

# **IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006**

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## **EXPLANATORY NOTES**

### **INFORMATION**

#### ***Section 27: Documents produced or found***

58. This section amends paragraph 4 of Schedule 2 to the Immigration Act 1971 by deleting paragraph 4(2A), substituting paragraph 4(4) and adding a new paragraph 4(5). It makes two substantive changes. First, it brings together the provisions on detention and examination of passports and other documents produced by passengers, or found on them, while being examined under Schedule 2 and provides that the same conditions govern detention and examination for all documents. Second, it provides a new power to enable immigration officers to require passengers being examined under Schedule 2 to provide biometric information (such as fingerprints) for the purpose of ascertaining whether a passenger in question is the rightful holder of the passport or other document he produces.

#### ***Section 28: fingerprinting***

59. **Section 28** amends section 141 of the Immigration and Asylum Act 1999 to enable fingerprints to be taken and stored from people who are detained under paragraph 16 of Schedule 2 of the Immigration Act 1971.
60. **Section 141** sets out a number of categories of person from whom fingerprints can be taken and stored by the Immigration and Nationality Directorate. It sets out the period during which fingerprints can be taken, and makes provision for destruction. Section 141(7)(d) currently permits fingerprints to be taken and stored from a person who has been arrested under paragraph 17 of Schedule 2 to the 1971 Act.
61. Subsection (2) amends section 141(7)(d) of the 1999 Act to enable fingerprints to be taken and stored from a person who has been detained as well as arrested under Schedule 2 of the 1971 Act.
62. Subsection (3) makes a consequential amendment to include detention as well as arrest for the purposes of calculating the relevant period when fingerprints can be taken under section 141 of the 1999 Act.

#### ***Section 29: Attendance for fingerprinting***

63. **Section 29** amends section 142 of the Immigration and Asylum Act 1999.
64. Section 141 of the Immigration and Asylum Act 1999 allows an authorized person (as defined) to take fingerprints from a person to whom the section applies. The section applies to, amongst others, asylum-seekers and their dependants. Section 142 of that Act allows the Secretary of State, by notice in writing, to require a person to whom section 141 applies to attend a specified place for fingerprinting. Section 142(2) currently states that the notice must give the person a period of at least seven days

within which to attend. Further, that period cannot begin until at least seven days have passed since the date of the notice. The notice may also require the person to attend on a specified time of day or during specified hours. In relation to asylum-seekers and their dependants only, this section seeks to amend section 142 so that a notice under the section:

- may require the person to attend during a specified period, beginning with a day not less than three days after the date given in the notice as its date of issue,
- may require the person to attend on a specified day not less than three days after the date given in the notice as its date of issue, and
- may require the person to attend at a specified time of day or during specified hours.

### ***Section 30: Proof of right of abode***

65. **Section 30** makes a series of amendments to section 3(9) of the Immigration Act 1971 which relates to the means by which a person seeking leave to enter the UK and claiming to have the right of abode there shall prove that right. The documents which can be used for this include a United Kingdom passport describing him as a British citizen, but not a United Kingdom passport describing him as a British subject with the right of abode in the United Kingdom. These individuals are, instead, able to evidence their right of abode by production of a certificate of entitlement as mentioned in s.3(9)(b) of the Immigration Act 1971. Section 30, sub-section (1)(b) remedies this by adding the passport issued to a British subject and endorsed with the right of abode in the United Kingdom to s.3(9).
66. Sub-sections (1)(c) and (d) add to the documents which may be used as evidence the identity cards issued to British citizens and to British subjects with a right of abode in the United Kingdom under the provisions in the current Identity Cards Bill. This will enable these cards to be used for travel within the European Economic Area in the same way as other Member States' national identity cards are used now.
67. **Section 30**, by replacing section 3(9) in its entirety, removes the now redundant reference to a passport issued to a "citizen of the United Kingdom and Colonies", as this category has not existed since 1 January 1983 when the British Nationality Act 1981 came into force.

