



# Immigration Act 2016

## 2016 CHAPTER 19

### PART 3

#### ENFORCEMENT

##### *Powers of immigration officers etc*

#### **46 Powers in connection with examination, detention and removal**

- (1) Schedule 2 to the Immigration Act 1971 (administrative provisions as to control on entry etc) is amended as follows.
- (2) In paragraph 2(1) (examination by immigration officers) at the end of paragraph (c) insert “; and
  - (d) whether, if he has been given leave which is still in force, his leave should be curtailed.”
- (3) After paragraph 15 insert—

##### *“Search of premises in connection with removal*

- 15A (1) This paragraph applies if—
- (a) an immigration officer is lawfully on any premises, and
  - (b) a person who is liable to be detained under paragraph 16(2) is on the premises.
- (2) The immigration officer may search the premises for documents which—
- (a) relate to the person, and
  - (b) may be evidence for a ground on which the person’s leave to enter or remain in the United Kingdom may be curtailed.
- (3) The power may be exercised—

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- (a) only if the immigration officer has reasonable grounds for believing there are documents within sub-paragraph (2) on the premises, and
    - (b) only to the extent that it is reasonably required for the purpose of discovering such documents.
  - (4) An immigration officer searching premises under this paragraph may seize any document the officer finds which the officer has reasonable grounds for believing is a document within sub-paragraph (2).
  - (5) Sub-paragraph (6) applies where—
    - (a) an immigration officer is searching premises under this paragraph, and
    - (b) any document the officer has reasonable grounds for believing is a document within sub-paragraph (2) is stored in any electronic form and is accessible from the premises.
  - (6) The immigration officer may require the document to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form.
  - (7) If a requirement under sub-paragraph (6) is not complied with or a document to which that sub-paragraph applies cannot be produced in a form of the kind mentioned in that sub-paragraph, the immigration officer may seize the device or medium on which it is stored.
  - (8) But sub-paragraphs (4) to (7) do not apply to a document which the immigration officer has reasonable grounds for believing is an item subject to legal privilege.
  - (9) An immigration officer may retain a document seized under this paragraph while—
    - (a) the person to whom the document relates is liable to be detained under paragraph 16(2), and
    - (b) the document falls within sub-paragraph (2)(b).
  - (10) But a document may not be retained for the purpose mentioned in sub-paragraph (9) if a photograph or copy would be sufficient for that purpose.”
- (4) In paragraph 25A (entry and search of premises where person arrested or detained under Schedule 2)—
- (a) after sub-paragraph (7) insert—
    - “(7A) Sub-paragraph (7B) applies where—
      - (a) an officer is searching premises under this paragraph, and
      - (b) any document the officer has reasonable grounds for believing is a relevant document is stored in any electronic form and is accessible from the premises.
    - (7B) The officer may require the document to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form.

- (7C) If a requirement under sub-paragraph (7B) is not complied with or a document to which that sub-paragraph applies cannot be produced in a form of the kind mentioned in that sub-paragraph, the officer may seize the device or medium on which it is stored.”
  - (b) in sub-paragraph (8) for “sub-paragraph (7)(a) does” substitute “sub-paragraphs (7) to (7C) do”, and
  - (c) in sub-paragraph (8A) for “sub-paragraph (7)” substitute “this paragraph”.
- (5) In paragraph 25B (search of person arrested under Schedule 2) after sub-paragraph (8) insert—
- “(8A) Sub-paragraph (8B) applies where—
    - (a) an officer is searching a person under this paragraph, and
    - (b) any document the officer has reasonable grounds for believing is a document within sub-paragraph (3)(b) is stored in any electronic form on a device or medium found on the person.
  - (8B) The officer may require the document to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form.
  - (8C) If a requirement under sub-paragraph (8B) is not complied with or a document to which that sub-paragraph applies cannot be produced in a form of the kind mentioned in that sub-paragraph, the officer may seize the device or medium on which it is stored.
  - (8D) Sub-paragraphs (8B) and (8C) do not apply to a document which the officer has reasonable grounds for believing is an item subject to legal privilege.”

