



# Immigration Act 2014

## 2014 CHAPTER 22

### PART 1

#### REMOVAL AND OTHER POWERS

##### *Removal*

#### **1 Removal of persons unlawfully in the United Kingdom**

For section 10 of the Immigration and Asylum Act 1999, substitute—

##### **“10 Removal of persons unlawfully in the United Kingdom**

- (1) A person may be removed from the United Kingdom under the authority of the Secretary of State or an immigration officer if the person requires leave to enter or remain in the United Kingdom but does not have it.
- (2) Where a person (“P”) is liable to be or has been removed from the United Kingdom under subsection (1), a member of P’s family who meets the following three conditions may also be removed from the United Kingdom under the authority of the Secretary of State or an immigration officer, provided that the Secretary of State or immigration officer has given the family member written notice of the intention to remove him or her.
- (3) The first condition is that the family member is—
  - (a) P’s partner,
  - (b) P’s child, or a child living in the same household as P in circumstances where P has care of the child,
  - (c) in a case where P is a child, P’s parent, or
  - (d) an adult dependent relative of P.
- (4) The second condition is that—

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- (a) in a case where the family member has leave to enter or remain in the United Kingdom, that leave was granted on the basis of his or her family life with P;
  - (b) in a case where the family member does not have leave to enter or remain in the United Kingdom, in the opinion of the Secretary of State or immigration officer the family member—
    - (i) would not, on making an application for such leave, be granted leave in his or her own right, but
    - (ii) would be granted leave on the basis of his or her family life with P, if P had leave to enter or remain.
- (5) The third condition is that the family member is neither a British citizen, nor is he or she entitled to enter or remain in the United Kingdom by virtue of an enforceable EU right or of any provision made under section 2(2) of the European Communities Act 1972.
- (6) A notice given to a family member under subsection (2) invalidates any leave to enter or remain in the United Kingdom previously given to the family member.
- (7) For the purposes of removing a person from the United Kingdom under subsection (1) or (2), the Secretary of State or an immigration officer may give any such direction for the removal of the person as may be given under paragraphs 8 to 10 of Schedule 2 to the 1971 Act.
- (8) But subsection (7) does not apply where a deportation order is in force against a person (and any directions for such a person's removal must be given under Schedule 3 to the 1971 Act).
- (9) The following paragraphs of Schedule 2 to the 1971 Act apply in relation to directions under subsection (7) (and the persons subject to those directions) as they apply in relation to directions under paragraphs 8 to 10 of Schedule 2 (and the persons subject to those directions)—
- (a) paragraph 11 (placing of person on board ship or aircraft);
  - (b) paragraph 16(2) to (4) (detention of person where reasonable grounds for suspecting removal directions may be given or pending removal in pursuance of directions);
  - (c) paragraph 17 (arrest of person liable to be detained and search of premises for person liable to arrest);
  - (d) paragraph 18 (supplementary provisions on detention);
  - (e) paragraph 18A (search of detained person);
  - (f) paragraph 18B (detention of unaccompanied children);
  - (g) paragraphs 19 and 20 (payment of expenses of custody etc);
  - (h) paragraph 21 (temporary admission to UK of person liable to detention);
  - (i) paragraphs 22 to 25 (bail);
  - (j) paragraphs 25A to 25E (searches etc).
- (10) The Secretary of State may by regulations make further provision about—
- (a) the time period during which a family member may be removed under subsection (2);
  - (b) the service of a notice under subsection (2).

(11) In this section “child” means a person who is under the age of 18.”