### ***Section 31: Provision of information to immigration officers***

68. **Section 31(2)** amends Paragraph 27 of Schedule 2 to the Immigration Act 1971 to enable the collection of passenger lists and crew information on or before the arrival of a ship or aircraft into the United Kingdom. As it stands paragraph 27(2) allows passenger lists or crew information to be requested for ships or aircraft arriving in the UK but this allows information to be collected in advance. Section 31(2) also introduces a new power to request passenger lists or crew information from a ship or aircraft which is leaving or is expected to leave the United Kingdom.
69. **Paragraph 27(2)** is amended to apply to the owners or agents of ship or aircraft as well as the captain.
70. It also amends paragraph 27(2) to enable the Secretary of State to require the information to be provided in the form and manner that he directs for example by electronic means.
71. **Section 31(3)** amends Paragraph 27(B) of Schedule 2 to the Immigration Act 1971 to enable an immigration officer also to request service information about the voyage or flight relating to ships or aircraft of the carrier. Service information will be specified in secondary legislation.

72. **Section 31(3)** also makes consequential amendments to offences under section 27 of the Immigration Act 1971.

***Section 32: Passenger and crew information: police powers***

73. This section provides information acquisition powers for the Police in respect of ships and aircraft arriving (or expected to arrive) in or leaving (or expected to leave) the UK. A constable of at least the rank of superintendent may request passenger or crew information from the owner or agent of a ship or aircraft. Passenger and crew information will be specified in secondary legislation. It is also possible for the constable of at least the rank of superintendent to request service information which will also be specified in secondary legislation.
74. Secondary legislation will also specify the form and manner in which information is to be provided.
75. The section requires passengers and crew members to provide the owner or agent of a ship or aircraft with any information that he requires for the purposes of complying with a requirement to provide information.
76. Requests shall be in writing, may apply generally throughout a specified period (not exceeding six months) or only to one or more specified ships or aircraft and must state the information required and the date or time by which the information must be provided.
77. Since police functions in Scotland are devolved, Scottish Police will be able to capture information for police purposes if they are or relate to reserved matters e.g. national security.

***Section 33: Freight information: police powers***

78. This section provides freight information acquisition powers for the Police in respect of ships, aircraft and vehicles arriving (or expected to arrive) in or leaving (or expected to leave) the UK. A constable of at least the rank of superintendent may request freight data from an owner or agent of a ship or aircraft, the owner or hirer of a vehicle, or any other person responsible for the import or export of goods.
79. Freight information will be specified in secondary legislation.
80. Requests shall be in writing, may apply generally throughout a specified period (not exceeding six months) or only to one or more specified ships, aircraft or vehicles and must state the information required and the date or time by which the information must be provided.
81. It makes comparable provision to that in section 32.

***Section 34: Offence***

82. This section explains the penalties that can be applied in England, Wales, Northern Ireland and Scotland for non-compliance with a requirement to provide information under section 32 or 33.

***Section 35: Power of Revenue and Customs to obtain information***

83. This section amends section 35(2) and (3) of the Customs & Excise Management Act to mean that the report provisions which these sections empower the Commissioners to direct apply to every ship and aircraft arriving or expected to arrive in the UK. The effect of this change is to allow the Commissioners' Directions made under section 35 to be amended to require the provision of the passenger data they direct to be made in advance of the arrival of the means of transport.

***Section 36: Duty to share information***

84. **Section 36** introduces a new power which provides for information obtained or held by the Border Agencies (Immigration Service, Police Service and HM Revenue and Customs) in the course of their functions to be shared, to the extent that the information is likely to be of use for immigration, police or Revenue and Customs purposes (which are terms defined in sections 20 and 21 of the Immigration and Asylum Act 1999).
85. Subsection (4) provides for the Secretary of State and the Treasury to issue jointly an order specifying the type of information to which this duty to share applies. Subsection (7) specifies that an order made under subsection (4) will exclude information collected by HM Revenue and Customs under the former Inland Revenue's powers.

The duty on a chief officer of police in Scotland to share information only applies to information which is likely to be of use for immigration, revenue and customs purposes and police purposes in so far as they are or relate to reserved matters (within the meaning of the Scotland Act 1998).

