

BORDERS, CITIZENSHIP AND IMMIGRATION ACT 2009

EXPLANATORY NOTES

COMMENTARY

Part 3: Immigration

Section 50: Restriction on studies

193. **Section 50** amends section 3(1)(c) of the IA 1971 to allow a condition to be imposed on a migrant's limited leave to enter or remain in the UK, restricting his or her studies whilst here. It will not apply to migrants who are, or have been, granted indefinite leave to enter or remain.
194. This condition could be used, for example, to stipulate an educational institution at which a student migrant is granted leave to study, with the result that any change of institution would require an application to the UK Border Agency for variation of condition. Breach of the condition will be a criminal offence under section 24(1)(b)(ii) of the IA 1971 and may result in removal from the UK.

Section 51: Fingerprinting of foreign criminals liable to automatic deportation

195. **Section 51** amends section 141 of the 1999 Act to insert a provision to allow fingerprints to be taken from a person who is a foreign criminal within the meaning of section 32 of the UKBA 2007 and in respect of whom a decision is taken that the automatic deportation provisions in that Act apply.
196. The amendments operate by extending the definition of the existing category C person in respect of whom fingerprints may be taken under section 141 of the 1999 Act to include the foreign criminal as described in the above paragraph. The provisions of sections 141 to 146 of the 1999 Act which apply in relation to a category C person will apply accordingly.
197. Subsection (2) excludes dependants of a foreign criminal from the section 141 fingerprinting provisions.

Section 52: Extension of sections 1 to 4 of the UK Borders Act 2007 to Scotland

198. **Section 52(1)** extends the permissive detention power in section 2 of the UKBA 2007 to designated immigration officers in Scotland. The provision will enable an immigration officer designated under section 1 of the UKBA 2007 to detain, at a port in Scotland, an individual whom the immigration officer thinks is subject to a warrant for arrest. Detention may be for up to three hours pending the arrival of a constable. Section 4 of the UKBA 2007 contains an interpretative provision on the meaning of "port".
199. There are related offences in section 3 of the UKBA 2007 where, for example, a person absconds from detention under section 1 of that Act. Subsection (2) of the section makes provision for the sentences for those offences in Scotland.

*These notes refer to the Borders, Citizenship and Immigration
Act 2009 (c.11) which received Royal Assent on 21 July 2009*

200. Subsection (3) amends section 60 of the UKBA 2007 to reflect the fact that sections 1 to 4 are to extend to Scotland