Memorandum to the Home Affairs Committee

Post-legislative Scrutiny

of the

UK Borders Act 2007

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MEMORANDUM TO THE HOME AFFAIRS COMMITTEE

POST LEGISLATIVE ASSESSMENT OF THE UK BORDERS ACT 2007

INTRODUCTION

This memorandum provides a preliminary assessment of the UK Borders Act 2007, in particular to provide information about how the provisions in the Act have worked in practice. It has been prepared by the Home Office and is published as part of the process set out by the previous Government in the document "Post Legislative Scrutiny – the Government's Approach" (Cm 7320), published in March 2008. The current Government has accepted the need to continue the practice of post legislative scrutiny as supporting the coalition's aim of improving Parliament's consideration of legislation.

OBJECTIVES OF THE UK BORDERS ACT 2007

The UK Borders Act 2007 introduced a number of provisions, all broadly aimed at strengthening the border. The Parliamentary Research Paper 7/11[1] provides a summary of the policy background to the Act. In brief, the Act followed Government commitments to overhaul the immigration and asylum system which was considered at the time "not fit for purpose" and to introduce identity cards, starting with cards for foreign nationals.

The provisions of the Act included:

- Powers for immigration officers to detain suspected criminals and those subject to an arrest warrant at port pending the arrival of police officers;

- Powers to make regulations to require those subject to immigration control to provide biometric information (including provisions for enforcement, appeals against enforcement, use and disposal of biometric information);

- Various measures in respect of the treatment of claimant's applications for right of leave (including conditions of leave, support for asylum seekers, enforcement against asylum support fraud, reducing appeal rights for points-based applications, over-cost charging, and a code of practice for the treatment of children by the UK Border Agency);

- Various enforcement measures (including offences of assaulting an immigration officer, powers to seize cash and dispose of property, arrest and search powers in relation to illegal working, and extending the territorial application of offences of facilitation and trafficking);

- Conditions and procedures for the deportation of foreign national offenders;

[1] (http://www.parliament.uk/documents/commons/lib/research/rp2007/rp07-011.pdf)

- Provision for HM Revenue and Customs and the Revenue and Customs Prosecution Office (now part of the Crown Prosecution Service) to supply information to the Secretary of State for immigration and related purposes and amendments to similar provisions applicable to enable the police to supply information to the Secretary of State;

- Powers to search for nationality documents following an arrest and powers to retain and copy any documents found; and

- The establishment of a Border and Immigration Inspectorate.

The assessment section of this memorandum sets out in greater detail the policy objectives behind the specific provisions of the Act.

COMMENCEMENT

All of the main provisions in the Act have been commenced in full, except section 32 which has been commenced in part only. Section 32 created a new statutory framework for the "automatic" deportation of certain non-British citizens convicted in the United Kingdom of a qualifying offence. Under the provision, the Secretary of State will be required to make a deportation order unless s/he thinks that removal would breach a person's rights under the European Convention on Human Rights (ECHR) or the United Kingdom's obligations under the Refugee Convention or one of the other exceptions in section 33 applies.

Section 57 (Money) has not been commenced and will not be. This section gave the Secretary of State authority to spend money provided by Parliament for purposes of this Act. It was erroneously not commenced on Royal Assent, but any relevant expenditure would have been authorised by the relevant Consolidated Fund or Appropriation Acts, therefore there has been no need to commence it.

The assessment section below provides the dates for commencement for the sections in the Act.

SUPPORTING DOCUMENTS

Annex A lists relevant publications.

Annex B lists the Commencement Orders for the Act.

Annex C lists all secondary legislation made under the Act, other relevant legislation and codes of practice issued under the 2007 Act.

ASSESSMENT OF THE PROVISIONS

DETENTION AT PORTS

Sections 1 - 4

Sections 1 – 4 of the UK Borders Act 2007 were commenced on 31 January 2008 (SI 2008/99). These provisions were brought in to strengthen border security by introducing powers for immigration officers to support the police to tackle criminality**.** These powers permit designated immigration officers to detain individuals subject to a police arrest warrant or individuals identified as someone who they think might be liable to arrest by a constable. The power is exercised by Border Force at the primary control point (PCP) at points of entry into the UK in England, Wales and Northern Ireland. These powers may only be exercised by designated immigration officers

A designated immigration officer is entitled to detain an individual for a maximum of three hours pending the arrival of a police constable *if* the immigration officer thinks that person may be liable to arrest by a constable pursuant to section 24(1), (2) or (3) of the Police and Criminal Evidence Act 1984 (or the equivalent provisions in Northern Ireland) or that an arrest warrant is outstanding for that individual. The designated immigration officer who detains an individual must arrange for a constable to attend as soon as is reasonably practicable. In addition, section 2 provides for an immigration officer to search the detained person for anything that could be used to assist escape or to cause physical injury and to pursue a person and return him to port should he attempt to abscond. It also provides for a Detainee Custody Officer[2] to provide detention services in respect of individuals detained under this section.

Section 3 creates summary offences of absconding from section 2 detention and assaulting or obstructing an immigration officer exercising a power under section 2, and provides for the maximum sentences applicable. Section 4 defines "port" for the purpose of the power under section 2, as including an airport or hoverport and being any place that an individual has gone to, or arrived at, for the purpose of embarking or disembarking from a ship or aircraft.

