*Draft Order laid before Parliament under section 141(5)(c) of the Nationality, Immigration and Asylum Act 2002, for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

# 2003 No.

# IMMIGRATION

## Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003

*Made - - - - 2003*

*Coming into force in accordance with article 1(2)*

Whereas the Secretary of State has consulted with such persons as appear to him to be appropriate;

And whereas a draft of this Order has been approved by a resolution of each House of Parliament;

Now, therefore, in exercise of the powers conferred on him by section 141 of the Nationality, Immigration and Asylum Act 2002(**1**), the Secretary of State hereby makes the following Order:

## PART 1

## INTRODUCTION

### Citation and commencement

**1.**—(1) This Order may be cited as the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003.

(2) Save for article 10 of this Order which shall come into force on the day after the day on which the Order is made, this Order shall come into force on the date on which the Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic concerning the Implementation of Frontier Controls at the Sea Ports of Both Countries on the Channel and North Sea(**2**) enters into force.

### Interpretation

**2.** In this Order, and in any enactment applied with modifications by Schedule 2 to this Order—

(**1**) 2002 c. 41.
(**2**) Cm 5832. The entry into force of the Treaty will be notified in the London, Edinburgh and Belfast Gazettes.

"Control Zone" means the part of the territory of the State of Departure within a port designated in Schedule 1 to this Order within which the officers of the State of Arrival are authorised to carry out immigration control under the Treaty;

"immigration control" means arrangements made in connection with the movement of persons into or out of the United Kingdom or another State and includes the investigation of offences relating to immigration;

"immigration officer" means an officer appointed by the Secretary of State under paragraph 1 of Schedule 2 to the 1971 Act;

"officer belonging to the French Republic" means an officer given responsibility by the Government of the French Republic for the exercise of immigration control in accordance with the Treaty;

"State of Departure" means the State upon whose territory the immigration control of the other State is carried out, and "State of Arrival" means the other State;

"the 1971 Act" means the Immigration Act 1971(**3**);

"the 1984 Act" means the Police and Criminal Evidence Act 1984(**4**); and

"Treaty" means the Treaty mentioned in article 1 (2).

# PART 2

## PROVISIONS RELATING TO THE EXERCISE OF POWERS BY FRENCH OFFICERS IN A CONTROL ZONE IN THE UNITED KINGDOM

### Exercise of functions by French officers

**3.**—(1) An officer belonging to the French Republic shall be permitted to carry out his functions in a Control Zone in the United Kingdom in application of his powers relating to immigration control.

(2) The offence in section 26 (1)(g) of the 1971 Act of obstructing, without reasonable excuse, an immigration officer or other person lawfully acting in the execution of the 1971 Act shall apply to an officer belonging to the French Republic carrying out his functions in accordance with paragraph (1) as it applies to such an immigration officer or other person.

### Powers of arrest and detention by French officers

**4.**—(1) An officer belonging to the French Republic may arrest and hold for questioning in a Control Zone in the United Kingdom a person who is being examined for the purposes of immigration control.

(2) The arrested person may be detained for a period of not more than 24 hours and, if there are exceptional circumstances and an immigration officer or a constable is notified of the extension, for a further such period.

### Detention of arrested persons by a constable

**5.**—(1) Where—

(a) an officer belonging to the French Republic has in a Control Zone in the United Kingdom arrested or detained a person in accordance with article 4 (1), and

(b) such an officer so requests,

(**3**) 1971 c. 77.
(**4**) 1984 c. 60.

a constable may make arrangements for the person to be taken into temporary custody.

(2) A person taken into temporary custody under paragraph (1)—

(a) shall be treated for all purposes as being in lawful custody, and

(b) may be taken to a police station or such other place as may be appropriate in the circumstances, and shall in that case be treated as being a person in whose case sections 36(7) and (8), 54, 55, 56 and 58 of the 1984 Act(**5**) and, in the case of a child or young person, section 34(2) to (7), (8) and (9) of the Children and Young Persons Act 1933(**6**) apply, and

(c) must be returned to an officer belonging to the French Republic before the end of the period referred to in article 4(2), to a place where detention can be resumed under that article.

(3) Where a person falls to be treated as mentioned in paragraph (2)(b), section 56 of the 1984 Act shall be taken to apply as if he were detained for a serious arrestable offence.

**Immunity from prosecution**

**6.** An officer belonging to the French Republic shall not be prosecuted for any offence committed in the exercise of his functions in a Control Zone in the United Kingdom.

