

Immigration Act 2014

Summary of Provisions

The titles used are as they appear in the Act. Clause **In Force** are in red.

REMOVAL

Section 1: Removal of Persons Unlawfully in the UK

This amends s.10 Immigration and Asylum Act 1999. A new section 10 has been introduced. It gives the Secretary of State power to remove somebody from the UK if they require leave to enter or remain but don't have it. The aim is to simplify the removal process.

It doesn't specify that written notice of removal should be given and it allows family members to be removed too without specific separate notice. The Act does not define who constitutes family members. The Immigration Minister has given verbal assurances that a written notice will be given to someone being removed, however this could be months or even years before removal as only one notice is required.

Draft Immigration (Removal of Family members) Regulations 2014 have been prepared.

The Delegated Powers and Regulatory Reform Committee have raised serious concerns about Section 1 and in particular the removal of family members and had recommended that the definition of family members be placed on the face of the Act, but this has not happened.

Section 2: Restrictions On Removal Of Children And Their Parents

A child and its parents cannot be removed for a period of 28 days beginning from the day their appeal rights are exhausted. But the SSHD can give a direction for the removal, make a deportation order or take 'any other interim or preparatory action'.

Section 3 Independent Family Returns Family

In every family returns case and where family are going to be detained the panel must be consulted.

POWERS OF IMMIGRATION OFFICERS

Section 4: Enforcement Powers **In Force July 14**

An immigration officer now has the power to escort a detained person and to search them for anything a person might use to cause physical injury to themselves or others or which they might use to escape detention.

Allows an immigration officer to enter and search for documents (whether or not person a person was arrested by a constable) and gives further powers to enter and search premises of a third party if there are reasonable grounds to believe that relevant documents may be found there.

It gives additional powers to retain documents whilst a person is liable to removal and if an immigration officer believes the retention of the document may facilitate removal.

An immigration officer's power to use reasonable force has been widened to allow the use of force when it is necessary in exercise of a power conferred by all the Immigration Acts.

BAIL In force

Section 5: Restrictions on Detention of Unaccompanied Children

An unaccompanied child can only be detained in a short term holding facility for a maximum of 24 hours and only if directions for removal are in force within that time period or a decision on whether or not to give directions is likely to result in such directions and the immigration officer under whose authority the child is detained believes removal will take place within

Section 6: Pre-departure Accommodation for Families

This is to be used solely for detained children and their families for a period of not more than 72 hours or not more than 7 days if authorised personally by a Minister of the Crown.

Section 7 Bail: Repeat applications and effect of removal directions

A new paragraph has been inserted into Schedule 2 Immigration Act 1971 which now means the Secretary of State's consent is required to release a person on bail where removal directions are in force and removal is to take place within 14 days of the bail hearing decision.

The Tribunal Procedure Rules are to be changed so that if a person applies for bail within 28 days of having been unsuccessful previously the Tribunal must dismiss the application without a hearing unless the applicant demonstrates there has been a material change in circumstances. **(This paragraph is not yet in force)**

The above also applies where a person has an appeal pending and makes a bail application.

BIOMETRICS (8-14) In Force

Section 8: Provision of biometric information with immigration applications

All foreign nationals applying for Direct Airside Transit Visas (DATVs) must provide biometric data as part of their application.

Non-EEA family members of EEA nationals and other non EEA nationals who have an enforceable EU right to enter or remain in the UK have to provide biometric data when they apply for a residence card or other document.

Section 9: Identifying persons liable to detention

This Section amends para 18(2) of Schedule 2 to the Immigration Act 1971 which allows for finger printing and photographing of detained persons to be extended to include 'all persons liable to be detained'.

Section 10: Provision of biometric information with citizenship applications

This Section allows for biometric data to be obtained from all people applying to become British citizens.

Section 11: Biometric Immigration documents

This Section allows the Secretary of State to refuse an application where a biometric immigration document is required and a person fails to provide it.

Section 12: Meaning of biometric data

S.15 of the UK Borders Act 2007 is widened to allow the Secretary of State to ask for information on a person's physical features other than finger prints and iris data however, this should be obtainable by an external examination only and should not specify DNA information.

A separate order is required for this and the order requires the affirmative resolution procedure, which means both Houses of Parliament must first approve it.

