

# IMMIGRATION ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1: Removal and other powers**

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

38. This section replaces section 10 of the 1999 Act and provides a power for the Secretary of State or an immigration officer to authorise the removal of a person who requires leave to enter or remain in the UK but does not have it (subsection (1)) or their family members (subsection (2)).
39. *Subsections (3), (4) and (5)* define the conditions to be met for a family member to be removed under subsection (2). Subsection (6) provides for any leave to enter or remain in the UK that a family member has to be invalidated by the service of a notice under subsection (2).
40. *Subsection (7)* allows the Secretary of State or an immigration officer to give directions for the removal of those persons described in subsections (1) and (2). Removal directions may be given to the captains or owners or agents of ships or aircraft to remove a person or to make arrangements for removal to the country or territory as specified in paragraphs 8 to 10 of Schedule 2 to the 1971 Act. However under subsection (8) persons being deported will continue to be removed under Schedule 3 to the 1971 Act.
41. *Subsection (9)* lists relevant paragraphs of Schedule 2 to the 1971 Act which will also apply to persons subject to removal under this section. This includes provision for arrest, detention, bail and searches for removal documents.
42. *Subsection (10)* provides a power for the Secretary of State to make regulations about the time period during which a family member may be removed under subsection (2) and the service of a notice under subsection (2).
43. *Subsection (11)* defines a child for the purpose of this section.

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

44. This section inserts a new section 78A into the 2002 Act to restrict the removal of children and their parent or carer unless certain conditions are met. Subsection (1) describes what constitutes a case of this type. Subsection (2) prohibits a child and their relevant parent or carer from being removed or required to leave the UK during a period of 28 days from when the relevant appeal rights are exhausted. Subsection (3) defines when the relevant appeals rights will be considered to be exhausted. Subsection (4) describes the actions that may nevertheless be taken during the 28 day period. Subsection (5) defines the meaning of “child” and the meaning of “being removed from or required to leave” used in this section.

### ***Section 3: Independent Family Returns Panel***

45. This section inserts a new section 54A into the Borders, Citizenship and Immigration Act 2009. Subsection (1) establishes the Independent Family Returns Panel as a statutory body. It currently exists as a non-statutory body.
46. *Subsection (2)* requires the Secretary of State to consult the Independent Family Returns Panel in every family returns case, on how best to safeguard and promote the welfare of the children of the family, and in each case where detention in pre-departure accommodation is proposed. Subsection (3) defines a “family returns case” as one where a child who is living in the UK is to be removed or required to leave and an individual who is the parent or carer of the child and is living in a household with the child is also being removed from or required to leave the UK.
47. *Subsections (4), (5) and (6)* provide for the Secretary of State to make provision by regulations about various matters connected with the Independent Family Returns Panel by statutory instrument. Subsection (7) defines “child,” “pre-departure accommodation” and “being removed from or required to leave” used in this section.