#### **47 Search of premises in connection with imposition of civil penalty**

- (1) This section applies if an immigration officer is lawfully on any premises.
- (2) The immigration officer may search the premises for documents which might be of assistance in determining whether a person is liable to the imposition of a penalty under—
  - (a) section 15 of the Immigration, Asylum and Nationality Act 2006 (penalty for employing illegal worker etc), or
  - (b) section 23 or 25 of the Immigration Act 2014 (penalty for leasing premises to disqualified person etc).
- (3) The power may be exercised—
  - (a) only if the immigration officer has reasonable grounds for believing there are documents within subsection (2) on the premises, and
  - (b) only to the extent that it is reasonably required for the purpose of discovering such documents.
- (4) An immigration officer searching premises under this section may seize any document the officer finds which the officer has reasonable grounds for believing is a document within subsection (2).
- (5) Subsection (6) applies where—
  - (a) an immigration officer is searching premises under this section, and

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- (b) any document the officer has reasonable grounds for believing is a document within subsection (2) is stored in any electronic form and is accessible from the premises.
- (6) The immigration officer may require the document to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form.
- (7) If a requirement under subsection (6) is not complied with or a document to which that subsection applies cannot be produced in a form of the kind mentioned in that subsection, the immigration officer may seize the device or medium on which it is stored.
- (8) But subsections (4) to (7) do not apply to a document or item which the immigration officer has reasonable grounds for believing is an item subject to legal privilege.
- (9) An immigration officer may retain a document or item seized under this section while the officer has reasonable grounds for believing that the document may be required—
  - (a) for the purposes of determining whether a person is liable to the imposition of a penalty under a provision mentioned in subsection (2),
  - (b) for the purposes of any objection relating to the imposition of such a penalty, or
  - (c) for the purposes of any appeal or other legal proceedings relating to the imposition of such a penalty.
- (10) But a document or item may not be retained for a purpose mentioned in subsection (9) if a photograph or copy would be sufficient for that purpose.
- (11) Section 28I of the Immigration Act 1971 (seized material: access and copying) applies to a document seized and retained under this section as it applies to anything seized and retained under Part 3 of that Act.

#### **48 Seizure and retention in relation to offences**

- (1) This section applies if an immigration officer is lawfully on any premises.
- (2) The immigration officer may seize anything which the officer finds in the course of exercising a function under the Immigration Acts if the officer has reasonable grounds for believing—
  - (a) that it has been obtained in consequence of the commission of an offence, and
  - (b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.
- (3) The immigration officer may seize anything which the officer finds in the course of exercising a function under the Immigration Acts if the officer has reasonable grounds for believing—
  - (a) that it is evidence in relation to an offence, and
  - (b) that it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.
- (4) The immigration officer may require any information which is stored in any electronic form and is accessible from the premises to be produced if the officer has reasonable grounds for believing—
  - (a) that—

- (i) it is evidence in relation to an offence, or
    - (ii) it has been obtained in consequence of the commission of an offence, and
  - (b) that it is necessary to seize it in order to prevent it being concealed, lost, tampered with or destroyed.
- (5) The reference in subsection (4) to information which is stored in any electronic form being produced is to such information being produced in a form—
  - (a) in which it can be taken away, and
  - (b) in which it is visible and legible or from which it can readily be produced in a visible and legible form.
- (6) This section does not authorise an immigration officer to seize an item which the officer has reasonable grounds for believing is an item subject to legal privilege.
- (7) Anything seized by an immigration officer under this section which relates to an immigration offence may be retained so long as is necessary in all the circumstances and in particular—
  - (a) may be retained, except as provided for by subsection (8)—
    - (i) for use as evidence at a trial for an offence, or
    - (ii) for forensic examination or for investigation in connection with an offence, and
  - (b) may be retained in order to establish its lawful owner, where there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence.
- (8) Nothing may be retained for a purpose mentioned in subsection (7)(a) if a photograph or copy would be sufficient for that purpose.
- (9) Section 28I of the Immigration Act 1971 (seized material: access and copying) applies to anything seized and retained under this section which relates to an immigration offence as it applies to anything seized and retained by an immigration officer under Part 3 of that Act.
- (10) This section does not apply in relation to anything which may be seized by an immigration officer under—
  - (a) section 19 of the Police and Criminal Evidence Act 1984 as applied by an order under section 23 of the Borders, Citizenship and Immigration Act 2009, or
  - (b) Article 21 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (SI 1989/1341 (NI 12)) as applied by that section.
- (11) In this section and section 49 “immigration offence” means an offence which relates to an immigration or nationality matter.