***Section 37: Information sharing: code of practice***

86. **Section 37** will require the Secretary of State and the Treasury jointly to issue a Code or Codes of Practice governing use of information shared in accordance with section 36(2) and the extent to which, or form and manner in which, shared information is to be made available with those sections.
87. Subsections (2) and (4) provide that a draft of the Code of Practice will be laid before Parliament before being issued and that the code of practice will come into force by means of an order, subject to the negative resolution procedure. Subsection (3) provides that a Code of Practice may be reviewed but that any revision will be subject to the procedures set out in subsections (2) and (4).

***Section 38: Disclosure of information for security purposes***

88. **Section 38** introduces a discretionary power which supports the disclosure of information relating to travel or freight for security purposes and defines the actors and purposes to whom the provision applies.
89. The section provides that the Secretary of State in so far as he has functions under the Immigration Acts, a chief officer of the police and HM Revenue and Customs may disclose information which is obtained or held by them in the course of their functions to the Security and Intelligence Agencies (SIAs) to the extent that the information is likely to be of use for a purpose specified in section 1 of the Security Service Act 1989 and sections 1 or 3 of the Intelligence Services Act 1994 (namely, national security, economic well being of the UK and support in combating serious crime). It is not necessary to provide for a reciprocal power for the provision of data by the SIAs to the Border Agencies because such disclosures, where necessary, may be made on the basis of existing legislation.
90. The Secretary of State and the Treasury will specify jointly by order the information that may be disclosed. Subsection (6) clarifies that the powers specified jointly by the Secretary of State and the Treasury do not apply to information collected by HM Revenue and Customs under the former Inland Revenue's powers.

***Section 39: Disclosure to law enforcement agencies***

91. **Section 39** provides a power for a police service to disclose information obtained in accordance with sections 32 or 33 to the police services in Jersey, Guernsey, the Isle of Man and a foreign law enforcement agency. A foreign law enforcement agency is defined as a person outside the UK with functions similar to a police force in the UK or SOCA.

92. The section applies to Scotland.

***Section 40: Searches: contracting out***

93. Subsection (1) permits an authorised person to search a ship, aircraft, vehicle or other thing for the purpose of identifying individuals who an immigration officer may wish to examine. The reference to "other thing" reflects the search of things on board ships or aircraft in paragraph 1(5) of Schedule 2.
94. Subsection (2) defines an authorised person and makes it clear that a ship, aircraft, vehicle or other thing can only be searched if an Immigration Officer would have power to search it under paragraph 1(5) of Schedule 2 to the Immigration Act 1971.
95. Subsection (3) & (4) states that the Secretary of State may authorise a specified class of constable for the purposes of this section or with the consent of the Commissioners for Her Majesty's Revenue and Customs, authorise an officer or a specified class of officer of Revenue and Customs for the purpose of this section.
96. Subsection (5) provides that before authorising a person (other than a constable or officer of Revenue and Customs) for the purposes of this section, the Secretary of State must be satisfied that the person is fit and proper for the purpose and properly trained.
97. Subsection (6) sets out the arrangements which the Secretary of State may make for the exercise by authorised persons of the powers conferred by this section (which include the power to enter into contracts with private contractors for the provision of authorised persons other than constables and officers of Revenue and Customs).
98. Subsection (7)(a) gives the authorised person ancillary powers of search and detention in relation to any individual who the authorised person discovers while exercising the power to search. It provides for power to search for items that may be used for self-harm, cause harm to others, or to assist in escape from detention. Furthermore powers are provided to search for items establishing information concerning identity, nationality, citizenship or information about the individual's journey.
99. Subsection (7)(b) gives the power to retain items found during the course of a section (7)(a) search and to deliver them to an Immigration Officer.
100. Subsection (7)(c)(d) &(e) allows an authorised person to detain an individual for a period of up to three hours, pending the arrival of an Immigration Officer or to deliver the individual to an Immigration Officer as soon as is reasonably practicable. Subsection (e) provides for the authorised person to use reasonable force pursuant to carrying out his duties under paragraphs (a) to (d).
101. Subsection (8)(a) stipulates that searches may not include the removal of clothing other than an outer coat, jacket or glove, but the individual being searched may be required to open his mouth.
102. Subsection (8)(b) excludes items subject to legal privilege from the powers of seizure. Legal privilege is as defined in:
- [Police and Criminal Evidence Act 1984 \(c.60\)](#) (England and Wales)
  - [Proceeds of Crime Act 2002 \(c.29\)](#) (Scotland)
  - [Police and Criminal Evidence \(Northern Ireland\) Order 1989 \(SI.1989/1341 \(N.I. 12\)\)](#)

***Section 41: Section 40: supplemental***

103. **Section 41** covers the appointment of a Monitor, contractual matters, offences and supplemental provisions.

