EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (SUPPLY OF INFORMATION TO THE SECRETARY OF STATE FOR IMMIGRATION PURPOSES) ORDER 2008

2008 No. [DRAFT]

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

2. Description

2.1 This Order will ensure that certain information held by the Secretary of State for Transport, the Secretary of State for Work and Pensions and the Chief Constable of the British Transport Police Force may be supplied to the Secretary of State for the Home Department for use for "immigration purposes".

2.2 "Immigration purposes" is defined in section 20(3) of the Immigration and Asylum Act 1999 ("the 1999 Act"). This Order extends that definition to include the new purposes specified in this Order.

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

3.1 None.

4. Legislative Background

4.1 Section 20 of the 1999 Act provides a statutory gateway under which the persons listed in section 20(1) are able to supply the Secretary of State for the Home Department with information for use for "immigration purposes". Section 20(1)(f) allows the Secretary of State to specify information held by other persons that may also be supplied.

4.2 "Immigration purposes" is defined in section 20(3) of the 1999 Act and includes such other purposes as may be specified.

4.3 This Order is the first time that the Secretary of State for the Home Department has specified:

- information held by other persons that may be supplied to the Secretary of State for use for immigration purposes, and
- additional "immigration purposes" for which that information may be used.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister of State for the Home Department, Liam Byrne, has made the following statement regarding Human Rights:

6.2 In my view the provisions of the Immigration (Supply of information to the Secretary of State for Immigration Purposes) Order 2008 are compatible with the Convention rights.

7. Policy background

7.1 There are currently no statutory powers for the Department for Work and Pensions (DWP), the Driver and Vehicle Licensing Agency (DVLA) or the Maritime and Coastguard Agency (MCA) to supply information held in pursuance of their functions to the UK Border Agency (UKBA) for use for immigration purposes. The DVLA and the MCA are executive agencies established by the Secretary of State for Transport. The UKBA is an executive agency established by the Secretary of State for the Home Department.

7.2 The information that DWP, DVLA and the MCA supply is extremely important to the work of UKBA. Given the increase in volume of information UKBA requires, and in some contexts, the decision to move to bulk disclosure of information via electronic format, it is appropriate to make an order setting out a clear legislative basis for the supply of this information.

7.3 The definition of a "chief officer of police" in section 20(4) of the 1999 Act does not include the British Transport Police Force (BTP). This Order makes clear that the BTP may supply information to the Secretary of State for use for immigration purposes in the same way that the other police forces defined in section 20(4) may supply such information.

7.4 It is envisaged that the information which will be supplied pursuant to this Order (either proactively or at the request of UKBA) will include the following:

- The DWP will share information relating to the location of immigration offenders and whether individuals have or are receiving DWP benefits including allowing UKBA to have limited access to the DWP Customer Information System (CIS).
- The Department for Transport, through the DVLA, will share information on applications it receives for driving licenses relating to the location of immigration offenders and those who are committing asylum support fraud. Through the MCA, the Department for Transport will share details of immigration offenders it has contact with while performing its functions.
- The BTP will share information on individuals they come into contact with while performing their functions relating to the location of possible immigration offenders and other criminal activity.

7.5 This information will be used by UKBA to locate and remove immigration offenders, ensure compliance with existing immigration laws and prevent abuse

of the asylum support benefit system. In particular, information provided by the DWP will be used to check applications for entry to the United Kingdom under the new Points Based System. Both DVLA and DWP are key partners in the Immigration Partnerships that are currently being established as part of the UKBA Enforcement Strategy.

7.6 It is important to note that the power to supply information under section 20 is not coercive and will simply provide a statutory gateway under which information may be shared. The exercise of this power will have to be lawful and therefore will still have to comply with the Data Protection Act 1998 and the Human Rights Act 1998. All information will be shared in a secure manner in line with Cabinet Office guidelines.

7.7 Adding to the immigration purposes under section 20(3) of the 1999 Act will confirm that all those persons covered by section 20(1) may share information on those individuals in receipt of asylum support under section 4 of the 1999 Act and those individuals who may have civil penalties imposed under section 15 of the Immigration, Asylum and Nationality Act 2006.

7.8 In recent years the numbers supported under section 4 have increased substantially and receiving information on these persons will be particularly important for the investigation of benefit fraud. It will also ensure that persons covered by section 20(1) will not be required to distinguish between different types of UKBA support when deciding whether to share information. Receiving information which will allow UKBA to determine whether to impose penalties relating to restrictions on employment is also an important part of UKBA's strategy to combat illegal working.

7.9 There has been no specific public consultation on this Order. However, UKBA have previously published and consulted on a number of documents outlining our proposal to increase data sharing with other government departments including but, not limited to, the Points Based System consultation document (March 2006), the IND Review (July 2006) and the Enforcement Strategy (March 2007).

8. Impact

8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is not expected to be significant.

9. Contact

Stephen Quick at the Home Office (UK Border Agency), tel: 020 8760 4655 or e-mail: Stephen.Quick2@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.