EXPLANATORY MEMORANDUM TO

THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002 (JUXTAPOSED CONTROLS) (AMENDMENT) (NO. 2) ORDER 2021

2021 No. XXXX

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 This instrument clarifies a provision in the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) (Amendment) Order 2021 ("the 2021 Order") relating to the Detention at Ports power.

2.2 A formatting error in article 2(7)(f) of the 2021 Order erroneously set out the modification to section 2 of the UK Borders Act 2007 ("the 2007 Act") as a standalone article rather than a provision to be inserted into Schedule 2 to the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003 ("the 2003 Order").

2.3 This instrument therefore revokes words from the 2021 Order and amends Schedule 2 to the 2003 Order to insert the required modification, with two additional minor clarifications to the inserted text.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

3.3 While the international sea traffic to which this Order applies currently terminates in England, the territorial application remains the whole of the United Kingdom

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 The Secretary of State for the Home Department has made the following statement regarding Human Rights:

"In my view the provisions of the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) (Amendment) (No. 2) Order 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 Section 141 of the Nationality, Immigration and Asylum Act 2002 permits an Order to be made to provide for a law of England and Wales to have effect, with or without modification, at a juxtaposed control at an EEA port. Pursuant to this, the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003 was made ("the 2003 Order"); at present, the juxtaposed controls locations governed by the 2003 Order are those at the ports of Calais and Dunkirk in France and, for the French authorities, at the port of Dover in the UK. These juxtaposed controls are provided for under the Le Touquet Treaty (2003).

6.2 In addition to the sea ports, juxtaposed controls also currently operate in Coquelles as set out in the Channel Tunnel (International Arrangements) Order 1993, and in Eurostar terminals in France, Belgium and the Netherlands as set out in the Channel Tunnel (International Arrangements) (Amendment No 3) 2001, the Channel Tunnel (Miscellaneous Provisions) Order 1994 and the Channel Tunnel (International Arrangements and Miscellaneous Provisions) (Amendment) Order 2020 respectively. These Orders extend all immigration enactments to the juxtaposed controls across the international rail network, giving immigration officers access to the full range of powers allocated to them under the immigration acts.

6.3 The 2003 Order did not follow this model, and instead, stipulated a list of specific immigration enactments to be extended to the control zones in French seaports. To align the operation of controls across all juxtaposed locations in line with operations across the UK, the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) (Amendment) Order 2021 ("the 2021 Order") amended the 2003 Order to extend all current immigration enactments, without specificity, to the sea ports and made the necessary modifications to the relevant enactments to enable these controls to operate correctly.

6.4 This instrument corrects errors in the 2021 Order relating to the modification to section 2 of the UK Borders Act 2007 ("the 2007 Act"), which makes provision for the Detention at Ports power. The 2021 Order erroneously set out the modification to section 2 of the 2007 Act as a standalone article rather than a provision to be inserted into Schedule 2 to the 2003 Order, which modifies relevant immigration enactments to ensure the juxtaposed controls in Calais and Dunkirk operate correctly.

6.5 This instrument therefore revokes words from the 2021 Order and makes an amendment to Schedule 2 to the 2003 Order to insert the required modification, with two additional minor changes to the inserted text that were originally inserted into the 2003 Order by the 2021 Order, compared to the text that was inserted by the 2021 Order.

6.5.1 Firstly, the inserted paragraph has been renumbered paragraph 4A following the revocation of paragraph 5 at the end of the Transition Period to reflect the UK's departure from the EU.

6.5.2 Secondly, the inserted text at paragraph 4A(a)(iii) has been re-numbered (ab) to reflect the insertion of a new paragraph (aa) into section 2 of the 2007 Act, again with effect from the end of the Transition Period to reflect the UK's departure from the EU.

7. Policy background

What is being done and why?

7.1 The UK currently operates border controls at ports in France, Belgium and the Netherlands. This allows Border Force officers to conduct immigration, and in some locations, policing and goods checks, on passengers and freight destined for the UK before they begin their journey. This is a reciprocal arrangement, with French officers completing entry checks at ports in the UK on passengers and freight destined for continental Europe.

7.2 For ferry services specifically, Border Force officers currently work at juxtaposed controls at the Northern French sea ports of Calais and Dunkirk to conduct immigration checks only (i.e. not customs controls), and the French Police aux Frontières currently undertake Schengen entry checks (immigration checks) at the UK port of Dover.

7.3 The 2021 Order aligned the regime at the sea ports of Northern France with the regime currently in operation at the juxtaposed locations in Coquelles and at Eurostar terminals in France, Belgium and the Netherlands. This instrument does two things; firstly, it reverses a formatting error in the 2021 Order to ensure the state of the law is explicitly clear. Secondly it corrects two further purely technical drafting defects in the previous Order where recent legislative changes were not taken into account.

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 this Order.

10. Consultation outcome

10.1 No consultation has been carried out on this instrument, which is purely to correct drafting defects in the 2021 Order. Consultation was carried out on the policy content of the 2021 Order.

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 corrects drafting defects in the 2021 Order.

13. Regulating small business

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

14. Monitoring & review

14.1 There is no need to monitor or review this instrument.

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