## **2 Restriction on removal of children and their parents etc**

After section 78 of the Nationality, Immigration and Asylum Act 2002, insert—

### **“78A Restriction on removal of children and their parents etc**

- (1) This section applies in a case where—
- (a) a child is to be removed from or required to leave the United Kingdom, and
  - (b) an individual who—
    - (i) is a parent of the child or has care of the child, and
    - (ii) is living in a household in the United Kingdom with the child,is also to be removed from or required to leave the United Kingdom (a “relevant parent or carer”).
- (2) During the period of 28 days beginning with the day on which the relevant appeal rights are exhausted—
- (a) the child may not be removed from or required to leave the United Kingdom; and
  - (b) a relevant parent or carer may not be removed from or required to leave the United Kingdom if, as a result, no relevant parent or carer would remain in the United Kingdom.
- (3) The relevant appeal rights are exhausted at the time when—
- (a) neither the child, nor any relevant parent or carer, could bring an appeal under section 82 (ignoring any possibility of an appeal out of time with permission), and
  - (b) no appeal brought by the child, or by any relevant parent or carer, is pending within the meaning of section 104.
- (4) Nothing in this section prevents any of the following during the period of 28 days mentioned in subsection (2)—
- (a) the giving of a direction for the removal of a person from the United Kingdom,
  - (b) the making of a deportation order in respect of a person, or
  - (c) the taking of any other interim or preparatory action.
- (5) In this section—
- “child” means a person who is aged under 18;
  - references to a person being removed from or required to leave the United Kingdom are to the person being removed or required to leave in accordance with a provision of the Immigration Acts.”

## **3 Independent Family Returns Panel**

Before section 55 of the Borders, Citizenship and Immigration Act 2009, insert—

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### **“54A Independent Family Returns Panel**

- (1) The Independent Family Returns Panel is established.
- (2) The Secretary of State must consult the Independent Family Returns Panel—
  - (a) in each family returns case, on how best to safeguard and promote the welfare of the children of the family, and
  - (b) in each case where the Secretary of State proposes to detain a family in pre-departure accommodation, on the suitability of so doing, having particular regard to the need to safeguard and promote the welfare of the children of the family.
- (3) A family returns case is a case where—
  - (a) a child who is living in the United Kingdom is to be removed from or required to leave the United Kingdom, and
  - (b) an individual who—
    - (i) is a parent of the child or has care of the child, and
    - (ii) is living in a household in the United Kingdom with the child, is also to be removed from or required to leave the United Kingdom.
- (4) The Secretary of State may by regulations make provision about—
  - (a) additional functions of the Independent Family Returns Panel,
  - (b) its status and constitution,
  - (c) the appointment of its members,
  - (d) the payment of remuneration and allowances to its members, and
  - (e) any other matters in connection with its establishment and operation.
- (5) Regulations under this section must be made by statutory instrument.
- (6) An instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section—
 

“child” means a person who is under the age of 18;

“pre-departure accommodation” has the same meaning as in Part 8 of the Immigration and Asylum Act 1999;

references to a person being removed from or required to leave the United Kingdom are to the person being removed or required to leave in accordance with a provision of the Immigration Acts.”

### *Powers of immigration officers*

## **4 Enforcement powers**

Schedule 1 (enforcement powers) has effect.

### *Detention and bail*

## **5 Restrictions on detention of unaccompanied children**

(1) Schedule 2 to the Immigration Act 1971 (administrative provisions as to control on entry etc) is amended as follows.

(2) In paragraph 16, after paragraph (2) insert—

“(2A) But the detention of an unaccompanied child under sub-paragraph (2) is subject to paragraph 18B.”

(3) In paragraph 18, after sub-paragraph (1) insert—

“(1A) But the detention of an unaccompanied child under paragraph 16(2) is subject to paragraph 18B.”

(4) After paragraph 18A (as inserted by paragraph 2 of Schedule 1) insert—

“18B (1) Where a person detained under paragraph 16(2) is an unaccompanied child, the only place where the child may be detained is a short-term holding facility, except where—

- (a) the child is being transferred to or from a short-term holding facility, or
- (b) sub-paragraph (3) of paragraph 18 applies.

(2) An unaccompanied child may be detained under paragraph 16(2) in a short-term holding facility for a maximum period of 24 hours, and only for so long as the following two conditions are met.

(3) The first condition is that—

- (a) directions are in force that require the child to be removed from the short-term holding facility within the relevant 24 hour period, or
- (b) a decision on whether or not to give directions is likely to result in such directions.

(4) The second condition is that the immigration officer under whose authority the child is being detained reasonably believes that the child will be removed from the short-term holding facility within the relevant 24 hour period in accordance with those directions.

(5) An unaccompanied child detained under paragraph 16(2) who has been removed from a short-term holding facility and detained elsewhere may be detained again in a short-term holding facility but only if, and for as long as, the relevant 24 hour period has not ended.

(6) An unaccompanied child who has been released following detention under paragraph 16(2) may be detained again in a short-term holding facility in accordance with this paragraph.