The powers in sections 1 – 4 extend to England, Wales and Northern Ireland. As these powers are not for the reserved purpose of immigration, but rather for the devolved purpose of policing, they were not extended to Scotland. Section 52 of Part 3 of the Borders, Citizenship and Immigration Act 2009 subsequently introduced a power for designated immigration officers in Scotland to detain an individual who is thought to be subject to a warrant for arrest (but not an individual liable to arrest, as is the case in England, Wales and Northern Ireland). The provisions in the 2009 Act have yet to be commenced in England, Wales and Northern Ireland. No commencement is envisaged for Scotland.

While this set of powers was commenced in England, Wales and Northern Ireland on 31 January 2008, in order to demonstrate its value before national rollout and possible

[2] See Part 8 of the Immigration and Asylum Act 1999

extension to Scotland, detention at ports has been trialled at two Border Force locations, one from a single airport location, and the other by a mobile brigade team, to provide multi-locational aviation and maritime capability. In total, thirty five officers have been designated with the powers.

All designated officers received three days of specific training; covering classroom based legislative instruction, the use of batons and handcuffs with continuous assessment throughout through the use of tactical scenarios demonstrating legal and physical intervention skills. Costs were minimal as internal trainers were used with locations such as Territorial Army bases providing the right, secure premises at minimal cost.

Both trial locations were required to follow common standard operating procedures. These provided detailed instructions of what to do in the event of an alert, how to deal with it, the recording processes and training time-scales. In addition memorandums of understanding were drafted with participating police forces outlining primacy and response time limits, together with operational responses. The powers are still exercisable in the two trial locations (where they have been absorbed as business as usual) but no decision has yet been made on further roll out in England, Wales and Northern Ireland and no commencement is currently envisaged for Scotland.

The main tenet behind this legislation is that it enables immigration officers to react to alerts for wanted persons for whom they have no arrest powers, and to detain those persons suspected of criminality when the police are not able to provide an immediate response. All alerts are therefore channelled to police control rooms in the first instance and it is only when they cannot react that immigration officer assistance will be sought. At the airport location, a total of fourteen alerts have been dealt with and this work is now regarded business as usual. However, no alerts have been dealt with in recent periods because the police have had the capability to respond to all alerts, which have continued in this period at an average of approximately 30 per month.

There has been one recorded conviction (in 2010) for absconding from custody since the offence came into force.

As stated above, the trials were meant to demonstrate whether there was a need/willingness to expand the detention at ports power to all ports without a permanent police presence. The Government is now considering the results of the trials alongside the role of the proposed National Crime Agency before making further decisions about national rollout of the powers.

There is no enabling power for secondary legislation to be made under sections 1-4 and we are not aware of any litigation or reviews connected to these provisions.

BIOMETRIC REGISTRATION

Sections 5 - 15

Sections 5 to 8, 10, 11 and 13 in part, and 14 and 15 were commenced on 31 January 2008. Sections 9 and 12, and 10, 11 and 13 in part were commenced on 25 November 2008, completing the commencement of sections 5-15 covering biometric registration.

Sections 5 to 15 gave the Secretary of State the power to make regulations to require a foreign national who is subject to immigration control to apply for a biometric immigration document, now known as the Biometric Residence Permit. The legislation also provided for a civil penalties regime for failure to comply with the regulations and safeguards to ensure data protection. This legislation was originally intended to meet the UK's obligation to comply with EU legislation and to support the National Identity Scheme (a policy supported by the previous Government).

The European legislation, Council Regulation (EC) No 1030/2002, as amended by (EC) No 380/2008, requires Member States when they issue a document granting leave for more than six months to those nationals from outside the European Economic Area (EEA), to do so in a standard format across all Member States by 20th May 2012. The amendments to the European legislation require Member States, including the UK, to issue a standalone polycarbonate card containing secure details of the holder's immigration status, and including an embedded electronic chip which stores two fingerprints and the facial image of the holder.

At the time of passing the legislation, the Government of the day included the requirement to produce a standalone immigration document (described as an Identity Card for Foreign Nationals) as part of the National Identity Scheme. Following the election in May 2010, the National Identity Scheme was discontinued and the Identity Card for Foreign Nationals became the Biometric Residence Permit.

Biometric Residence Permits support the Government's commitments to secure the border and control migration. They help strengthen immigration controls; reduce the burden on businesses and those required to check the status of foreign nationals; and enable migrants lawfully in the UK to access employment and other benefits to which they are entitled. Because the permits conform to a secure format that meets very high technical standards to safeguard against counterfeiting and falsification, these foreign nationals who need to demonstrate their entitlement can do so with greater confidence and convenience. Research conducted with BRP holders in 2011 supports this.

As more BRPs are rolled out, it will become even easier for employers and others to establish whether their foreign nationals are entitled to work or access public benefits or services in the UK, in particular as the UK Border Agency is rolling out an employer checking service.

Since the commencement of sections 5 – 15 of the 2007 Act, there have been six sets of regulations requiring non-EEA migrants to apply for a biometric immigration document. This was to enable an incremental rollout of biometric residence permits so that the

systems and processes could be carefully managed. The first set, made early in 2008[3] was to enable a pilot to be operated that tested the biometric enrolment systems. It issued biometric immigration documents in the form of a vignette containing a photograph of the holder. Fingerprints were held on the UK Border Agency's fingerprint database.

