EXPLANATORY MEMORANDUM TO

THE CHANNEL TUNNEL (INTERNATIONAL ARRANGEMENTS) AND CHANNEL TUNNEL (MISCELLANEOUS PROVISIONS) (AMENDMENT) ORDER 2015

2015 No. 856

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The purpose of this Order is to extend the detention at port powers at sections 1to 4 of the UK Borders Act 2007 to the fixed tunnel link at Coquelles (i.e. Eurotunnel arrivals) and to the rail terminals in France and Belgium and also to the fixed tunnel link and international rail terminals (Ebbsfleet/Ashford/St Pancras) in the UK. These powers enable designated immigration officers to detain an individual for up to three hours pending the arrival of a constable.

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

3.1 Among other things, this Order corrects a defect in S.I. 2007/3579 that was identified by the Joint Committee in their 9th Report of 2007-08.

4. Legislative Context

4.1 Under sections 1 to 4 of the UK Borders Act 2007, in England and Wales, an individual may be detained if a designated immigration officer thinks the individual may be liable to arrest under section 24 of the Police and Criminal Evidence Act 1984 or Article 26 of the Police and Criminal Evidence (Northern Ireland) Order 1989 or is subject to a warrant for arrest. In Scotland, an individual may be detained if the Immigration Officer thinks the individual is subject to a warrant for arrest or may be liable to be detained by a constable under section 14 of the Criminal Procedure (Scotland) Act 1995 in respect of an offence under section 9(1) of the Counter-Terrorism and Security Act 2015. Under section 4, these powers can be exercised at a port, which is defined as including an airport and a hoverport. This Order modifies and extends these powers so that they apply at international rail stations and terminal control points in the UK and at the juxtaposed controls where UK officers currently exercise powers at Coquelles, Lille and Paris in France and at Brussels in Belgium. They also enable an individual detained at any of these locations to be handed over to a UK constable, a

French officer or a Belgian officer, depending on what is permitted by the international treaties at a particular location.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

- ***What is being done and why***

7.1 In the UK: From 13th April, SIS II (a system for sharing inter alia European Arrest Warrant information and extradition requests) will come into force and from that date the UK will be unable to use this information for immigration purposes (due to bars in the European legislation). Therefore we need the capability for immigration officers to detain individuals at port pending the arrival of the UK police. The current definition of a 'port' at section 4 of the UKBA 2007 needs modification to ensure that these powers can be applied at international rail terminals/terminal control points as well as at other ports. This is covered by the modifications at article 4 of this Order.

7.2 In France and Belgium: SIS II will have a significant impact as previously immigration officers receiving information about European Arrest Warrants (and extradition requests) regularly refused admission/entry at the juxtaposed controls. They are no longer able to use this information for immigration purposes (subject to various caveats). The UK Government considers that the detention at port powers can be extended to all juxtaposed locations except the sea ports (where the terms of the Le Touquet Treaty do not permit it). This will enable UK officers to detain individuals subject to European Arrest Warrants (and extradition requests) pending the attendance of French or Belgian officers or, at Coquelles where Kent police are stationed, potentially UK police. The Government also notes the importance of extending the detention at port powers to enable UK officers to intervene and detain aggressive passengers/passengers who are assaulting French officers.

- ***Consolidation***

7.3 On balance the Department does not consider consolidation to be appropriate on this occasion but will consider consolidation in the event that amendments are required to this instrument in the future.

8. Consultation outcome

8.1 The Order is not subject to statutory consultation and no public consultation was undertaken.

9. Guidance

9.1 This instrument does not create any new powers so for the UK existing guidance on the detention at ports powers will apply at rail and terminal control points. Guidance on the exercise of these powers at the juxtaposed controls will be in place before these powers come into force.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has therefore not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The exercise of these powers in the UK is subject to the oversight of the Independent Police Complaints Commission. The operation of juxtaposed controls is regularly inspected by the Independent Chief Inspector of Borders and Immigration.

13. Contact

Sanaya Setna at the Home Office (Tel: 0207 035 5252 or email: Sanaya.Setna@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.