(7) In this paragraph—

“relevant 24 hour period”, in relation to the detention of a child in a short-term holding facility, means the period of 24 hours starting when the child was detained (or, in a case falling within sub-paragraph (5), first detained) in a short-term holding facility;

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“short-term holding facility” has the same meaning as in Part 8 of the Immigration and Asylum Act 1999;

“unaccompanied child” means a person—

- (a) who is under the age of 18, and
- (b) who is not accompanied (whilst in detention) by his or her parent or another individual who has care of him or her.”

## 6 Pre-departure accommodation for families

(1) Part 8 of the Immigration and Asylum Act 1999 (removal centres and detained persons) is amended as follows.

(2) In section 147 (interpretation)—

(a) after the definition of “custodial functions” insert—

““detained children” means detained persons who are under the age of 18;”;

(b) after the definition of “escort monitor” insert—

““pre-departure accommodation” means a place used solely for the detention of detained children and their families for a period of—

(a) not more than 72 hours, or

(b) not more than seven days in cases where the longer period of detention is authorised personally by a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975);”;

(c) in the definition of “removal centre”, after “facility,” insert “pre-departure accommodation,”;

(d) in the definition of “short-term holding facility”, at the end insert—

“but which is not pre-departure accommodation.”

(3) In section 155 (custodial functions and discipline), in subsection (2), at the end insert “and in pre-departure accommodation”.

(4) After section 157 insert—

### “157A Pre-departure accommodation

(1) The following provisions of this Part apply to pre-departure accommodation as they apply to removal centres—

(a) section 149 (contracting out of certain removal centres);

(b) section 150 (contracting out functions at directly managed removal centres);

(c) section 151 (intervention by Secretary of State).

(2) In the application of those provisions to pre-departure accommodation—

(a) references to a removal centre contract are to be read as a contract made under section 149(1) for the provision or running of pre-departure accommodation;

(b) references to a contracted out removal centre are to be read as references to pre-departure accommodation in relation to which a contract under section 149(1) is in force;

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- (c) references to a directly managed removal centre are to be read as references to pre-departure accommodation in relation to which there is no contract under section 149(1) in force;
- (d) references to removal centre rules are to be read as references to rules made under subsection (4).

(3) The Secretary of State may by regulations extend to pre-departure accommodation any other provision made by or under this Part in relation to removal centres.

(4) The Secretary of State may make rules for the regulation and management of pre-departure accommodation.”

## **7 Immigration bail: repeat applications and effect of removal directions**

(1) Schedule 2 to the Immigration Act 1971 (administrative provisions as to control on entry etc) is amended as follows.

(2) In paragraph 22 (bail) at the end insert—

“(4) A person must not be released on bail in accordance with this paragraph without the consent of the Secretary of State if—

- (a) directions for the removal of the person from the United Kingdom are for the time being in force, and
- (b) the directions require the person to be removed from the United Kingdom within the period of 14 days starting with the date of the decision on whether the person should be released on bail.”

(3) In paragraph 25—

- (a) the existing paragraph is re-numbered as sub-paragraph (1);
- (b) in that sub-paragraph, for “may” substitute “must”;
- (c) after that sub-paragraph insert—

“(2) Tribunal Procedure Rules must secure that, where the First-tier Tribunal has decided not to release a person on bail under paragraph 22, the Tribunal is required to dismiss without a hearing any further application by the person for release on bail (whether under paragraph 22 or otherwise) that is made during the period of 28 days starting with the date of the Tribunal’s decision, unless the person demonstrates to the Tribunal that there has been a material change in circumstances.”

(4) In paragraph 29 (grant of bail pending appeal), in sub-paragraph (1), at the end insert “(and paragraph 22 does not apply)”.

(5) In paragraph 30 (restrictions on grant of bail pending appeal), in sub-paragraph (1)—

- (a) after “if” insert “— (a)”;
- (b) for “or the power to give such directions is for the time being exercisable” substitute “and
- (b) the directions require the person to be removed from the United Kingdom within the period of 14 days starting with the date of the decision on whether the person should be released on bail.”

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(6) After paragraph 33, insert—

“33A (1) Tribunal Procedure Rules must make provision with respect to applications to the First-tier Tribunal under paragraphs 29 to 33 and matters arising out of such applications.

(2) Tribunal Procedure Rules must secure that, where the First-tier Tribunal has decided not to release a person on bail under paragraph 29, the Tribunal is required to dismiss without a hearing any further application by the person for release on bail (whether under paragraph 29 or otherwise) that is made during the period of 28 days starting with the date of the Tribunal’s decision, unless the person demonstrates to the Tribunal that there has been a material change in circumstances.”