#### **49 Duty to pass on items seized under section 48**

- (1) This section applies if an immigration officer exercises—
  - (a) the power under section 48 to seize or take away an item on the basis that the item or information contained in it has been obtained in consequence of the commission of, or is evidence in relation to, an offence other than an immigration offence (a “relevant offence”), or

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- (b) a power to that effect in Part 3 of the Immigration Act 1971 as applied by section 14(3) of the Asylum and Immigration (Treatment of Claimants etc) Act 2004.
- (2) Subject to subsection (3), the immigration officer must, as soon as is reasonably practicable after the power is exercised, notify a person who the immigration officer thinks has functions in relation to the investigation of the relevant offence.
  - (3) If the immigration officer has reasonable grounds for believing that the item referred to in subsection (1) has also been obtained in consequence of the commission of, or is evidence in relation to, an immigration offence, the immigration officer may notify a person who the immigration officer thinks has functions in relation to the investigation of the relevant offence.
  - (4) A person notified under this section of the exercise of a power mentioned in subsection (1) in relation to an item must, as soon as is reasonably practicable after being so notified, inform the immigration officer whether the person will accept the item.
  - (5) The person may inform the immigration officer that the person will not accept the item only if—
    - (a) the person does not think the item or information contained in it has been obtained in consequence of the commission of, or is evidence in relation to, an offence,
    - (b) the person does not have functions in relation to the investigation of the relevant offence, or
    - (c) the person thinks that it would be more appropriate for the relevant offence to be investigated by another person with such functions.
  - (6) If the person informs the immigration officer that the person will accept the item, the immigration officer must give it to the person as soon as is reasonably practicable.
  - (7) Once the item has been given as mentioned in subsection (6), any provision of an enactment which applies to items seized or taken away by the person applies to the item as if it had been seized or taken away by the person for the purposes of the investigation of the relevant offence.
  - (8) If the person informs the immigration officer that the person will not accept the item because subsection (5)(a) applies, the immigration officer must, as soon as is reasonably practicable, return the item in accordance with subsection (10).
  - (9) If the person informs the immigration officer that the person will not accept the item because subsection (5)(b) or (c) applies, the immigration officer must, as soon as is reasonably practicable—
    - (a) notify the exercise of a power mentioned in subsection (1) in relation to the item to another person (if any) who the immigration officer thinks has functions in relation to the investigation of the relevant offence, or
    - (b) if there is no such person, return the item in accordance with subsection (10).
  - (10) An item which must be returned in accordance with this subsection must be returned—
    - (a) to the person from whom it was seized, or
    - (b) if there is no such person, to the place from which it was seized or taken away.
  - (11) Where an item to which this section applies or information contained in such an item has been obtained in consequence of the commission of, or is evidence in relation to,

more than one offence, references in this section to the relevant offence are to any of those offences.

- (12) A function conferred or imposed by this section on an immigration officer may be exercised by any other immigration officer.
- (13) In this section “enactment” includes—
- (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978,
  - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,
  - (c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales, and
  - (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation.

## **50 Retention of things seized under Part 3 of the Immigration Act 1971**

After section 28H of the Immigration Act 1971 insert—

### **“28ZI Retention of seized material**

- (1) This section applies to anything seized by an immigration officer under this Part for the purposes of the investigation of an offence or on the basis that it may be evidence relating to an offence.
- (2) Anything seized as mentioned in subsection (1) may be retained so long as is necessary in all the circumstances and in particular—
  - (a) may be retained, except as provided for by subsection (3)—
    - (i) for use as evidence at a trial for an offence, or
    - (ii) for forensic examination or for investigation in connection with an offence, and
  - (b) may be retained in order to establish its lawful owner, where there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence.
- (3) Nothing may be retained for a purpose mentioned in subsection (2)(a) if a photograph or copy would be sufficient for that purpose.”

