

# IMMIGRATION ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 6: Miscellaneous

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

394. This section inserts new sections 4E to 4J into the 1981 Act to provide for registration as a British citizen for persons born before 1 July 2006 to a British father, where their parents were unmarried at the time of their birth. In particular, they provide an entitlement to be registered for those who would have become British automatically had their parents been married at the time of their birth and for those who would currently have an entitlement to registration but for the fact that their parents were not married at the time of their birth.
395. Section 4E stipulates the general conditions to be met for the purposes of sections 4E to 4I.
396. Section 4F entitles a person to be registered as a British citizen if the person meets the general conditions in 4E and would be entitled to be registered as a British citizen under the specified registration provisions of the 1981 Act had the person's mother been married to the person's natural father at the time of his or her birth. Section 4F subsection (4) provides a power for the Secretary of State to waive the need for any or all of the parental consents to be given if the relevant registration provision is section 3(5) of the 1981 Act.
397. Section 4G entitles a person to be registered as a British citizen if the person meets the general conditions in 4E and if, at any time after commencement of the 1981 Act, the person would automatically have become a British citizen at birth under the 1981 Act or the British Nationality (Falkland Islands) Act 1983, had the person's mother been married to the person's natural father at the time of the person's birth. Section 4G(5) provides a power for the Secretary of State to waive the need for any or all of the consents required under subsection (3) as read with subsection (4) to be waived in a particular case.
398. Section 4H entitles a person to be registered as a British citizen if the person meets the general conditions in 4E, was a citizen of the United Kingdom and Colonies immediately before commencement of the 1981 Act and would automatically have become a British citizen under the 1981 Act had the person's mother been married to the person's natural father at the time of the person's birth.
399. Section 4I entitles a person to be registered as a British citizen if the person meets the general conditions in 4E, is an eligible former British national or non-British national and would have automatically become a British citizen under the 1981 Act had the person's mother been married to the person's natural father at the time of the person's birth.

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400. Section 4J contains supplementary provisions, in particular to stipulate that a person's "natural father" is someone who satisfies the requirements as to proof of paternity prescribed in regulations under section 50(9B) of the 1981 Act.

***Section 66: Deprivation of citizenship: conduct seriously prejudicial to the interests of the UK***

401. At present, the Secretary of State can deprive a person of their citizenship under section 40 of the 1981 Act. This can be done where either the individual has acquired it using fraud, false representation or concealment of a material fact (section 40(3)); or where the Secretary of State is satisfied that doing so is 'conducive to the public good' (section 40(2)) and the person would not be left stateless as a result (section 40(4)).
402. *Subsection (1)* amends section 40 and inserts new subsection (4A) to create a sub-category of cases which enables the Secretary of State to deprive, by order, a person of their British citizenship status - regardless of whether or not it will render them stateless - where the individual has (i) acquired citizenship as a result of naturalisation and (ii) conducted themselves in a manner seriously prejudicial to the vital interests of the UK (and so for this reason it is conducive to the public good to deprive that person). The order requires the Secretary of State to have reasonable grounds to believe that the person is able, under the law of a country or territory outside the UK, to become a national of such a country or territory.
403. *Subsection (2)* provides that the Secretary of State may take into account the manner in which a person conducted him or herself before this section came into force when deciding to make an order under subsection (2) of section 40 of the 1981 Act.
404. *Subsection (3)* inserts section 40B into the 1981 Act to require the Secretary of State to arrange a review of the use of the power in section 40(4A) after an initial one year period and each subsequent three year period. The Secretary of State must lay the report of the outcome of the review before each House of Parliament.
405. The purpose of this provision is to qualify the existing provisions on deprivation so that in the most serious cases - such as those involving national security, terrorism, espionage or taking up arms against British or allied forces - individuals can still be deprived of their citizenship, where this has been acquired by means of naturalisation, without regard to whether or not it will render them stateless, provided that the Home Secretary has reasonable grounds to believe they are able to become a national of another country or territory.
406. This provision is intended to be more closely aligned with the 1961 UN Convention on the Reduction of Statelessness, which allowed states to declare on ratifying the Convention that they retain the right to deprive a person and render them stateless in specific circumstances. The UK ratified the Convention on 29 March 1966 and explicitly retained the right to deprive where the person either " i) has, in regard of an express prohibition of Her Britannic Majesty, rendered or continued to render services to, or received or continued to receive emoluments from, another State, or ii) has conducted himself in a manner seriously prejudicial to the vital interests of Her Britannic Majesty."

***Section 67: Embarkation checks***

407. This section provides that Schedule 8 (embarkation checks) has effect.

## **Schedule 8: Embarkation checks**

### **Part 1: Functions Exercisable by Designated Persons**

#### **Examinations by designated person**

- 408. *Paragraph 2* of this Schedule allows for powers of examination exercisable by an immigration officer to be exercised by a designated person.
- 409. *Paragraphs 2(1) and (2)* amend paragraph 3 of Schedule 2 to the 1971 Act to allow a “designated person” to exercise the power of examination in relation to any person who is embarking or seeking to embark in the UK.
- 410. *Paragraph 2(3)* replaces sub-paragraph (1A) of paragraph 3 of Schedule 2 so that, whether the initial examination is undertaken by an immigration officer or designated person, a person so examined may be required by notice in writing given by an immigration officer, to submit to further examination.

