EXPLANATORY MEMORANDUM TO

THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002 (JUXTAPOSED CONTROLS) (AMENDMENT) ORDER 2024

2024 No. 1085

1. Introduction

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

2. Declaration

2.1 The Rt Hon Yvette Cooper MP, Secretary of State for the Home Department, confirms that this Explanatory Memorandum meets the required standard.

2.2 Harriet Wilkinson and Rebecca Bradford, SCS1 for Goods, Biosecurity and Border Fluidity, at the Home Office confirm that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Ben Spittles and John Morris at the Home Office, email: ees.si@homeoffice.gov.uk, can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument allows the French Police aux Frontières ('PAF') working at juxtaposed controls in the Port of Dover (a designated area in which French officials conduct Schengen entry checks; UK officials conduct UK entry checks in Calais) to detain and escort arrested persons between immigration control zones in the port via a 'Circulation Area'.

4.2 The instrument also allows PAF officers to carry service weapons in the Circulation Area and extends to the Circulation Area the offence of obstructing a PAF officer from carrying out his functions, and the offence of assaulting a PAF officer. It also provides a PAF officer with immunity from prosecution for any offence committed in the exercise of his functions in the Circulation Area.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) will be specified in a 'Circulation Area' delimited in an updated control Administrative Arrangement made under the Treaty of Le Touquet (2003)

5. Policy Context

What is being done and why?

5.1 The European Union Entry Exit System ('EES') is planned for implementation in autumn 2024 and will require non-European Union nationals to register their biometrics (photograph and fingerprints) with European Union Member State officials, or agents operating on their behalf, as part of enhanced Schengen entry

checks. At the juxtaposed controls in the Port of Dover, this work will be undertaken by PAF officers.

5.2 Prior to this amendment coming into force, PAF officers conducted Schengen entry checks in their immigration control zone at the eastern docks in the Port of Dover, delimited in an administrative arrangement under the Treaty of Le Touquet (2003). In their control zone PAF officers carried service weapons on their person and stored them subject to strict safeguards set out in another administrative arrangement made under the same Treaty. They also arrested and detained persons following immigration examination. These powers and the associated provisions are set out in The Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003 ('the 2003 Order') which implements the Treaty of Le Touquet (2003).

5.3 The introduction of additional checks at the border has the potential to cause significant congestion and disruption at the Port of Dover's eastern docks. This is because the Schengen entry check process will take longer, and there is a high volume of passenger and freight traffic as well as limited space. To mitigate against this, PAF officers will conduct Schengen entry checks in a new control zone at the western docks. Splitting immigration controls between two control zones requires PAF officers to be able to travel between control zones with their service weapons on their person and while escorting detained persons.

5.4 We are therefore amending administrative arrangements under the Treaty of Le Touquet (2003) to provide for the additional control zone at the western docks. The existing powers and provisions available in the eastern docks will apply there. The amendments will also delimit a Circulation Area linking the control zones in which PAF officers can travel and carry their service weapons on their person, rather than leaving them in storage.

5.5 This instrument is required to amend and extend certain powers and provisions (see section 4.1 and 6) in the 2003 Order to the Circulation Area. This approach minimises legal risk, provides clarity to all parties, and affords a degree of future-proofing should circumstances change by retaining the flexibility of the 2003 Order.

What was the previous policy, how is this different?

5.6 Previously, PAF officers conducted Schengen entry checks in their control zone at the eastern docks in the Port of Dover. They carried and stored their service weapons in their control zone and arrested and detained persons following immigration examination.

5.7 This policy is different as the instrument and the amendments to the administrative arrangements under the Treaty of Le Touquet (2003) allow PAF officers to conduct Schengen entry checks in a new immigration control zone at the western docks, and travel between control zones via a Circulation Area with their service weapons on their person and while escorting detained persons.

5.8 This will mitigate against potential disruption at the eastern docks following EES implementation in autumn 2024.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument amends the 2003 Order to permit the PAF to travel between control zones via a Circulation Area and extends ancillary protections.

6.2 Article 2 inserts into the 2003 Order a new article 10A, which contains all substantive provisions. These provisions currently apply to the exercise of PAF functions within a control zone but require extension to the Circulation Area.

6.3 Paragraph (2) provides that a person detained under article 4 of the 2003 Order may be escorted within a Circulation Area. Paragraph (3) provides that while a PAF officer is escorting a person within a Circulation Area the PAF officer cannot be prosecuted for offences and French law would apply in relation to any claim for compensation. Paragraph (4) permits the carriage of service weapons within the Circulation Area and provides that UK immigration offences apply when committed against PAF officers.

Why was this approach taken to change the law?

6.4 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Home Office emailed a consultation document to Kent Police, the PAF, and the French Ministère de l'Intérieur (MOI), and invited responses. The document summarised the legislative changes and amendments to the administrative arrangements under the Treaty of Le Touquet (2003). It also explained how the changes and amendments enable PAF officers to travel between control zones via a Circulation Area with their service weapons on their person and while escorting detained persons.

7.2 Kent Police stated it understood the proposed changes and had no comments. The PAF and MOI sought clarification from the Home Office on several technical points and stated that if their understanding was correct then the proposed changes met their needs. The Home Office responded to the PAF/MOI and confirmed their understanding.

8. Applicable Guidance

8.1 Not applicable

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 The Home Office has not prepared a full Impact Assessment because this instrument does not meet the threshold for such an Assessment. The Home Office has prepared and published an Economic Note. This highlights a small financial cost which is due to the requirement for Kent Police to log a telephone call from the PAF when PAF officers escort a detained person to the control zone at the eastern docks via a Circulation Area. Over a ten-year appraisal period this is estimated to cost £3,052.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector aside from the small financial cost to Kent Police as outlined above.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The main approach to monitoring and reviewing this legislation is to look at how it is operationalised. UK authorities, including Border Force and Kent Police, will do this through regular engagement with the PAF and any issues that cannot be resolved at a local level will be escalated to the Home Office. The Home Office will liaise with all parties including the MOI if required to reach a mutually acceptable outcome. Also, the UK authorities and their French counterparts will hold a formal meeting to review

the effectiveness and continued requirement for the legislation no later than 12 months after it enters into force. The Home Secretary will then receive advice.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 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) Order 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").