In November 2008, following approval of the Immigration (Biometric Registration) Regulations 2008, the UK Border Agency commenced issuing Biometric Residence Permits to non-EEA categories, starting with students and marriage and partnership categories. Since then, four further sets of biometric regulations have been made[4], which have enabled the UK Border Agency to complete the rollout of Biometric Residence Permits to all non-EEA nationals who have successfully applied for further leave while in the UK or to replace older immigration documents. Since the start of the rollout, the Agency had issued over 650,000 biometric permits as of the end of February 2012.

The use of biometrics is already well established by the UK Border Agency, both overseas during the visa application process and in-country. Using biometric technology has helped the Agency to identify and take action against those submitting fraudulent or multiple applications.

The biometric information is stored securely onto the UK Border Agency's security accredited biometric database. Staff involved in taking and checking biometrics are all subject to security vetting and access to databases is set so that staff may only access the information they require to undertake their work. Two fingerprints are also stored on the secure encrypted chip contained within the biometric residence permits. Information is stored, shared and used in accordance with section 8 of the 2007 Act, the Immigration (Biometric Registration) Regulations 2008 and the Data Protection Act 1998.

Since the commencement of the 2007 Act and the making of regulations requiring migrants to apply for a Biometric Residence Permit, the level of compliance has been high. This is largely due to the applicants being linked to immigration applications, which are likely to be refused or rejected if there is evidence of non-compliance. However, we do not have specific information about the number of cases that have been refused or rejected on the basis of non-compliance with the requirement to apply for a biometric residence permit.

Turning to the use of civil penalties, since the UK Border Agency commenced issuing biometric residence permits in November 2008, we have issued 67 civil penalties as of the end of 2011. Over the same time there have been 18 objections to the penalties which resulted in 16 penalties being cancelled. During the same period there were no appeals made to either the county court in England, Wales and Northern Ireland or sheriff in Scotland. The value of civil penalties issued is £16,750 and the amount paid is £1,900. The lower amount might be due to several factors including our policy of not enforcing penalties when foreign nationals subsequently comply with the biometric requirements.

[3] The Immigration (Biometric Registration) (Pilot) Regulations 2008

[4] The Immigration (Biometric Registration) (Amendment) Regulations 2009; The Immigration (Biometric Registration) (Amendment No. 2) Regulations 2009; The Immigration (Biometric Registration) (Amendment) Regulations 2010; and The Immigration (Biometric Registration) (Amendment) Regulations 2012

The use of sanctions on foreign nationals who fail to comply with the biometric registration regulations are governed by a published code of practice, "Code of Practice about the sanctions for non-compliance with the biometric registration regulations"[5], which was laid before Parliament in July 2008. The current code is currently being reviewed to reflect policy changes and changes to how biometric residence permits are issued to migrants staying in the UK. Amendments to the code will be subject to public consultation and a draft must be laid before Parliament before it is issued.

TREATMENT OF CLAIMANTS

Section 16 – conditional leave to enter or remain

Section 16 came into force on 31 January 2008. It amended section 3(1)(c) of the Immigration Act 1971 and adds to the range of conditions that can be attached to a person's limited leave to enter or remain in the UK. In particular, it provides for a condition requiring a person to report to an immigration officer or the Secretary of State from time to time and a condition about where a person can live.

The intention of the provision was to enable the UK Border Agency to put in place measures to ensure the closer monitoring of certain categories of person. One such group was foreign national offenders who could not be removed from the UK due to judgements from the courts about risks of human rights abuse on return. It was envisaged that certain people in this group would remain a priority for removal, when circumstances permitted. The additional conditions enabled the Agency to monitor their whereabouts in order that they might be removed in the future. The second intended group was unaccompanied asylum-seeking children (UASCs). There was a concern about UASCs absconding from contact with the Agency, which gave rise to concerns about child protection and the Agency's ability to remove these UASCs to their country of origin in the future if their application for asylum is unsuccessful.

While section 16 came into force in January 2008, the power has been routinely used only since September 2011 under a new policy for granting Restricted Discretionary Leave. This policy applies to people who cannot be removed for ECHR reasons but who have been excluded from refugee protection by virtue of Article 1F of the Refugee Convention. Article 1F covers those who have committed war crimes, crimes against humanity etc. outside the UK. This policy is designed to ensure contact with this group, and to monitor their behaviour, because they remain a priority for removal in the future, when circumstances permit. The Restricted Discretionary Leave policy imposes conditions on reporting, residence, employment and studies and makes clear that the person's presence in the UK is temporary. It would not have been possible to implement this policy without the provisions in section 16.

[5] Laid in Parliament under the Immigration (Biometric Registration) (Civil Penalty Code of Practice) Order 2008

The power provides a very useful and effective way for the Agency closely to manage high priority or high risk individuals. However, it also imposes a significant resource burden on the Agency and, consequently, must be used in the most serious cases only.

For similar reasons, it has yet to be used for the management of UASCs. Current practice is for caseworkers to establish individual contact management strategies which can, for example, involve keeping in touch with the child via their social worker. To date this has proved sufficient to enable case owners to maintain contact with children and the use of the powers in section 16 has not been necessary. However, section 16 provides an alternative should the contact management strategies be insufficient or should the circumstances of specific cases merit its use.