### ***Section 4: Enforcement Powers***

48. This section gives effect to Schedule 1.

### ***Schedule 1: Enforcement Powers***

49. *Paragraph 1* inserts into paragraph 18(3) of Schedule 2 to the 1971 Act a power for an immigration officer to escort a person detained under paragraph 16. Paragraph 18(3) already allows any person acting under the authority of an immigration officer to escort a person so detained.
50. *Paragraph 2(1)* inserts a new paragraph 18A into Schedule 2 to the 1971 Act, giving immigration officers a power to search a person detained under paragraph 16 for anything which the person might use to cause physical injury to themselves or others or which they might use to escape from legal custody. It sets out the grounds which must exist before the power can be exercised, the extent of the search and sets out what may be seized and retained as a result of the search and for how long such items may be retained.
51. *Paragraphs 2(2) to 2(5)* make amendments corresponding to those in sub-paragraph (1) to other enactments which reference the powers that are available to immigration officers in respect of persons detained under paragraph 16 of Schedule 2 to the 1971 Act to ensure that the new paragraph 18A applies.
52. *Paragraph 3* amends paragraph 25A of Schedule 2 to the 1971 Act by making the power to enter and search premises for relevant documents available in respect of persons who are arrested other than under that Schedule and detained under paragraph 16 of Schedule 2, whether or not the arrest was carried out by a constable. It further inserts new sub-paragraphs (6A) and (6B) into paragraph 25A so that a warrant may be obtained to enter and search premises belonging to a third party (other than the arrested person) where there are reasonable grounds to believe that relevant documents may be found there. Paragraph 3(4) removes the power to retain relevant documents for so long as necessary in connection with the purpose for which the person was arrested and paragraph 3(5) inserts a new sub-paragraph (8A) so that the power to retain relevant documents is aligned with the retention powers in section 17 of the 2004 Act and section 46(3) of the 2007 Act.
53. *Paragraph 4* amends sections 28J(11) and 28K(14) of the 1971 Act so that those provisions, which are concerned with the execution and safeguards in respect of warrants, also apply to the new power to obtain a warrant under paragraph 25A(6A) of Schedule 2 to the 1971 Act.

54. *Paragraph 5* amends section 146 of the 1999 Act to provide for immigration officers to use reasonable force when it is necessary in the exercise of a power conferred on them by the Immigration Acts. This clarifies that the power is not limited to the exercise of powers under the 1971 Act and the 1999 Act.

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

55. *Subsections (1), (2) and (3)* amend Schedule 2 to the 1971 Act to restrict the detention of an unaccompanied child under Schedule 2.
56. *Subsection (4)* inserts a new paragraph 18B after paragraph 18A of Schedule 2 to the 1971 Act to define the circumstances when detention may occur. Paragraph 18B sub-paragraph (1) restricts an unaccompanied child's detention under paragraph 16(2) to a short-term holding facility, except where the child is being transferred to or from a short-term holding facility, or paragraph 18(3) applies, which is when a child is held while being taken to and from a place where their attendance is required for the purposes of the operation of the 1971 Act. This may include, for example, an Embassy or High Commission, to ascertain their nationality or admissibility to a country other than the UK. Sub-paragraph (2) restricts detention to a maximum period of 24 hours and only for so long as the conditions in sub-paragraphs (3) and (4) are met. Sub-paragraphs (5) and (6) limit the circumstances under which an unaccompanied child detained under paragraph 16(2) may be detained again, either following their removal from a short-term holding facility and their detention elsewhere or following their release from detention under paragraph 16(2). Sub-paragraph (7) defines the meaning of "relevant 24 hour period," "short-term holding facility" and "unaccompanied child" used in this section.

### ***Section 6: Pre-departure accommodation for families***

57. *Subsections (1), (2) and (3)* amend Part 8 of the 1999 Act to define "detained children" as detained persons under the age of 18 and "pre-departure accommodation" as a place used solely for the detention of detained children and their families for a period of not more than 72 hours, or not more than seven days in cases where the longer period is authorised personally by a Minister of the Crown. They make clear that a short-term holding facility is not pre-departure accommodation.
58. *Subsection (4)* inserts new section 157A into Part 8 of the 1999 Act. Subsections (1) and (2) of new section 157A apply certain provisions of Part 8 to pre-departure accommodation as they apply to removal centres. Subsection (3) provides for the Secretary of State to extend by regulations any other provision made by or under Part 8 in relation to removal centres and subsection (4) provides for the Secretary of State to make rules for the regulation and management of pre-departure accommodation.

