5)(a) of, and Part 3 of Schedule 7 to, the Serious Organised Crime and Police Act 2005, paragraphs 2 and 3 of Schedule 1 to the Drugs Act 2005, sections 11 and 46(2) to (5) of, and paragraphs 8(1) and (2), 9(2), 10(2) and (3) and 11 of Schedule 6 and paragraphs 9, 10(2) to (5) of Schedule 14 to, the Police and Justice Act 2006, Schedule 17 of the Armed Forces Act 2006, section 107(2) and (3), and 108(2) of, paragraph 77 of Schedule 21 and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009, paragraph 123(3) of Schedule 7, and Part 13 of Schedule 8, to the Policing and Crime Act 2009, section 1 of the Police (Detention and Bail) Act 2011 (c. 9), paragraph 162 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c. 13), paragraphs 5 and 6 of Schedule 24 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012, sections 18(5) and 42 of the Criminal Justice and Courts Act 2015, sections 54(2) to (8), 55(2) to (5), 56(1), (3) and (4), 57(2) to (4), 58, 61(2), 63, 64(3), (4), (6) and (7), 65(2) to (6), 66(2), (4), (5) and (7) to (9), 67(2) to (5), 74(3) to (5) and 75(2) and (3) of the Policing and Crime Act 2017, paragraph 16 of the Schedule to the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33), paragraph 18(2) of the Counter-Terrorism and Border Security Act 2019 and paragraph 11(2) to (4) of Schedule 24 to the Coronavirus Act 2020.

(b) Amendments were made by paragraph 8 of Schedule 1 to the Criminal Justice Act 2003.

(b) as not being in police detention for the purposes of sections 40 to 43 of the 1984 Act.

(7) Where the competent Dutch authorities determine that the act was not performed by the officer whilst in the exercise of the officer's functions and the officer accordingly does not by virtue of Article 14(2) to the Protocol to the Agreement come under United Kingdom jurisdiction, the custody officer shall arrange for the officer to be transferred to the Netherlands immediately.

(8) In any other case—

- (a) the custody officer shall immediately inform the officer of the determination,
- (b) the officer shall be treated as being in police detention for all purposes of Part 4 of the 1984 Act, and
- (c) that Part shall have effect in relation to the officer as if the relevant time mentioned in section 41(2) were the time at which he is informed of the determination."

EXPLANATORY NOTE

(This note is not part of the Order)

This Order implements into United Kingdom law the provisions of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of the Netherlands concerning Border Controls on Rail Traffic between the Netherlands and the United Kingdom using the Channel Fixed Link, done at the Hague on 10 July 2020 (the "Bilateral Agreement") that relate to officer powers.

Article 2 amends the Channel Tunnel (Arrangements with the Kingdom of the Netherlands) (Amendment) Order 2020 (S.I. 2020/916) ("the 2020 Order") to insert a new Schedule 2 setting out the powers available to officers of both Contracting Parties while carrying out their functions in the territory of the other State. It also provides for this Schedule to be revoked from the date upon which the Agreement between the Government of the French Republic, the Government of the Kingdom of Belgium, the Government of the Kingdom of the Netherlands and the Government of the United Kingdom of Great Britain and Northern Ireland amending and supplementing the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of the Kingdom of Belgium and the Government of the French Republic concerning Rail Traffic between Belgium and the United Kingdom using the Channel Fixed Link with Protocol, done at Brussels on 15 December 1993, done at Brussels ("the Quadripartite Agreement") on 7 July 2020 comes into force. The Quadripartite Agreement makes separate provision for these powers from the date on which it comes into force. Finally, it inserts two paragraphs of Article 16 of the Bilateral Agreement into Schedule 1 of the 2020 Order. Those paragraphs confirm that parts of the Agreement shall also cease to have effect from the date on which the Quadripartite Agreement comes into force.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

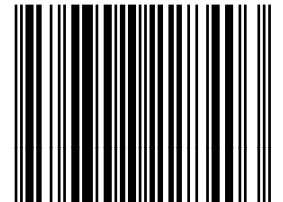
© Crown copyright 2021

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£6.90

<http://www.legislation.gov.uk/id/uksi/2021/1190>

ISBN 978-0-34-822840-3



9 780348 228403