Section 16 provides no regulation-making powers. As yet, the use of section 16 has attracted no legal challenge.

Section 17 - (support for asylum seekers: while appeals extant)

Section 17 was commenced on Royal Assent of the 2007 Act (30 October 2007). The effect of section 17 is that a failed asylum seeker becomes an asylum seeker again (for the purposes of support), despite the fact that their claim for asylum has already been determined[6] during any period when they can bring an in-country appeal against an immigration decision. This legislation was introduced to make clear that failed asylum seekers can receive section 95 (Immigration and Asylum Act 1999) support again if they put in further submissions which are treated as a fresh claim for asylum and refused with an in-country right of appeal (until that appeal right is exhausted). "Section 95 support" is provided to those who have claimed asylum and who would otherwise be destitute, until they have exhausted their appeal rights. Section 95 support is in the form of accommodation and subsistence support, or subsistence only support. Subsistence is paid in cash. The vast majority of section 95 recipients receive accommodation and subsistence. Prior to the introduction of section 17, there was doubt about the legal foundation for providing section 95 support in such circumstances and during the passage of the Bill the practice of doing so was being challenged at the House of Lords. The UK Government wished to ensure that the law was clear in this area.

The Asylum Support (Prescribed Period following Appeal) Regulations 2007[7] were made to set out the prescribed periods within which support will continue to be paid after appeal rights are exhausted.

UK Border Agency practice was already in line with these provisions before the 2007 Act was passed. Failed asylum seekers (whose further submissions had been refused) were considered to be asylum seekers for support purposes whilst any appeal of that refusal was pending under Section 4 support cases under the Immigration and Asylum Act 1999, which sets out that 'the Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of a person if – (a) he was (but is no longer) an asylum-seeker, and (b) his claim for asylum was rejected'.

[6] see section 94(3) of the Immigration and Asylum Act 1999 for a definition of 'determined'
[7] http://www.legislation.gov.uk/uksi/2007/3102/contents/made

This is reflected in section 17(6), which states that section 17 will be treated as always having had effect.

As a result, the only action taken to implement section 17 was to make reference to it in the guidance on ceasing asylum support[8] and through the laying of the Asylum Support (Prescribed Period following Appeal) Regulations 2007.

We are not aware of any litigation or reviews in connection with the introduction of section 17.

Section 18 (support for asylum-seekers: enforcement)

Section 18 inserts sections 109A and 109B into the Immigration and Asylum Act 1999. These sections provide for immigration officer powers of arrest, entry, search and seizure in circumstances where the officer has reasonable grounds to suspect a person has committed an offence under section 105 or 106 of the Immigration and Asylum Act 1999 (offences of making false or dishonest representations in order to obtain asylum support). The aim of this legislation was to introduce powers for immigration officers to take effective action without reliance on the police against those who commit asylum support fraud.

Section 18 was commenced on 31 January 2008 (SI 2008/99). On the same date a Home Office Circular was issued to the Police and Courts in England, Wales, Scotland and Northern Ireland setting out the new powers[9].

The UK Border Agency does not hold data on the number of enforcement actions taken using the powers created in section 18; however it is likely that these powers are used only occasionally. In 2008, 62 people were prosecuted for the offences described in sections 105 and 106 of the 1999 Act; similarly in 2009, 66 people were prosecuted and 54 in 2010 and it is likely that at least some of these cases were arrested using the powers created in section 18.

No secondary legislation has been made in connection with this section and we are not aware of any litigation or reviews about it.

Section 19 (Points-based applications: no new evidence on appeal)

Section 19 of the UK Borders Act 2007 inserts section 85A into the Nationality, Immigration and Asylum Act 2002. It sets out the exceptions where a person will not be able to adduce new evidence on appeal, including a restriction on the evidence an appellant in a Points-Based System (PBS) case can rely on at appeal to that submitted in support of, and at the time of making, their application.

8 http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/asylumsupport/guidance/statuscessationguidance.pdf?view=Binary

9 http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2008/003-2008/

It was introduced with the intention that it would reduce the number of PBS appeals decided on evidence which had not been made available to the UK Border Agency decision-maker pre-decision, apart from in certain specified circumstances. These exemptions are where the evidence relates to:

- Human rights, race relations, asylum or EEA grounds of appeal;
- Proving that a document is genuine or valid;
- Grounds of appeal unrelated to PBS.

The provision requires applicants to submit all their evidence with their initial application and, by getting their application right first time, be successful without having to go through a lengthy and expensive appeals process. A significant proportion of appeals were lost by the UK Border Agency because appellants submitted new evidence late in the process which led to the Tribunal allowing the appeals in light of the new evidence. We expected the measure to reduce the number of decisions overturned at appeal.

Section 19 was commenced on 23 May 2011 (SI 2011/1293). Shortly afterwards Lord Avebury tabled a motion to regret[10] – debated on 7 July 2011 – expressing disappointment that commencement terms meant appeals lodged (but not heard) before 23 May were also caught by the new restriction. While we recognised the concerns of Lord Avebury, we felt the commencement terms were appropriate as the introduction of this measure did not require applicants to do anything differently; it reinforced the existing requirement, that all evidence should be included at the application stage. It had also been on the statute book since October 2007 with the clear intention to introduce once PBS was operational. As such it was commenced to apply to all PBS appeals heard for the first time from 23 May, including cases where an appeal had been lodged (but not heard) in the period leading up to commencement. These transitional provisions have also been the subject of legal challenge but the Court of Appeal ruled in July 2012 that they were legal.