## **51 Search for nationality documents by detainee custody officers etc**

- (1) The Secretary of State may direct a detainee custody officer, prison officer or prisoner custody officer to exercise any of the powers in subsection (6) in relation to—
  - (a) a detained person who is detained in a removal centre, prison or young offender institution, or
  - (b) a person who is detained in a short-term holding facility.
- (2) The Secretary of State may direct a prison officer or prisoner custody officer to exercise any of the powers in subsection (6) in relation to a person detained in a prison or young offender institution—
  - (a) who has been recommended for deportation by a court under section 3(6) of the Immigration Act 1971,



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- (b) in respect of whom the Secretary of State has made a deportation order under section 5(1) of that Act,
  - (c) to whom a notice has been given in accordance with regulations under section 105 of the Nationality, Immigration and Asylum Act 2002 (notice of decision) of a decision to make a deportation order against that person, or
  - (d) in respect of whom the Secretary of State must make, or has made, a deportation order under section 32(5) of the UK Borders Act 2007.
- (3) In this section and section 52 “relevant officer” means a detainee custody officer, prison officer or prisoner custody officer.
- (4) The Secretary of State may give a direction in relation to a person detained as mentioned in subsection (1) or (2) only if the Secretary of State has reasonable grounds to believe a relevant nationality document will be found if a power in subsection (6) is exercised in relation to the person.
- (5) A relevant officer to whom a direction is given under subsection (1) or (2) must (if able to do so) comply with it.
- (6) The powers referred to in subsections (1), (2) and (4) are—
  - (a) to require the person to hand over to the relevant officer all relevant nationality documents in his or her possession,
  - (b) to search for such documents and to take possession of any that the relevant officer finds,
  - (c) to inspect any relevant nationality documents obtained in the course of the exercise of a power in paragraph (a) or (b), and
  - (d) to seize and retain any such documents so obtained.
- (7) The power in subsection (6)(b) is a power to search any of the following—
  - (a) the person;
  - (b) anything the person has with him or her;
  - (c) the person’s accommodation in the removal centre, short-term holding facility, prison or young offender institution;
  - (d) any item of the person’s property in the removal centre, short-term holding facility, prison or young offender institution.
- (8) A full search may be carried out under subsection (7)(a); but such a search may not be carried out in the presence of—
  - (a) another person detained as mentioned in subsection (1) or (2), or
  - (b) a person of the opposite sex.
- (9) An intimate search may not be carried out under subsection (7)(a).
- (10) A relevant officer may if necessary use reasonable force for the purposes of exercising a power in subsection (6)(a) or (b).
- (11) A relevant officer must pass a relevant nationality document seized and retained under subsection (6)(d) to the Secretary of State as soon as is reasonably practicable.
- (12) The Secretary of State may retain a relevant nationality document which comes into the Secretary of State’s possession under subsection (11) while the Secretary of State suspects that—
  - (a) a person to whom the document relates may be liable to removal from the United Kingdom in accordance with a provision of the Immigration Acts, and



- (b) retention of the document may facilitate the removal.
- (13) If subsection (12) does not apply to a document which comes into the Secretary of State's possession under this section, the Secretary of State may—
- (a) arrange for the document to be returned in accordance with subsection (14), or
  - (b) if the Secretary of State thinks that it would not be appropriate to return the document, dispose of the document in such manner as the Secretary of State thinks appropriate.
- (14) A document which is required to be returned in accordance with this subsection must be returned to—
- (a) the person who was previously in possession of it, or
  - (b) if it was not found in the possession of a person, the location in which it was found.
- (15) In this section and section 52—
- “full search” means a search which involves the removal of an item of clothing which—
    - (a) is being worn wholly or partly on the trunk, and
    - (b) is being so worn either next to the skin or next to an article of underwear;
  - “intimate search” means a search which consists of a physical examination of a person's body orifices other than the mouth;
  - “nationality document” means a document which might—
    - (a) establish a person's identity, nationality or citizenship, or
    - (b) indicate the place from which a person has travelled to the United Kingdom or to which a person is proposing to go.
- (16) For the purposes of this section and section 52 a nationality document is “relevant” if it relates to a person who is liable to removal from the United Kingdom in accordance with a provision of the Immigration Acts.
- (17) In this section the following expressions have the same meaning as in Part 8 of the Immigration and Asylum Act 1999 (see section 147)—
- “detained person”;
  - “detainee custody officer”;
  - “prisoner custody officer”;
  - “removal centre”;
  - “short-term holding facility”.