**Arrest of French officer**

**7.**—(1) Where an officer belonging to the French Republic is arrested for an act performed in a Control Zone in the United Kingdom, the officer shall be taken to a police station designated under section 35 of the 1984 Act(**7**).

(2) The custody officer at the police station to which the officer is taken shall, after consultation with the competent French authorities, determine whether the act was performed by the officer whilst in the exercise of his functions, and may for the purpose of determining that question detain the officer at the police station for not longer than the permitted period.

(3) The permitted period is the period of 48 hours beginning at the time at which the officer arrives at the police station.

(4) Subject to paragraph (6), the officer shall be treated—

(a) as not being detained at the police station for the purposes of section 37 of the 1984 Act(**8**), and

(b) as not being in police detention for the purposes of sections 40 to 43 of the 1984 Act(**9**).

(5) Where the custody officer determines that the act was performed by the officer whilst in the exercise of his functions, he shall immediately inform the competent French authorities and shall make arrangements within the permitted period for the transfer of the officer to France.

(6) In any other case—

(a) the custody officer shall immediately inform the officer of his determination,

(b) the officer shall be treated as being in police detention for all purposes of Part IV of the 1984 Act, and

(**5**) Section 54 of the 1984 Act was amended by section 147 of the Criminal Justice Act 1988 (c. 33) and there are amendments to sections 55, 56 and 58 of the 1984 Act which are not relevant to this Order.
(**6**) 23 Geo 5 c. 12. Section 34(2) to (7) and (8) and (9) of the 1933 Act were substituted by section 57 of the 1984 Act.
(**7**) Section 35 was amended by section 101 of, and paragraph 12 of Schedule 7 to, the Anti-terrorism, Crime and Security Act 2001 (c. 24).
(**8**) There are amendments to section 37 of the 1984 Act which are not relevant to this Order.
(**9**) Section 40 of the 1984 Act was amended by section 42 of the Police Reform Act 2002 (c. 30) and section 40A of the 1984 Act was inserted by section 73 (1) of the Criminal Justice and Police Act 2001 (c. 16). There are amendments to sections 41 to 43 of the 1984 Act which are not relevant to this Order.

(c) that Part shall have effect in relation to him as if the relevant time mentioned in section 41(2) were the time at which he is informed of the determination.

**Disapplication of law of England and Wales**

**8.**—(1) The law of England and Wales shall not have effect in relation to any claim for compensation which may be alleged against, or by, an officer belonging to the French Republic for loss or injury in the exercise of his functions in a Control Zone in the United Kingdom and any such claim shall be subject to the law of the French Republic as if the circumstances giving rise to the claim had occurred in France.

(2) The Data Protection Act 1998(**10**) shall not have effect in relation to data which are processed within a Control Zone in the United Kingdom in connection with the carrying out of immigration control by an officer belonging to the French Republic.

(3) No charge shall be payable under section 40(2) of the Immigration and Asylum Act 1999(**11**) (charge in respect of passenger without proper documents) by the owner of a ship in respect of any individual who is shown by the owner to have embarked on the ship for the voyage to the United Kingdom after having passed through a Control Zone in France.

**Carrying of firearms by French officers**

**9.** Section 54(3) of the Firearms Act 1968(**12**) (application to Crown servants) shall have effect in relation to an officer belonging to the French Republic exercising his functions within a Control Zone in the United Kingdom as if the reference to a member of a police force included a reference to such an officer.

**Provision of facilities for French officers**

**10.** The Secretary of State may by written notice require any person concerned with the management of a port in the United Kingdom which is designated in Schedule 1 to this Order to provide free of charge such accommodation, installations and equipment as may be necessary to enable officers belonging to the French Republic to perform their functions in a Control Zone in the United Kingdom.