Our overall assessment is that the primary objectives of the section have been met. Analysis of the appeal win rate shows an increase in the proportion of PBS appeals won by the UK Border Agency from introduction of the measure in May 2011 to June 2012 from 31% to 46%. Samples of allowed appeals in 2010 and the latter half of 2011 also showed that the number of cases in which new evidence was the prime factor for an appeal being allowed had fallen from 65% to around 35%.

Section 20 - Fees

Section 20 came into force on 31 January 2008 (SI 2008/99). It amends section 42 of the Asylum and Immigration (Treatment of Claimants, Etc) Act 2004 and enables the Secretary of State to set fees for specific claims, applications, services or processes that, in addition to recovering the administrative costs, cross-subsidise other chargeable immigration costs.

[10] http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/110707-0001.htm#11070743000542

Under pre-existing legislation[11], the UK Border Agency was able to set fees for certain products to cover costs and to charge for certain products over-cost (to reflect benefits to the applicant, for example permanent residence). The amendment through section 20 enables the Secretary of State, when specifying a fee for a claim, application, service, process or other matter in respect of which an order has been made under section 51(1) or (2) of the Immigration and Nationality Act 2006 to specify an amount that reflects (in addition to any costs referable to the claim, application, service, process or other matter) costs referable to:

- any other claim, application, service, process or matter in respect of which an order has been made under section 51(1) or (2),
- the determination of applications for entry clearances (within the meaning given by section 33(1) of the Immigration Act 1971),
- the determination of applications for transit visas under section 41 of the Immigration and Asylum Act 1999, or
- the determination of applications for certificates of entitlement to the right of abode in the United Kingdom under section 10 of the Nationality, Immigration and Asylum Act 2002.

The following secondary legislation has been laid in connection with section 20 since it came into effect:

- The Immigration and Nationality (Fees) Regulations 2012 (http://www.legislation.gov.uk/uksi/2012/971/contents/made)
- The Immigration and Nationality (Fees) Regulations 2011 (http://www.legislation.gov.uk/uksi/2011/1055/contents/made)
- The Immigration and Nationality (Fees)(No. 2) Regulations 2010 (http://www.legislation.gov.uk/ukdsi/2010/9780111502327/contents)
- The Immigration and Nationality (Fees) Regulations 2010 (http://www.legislation.gov.uk/ukdsi/2010/9780111491096/contents)
- The Immigration and Nationality (Fees) Regulations 2009 (http://www.legislation.gov.uk/uksi/2009/816/contents/made)
- The Immigration and Nationality (Fees) (Amendment No. 3) Regulations 2008 (http://www.legislation.gov.uk/uksi/2008/3017/contents/made)
- The Immigration and Nationality (Fees) (Amendment No. 2) Regulations 2008 (http://www.legislation.gov.uk/uksi/2008/1695/contents/made)
- The Immigration and Nationality (Fees) (Amendment) Regulations 2008 (http://www.legislation.gov.uk/uksi/2008/544/contents/made)

This legislation has allowed over-cost fees to be set for the following products:

Entry clearance fees

Visit visa - Long 2 year
Visit visa - Long 5 year
Visit visa - Long 10 year

[11] Section 51 of the Immigration, Asylum and Nationality Act 2006 and section 42 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004

Settlement visas
Other visa
Tier 1 (Entrepreneur, Investor or Exceptional Talent)
Tier 1 Post Study Work

Tier 2 General
Tier 2 Sportspeople
Tier 2 Minister of Religion
Tier 2 Long Term ICT's
Tier 2 Short Term ICT's
Media representatives

PBS Sponsorship fees
Tier 2 Certificate of Sponsorship
Premium Sponsorship licence – large sponsor Tiers 2 and 5
Premium Sponsorship licence – small sponsor Tiers 2 and 5

Section 20 has provided the Secretary of State with greater flexibility in the element of cross-subsidy included within immigration fees. That flexibility enables the UK Border Agency to generate sufficient revenue to contribute adequately towards the costs of running the immigration system, reducing the obligation on the general UK taxpayer. It also supports broader UK Government policy objectives by enabling the UK Border Agency to keep some fees low by cross-subsidising costs within the system. For example, recognising the economic benefit of tourism, short-term visit visas can be charged at under cost by setting fees above costs for certain groups of people coming to the UK for employment purposes or settlement. In addition, section 20 enabled the UK Border Agency to recover income to support the Migration Impacts Fund (MIF)(with Parliament's approval[12]), and recover Ministry of Justice appeals costs (again with Parliament's approval[13]). The MIF was abolished in October 2010 following the general election.

We are not aware of any litigation or reviews in connection with section 20.

Section 21 - Children

This section came into force on 6 January 2009 (SI 2008/3136).