## **52 Seizure of nationality documents by detainee custody officers etc**

- (1) A relevant officer may seize a nationality document which the relevant officer finds in the course of the exercise of a power to search other than one conferred by section 51.
- (2) Where a relevant officer seizes a nationality document under subsection (1), the relevant officer—
- (a) must seek the consent of the Secretary of State to retain the document, and
  - (b) if the relevant officer obtains the Secretary of State's consent, must pass the document to the Secretary of State as soon as is practicable.
- (3) The Secretary of State may give consent under subsection (2) only if the Secretary of State has reasonable grounds to believe that—

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- (a) the document is a relevant nationality document, and
  - (b) the document may facilitate the removal of the person to whom it relates from the United Kingdom in accordance with a provision of the Immigration Acts.
- (4) If the Secretary of State does not give consent under subsection (2), the Secretary of State must—
- (a) direct the relevant officer to return the document as mentioned in subsection (5), or
  - (b) if the Secretary of State thinks that it would not be appropriate to return the document, direct the relevant officer to dispose of the document in such manner as the Secretary of State may direct.
- (5) A document which is required to be returned in accordance with this subsection must be returned to—
- (a) the person who was previously in possession of it, or
  - (b) if it was not found in the possession of a person, the location in which it was found.
- (6) The Secretary of State may retain a relevant nationality document which comes into the Secretary of State’s possession under this section while the Secretary of State suspects that—
- (a) a person to whom the document relates may be liable to removal from the United Kingdom in accordance with a provision of the Immigration Acts, and
  - (b) retention of the document may facilitate the removal.
- (7) If subsection (6) does not apply to a document which comes into the Secretary of State’s possession under this section, the Secretary of State may—
- (a) arrange for the document to be returned in accordance with subsection (5), or
  - (b) if the Secretary of State thinks that it would not be appropriate to return the document, dispose of the document in such manner as the Secretary of State thinks appropriate.

### **53 Amendments relating to sections 51 and 52**

- (1) Schedule 11 to the Immigration and Asylum Act 1999 (detainee custody officers) is amended as follows.
- (2) In paragraph 4 (offence of assaulting detainee custody officer)—
- (a) omit the “or” at the end of paragraph (b), and
  - (b) at the end of paragraph (c) insert “or
  - (d) performing functions under section 51 of the Immigration Act 2016 (search for nationality documents),”.
- (3) In paragraph 5 (offence of obstructing detainee custody officer)—
- (a) omit the “or” at the end of paragraph (b), and
  - (b) at the end of paragraph (c) insert “or
  - (d) performing functions under section 51 of the Immigration Act 2016 (search for nationality documents),”.
- (4) After paragraph 8 insert—
- “9 A reference in paragraph 4(d) or 5(d) to a detainee custody officer performing functions under section 51 of the Immigration Act 2016

includes a reference to a prison officer or prisoner custody officer performing such functions.”

#### **54 Amendments to search warrant provisions**

Schedule 8 (amendments to search warrant provisions) has effect.

#### **55 Supply of information to Secretary of State**

(1) Section 20 of the Immigration and Asylum Act 1999 (supply of information to Secretary of State) is amended in accordance with subsections (2) to (10).

(2) For the heading substitute “Power to supply information etc to Secretary of State”.

(3) In subsection (1) for paragraphs (a) to (f) substitute—

- “(a) a public authority, or
- (b) any specified person, for purposes specified in relation to that person.”

(4) In subsection (1A) in each of paragraphs (a) and (b) for “a person listed in subsection (1) or someone acting on his behalf” substitute “a public authority or someone acting on behalf of a public authority”.

(5) After subsection (1A) insert—

“(1B) This section does not apply to—

- (a) information which is held by the Crown Prosecution Service, or
- (b) a document or article which comes into the possession of, or is discovered by, the Crown Prosecution Service, or someone acting on behalf of the Crown Prosecution Service,

if section 40 of the UK Borders Act 2007 applies to the information, document or article.”

(6) After subsection (2A) insert—

“(2B) Subsection (2A)(a) does not affect any other power of the Secretary of State to retain a document or article.”

(7) In subsection (3) after paragraph (d) insert—

“(da) anything else that is done in connection with the exercise of a function under any of the Immigration Acts;”.