### *Biometrics*

## **8 Provision of biometric information with immigration applications**

(1) Section 126 of the Nationality, Immigration and Asylum Act 2002 (power to require provision of physical data with certain immigration applications) is amended as follows.

(2) In subsection (2), after paragraph (c) insert—

“(d) a transit visa (within the meaning of section 41 of the Immigration and Asylum Act 1999), or

(e) a document issued as evidence that a person who is not a national of an EEA state or Switzerland is entitled to enter or remain in the United Kingdom by virtue of an enforceable EU right or of any provision made under section 2(2) of the European Communities Act 1972.”

(3) In subsection (4), after paragraph (f) insert—

“(fa) provide for biometric information to be recorded on any document issued as a result of the application in relation to which the information was provided;”.

(4) In subsection (9), after the definition of “code” insert—

““document” includes a card or sticker and any other method of recording information (whether in writing or by the use of electronic or other technology or by a combination of methods);”.

## **9 Identifying persons liable to detention**

In paragraph 18(2) of Schedule 2 to the Immigration Act 1971 (power to take steps for identifying persons detained under paragraph 16 of that Schedule) after “detained” insert “or liable to be detained”.

## **10 Provision of biometric information with citizenship applications**

(1) Section 41 of the British Nationality Act 1981 (regulations for giving effect to the Act) is amended as follows.

(2) In subsection (1), after paragraph (b) insert—



“(bza) requiring an application for registration or naturalisation of a person as a British citizen to be accompanied by biometric information, or enabling an authorised person to require an individual to whom such an application relates to provide biometric information;”.

(3) After subsection (1) insert—

“(1ZA) In subsection (1)(bza) “authorised person” and “biometric information” have the same meaning as in section 126 of the Nationality, Immigration and Asylum Act 2002.

(1ZB) Section 126(4) to (7) of that Act applies to regulations under subsection (1)(bza) as it applies to regulations under section 126(1) of that Act.

(1ZC) Section 8 of the UK Borders Act 2007 (power to make regulations about use and retention of biometric information) applies to biometric information provided in accordance with regulations under subsection (1)(bza) as it applies to biometric information provided in accordance with regulations under section 5(1) of that Act.

(1ZD) But (despite section 8(5)(b) of that Act) regulations made by virtue of subsection (1ZC) may provide for photographs of a person who is registered or naturalised as a British citizen to be retained until the person is issued with a United Kingdom passport describing the person as a British citizen.”

(4) In subsection (8)(b) for “(1)(bc)” substitute “(1)(bza), (bc)”.

## **11 Biometric immigration documents**

After section 7(2) of the UK Borders Act 2007 (effect of failure to comply with regulations about biometric immigration documents) insert—

“(2A) If the regulations require a biometric immigration document to be used in connection with an application or claim, they may require or permit the application or claim to be disregarded or refused if that requirement is not complied with.”

## **12 Meaning of “biometric information”**

(1) Section 15 of the UK Borders Act 2007 (biometric immigration documents: interpretation) is amended as follows.

(2) In subsection (1), omit paragraphs (b) and (c).

(3) After subsection (1) insert—

“(1A) For the purposes of section 5 “biometric information” means—

- (a) information about a person’s external physical characteristics (including in particular fingerprints and features of the iris), and
- (b) any other information about a person’s physical characteristics specified in an order made by the Secretary of State.

(1B) An order under subsection (1A)(b)—

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- (a) may specify only information that can be obtained or recorded by an external examination of a person;
- (b) must not specify information about a person's DNA.

(1C) Section 6(6) applies to an order under subsection (1A)(b) as it applies to regulations under section 5(1)."

(4) Schedule 2 (which amends other enactments) has effect.

### 13 Safeguards for children

(1) Schedule 2 to the Immigration Act 1971 (entry control) is amended as follows.

(2) In paragraph 4 (power to take biometric information on examination), after sub-paragraph (6) (as inserted by paragraph 1(3) of Schedule 2) insert—

“(7) A person (“P”) who is under 16 may not be required to provide biometric information under sub-paragraph (5) unless—

- (a) the decision to require P to provide the information has been confirmed by a chief immigration officer, and
- (b) the information is provided in the presence of a person of full age who is—
  - (i) P's parent or guardian, or
  - (ii) a person who for the time being takes responsibility for P.