#### **Information and Documents**

- 411. *Paragraph 3* of this Schedule amends paragraph 4 of Schedule 2 to the 1971 Act to enable a designated person to require information and documents relevant to an examination.
- 412. *Paragraph 3(2)* amends paragraph 4(1) of Schedule 2 so that a passenger examined under paragraph 3(1) is under a duty to provide the immigration officer or the designated person with all such information in his possession as that person may require for the purpose of either his, or any other person’s, functions under that paragraph. So, a designated person can require such information as may be necessary to allow an immigration officer to locate the passenger in order to give him written notice that he is required to submit to further examination.
- 413. *Paragraph 3(3)* amends paragraph 4(2) of Schedule 2 to require a person examined under paragraph 3, if so required by an immigration officer or a designated person, to produce a specified document or to declare whether they are carrying or have carried a document of a type which the immigration officer or designated person consider relevant for the purposes of the examination.
- 414. *Paragraph 3(4)* amends paragraph 4(3) of Schedule 2 to confirm that an immigration officer can exercise the power of search set out in that paragraph, even if they did not commence the examination or require the person to produce documents under paragraph 4(2)(b).
- 415. *Paragraph 3(5)* amends paragraph 4(4) of Schedule 2 to confirm that any immigration officer may exercise the power to examine and detain a passport or other document, even if they did not commence the examination. Where a passport or other document is produced or found in accordance with this paragraph, an immigration officer may examine it and detain it.
- 416. *Paragraph 3(6)* inserts new sub-paragraphs (4A) and (4B) into paragraph 4 of Schedule 2. New sub-paragraph (4A) provides the power for a “designated person” to be able to examine and detain a passport or other document produced during the examination. Where this power is exercised, the designated person must deliver the passport or document to an immigration officer as soon as reasonably practicable. The new sub-paragraph (4B) provides for an immigration officer to treat a document delivered to him under this paragraph as though he had found the document himself under sub-paragraph (4)(a), (b) or (c).
- 417. *Paragraph 3(7)* amends paragraph 4(5) of Schedule 2 so that a passenger examined under paragraph 3 may be required to provide biometric information (in particular, fingerprints or features of the iris or any other part of the eye) to either an immigration

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officer or a designated person, where this is necessary to determine whether a passport or other document relates to that person.

### **Embarkation cards**

418. *Paragraph 4* of this Schedule amends paragraph 5 of Schedule 2 to the 1971 Act to enable the Secretary of State to make provision by order to require passengers embarking in the UK to produce embarkation cards to a designated person.

### **Designations**

419. *Paragraph 5* of this Schedule inserts new paragraph 5A in Schedule 2 to the 1971 Act to make provision in relation to designated persons.
420. New paragraph 5A(2) of Schedule 2 to the 1971 Act provides that a designation will be subject to such limitations as may be specified in the designation.
421. New paragraph 5A(3) sets out that a limitation under paragraph (5A)(2) may in particular relate to the functions that are exercised by that designated person.
422. New paragraph 5A(4) provides that a designation may be permanent or for a specified period and may in either case be withdrawn or varied.
423. New paragraph 5A(5) provides that the power to designate, or to withdraw or vary a designation, is exercised by the Secretary of State giving notice to the person in question.
424. New paragraph 5A(6) provides that the Secretary of State may designate a person under this paragraph only if satisfied that the person is capable of effectively carrying out the functions that are exercisable by virtue of the designation, has received adequate training in respect of the exercise of those functions, and is otherwise a suitable person to exercise those functions.

### **Directions to carriers and operators of ports**

425. *Paragraph 6* inserts new paragraph 5B in Schedule 2 to the 1971 Act to enable the Secretary of State to direct carriers and port operators to make specified arrangements for the exercise of functions by designated persons.
426. New paragraph 5B(1) makes provision for the Secretary of State to direct carriers or port operators to make arrangements for “designated persons” to exercise a specified function in relation to persons of a specified description. So a carrier or port operator may be required to make arrangements for designated persons to exercise the power of examination in respect of embarking passengers travelling on a specified route, or from a specified port.
427. New paragraph 5B(2) provides that such a direction must specify the port where, and the date (or dates) and time (or times) when a function is to be exercised under the arrangements.
428. New paragraph 5B(3) requires a direction under this paragraph to be given in writing.
429. New paragraph 5B(4) provides that a direction given under this paragraph may specify a description of persons by reference to destination, route, date and time of travel to which it applies.
430. New paragraph 5B(5) defines “function” and “specified” in directions under this paragraph.

## **Part 2: Other Provision**

### **Offences**

431. *Paragraph 7* amends section 27 of the 1971 Act to provide that a failure by a carrier or port operator to comply with a direction issued under new paragraph (5B) of Schedule 2 without reasonable excuse will be an offence under that section.