(8) After subsection (3) insert—

“(3A) Public authority” means a person with functions of a public nature but does not include—

- (a) Her Majesty’s Revenue and Customs,
- (b) either House of Parliament or a person exercising functions in connection with proceedings in Parliament,
- (c) the Scottish Parliament or a person exercising functions in connection with proceedings in the Scottish Parliament,
- (d) the National Assembly for Wales or a person exercising functions in connection with proceedings in that Assembly, or

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- (e) the Northern Ireland Assembly or a person exercising functions in connection with proceedings in that Assembly.”
- (9) Omit subsection (4).
- (10) After subsection (6) insert—
  - “(7) Nothing in this section authorises information, a document or an article to be supplied if to do so would contravene a restriction on the disclosure of information (however imposed).”
- (11) After section 20 of the Immigration and Asylum Act 1999 insert—

**“20A Duty to supply nationality documents to Secretary of State**

- (1) This section applies to a nationality document which the Secretary of State has reasonable grounds for believing is lawfully in the possession of a person listed in Schedule A1.
- (2) The Secretary of State may direct the person to supply the document to the Secretary of State if the Secretary of State suspects that—
  - (a) a person to whom the document relates may be liable to removal from the United Kingdom in accordance with a provision of the Immigration Acts, and
  - (b) the document may facilitate the removal.
- (3) A person to whom a direction is given must, as soon as is practicable, supply the document to the Secretary of State.
- (4) If the document was originally created in hard copy form and the person possesses the original document, it must be supplied to the Secretary of State unless it is required by the person for the performance of any of the person’s functions.
- (5) If the original document is required by the person for the performance of any of the person’s functions—
  - (a) the person must, as soon as is practicable, supply a copy of the document to the Secretary of State, and
  - (b) if subsequently the person no longer requires the original document, the person must supply it to the Secretary of State as soon as is practicable after it is no longer required.
- (6) Subsection (5)(b) does not apply if the Secretary of State notifies the person that the original document is no longer required.
- (7) If subsection (5) applies the person may make a copy of the original document before supplying it to the Secretary of State.
- (8) The Secretary of State may retain a nationality document supplied under this section while the Secretary of State suspects that—
  - (a) a person to whom the document relates may be liable to removal from the United Kingdom in accordance with a provision of the Immigration Acts, and
  - (b) retention of the document may facilitate the removal.

- (9) Subsection (8) does not affect any other power of the Secretary of State to retain a document.
- (10) The Secretary of State may dispose of a nationality document supplied under this section in such manner as the Secretary of State thinks appropriate.
- (11) Nothing in this section authorises or requires a document to be supplied if to do so would contravene a restriction on the disclosure of information (however imposed).
- (12) The Secretary of State may by regulations amend Schedule A1 so as to add, modify or remove a reference to a person or description of person.
- (13) Regulations under subsection (12) may not amend Schedule A1 so as to apply this section to—
- (a) either House of Parliament or a person exercising functions in connection with proceedings in Parliament,
  - (b) the Scottish Parliament or a person exercising functions in connection with proceedings in the Scottish Parliament,
  - (c) the National Assembly for Wales or a person exercising functions in connection with proceedings in that Assembly, or
  - (d) the Northern Ireland Assembly or a person exercising functions in connection with proceedings in that Assembly.
- (14) In this section “nationality document” means a document which might—
- (a) establish a person’s identity, nationality or citizenship, or
  - (b) indicate the place from which a person has travelled to the United Kingdom or to which a person is proposing to go.”
- (12) In section 166 of the Immigration and Asylum Act 1999 (regulations and orders)—
- (a) after subsection (5) insert—

“(5A) No regulations under section 20A(12) which amend Schedule A1 so as to—

    - (a) add a reference to a person or description of person, or
    - (b) modify a reference to a person or description of person otherwise than in consequence of a change of name or transfer of functions,

are to be made unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House.”, and
  - (b) in subsection (6), before the “or” at the end of paragraph (a) insert—

“(ab) under section 20A(12) and which falls within subsection (5A),”.
- (13) Before Schedule 1 to the Immigration and Asylum Act 1999 insert the Schedule A1 set out in Schedule 9.

## **56 Detention etc. by immigration officers in Scotland**

- (1) The Criminal Law (Consolidation) (Scotland) Act 1995 is amended as follows.
- (2) In section 24A (extension of period of detention under section 24) for subsection (7) substitute—

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- “(7) In this section and section 24B, “custody review officer” means—
- (a) an officer who—
    - (i) is of a rank at least equivalent to that of police inspector, and
    - (ii) has not been involved in the investigation in connection with which the person is detained, or
  - (b) in relation to the detention of a person under section 24 by an immigration officer, a constable—
    - (i) of the rank of inspector or above, and
    - (ii) who has not been involved in the investigation in connection with which the person is detained.”
- (3) In section 26A(2) (power of arrest of authorised immigration officers) omit “or immigration enforcement offence”.
- (4) Section 26B(1) (interpretation of Part 3) is amended as follows.
- (5) In the definition of “immigration offence”—
- (a) after “means” insert “— (a)”, and
  - (b) at the end of paragraph (a) insert “, or
  - (b) (insofar as it is not an offence within paragraph (a)) an offence under the Immigration Acts or in relation to which a power of arrest is conferred on an immigration officer by the Immigration Acts;”.
- (6) Omit the definition of “immigration enforcement offence”.