The purpose of section 21 was to provide the UK Border Agency with a means of discharging a responsibility proposed for all public bodies by Lord Laming's report into the death of Victoria Climbie. This is a responsibility to be vigilant on behalf of children for signs that they are at risk of harm translated into legislation as a duty for public bodies to safeguard children and promote their welfare in carrying out their functions. The purpose of section 21 and the accompanying Code of Practice was to apply this general responsibility to the

[12] On 23 March 2009 (Commons) 26 March 2009 (Lords)
[13] On 24 February 2010 (Commons) and 4 March 2010 (Lords)

particular role of the UK Border Agency whilst recognising that its role also involves refusing permission to stay and removing individuals, including children, from the UK.

The main requirement of section 21 was for the UK Border Agency to have a Code of Practice for Keeping Children Safe from Harm[14]. This was laid before Parliament on 16 December 2008 and came into effect on 6 January 2009.

There have been no legal problems with the wording of section 21, nor any reviews that we are aware of. Although there were no particular operational problems arising from section 21, it was nevertheless seen as not fully reflecting the duty as it was expressed in the Children Act 2004 following Lord Laming's report. As such there was a subsequent preference from children's charities and welfare groups and Parliament to replace the code with a duty similar to that in the Children Act 2004.

As a result, section 21 was subsequently repealed from 2 November 2009 when section 55 of the Borders, Citizenship and Immigration Act 2009 came into force (SI 2009/2731). This placed a duty on the Home Secretary to make arrangements to safeguard and promote the welfare of children in carrying out immigration, nationality and asylum functions and in exercising general customs functions. The Code of Practice was automatically revoked when section 21 of the 2007 Act was repealed.

Sections 22 and 23 - Assaulting an immigration officer

Sections 22 and 23 were commenced on 31 January 2008 (SI 2008/99). Section 22 introduced an offence of assaulting an immigration officer and section 23 provided immigration officers with a power to arrest without warrant someone suspected of committing an offence under section 22. The offence and power of arrest were introduced in order to enable immigration officers to deal directly with assaults on them, without requiring a police officer to make an arrest. It was felt that as immigration officers have coercive powers, they needed this power of arrest in the event of an assault, which would put them in the same position as police officers and customs officials with whom they might be engaged in joint operations.

Information on the new powers was integrated into annual refresher training for immigration officers. There have been no prosecutions under section 22 since the offence came into force in 2008.

Sections 24 - Seizure of cash

Section 24 came into force on 1st April 2010. It was introduced to allow immigration officers to exercise powers under Chapter 3 Part 5 of the Proceeds of Crime Act 2002 (POCA) which are already available to police officers, HMRC's customs officers, customs officials

14 http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/closedconsultations/keepingchildrensafe/codeofpracticechildren?view=Binary

designated by the Secretary of State or the Director of Border Revenue and other accredited financial investigators.

The intention of this provision was to allow immigration officers to search a person or premises for cash where there are reasonable grounds for suspecting that such cash is derived from or intended for use in an offence under the Immigration Acts; to seize and detain cash when there are reasonable grounds for suspecting that the cash is derived from or intended for use in an offence under the Immigration Acts or an offence listed in section 14(2) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. Forfeiture of cash is linked to the Asset Recovery Incentivisation Scheme (ARIS), which allows the UK Border Agency to benefit by receiving back 50% of all cash forfeited.

Whilst section 24 came into force on 1st April 2010, it has only been in use since 1st June 2010, the UK Border Agency having first put in place detailed guidance for immigration officers using it. Section 24 represents a useful and effective way for immigration officers to tackle serious and organised immigration crime and also to deprive immigration offenders who are to be removed from the UK of the financial gain which they have earned whilst here in breach of immigration laws. Approximately £254,000 seized using section 24 has been forfeited by the courts up to October 2011. This power is consistent with similar customs and police powers.

The Code of Practice which the Secretary of State is required to make under section 292 of POCA in relation to the exercise of the powers conferred by section 289 of that Act has not yet been amended to cover immigration officers as it also needs to be updated to take account of an as yet un-commenced provision, namely section 63 of the Policing and Crime Act 2009. Ministers have approved in principle the commencement of section 63, but that will not happen until the completion of a full 12-week public consultation on the Code and a subsequent Parliamentary debate. In the meantime, immigration officers will continue to be precluded from exercising the section 289 power to search for cash until the Code is amended.

However, immigration officers have been able to use powers under section 294 of POCA to seize cash, if they happen to come across it when carrying out a lawful search under another power e.g. following arrest of a suspected over-stayer, where they could search his premises under section 28E of the 71 Act for evidence of the offence. For example, in searching for his passport they come across £2,000.

To be clear, they cannot conduct a search under section 289 solely for the purpose of seizing cash, but can seize it under section 294 if they happen to come across it while searching for something else. There is a very fine distinction between the two.

There have been no legal challenges in relation to the drafting of the provisions.

Sections 25 and 26 - Forfeiture and disposal of property

Section 25 came into force on 31st March 2008. It is used hand in hand with section 26 of the UK Borders Act 2007 which came into force on 1st April 2008. The associated Immigration (Disposal of Property) Regulations 2008 (S.I. 2008/786) came into force on 17th April 2008.

While sections 25 and 26 came into force in 2008, the powers have only been in use since April 2009. However they are routinely used upon conviction at the conclusion of a UKBA criminal prosecution. Detailed guidance was issued to coincide with the use of the powers (the Property Forfeiture and Disposal guidance – included at annex C).

Section 25 does not extend to Scotland. In Scotland, UK Border Agency staff are directed by the Procurator Fiscal on how to dispose of productions (exhibits). The powers within section 26 extend to Scotland but in relation to disposal of productions UK Border Agency staff are also directed by the Procurator Fiscal.