Section 13: Safeguards for children

Sections 4 and 18 of Schedule 2 Immigration Act 1071 are amended to ensure persons under 16 are not required to provide biometric data unless authorised by a chief immigration officer and that the information is provided in the presence of a parent, guardian or someone who takes responsibility for the child at the time.

Section 14: Use and retention of biometric data

A new section 8 to the UK Borders Act 2007 is introduced. It requires the Secretary of State to make provisions about the use and retention of biometric data, including use of biometric information for non-immigration purposes, retention and destruction.

APPEALS ETC

Section 15: Right of appeal to the First-tier Tribunal

Appeal rights have been replaced by administrative review. The only rights of appeal still available are in protection claims (where a person is seeking refugee status or humanitarian protection) or where that leave is being revoked or where a person claims breach of human rights.

Section 16: Report by Chief Inspector on Administrative Review

The effectiveness of administrative reviews to be reported upon within a year of being in force. Report must be laid before Parliament.

Section 17: Place from which an appeal may be brought or continued **in Force**

An appellant can remain in the UK to bring or continue his appeal if the original claim was made whilst the person was in the UK. If however, the Secretary of State has certified the appeal as 'clearly unfounded' or a person can be removed to a safe third country, the appeal can only take place once the person has left the UK.

In the case of someone liable to deportation who raises a human rights claim the default is to remove them from the UK by certifying the appeal on the basis that they would not face, before the appeals process is exhausted 'a real risk of serious irreversible harm if removed to [that] country or territory'. The right of appeal is then exercised from abroad.

(NOTE: on 28th July 2014 the Govnt also brought in powers to deport EU nationals pending appeals in similar circumstances – (EEA) (Amendment)(No.2) Regulations 2-14 (SI2014/19)

Section 18: Review of certain deportation decisions by Special Immigration Appeals Commission (SIAC)

This Section allows SIAC to hear judicial reviews from those without appeal rights in national security cases rather than the open high court.

ARTICLE 8 OF THE ECHR In Force

Section 19: Article 8 of the ECHR: public interest considerations

This Section requires the Courts to take into account the public interest as defined by the Act when considering someone's right to family or private life. In all cases it is deemed to be in the public interest that persons are able to speak English and are financially independent. The rationale for this is because it means they are not a burden on taxpayers and are able to integrate into society.

In cases involving foreign national criminals it is deemed that deportation is in the public interest. The more serious the offence committed by a foreign criminal, the greater the public interest in deportation.

If an individual's sentence is under 4 years the public interest argument can be overridden if and individual has:

- Lawfully resided in the UK for most of their life
- Is culturally and socially integrated in the UK and
- There would be very significant obstacles to integration into the country where deportation is being proposed

For someone with a sentence of at least 4 years there must be 'compelling circumstances' over and above those described above.

(NOTE: On 28th July 2014 new immigration rules came in HC532. The new article 8 test is to apply to all applications decided on or after 28th July)

ACCESS TO SERVICES

RESIDENTIAL TENANCIES

Pilot to be introduced on 1 December 2014 in Birmingham Wolverhampton, Dudley, Walsall and Sandwell

Section 20-37: Residential tenancy agreement

All non-British, non-EEA or non-Swiss citizens who require leave to enter or remain in the UK but do not have it are disqualified from entering into a residential tenancy agreement.

Landlords have a duty to check a person's immigration status. If they rent to someone who does not have leave they can be fined up to £3000 per adult by way of a penalty notice.

Landlords can object to the penalty notice and do have a right of appeal against it. They are also required to adhere to the Code of Practice which will tell them how to make the checks

and how not to be discriminatory. Breach of the code does not carry any civil or criminal liability.

Certain accommodation is exempt from this Section. Where rent is not paid this Section does not apply for example convents or monasteries. Schedule 3 of the Act contains a list of excluded properties and these include social housing, care homes and refuges. Student accommodation organised by universities and colleges is also exempt.

Schedule 3 can be amended by order this requires the affirmative resolution procedure, which means both Houses of Parliament must first approve it.

NOTE: Ministers have agreed that this scheme will initially apply on a pilot basis although this is not in the legislation. Details of the pilot have not yet been made public.

