

EXPLANATORY MEMORANDUM TO
THE CHANNEL TUNNEL (ARRANGEMENTS WITH THE KINGDOM OF THE
NETHERLANDS) (AMENDMENT) ORDER 2021

2021 No. 1190

AND

THE CHANNEL TUNNEL (INTERNATIONAL ARRANGEMENTS AND
MISCELLANEOUS PROVISIONS) (AMENDMENT) ORDER 2021

2021 No. 1196

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 the Channel Tunnel (International Arrangements and Miscellaneous Provisions) (Amendment) Order 2021 (“the Quadripartite Order”) is to give domestic effect to provisions relating to the powers of arrest and detention in respect of the juxtaposed controls in the Netherlands that are contained in 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 and 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, hereinafter called the “Quadripartite Agreement”.
- 2.2 The Quadripartite Agreement amended and supplemented the 1993 Tripartite Agreement between France, Belgium and the United Kingdom which underpins the operation of juxtaposed immigration controls on international passenger rail services (the “Tripartite Agreement”), and which was incorporated into domestic law by the Channel Tunnel (Miscellaneous Provisions) Order 1994 (S.I. 1994/1405) (“the 1994 Order”). The Quadripartite Agreement extended the scope of the Tripartite Agreement to include services running to and from the Netherlands and made some amendments to the regime. The Quadripartite Agreement was incorporated into domestic law by the Channel Tunnel (International Arrangements and Miscellaneous Provisions) (Amendment) Order 2020 (S.I. 2020/915).
- 2.3 The Quadripartite Order amends Schedule 3 to the 1994 Order to allow for the exercise of officers’ powers by British officers at the controls in the Netherlands, and by Dutch officers in the UK. The Order also takes the opportunity to update, where necessary, the legislative references relating to officers’ powers in Schedule 3 to the principal Order that established the Channel Tunnel international rail regime, namely the Channel Tunnel (International Arrangements) Order 1993.

- 2.4 Pending ratification of the Quadripartite Agreement, a bilateral Agreement between the United Kingdom and the Netherlands (known as the Agreement between 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”) allowed for the implementation of juxtaposed controls in the Netherlands for trains travelling between the Netherlands and the United Kingdom via the Channel Tunnel (known officially as the “Channel Fixed Link”). The Bilateral Agreement was incorporated into domestic law by the Channel Tunnel (Arrangements with the Kingdom of the Netherlands) Order 2020 (S.I. 2020/916).
- 2.5 The Channel Tunnel (Arrangements with the Kingdom of the Netherlands) (Amendment) Order 2021 (“the Netherlands Order”) amends the Channel Tunnel (Arrangements with the Kingdom of the Netherlands) Order 2020 to insert a new Schedule 2 setting out the officers’ powers, including those of arrest and detention, exercisable at the controls in the Netherlands. The Order also provides for the new Schedule to be revoked once the Quadripartite Agreement, and the domestic provisions incorporating that agreement, enter into force.

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 these instruments is the United Kingdom.
- 4.2 The territorial application of these instruments is the United Kingdom.

5. European Convention on Human Rights

- 5.1 As these instruments are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Section 11 of the Channel Tunnel Act 1987 provides that the appropriate Minister may by order make provision as appears to him to be necessary or expedient with respect to controls in relation to persons or goods at authorised terminal control points outside the tunnel system for trains on international services. These instruments make the necessary provisions relating to officers’ powers, including the powers of arrest and detention, in respect of the juxtaposed controls in the Netherlands.
- 6.2 Various international agreements and arrangements govern the route between the UK and Brussels Midi station in Belgium, including the Tripartite Agreement (and the Protocol to that Agreement), administrative arrangements made pursuant to that instrument in 2004 and 2007 and a 2013 bilateral Agreement between the UK and Belgium. These taken together provide the basis for juxtaposed controls in respect of trains travelling between Belgium and the UK via the Channel Tunnel. In 2020, the Tripartite Agreement was amended and supplemented by the Quadripartite Agreement, and provided a legal basis for the exercise of border controls for all UK-bound rail passengers travelling via the Channel Fixed Link from international rail

stations in the Netherlands and Belgium. The Sangatte Protocol, done at Sangatte on 25 November 1991, and the Additional Protocol to the Sangatte Protocol, done at Brussels on 29 May 2000, and arrangements made thereunder, make separate provision for international trains travelling via the Channel Fixed Link that originate or terminate in France.