*These notes refer to the Immigration, Asylum and Nationality Act 2006 (c.13) which received Royal Assent on 30 March 2006*

104. Subsection (1) requires the Secretary of State to appoint a Monitor. This person will be a Crown Servant and his or her role will be to monitor the exercise of powers of authorised persons other than constables or officers of Revenue and Customs and periodically undertake inspections into the exercise of those powers, reporting back to the Secretary of State about any allegation or failings in the exercise or application of those powers.
105. Subsection (2) provides for the Secretary of State to revoke the authorisation given to constables and officers of Revenue and Customs.
106. Subsection (3) permits the Secretary of State to stipulate conditions when granting authorisation to a person other than a constable or officer of Revenue and Customs and provides for the Secretary of State, by written notice, to suspend or revoke the authorisation. The Secretary of State shall stipulate the term of authorisation (by reference to dates or otherwise).
107. Subsection (4) explains what is meant by "specified class" of constable or officer of Revenue and Customs in section 40(3) & 40(4) and provides that the specification may be by reference to named individuals, the functions to be exercised, the location or circumstances in which a person is exercising the function or any other matter.
108. Subsection (5) requires that an Immigration Officer receiving an individual or article delivered by an authorised person shall treat that individual or article as if they had been discovered by an Immigration Officer undertaking a search under schedule 2 of the Immigration Act 1971. This Act does not amend the application of existing procedures applied by an Immigration Officer to individuals or articles discovered.
109. Subsection (6) provides that a person is guilty of an offence if he;
- absconds from detention
  - absconds either whilst being transferred to a place or having arrived
  - absconds prior to being delivered to an Immigration Officer
    - obstructs an authorised person who is exercising his powers under this Act.
    - assaults an authorised person who is exercising his powers under this Act.
110. Subsection (7) provides that an offence is not committed under subsection (6) unless the authorised person is readily identifiable as a constable or officer of Revenue and Customs or as an authorised person (by means of a uniform, badge or other means of identification).
111. Subsection (8) provides that on summary conviction for the offences listed in subsection (6), a person shall be liable to imprisonment for a term not exceeding 51 weeks in England or Wales or 6 months in Scotland or Northern Ireland or to a fine not exceeding level 5 on the standard scale or both a fine and imprisonment.
112. Subsection (9) provides that in relation to a conviction occurring before the commencement of section 281(5) of the [Criminal Justice Act 2003 \(c.44\)](#) (Magistrates Powers') reference in subsection (7)(a) to 51 weeks shall be treated as a reference to 6 months.

***Section 42: information: embarking passengers***

113. [Section 42](#) amends paragraphs 3 and 16 of Schedule 2 to the Immigration Act 1971, which currently enables an immigration officer to examine departing passengers to establish nationality and identity.
114. Subsection (2) amends paragraph 3 so as to extend the powers of examination on embarkation to cover three new kinds of information. An immigration officer will have the power to examine an embarking passenger not only for the purpose of establishing whether he is a British citizen, and if not, his identity, but also to establish whether:

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- his entry to the United Kingdom was lawful;
  - he has complied with any conditions of leave to enter or remain in the United Kingdom; and
  - his return to the United Kingdom is prohibited or restricted.
115. Subsection 2 also amends paragraph 3 so as to enable an immigration officer to require a person to submit to further examination by giving him written notice that he must do so.
116. Subsection 3 amends paragraph 16 of Schedule 2 to the 1971 Act by introducing the power for a person to be detained under the authority of an immigration officer where he has been required to submit to further examination on embarkation. The detention can only be for a maximum of 12 hours pending the completion of the further examination.
117. Subsection 4 is a consequential amendment to make clear that paragraph 21 of Schedule 2 to the 1971 Act, which makes provision for temporary admission, does not apply to detention of departing passengers. As detention is permitted only for a maximum of 12 hours the power to grant temporary admission is not necessary.