The intention of section 25 was that where a court makes a forfeiture order at the conclusion of a successful UKBA-led immigration criminal investigation and prosecution, the court should have the power to order that the property be taken into the possession of the Secretary of State (on the request of the CPS) rather than the police, as was the case prior to this legislation coming into force.

The power provides a legal avenue for the court to make such orders in relation to property used for the commission or facilitation of crime or in relation to property that was intended to be used in this way, so long as the offence in connection with which the order is made relates to immigration or asylum or was committed for a purpose connected with immigration or asylum. An example of this would be a laptop containing forged Home Office headed letter templates. Prior to this legislation coming into force, the court could only order property to be taken into the possession of the police and evidence was subsequently stockpiled in UK Border Agency property stores or stored in police property stores and disposed of using the Police (Property) Act 1897.

The intention of section 26 was to provide powers of disposal in relation to property which has come into the possession of an immigration officer or the Secretary of State in the course of, or in connection with, the exercise of her functions under the Immigration Acts. This includes property which has been forfeited or seized under the Immigration Acts as well as property acquired in any other way. This provision also provides for the Secretary of State to make regulations for the disposal of property in particular circumstances and specifies that regulations may make provision which is the same as or similar to provision made by regulations under section 2 of the Police (Property) Act 1897 (or any similar enactment applying in relation to Scotland or Northern Ireland).

The Immigration (Disposal of Property) Regulations 2008 is the subordinate legislation made under that enabling power and the regulations detail the various methods of disposal available to the Secretary of State where the owner of the property has not been ascertained or where a disposal order cannot be made, in the case of property forfeited under section 25C of the Immigration Act 1971 or property forfeited under section 25 of the

UK Borders Act 2007, on the basis that six months from the date of the forfeiture order has not expired or where a court has declined to make a disposal order on the basis that the applicant has satisfied the court that (s)he did not consent to the offender's possession of the property or that (s)he did not know and had no reason to suspect that the property was likely to be used, or was intended to be used, in connection with an offence.

Pursuant to section 26 the Secretary of State has the power to make regulations allowing her to retain property or govern its disposal by sale or destruction.

As yet the operation of sections 25 and 26 has attracted no legal challenges and we are not aware of any reviews of these provisions.

ENFORCEMENT

Section 27 and 28 (employment: arrest and search for personnel records)

Sections 27 and 28 came into force on 29 February 2008 (SI 2008/309). They were introduced to ensure that there continued to be a power of arrest and search in connection with the offence of knowingly employing an illegal worker when the then existing offence under section 8 of the Asylum and Immigration Act 1996 was repealed. The offence of employing an illegal worker (section 8 of 1996 Act), which had connected powers of search and arrest, was replaced by a regime of civil penalties for employers and a new offence of knowingly employing an illegal worker (sections 15-21 of the Immigration, Asylum and Nationality Act 2006). Section 27 introduced an express power of arrest and section 28 introduced a power to search for personnel records in connection with an offence under section 21 of the 2006 Act.

Because sections 27 and 28 were introduced in order to maintain existing powers of search and arrest, the powers did not require changes to existing guidance on arrest and search.

We are not aware of any litigation or reviews into the sections.

Sections 29-31 – facilitation and trafficking

Sections 29 – 31 were commenced on 31 January 2008 (SI 2008/99). Sections 29 and 31 were enacted following adverse court judgments about the meaning of section 25A of the Immigration Act 1971. Section 25A of the 1971 Act was inserted into that Act by section 143 of the Nationality, Immigration and Asylum Act 2002 and criminalised facilitating the arrival in the UK of an asylum seeker for gain. However, it was argued successfully in at least two cases that acts facilitating the entry of asylum seekers had occurred after arrival in the UK (as the acts took place in the UK). The same wording was also used in the offences of trafficking in the Asylum and Immigration (Treatment of Claimants) Act 2004 and Sexual Offences Act 2003. Sections 29 and 31 amended these offences to make it clear that acts facilitating the entry into the UK (and also committed after arrival in the UK) also amounted to offences of facilitation or trafficking.

At the same time, sections 30 and 31 provided for extra-territorial jurisdiction in respect of these offences of facilitation and trafficking (and also of the offence of assisting unlawful

immigration to a member State in section 25 of the 1971 Act) by providing that the offences applied to things done whether inside or outside the UK.

While there has been an increase in the number of convictions for these offences since commencement of sections 29 - 31, it is not possible to identify from the information collated centrally whether this is as a result of the additional wording and expanded jurisdiction. However, the Crown Prosecution Service is not aware of any cases failing because of arguments about the wording of the offences.

DEPORTATION OF CRIMINALS

Sections 32 – 39

Sections 32 – 39 were commenced (section 32 in part only) on 1 August 2008, with transitional arrangements for those already subject to deportation proceedings.

Sections 32- 39 provided the framework for 'automatic deportation' and were introduced against the backdrop of considerable public and Parliamentary scrutiny in 2006 of the Home Office's performance on deporting foreign national offenders. The objective of the sections was (i) to impose a statutory duty on the Secretary of State to make a Deportation Order against a 'foreign criminal' (as defined in section 32), and (ii) provide that 'foreign criminals' (as defined in section 32) would not have an in-country right of appeal against the decision to deport them, with some exceptions, most notably for those in need of international protection, or who make a human rights claim.