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

59. *Subsection (2)* inserts new paragraph 22(4) into Schedule 2 to the 1971 Act, which provides that the Secretary of State's consent is required to release a person on bail where removal directions are in force and the removal is due to take place within 14 days of the date of the decision to grant or refuse bail. The Government has published a statement of intent setting out how this provision will be used.<sup>1</sup>
60. *Subsection (3)* provides that the Tribunal Procedure Rules<sup>2</sup> must provide that where a person has already made an unsuccessful bail application to the Tribunal under paragraph 25 of Schedule 2 and another application is made within 28 days, the Tribunal must dismiss it without a further hearing unless the applicant demonstrates that there has been a material change in circumstances. The Tribunal Procedure Committee recently

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<sup>1</sup> Immigration Bill Statement of Intent: Bail – effect on removal directions, <https://www.gov.uk/government/publications/immigration-bill-part-1-removal>.

<sup>2</sup> The Asylum and Immigration Tribunal (Procedure) Rules 2005 (as amended), SI 2005/230

consulted<sup>3</sup> on whether to make rules to limit repeat bail applications and published draft procedure rules<sup>4</sup>. The effect of the change in the Act is to make it mandatory that the procedure rules include this provision rather than at the Committee's discretion.

61. *Subsection (4)* amends paragraph 29 of Schedule 2 to clarify that when a person has an appeal pending under Part 5 of the 2002 Act they must apply for bail under paragraph 29, and not under paragraph 22.
62. *Subsections (5) and (6)* make equivalent amendments to those made by subsections (2) and (3) in respect of bail applications under paragraph 29 of Schedule 2 (i.e. applications made by a person who has an appeal pending). So subsection (5) amends paragraph 30 to state that where removal directions have been set for a date within 14 days of the decision to release on bail, a person may not be released on immigration bail by the Tribunal without the consent of the Secretary of State.
63. *Subsection (6)* provides that the Tribunal Procedure Rules must state that where a person has already made an unsuccessful bail application to the Tribunal under paragraph 29 and another application is made within 28 days, the Tribunal must dismiss it without a further hearing unless the applicant demonstrates that there has been a material change in circumstances.

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

64. This section amends section 126 of the 2002 Act to make provision for the Secretary of State to make regulations requiring foreign nationals applying for Direct Airside Transit Visas (DATVs), pursuant to section 41 of the 1999 Act, to provide their biometric information as part of their application. The Secretary of State may also make regulations requiring non-EEA family members of EEA nationals, and other non-EEA nationals who are able to enter or remain in the UK under an enforceable EU right to provide biometric information when they are applying for a document as evidence of their right to enter or remain in the UK, such as an EU residence card.
65. *Subsection (3)* adds a new paragraph to subsection (4) of section 126, which provides for biometric information submitted as part of an application to be recorded on any document issued as a consequence of that application.
66. *Subsection (4)* defines what is meant by a "document" for these purposes.

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

67. Currently, if an immigration officer wants to check a person's biometrics, usually fingerprints, to confirm their identity the person must first give their consent, unless they are either still subject to an immigration examination or have been arrested or detained in which case statutory powers exist which allow for their biometrics to be required. This section amends paragraph 18(2) of Schedule 2 to the 1971 Act to include persons who are liable to be detained, as well as those who have already been detained, as being persons in respect of whom necessary steps can be taken for the purposes of identification, such as fingerprinting and photographing. This power to check biometrics is limited to the purpose of verifying identity as part of an immigration investigation and any biometrics are to be destroyed as soon as that purpose has been fulfilled.

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3 Consultation on proposed Tribunal Procedure Rules 2013 <http://www.justice.gov.uk/downloads/about/moj/advisory-groups/tpc-iac-rules-2013-consultation.pdf>

4 Draft Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2013 <http://www.justice.gov.uk/downloads/about/moj/advisory-groups/draft-tpc-iac-rules2013.pdf>

***Section 10: Provision of biometric information with citizenship applications***

68. This section enables regulations made under section 41 of the 1981 Act to make provision for biometric information to be required when a person applies to become a British citizen.
69. *Subsection (3)* makes amendments to section 41 of the 1981 Act, so that the references to “authorised person” and “biometric information” have the same definitions as those contained in section 126 of the 2002 Act. It provides that the safeguards in relation to taking biometric information from children under the age of 16, which are set out in the 1999 Act, apply equally to regulations made under the 1981 Act. It also provides an exception to the requirement, contained in section 8(5)(b) of the 2007 Act, that biometric information be destroyed as soon as reasonably practicable once a person becomes a British citizen to enable photographs submitted as part of a citizenship application to be retained until that person is issued with their first British passport.