# PART 3

## PROVISIONS RELATING TO THE EXERCISE OF POWERS BY UNITED KINGDOM IMMIGRATION OFFICERS AND CONSTABLES IN A CONTROL ZONE IN FRANCE

**Enactments having effect in a Control Zone in France**

**11.**—(1) For the purpose of enabling immigration officers to exercise immigration control in a Control Zone in France, the following shall have effect in relation to a person in a Control Zone in France, or anything done in that Zone, with the modifications set out in Schedule 2 to this Order—

(a) the 1971 Act(**13**);

(**10**) 1998 c. 29.
(**11**) 1999 c. 33. Section 40 was substituted by paragraph 13 of Schedule 8 to the Nationality, Immigration and Asylum Act 2002 (c. 41).
(**12**) 1968 c. 27. Section 54 (3) was substituted by section 42 of the Police and Magistrates' Court Act 1994 (c. 29).
(**13**) Relevant amendments to the 1971 Act are as follows: section 33 and paragraphs 4, 9 and 22 of Schedule 2 were amended by section 12 (1) of, and paragraph 5 of Schedule 2 to, the Asylum and Immigration Act 1996 (c. 49); paragraph 4 (2) of Schedule 2 was inserted by section 10 of the Immigration Act 1988 (c. 14); paragraphs 2, 2A, 7, 16, 18, 21, 22 and 26 of

(b) Schedules 7, 8 and 14 to the Terrorism Act 2000(**14**);

(c) the Code of Practice for examining officers under The Terrorism Act 2000(**15**);

(d) the Immigration (Leave to Enter and Remain) Order 2000(**16**); and

(e) the Immigration (European Economic Area) Regulations 2000(**17**).

(2) Paragraphs 2 (powers and duties of detainee custody officers) and 3 (short-term holding facilities) of Schedule 11, and paragraph 2 of Schedule 13 (powers and duties of detainee custody officers), to the Immigration and Asylum Act 1999 shall have effect in relation to a detainee custody officer in a Control Zone in France as they have effect in relation to such an officer in the United Kingdom and, in the definition of "short-term holding facility" in section 147 of that Act, the reference to "a place" includes a place in a Control Zone in France.

(3) Sections 19B (discrimination by public authorities) and 19D (exception from section 19B for certain acts in immigration and nationality cases) of the Race Relations Act 1976(**18**) shall have effect in relation to immigration officers carrying out their functions in a Control Zone in France as they have effect in relation to such officers carrying out their functions in England and Wales and Scotland.

(4) The Data Protection Act 1998 shall have effect in relation to data which are processed in a Control Zone in France in connection with the carrying out of immigration control by an immigration officer or a constable, or the exercise of a power of arrest by a constable under article 13 (3) of this Order, as if, for the purposes of section 5 of that Act, the data were processed by a data controller established in the United Kingdom in the context of that establishment.

(5) The law of England and Wales shall have effect in relation to any claim for compensation which may be alleged against, or by, a constable or an immigration officer for loss or injury in the exercise of his functions in a Control Zone in France as if the circumstances giving rise to the claim had occurred in England.

**Application of criminal law to a Control Zone in France**

**12.**—(1) An act or omission which constitutes an offence under one of the following provisions of the 1971 Act shall also be an offence if it takes place in a Control Zone in France—

(a) section 24A (1)(a) and (3)(**19**) (deception);

(b) section 25 (assisting unlawful immigration to member state), but as if subsections (4) and (5) were omitted;

(d) section 25A (helping asylum seeker to enter United Kingdom);

(e) section 25B (assisting entry to United Kingdom in breach of deportation or exclusion order)(**20**);

(f) section 26 (general offences in connection with administration of Act); and

(g) section 27(c) (offences by persons connected with ships or aircraft or with ports) but as if the words "or aircraft" and "or disembarkation" were omitted.

Schedule 2 were inserted or amended by section 169 of, and Schedule 14 to, the Immigration and Asylum Act 1999 (c. 33) and section 28G and paragraph 25B of Schedule 2 was inserted by section 134 of that Act; and paragraph 10A of Schedule 2 was inserted by section 73 of the Nationality, Immigration and Asylum Act 2002.

(**14**) 2000 c. 11.

(**15**) The Code was issued pursuant to paragraph 6 (1) of Schedule 14 to the Terrorism Act 2000.

(**16**) S.I.2000/1161.

(**17**) S.I. 2000/2326. The 2000 Regulations were amended by the Immigration (European Economic Area) (Amendment) Regulations 2003 (S.I. 2003/549).

(**18**) 1976 c. 74. Sections 19B and 19D were inserted by section 1 of the Race Relations (Amendment) Act 2000 (c. 34).

(**19**) Section 24A was inserted by section 28 of the Immigration and Asylum Act 1999.

(**20**) Sections 25, 25A and 25B of the 1971 Act were substituted for section 25 of that Act by section 143 of the Nationality, Immigration and Asylum Act 2002.