## **57 Powers to take fingerprints etc. from dependants**

- (1) Section 141 of the Immigration and Asylum Act 1999 (powers to take fingerprints from certain persons and their dependants) is amended as follows.
- (2) In subsection (7) for paragraph (f) substitute—
- “(f) any person (“F”) who is—
- (i) a member of the family of a person within any of paragraphs (a), (b) or (ca) to (e), or
  - (ii) a dependant of a person within paragraph (c)(i).”
- (3) In subsection (8)(f) after “person” insert “of whose family he is a member or”.
- (4) In subsection (9)(f) after “person” insert “of whose family he is a member or”.
- (5) After subsection (13) insert—
- “(13A) For the purposes of subsection (7)(f)(i), a person is a member of the family of another person (“P”) if—
- (a) the person is—
    - (i) P’s partner,
    - (ii) P’s child, or a child living in the same household as P in circumstances where P has care of the child,
    - (iii) in a case where P is a child, P’s parent, or
    - (iv) an adult dependant relative of P, and

- (b) the person does not have a right of abode in the United Kingdom or indefinite leave to enter or remain in the United Kingdom.

(13B) In subsection (13A) “child” means a person who is under the age of 18.”

- (6) In subsection (14) for “(7)(f)” substitute “(7)(f)(ii)”.
- (7) Section 142 of the Immigration and Asylum Act 1999 (attendance for fingerprinting) is amended as follows.
- (8) In subsection (2) for “a dependant of” substitute “a member of the family of, or a dependant of,”.
- (9) In subsection (2A) for “a dependant of” substitute “a member of the family of”.
- (10) Until the commencement of the repeal of section 143 of the Immigration and Asylum Act 1999 (destruction of fingerprints) by paragraph 17(2) of Schedule 9 to the Immigration Act 2014, subsection (9) of that section has effect as if after “the person” there were inserted “of whose family he is a member or”.
- (11) In section 144A(2) of the Immigration and Asylum Act 1999 (application of regulations about use and retention of fingerprints etc to dependants) after “the person” insert “of whose family F is a member or”.

## **58 Interpretation of Part**

- (1) In this Part “immigration officer” means a person appointed by the Secretary of State as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971.
- (2) In this Part “premises” and “item subject to legal privilege” have the same meaning—
  - (a) in relation to England and Wales, as in the Police and Criminal Evidence Act 1984;
  - (b) in relation to Northern Ireland, as in the Police and Criminal Evidence (Northern Ireland) Order 1989 ([SI 1989/1341 \(NI 12\)](#));
  - (c) in relation to Scotland, as in section 412 of the Proceeds of Crime Act 2002.

### *Detention and bail*

## **59 Guidance on detention of vulnerable persons**

- (1) The Secretary of State must issue guidance specifying matters to be taken into account by a person to whom the guidance is addressed in determining—
  - (a) whether a person (“P”) would be particularly vulnerable to harm if P were to be detained or to remain in detention, and
  - (b) if P is identified as being particularly vulnerable to harm in those circumstances, whether P should be detained or remain in detention.
- (2) In subsection (1) “detained” means detained under—
  - (a) the Immigration Act 1971,
  - (b) section 62 of the Nationality, Immigration and Asylum Act 2002, or
  - (c) section 36 of the UK Borders Act 2007,and “detention” is to be construed accordingly.



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*Status: This is the original version (as it was originally enacted).*

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- (3) A person to whom guidance under this section is addressed must take the guidance into account.
- (4) Before issuing guidance under this section the Secretary of State must lay a draft of the guidance before Parliament.
- (5) Guidance under this section comes into force in accordance with regulations made by the Secretary of State.
- (6) The Secretary of State may from time to time review guidance under this section and may revise and re-issue it.
- (7) References in this section to guidance under this section include revised guidance.