### **Section 68: Fees**

432. *Subsection (1)* provides for the Secretary of State to charge fees for the exercise of functions in connection with immigration and nationality. The term “functions” includes, but is not limited to, the specified functions listed in section 51 of the 2006 Act (applications, claims, services and processes). Use of the term simplifies the legislation, ensuring that there is no longer a need to decide which category a particular activity falls into. Functions can be delivered overseas, at the border or within the UK. They can be delivered by the Secretary of State, her officers, agents, commercial partners or any person acting on her behalf.
433. *Subsections (2) to (7)* provide that the existing legislative structure consisting of a power contained in primary legislation and exercised by way of a fees order and fees regulations is maintained. Chargeable functions will be set out in a fees order; and fee amounts set out in fees regulations (subsections (7) and (8)) which will be subject to the negative resolution procedure. A fees order made under section 68 is subject to the affirmative resolution procedure (see section 74).
434. *Subsection (4)* provides that the fees order must also specify the way that fees will be set. Fees must be charged either as a fixed amount; calculated using an hourly rate; as a combination of these; or by way of another factor.
435. *Subsection (5)* provides that the order must also specify the maximum amount that may be charged in respect of the fixed element of the fee. A minimum level of fixed fee may also be specified for particular functions.
436. *Subsection (6)* provides that where fees are set by reference to an hourly rate or other factor (subsection (4)(b)) the fees order must specify how the fee or fee part is to be calculated. Consistent with subsection (5), a maximum rate or other factor must be specified and a minimum rate or other factor may be specified for particular fees.
437. *Subsection (7)* confirms that fees for all functions will be set out in fees regulations. Where the fee is set as a fixed amount, this amount will be set out in regulations (most immigration and visa fees are set in this way). Where the fee is to be calculated by reference to an hourly rate or other factor, or where it comprises more than one element, the amounts and rates will be set out in regulations.
438. *Subsection (8)* provides that the fee amounts and rates set out in fees regulations must not exceed the maxima or be less than any minima set out in a fees order. Consistent with existing powers in the 2004 and 2006 Acts, it also provides that the fee for the exercise of a function may exceed the cost of exercising that function.
439. *Subsection (9)* consolidates the matters that may already be taken into account when setting certain fees – administrative costs, benefits and the costs of other functions – and extends these to include international comparisons (fees set by other countries for similar functions), the promotion of economic growth and mutual or reciprocal arrangements with other countries. It also ensures that these matters may be considered in relation to fees for all relevant functions. Costs may include the costs of the Secretary of State or any other person performing a function (for example a commercial provider exercising functions pursuant to a contract with the department). Subsection (9) ensures that those who use the immigration and nationality system continue to pay their fair share towards its continued running and that fees and any future fee changes can be

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targeted to promote economic growth, including reducing fees in some categories or offering fast-track services for visitors and economically valuable migrants.

440. *Subsection (9)(c)* confirms that fees can be set to take account of the cost of exercising any function in connection with immigration or nationality. This ensures that individual fees may be set at a level that reflects the cost of operating the immigration system, by applying cross-subsidy powers to the full range of functions rather than, as at present, being limited to specific chargeable functions.
441. *Subsections (9)(d) to (f)* provide that fees can be set with regard to economic and international considerations. For example, application fees may be set at a level to attract tourists or economically valuable migrants to the UK. Premium service fees may be set at a level to ensure that premium services may be made available to commercially important people, and those the UK considers will support international trade and economic growth.
442. *Subsection (10)* ensures that powers in relation to exceptions, discretion etc. are carried forward from section 51 of the 2006 Act.
443. *Subsection (12)* confirms the definition of ‘costs’, including those of commercial providers exercising immigration functions, and states that it applies to this section as well as sections 69 and 70.
444. *Subsection (13)* ensures that it is possible to charge a different amount for the same function in different circumstances, for example where the Government wants to offer a concession to encourage applications in a particular route or for a particular group to promote economic growth. This applies to any function specified in this section and section 70.

***Section 69: Fees orders and fees regulations: supplemental***

445. This section sets out supplemental provisions which clarify the way that the powers in section 68 may be exercised and how fees paid may be applied.

***Section 70: Power to charge fees for attendance services in particular cases***

446. *Subsection (1)* confirms that section 70 only applies when a person carries out a function in connection with immigration or nationality at a location outside of the United Kingdom, at an agreed time and place at the request of a customer. Attendance services are optional and bespoke services, which are provided in addition to other chargeable services.
447. *Subsection (2)* states that the ‘attendance service’ defined in subsection (1) does not include the exercise of other chargeable functions, for which fees must be set out in the fees order and fees regulations.
448. *Subsection (4)* provides that the customer may be charged a fee for the ‘attendance service’ in order to ensure that the costs of providing the service are recovered.

***Section 71: Duty regarding the welfare of children***

449. This section confirms that this Act does not limit any duty imposed on the Secretary of State or any other person by section 55 of the Borders, Citizenship and Immigration Act 2009 (duty regarding the welfare of children).