***Section 11: Biometric immigration documents***

70. This section inserts a new subsection (2A) into section 7 of the 2007 Act to enable the Secretary of State to require an application or claim to be disregarded or refused where a person has failed to comply with a requirement of regulations made under section 5 of the 2007 Act, where those regulations have required a biometric immigration document to be used in connection with that application or claim.

***Section 12: Meaning of “biometric information”***

71. This section amends section 15 of the 2007 Act to define biometric information for the purposes of that provision as information about a person’s external physical characteristics, such as fingerprints and features of a person’s eye. Where the meaning of biometric information is to encompass information beyond external features, the Secretary of State is to specify the physical characteristics in an order. However, it cannot include information about a person’s DNA. The order is subject to the affirmative resolution procedure.
72. *Subsection (4)* gives effect to Schedule 2 (meaning of biometric information), which makes corresponding amendments to other enactments providing for powers to require the provision of biometric information.

***Section 13: Safeguards for children***

73. This section amends paragraphs 4 and 18 of Schedule 2 to the 1971 Act to ensure that persons aged under 16 are not required to provide biometric information under that Schedule, unless the requirement is authorised by a chief immigration officer, and the information is provided in the presence of an adult who is a parent or guardian or someone who takes responsibility for the child at the time.

***Section 14: Use and retention of biometric information***

74. *Subsection (1)* substitutes a new section 8 of the 2007 Act.
75. New section 8(1) requires the Secretary of State to make provision about the use and retention of biometric information provided pursuant to regulations made under section 5 of the 2007 Act.
76. New section 8(2) provides that the regulations must provide that biometric information is retained only if it necessary to retain it for use in connection with the exercise of functions in relation to immigration or nationality.
77. New section 8(3) provides that the regulations may include provision permitting the use of retained biometric information for non-immigration purposes, such as the prevention of crime and disorder or the protection of national security.

*These notes refer to the Immigration Act 2014 (c.22)  
which received Royal Assent on 14 May 2014*

78. New sections 8(4), 8(5) and 8(6) provide that the regulations must include provision about the destruction of biometric information and must require the Secretary of State to take all reasonable steps to ensure that information is destroyed if its retention is no longer necessary for an immigration or nationality purpose and in all cases where the Secretary of State is satisfied that a person is a British citizen or a Commonwealth citizen with the right of abode. The requirement to destroy biometric information extends to copies, whether held electronically or otherwise.
79. New section 8(7) allows biometric information which would otherwise be required to be destroyed to be retained if it is retained in accordance with another power.
80. New section 8(8) provides for persons whose biometric information has been destroyed by virtue of the regulations to obtain a certificate confirming this on request from the Secretary of State.
81. New section 8(9) provides that section 6(6) of the 2007 Act applies to this section as it does for regulations made under section 5(1) of the 2007 Act, which means the regulations are subject to the affirmative resolution procedure.
82. *Subsections (2) and (3)* make corresponding amendments, so that regulations made under section 8 of the 2007 Act must also include provision for the use and retention of biometric information provided under sections 141 and 144 of the 1999 Act and section 126 of the 2002 Act.
83. The Government has published a statement of intent explaining its plans for the use and retention of biometric data taken pursuant to immigration powers.<sup>5</sup>

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<sup>5</sup> *Immigration Bill Statement of Intent – Use and retention of biometric information*, <https://www.gov.uk/government/publications/immigration-bill-part-1-removal>.