- 6.3 In 2020, the Channel Tunnel (International Arrangements and Miscellaneous Provisions) (Amendment) Order 2020 and the Channel Tunnel (Arrangements with the Kingdom of the Netherlands) Order 2020, which incorporated the Quadripartite and Bilateral Agreements into domestic law did not incorporate the provisions contained in those agreements relating to the powers of arrest and detention, as the exercise of these powers by British officers in the Netherlands depended on a change to Dutch domestic legislation. This legislation is now anticipated to be in place in due course.
- 6.4 The Quadripartite Order and the Netherlands Order will be laid together before Parliament and will bring into force domestically the provisions set out in the Bilateral Agreement in relation to the exercise of powers of arrest and detention exercisable by officers at the juxtaposed controls in the Netherlands.
- 6.5 These Orders will allow for the exercise of officers' powers, including arrest and detention powers, by British officers in the Netherlands, and by Dutch officers in the UK.

7. Policy background

What is being done and why?

- 7.1 The UK currently operates border controls in Eurostar terminals in France, Belgium and the Netherlands. This allows Border Force officers to conduct immigration checks (i.e. not customs controls) on passengers destined for the UK before they begin their journeys. This is a reciprocal arrangement, with French Police aux Frontières officers currently undertaking Schengen entry checks (immigration checks) on passengers destined for continental Europe on behalf of France, Belgium and the Netherlands in London St Pancras International, Ebbsfleet International and Ashford International. 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 In 2020, the UK, France, Belgium and the Netherlands signed a Quadripartite Agreement to allow for the creation of juxtaposed border controls in the Netherlands in support of direct UK-Netherlands Eurostar services. As the internal processes required for all four governments to ratify the Quadripartite Agreement will take time to complete, the Quadripartite Agreement will not come into force for some time. Thus, to ensure that direct services from the Netherlands to the UK were commenced promptly and that juxtaposed controls were in place to facilitate that service, a separate Bilateral agreement between the UK and the Netherlands allowing for the exercise of juxtaposed controls in the Netherlands, pending the coming into force of the Quadripartite Agreement, was also signed in 2020.
- 7.3 Whilst the majority of provisions in these international agreements were incorporated into domestic law in 2020, specific provisions contained in these agreements relating

to arrest and detention powers were not; this is because the exercise of the powers by UK officers at the juxtaposed controls in the Netherlands necessitated a change to Dutch law. Until this necessary change was in effect in the Netherlands, interim border security arrangements were put in place with the Dutch authorities, allowing UK officers to refer persons liable to arrest or detention back to the Dutch authorities to deal with as they deem appropriate. While these interim arrangements have ensured a high-level of border security, it is nonetheless important that UK officers working at the juxtaposed controls in the Netherlands are properly and fully empowered to effect border controls and protect the UK border.

- 7.4 The necessary change to Dutch law is anticipated to be in place in due course. The Quadripartite Order will therefore give domestic effect to arrest and detention provisions contained in the Quadripartite Agreement between the UK, France, Belgium and the Netherlands concerning the exercise of border controls on rail traffic between the aforementioned countries via the Channel Tunnel.
- 7.5 Pending the coming into force of the Quadripartite Agreement, the Netherlands Order will give domestic effect to arrest and detention provisions contained in the Bilateral Agreement between the UK and the Netherlands concerning the initial operation of juxtaposed immigration controls in the Netherlands.

8. European Union Withdrawal Act and Future Relationship

- 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 these Orders.

10. Consultation outcome

- 10.1 The Quadripartite and Bilateral Agreements relate to a regime for which there is no statutory requirement for consultation. Given the nature of its contents, no public consultation was undertaken.

11. Guidance

- 11.1 There are no plans to issue specific guidance for this instrument.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 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 impact on the private or public sector. This instrument simply extends arrest and detention powers, that have already been agreed at an international level, to the juxtaposed controls in the Netherlands, thereby aligning those controls with operations at all other juxtaposed Eurostar locations.

13. Regulating small business

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

14. Monitoring & review

- 14.1 The approach to the monitoring of this legislation is required to be in line with the provisions of the Quadripartite Agreement and the Bilateral Agreement, whereby the Parties may, by mutual agreement, amend or review its provisions where necessary. In such a circumstance, this legislation would be accordingly amended or reviewed.

15. Contact

- 15.1 Sonia Baig at the Home Office (Telephone: 0207 035 3058 or email: Sonia.Baig5@HomeOffice.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Nigel Farminer at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Damian Hinds MP, Minister for Security and Borders at the Home Office can confirm that this Explanatory Memorandum meets the required standard.