NATIONAL HEALTH SERVICE

Section 38: Immigration health charge

This Section provides the Secretary of State with a power, by order, to require migrants seeking leave to enter or remain (or entry clearance) to pay an immigration health charge.

The order will provide details of the amount, method of payment and consequences of non-payment of the charge and for exemptions from the charge.

The order requires the affirmative resolution procedure, which means both Houses of Parliament must first approve it.

NOTE: £150 for international students and £200 for other categories has been proposed but we do not have final details or confirmation as yet.

Section 39 Related provisions: charges for health services

Those ordinarily resident in the UK are not subject to a charge for the NHS. This Section changes the ordinary resident test for the purposes of charging so that all those who do not have indefinite leave to remain can be charged. This includes those who need leave to enter or remain but also those currently living and working here with limited leave.

NOTE: The Department of Health has published further details on changes to the NHS. The following phases have been published, exact details and dates will be determined by the Home Office and we do not have details yet:

Phase 2 April 2014 onwards – Testing and eventual introduction of a registration system identifying chargeable patients in secondary care

Phase 3 from 2014/2015 - Health levy as per Section 33 to be implemented. All new (non-visitor) visa applicants will pay alongside the visa fees.

Phase 4 from April 2015 – extension of charging policy to some primary care and A&E services. (GP consultations will remain free).

BANK ACCOUNTS

Section 40: Prohibition on opening current accounts for disqualified persons To commence 12 December 2014

Banks and building societies must not open a current account for a person who is not in the UK or requires leave to enter or remain but does not have it. The bank or building society must carry out a status check to identify whether the person is 'disqualified' through a specific anti-fraud organisation or data-matching authority which will be designated by the Home Secretary.

Banks and building societies are allowed to open an account if they are unable to carry out the status check due to factors out of their control such as operational difficulties for an extended period of time encountered by the status check bodies.

A disqualified person cannot be part of a joint account or a third party signatory.

Section 41: Regulation by Financial Conduct Authority (FCA) In Force

The Treasury can make regulations to allow the FCA to monitor and enforce compliance by banks and buildings societies and charge a penalty. It will be a criminal offence to mislead the FCA

Section 42: Bank and Building Society. In Force

Definitions

Section 43: Power to amend In Force

The Treasury can in the future, by order, increase the types of institutions these Sections apply to, for example credit unions.

The order requires the affirmative resolution procedure, which means both Houses of Parliament must first approve it.

WORK

Section 44: Appeals against penalty notices In Force

This Section amends the Immigration, Asylum and Nationality Act 2006 with regards to appeals by employers against penalty notices for a breach of the illegal working provisions in the Act. The effect is that the employer must first give a 'notice of objection' to the Secretary to State who will determine the objection by way of administrative review. The aim is to negate the need of an appeal.

NOTE: On 16th May 2014 changes came into force to the Civil Penalty Scheme. The maximum penalty for a first time breach in a 3 year period is penalty £15,000 per illegal employee. For a second or subsequent breach in a 3 year period the penalty is £20,000 per illegal employee.

Section 45: Recovery of sums under the penalty notice. In Force

The purpose of this Section is to make it easier for the Secretary of State to recover penalties from employers by removing the need for court proceedings (which allows the employer to raise a defence). The amendment will allow the Secretary of State to enforce the penalty as if it were a debt under a court order, register it with the civil court and take enforcement action immediately.

DRIVING LICENCES In Force

Section 46: Grant of driving licences: residence requirement

This Section amends Road Trafficking legislation so that a person who needs leave to enter or remain but does not have it does not meet the 'residence requirement' and cannot be issued with a driving licence.

Section 47: Revocation of driving licences on grounds of immigration status

The Secretary of State can revoke a licence if a licence holder does not meet the residence requirement (as defined as above). A person who fails to surrender their licence without reasonable excuse will be guilty of a criminal offence. A right of appeal to a magistrates' court (or Sheriff's court in Scotland) is given but the court is not allowed to determine whether the appellant should have been granted leave nor is allowed to take into account the fact that an appellant may have been granted leave after the revocation notice.