(8) The person mentioned in sub-paragraph (7)(b)(ii) may not be—

- (a) a person who is entitled to require the provision of information under sub-paragraph (5) (an “authorised person”), or
- (b) an officer of the Secretary of State who is not such a person.

(9) Sub-paragraph (7) does not prevent an authorised person requiring the provision of biometric information by a person the authorised person reasonably believes to be 16 or over.”

(3) In paragraph 18 (power to take biometric information from detained persons), after sub-paragraph (2A) insert—

“(2B) Paragraph 4(7) to (9) applies to sub-paragraph (2) as it applies to paragraph 4(5).”

### 14 Use and retention of biometric information

(1) For section 8 of the UK Borders Act 2007 substitute—

#### **“8 Use and retention of biometric information**

(1) The Secretary of State must by regulations make provision about the use and retention by the Secretary of State of biometric information provided in accordance with regulations under section 5(1).

(2) The regulations must provide that biometric information may be retained only if the Secretary of State thinks that it is necessary to retain it for use in connection with—

- (a) the exercise of a function by virtue of the Immigration Acts, or

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- (b) the exercise of a function in relation to nationality.
- (3) The regulations may include provision permitting biometric information retained by virtue of subsection (2) also to be used—
  - (a) in connection with the prevention, investigation or prosecution of an offence,
  - (b) for a purpose which appears to the Secretary of State to be required in order to protect national security,
  - (c) in connection with identifying persons who have died, or are suffering from illness or injury,
  - (d) for the purpose of ascertaining whether a person has acted unlawfully, or has obtained or sought anything to which the person is not legally entitled, and
  - (e) for such other purposes (whether in accordance with functions under an enactment or otherwise) as the regulations may specify.
- (4) The regulations must include provision about the destruction of biometric information.
- (5) In particular the regulations must require the Secretary of State to take all reasonable steps to ensure that biometric information is destroyed if the Secretary of State—
  - (a) no longer thinks that it is necessary to retain the information for use as mentioned in subsection (2), or
  - (b) is satisfied that the person to whom the information relates is a British citizen, or a Commonwealth citizen who has a right of abode in the United Kingdom as a result of section 2(1)(b) of the Immigration Act 1971.
- (6) The regulations must also—
  - (a) require that any requirement to destroy biometric information by virtue of the regulations also applies to copies of the information, and
  - (b) require the Secretary of State to take all reasonable steps to ensure—
    - (i) that data held in electronic form which relates to biometric information which has to be destroyed by virtue of the regulations is destroyed or erased, or
    - (ii) that access to such data is blocked.
- (7) But a requirement to destroy biometric information or data is not to apply if and in so far as the information or data is retained in accordance with and for the purposes of another power.
- (8) The regulations must include provision—
  - (a) entitling a person whose biometric information has to be destroyed by virtue of the regulations, on request, to a certificate issued by the Secretary of State to the effect that the Secretary of State has taken the steps required by virtue of subsection (6)(b), and
  - (b) requiring such a certificate to be issued within the period of 3 months beginning with the date on which the request for it is received by the Secretary of State.
- (9) Section 6(6) applies to regulations under this section as it applies to regulations under section 5(1).”

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(2) In the Immigration and Asylum Act 1999, after section 144 insert—

**“144A Use and retention of fingerprints etc.**

(1) Section 8 of the UK Borders Act 2007 (power to make regulations about use and retention of biometric information) applies to—

- (a) fingerprints taken by virtue of section 141, and
- (b) biometric information taken by virtue of regulations under section 144,

as it applies to biometric information provided in accordance with regulations under section 5(1) of that Act.

(2) Regulations made by virtue of subsection (1)(a) must require fingerprints taken from a person (“F”) by virtue of section 141(7)(f) to be destroyed when fingerprints taken from the person whose dependant F is are destroyed.

(3) Regulations made by virtue of subsection (1)(b) must make equivalent provision in relation to biometric information taken by virtue of any provision of regulations under section 144 which is equivalent to section 141(7)(f).”

(3) In section 126 of the Nationality, Immigration and Asylum Act 2002 (power to require provision of physical data with certain immigration applications), after subsection (8) insert—

“(8A) Section 8 of the UK Borders Act 2007 (power to make regulations about use and retention of biometric information) applies to biometric information provided in accordance with regulations under subsection (1) as it applies to biometric information provided in accordance with regulations under section 5(1) of that Act.”