## **60 Limitation on detention of pregnant women**

- (1) This section applies to a woman if the Secretary of State is satisfied that the woman is pregnant.
- (2) A woman to whom this section applies may not be detained under a relevant detention power unless the Secretary of State is satisfied that—
  - (a) the woman will shortly be removed from the United Kingdom, or
  - (b) there are exceptional circumstances which justify the detention.
- (3) In determining whether to authorise the detention under a relevant detention power of a woman to whom this section applies, a person who, apart from this section, has power to authorise the detention must have regard to the woman’s welfare.
- (4) A woman to whom this section applies may not be detained under a relevant detention power for a period of—
  - (a) more than 72 hours from the relevant time, or
  - (b) more than seven days from the relevant time, in a case 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).
- (5) In subsection (4) “the relevant time” means the later of—
  - (a) the time at which the Secretary of State is first satisfied that the woman is pregnant, and
  - (b) the time at which the detention begins.
- (6) A woman to whom this section applies who has been released following detention under a relevant detention power may be detained again under such a power in accordance with this section.
- (7) This section does not apply to the detention under paragraph 16(2) of Schedule 2 to the Immigration Act 1971 of an unaccompanied child to whom paragraph 18B of that Schedule applies.
- (8) In this section—

“relevant detention power” means a power to detain under—

  - (a) paragraph 16(2) of Schedule 2 to the Immigration Act 1971 (detention of persons liable to examination or removal),
  - (b) paragraph 2(1), (2) or (3) of Schedule 3 to that Act (detention pending deportation),

(c) section 62 of the Nationality, Immigration and Asylum Act 2002 (detention of persons liable to examination or removal), or

(d) section 36(1) of the UK Borders Act 2007 (detention pending deportation);

“woman” means a female of any age.

(9) The Immigration Act 1971 is amended in accordance with subsections (10) and (11).

(10) In paragraph 16 of Schedule 2 (detention of persons liable to examination or removal) after sub-paragraph (2A) insert—

“(2B) The detention under sub-paragraph (2) of a person to whom section 60 (limitation on detention of pregnant women) of the Immigration Act 2016 applies is subject to that section.”

(11) In paragraph 2 of Schedule 3 (detention or control pending deportation) after sub-paragraph (4) insert—

“(4ZA) The detention under sub-paragraph (1), (2) or (3) of a person to whom section 60 (limitation on detention of pregnant women) of the Immigration Act 2016 applies is subject to that section.”

(12) In section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State) after subsection (7) insert—

“(7A) The detention under this section of a person to whom section 60 (limitation on detention of pregnant women) of the Immigration Act 2016 applies is subject to that section.”

(13) In section 36 of the UK Borders Act 2007 (detention) after subsection (2) insert—

“(2A) The detention under subsection (1) of a person to whom section 60 (limitation on detention of pregnant women) of the Immigration Act 2016 applies is subject to that section.”

## **61 Immigration bail**

(1) Schedule 10 (immigration bail) has effect.

(2) In that Schedule—

- (a) Part 1 contains the main provisions about immigration bail, and
- (b) Part 2 contains amendments to other Acts.

(3) A person may be released and remain on bail under paragraph 22 or 29 of Schedule 2 to the Immigration Act 1971 even if the person can no longer be detained under a provision of the Immigration Acts to which that paragraph applies, if the person is liable to detention under such a provision.

(4) The reference in subsection (3) to paragraph 22 or 29 of Schedule 2 to the Immigration Act 1971 includes that paragraph as applied by any other provision of the Immigration Acts.

(5) Subsections (3) and (4) are to be treated as always having had effect.

(6) Subsections (3) to (5) are repealed on the coming into force of the repeal of paragraphs 22 and 29 of Schedule 2 to the Immigration Act 1971 by paragraph 20 of Schedule 10.

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*Status: This is the original version (as it was originally enacted).*

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*Power to cancel leave*

**62 Power to cancel leave extended under section 3C of the Immigration Act 1971**

(1) In section 3C of the Immigration Act 1971 (continuation of leave pending variation decision) after subsection (3) insert—

“(3A) Leave extended by virtue of this section may be cancelled if the applicant—

- (a) has failed to comply with a condition attached to the leave, or
- (b) has used or uses deception in seeking leave to remain (whether successfully or not).”

(2) In section 4(1) of that Act (persons by whom and means by which powers are to be exercised) after “conditions” insert “or to cancel any leave under section 3C(3A)”.