MARRIAGE AND CIVIL PARTNERSHIP

Section 48-62 Referral and Investigation of proposed marriages and civil partnerships

There are several detailed provisions with regard to the conduct of the investigation and information that needs to be provided by couples but the main changes are that all marriages following civil preliminaries and all civil partnerships in England and Wales will be subject to a 28-day notice period (currently 15 days) from when notice is given to the registration official.

Where the Home Office has reasonable grounds to suspect that a referred marriage or civil partnership is a sham, it will be able to extend the notice period to 70 days in order to investigate the genuineness of the couple's relationship.

All notices of marriage or civil partnership involving a non-EEA national will need to be referred to the Home Office where a person could gain an immigration advantage from the marriage or civil partnership. This will apply where the non-EEA national does not have settled status or an EU law right of permanent residence in the UK and is not exempt from immigration control or holding a marriage or civil partnership visa. There is also a new duty on officials to report suspected sham marriages in respect of information received in advance of a person giving notice of marriage.

The Secretary of State will serve a notice when conducting an investigation on a couple and can require them to be present at a particular time or place including their home and to be interviewed and provide information, evidence and photographs.

A couple will be unable to get married or enter into a civil partnership if they do not comply with such an investigation.

Non-European Economic Area (non-EEA) nationals will only be able to marry in the Church of England or the Church in Wales following civil preliminaries, except in limited circumstances. Where they want to marry following the publication of banns they will have to show specific evidence that are British citizens, EEA nationals or Swiss nationals.

(Not yet in force but current scheme strengthened by commencement of s56, s.59 and Schedule 6 – s.56 is a duty on registrars to report suspicious marriages/civil partnerships. S.59 and Schedule 6 significantly increase the powers to share information with each other.

OVERSIGHT

Office of the Immigration Service Commissioner (OISC)

Section 63: Immigration advisers and immigration service providers

The powers of the OISC have been increased. All advisers must now be registered (those not charging for services currently do not have to) but fees can be waived for them. There is a new duty to cancel registration where the person is deemed unfit to provide immigration advice. Where a person is charged with an offence involving dishonesty or deception, an indictable offence or certain immigration offences the Tribunal can at the Commissioner's request suspend a person's registration. The Commissioner can inspect the activities and business of registered persons. **This latter bit is In Force**

Section 64: Police Ombudsman for N.Ireland In Force

This allows the Ombudsman and Secretary of State to enter into an agreement to exercise specific enforcement actions.

MISCELLANEOUS

CITIZENSHIP

Section 65: Persons unable to acquire citizenship – natural father not married to mother

Positive changes to British nationality law to do away with problems of illegitimacy.

Section 66: Deprivation if conduct seriously prejudicial to vital interests of the UK In Force

This Section was inserted by the Secretary of State just prior to the Third Reading of the Bill in the House of Commons. It allows for a person to be deprived of citizenship, if a) citizenship was acquired by naturalisation and b) the Secretary of State is satisfied that the deprivation is conducive to public good because the person has conducted themselves in a manner seriously prejudicial to the vital interests of the UK. Even if this renders them stateless. However, leaving a person stateless was contested by the House of Lords who in the end voted on a committee being set up to analyse whether the British Nationality Act should be amended in this way. The House of Commons rejected the Lords' amendment but substituted two of their own which now form the basis of this Section in the Act.

This Section now has a third requirement in addition to (a) and (b) outlined above; c) and the Secretary of State has reasonable grounds for believing that the person is able to become a national of another country.

In addition, a requirement to review the operation of the deprivation power has been inserted. The first review is to be carried out after one year of this Section coming into force

and then every three years. It should be carried out as soon as practicable after these dates and laid before each House of Parliament.

Section 67: Embarkation checks **In Force**

Powers of examination currently exercisable by an immigration officer can be exercised by a 'designated person'.

A person can be given written notice by an immigration officer to submit to further examination.

The Secretary of State can require passengers embarking in the UK to produce embarkation cards

Sections 68-70

These relate to charging of fees in relation to the exercise of immigration and nationality functions, transitional and consequential provisions, details on orders, jurisdiction and commencement.

Welfare of Children **In Force**

Section 71: Duty Regarding the welfare of children

This clarifies that the Act does not limit the duty on the SSHD under s.55 of the Borders, Citizenship and Immigration Act 2009, which is the duty to safeguard and promote the welfare of children.

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