Section 32(3) sought to extend the definition of 'foreign criminal' to some individuals convicted of an offence specified in an order made under section 72(4)(a) of the Nationality, Immigration and Asylum Act 2002. However, the use of the list of offences specified in the 2002 order was ruled unlawful in the context of asylum decisions by the Court of Appeal[15] and as a result section 32 (3) has not been commenced.

The legislation was expected to make the deportation process faster and reduce the volume of appeals. There was also an expectation that it would increase compliance with deportation proceedings as more foreign national offenders would be clear from the outset that deportation was inevitable.

The in-country appeal right remains for foreign criminals with arguable asylum or human rights claims.

The original intention behind the measure has been in part undermined by subsequent litigation. The Secretary of State has been unsuccessful in resisting a judicial review in R v SSHD ex parte *R (aoa) Ebcin Mehmet v SSHD* [2011] EWHC 741 (Admin). In this case, the court ruled that a refusal to revoke a deportation order made under the automatic deportation provisions is an 'immigration decision' for the purposes of section 82(2)(k) Nationality Immigration and Asylum Act 2002. This means that where post-appeal representations against deportation raise asylum or human rights grounds, an appeal against a refusal to revoke a deportation order must be heard in country. The previous

[15] [2009] EWCA Civ 630

understanding of section 32(6)(b) UK Borders Act 2007 was that such applications to revoke could only be made from outside the UK. The court disagreed. The effect of the ruling is that, in a small number of cases, a person can generate a second appeal against deportation in the UK before deportation can be carried out. This inevitably slows the deportation process in such cases. Although where the second appeal raises issues that should have been argued in the first appeal, or otherwise is clearly unfounded, it can be certified to prevent a right of appeal or an in country right of appeal. The UK Border Agency estimates that there are approximately ten additional appeals per month as a result of this judgment – so the impact is small in proportion to the overall number of decisions and deportation orders made.

The automatic deportation provisions were introduced alongside considerable organisational reforms inside the UK Border Agency in order to improve the Agency's performance on deporting foreign national offenders. The Agency's operational performance has improved greatly over that period. It is impossible to disaggregate the effect of the automatic deportation provisions from the effect of the operational improvements so it is not possible to state precisely how much of the improvements are a result of one or the other.

There have been a few teething issues with legal challenges shortly after implementation, and an unexpected High Court ruling on the impact of further representations (see *Ebcin Mehmet* above) but the provisions in sections 32-39 have had a positive impact on the deportation process overall.

INFORMATION

Section 40: Supply of Revenue and Customs information

Section 40 was commenced on 31 January 2008 (SI 2008/99). It consolidated the legal basis allowing HM Revenue and Customs (HMRC) or the Revenue and Customs Prosecution Office (RCPO– now a section of the Crown Prosecution Service) to provide information, documents and articles to the Secretary of State in respect of her immigration and nationality functions. It allows the Secretary of State to retain documents for these purposes and replaced existing information sharing legislation.

HMRC regularly share information with the UK Border Agency using this section of the UK Border Act 2007. There are at least 250 enquiries with HMRC per month which enable the UK Border Agency or Border Force to use HMRC information when considering applications for leave to remain in the United Kingdom. Examples of information sharing include:

- Use of information held by HMRC to carry out identity checks on detained passengers where it is suspected they are claiming HMRC benefits or working illegally. If the results of such checks indicate that the individual has been working illegally or claiming benefits to which they are not entitled, enforcement action may be taken including possible removal or deportation where appropriate.

- Use of information provided by HMRC to identify and jointly target immigration and tax offenders. As above, enforcement action may be taken to remove or deport individuals where appropriate.

HMRC and the UK Border Agency have a memorandum of understanding in place (currently under review) which sets out in more detail the process the two organisations must adhere to when sharing information using this and other information sharing gateways. The memorandum seeks to ensure information is only shared when necessary and sets outs safeguards to protect personal information in line with relevant statutory provisions.

Section 40 does not provide for secondary legislation and we are not aware of any reviews or litigation in connection with this section. However, further legislation has been enacted which is relevant to information sharing, namely the Borders, Citizenship and Immigration Act 2009. (See sections 41 and 42 below.)

Sections 41 and 42: Confidentiality and wrongful disclosure

Sections 41 and 42 were commenced on 31 January 2008 (SI 2008/99). Section 41 prohibits the disclosure of the information supplied by or on behalf of HMRC or the Revenue and Customs Prosecutions Office (RCPO), including where it is provided under section 40, except in defined circumstances. This renders Home Office staff who receive and process HMRC information subject to the same confidentiality requirement as HMRC staff and protects taxpayer confidentiality. Section 42 creates an offence of wrongful disclosure for those in breach of section 41 with a penalty of up to 2 years imprisonment. This offence provides additional safeguards to ensure HMRC and RCPO retain some control over the onward transmission of this information. To date there have not been any convictions under this section since coming into force in 2008.

Sections 41 and 42 do not provide for secondary legislation and we are not aware of any reviews or litigation in connection with these sections. However, further legislation has been enacted which is relevant to information sharing through the Borders, Citizenship and Immigration Act 2009.

Sections 41A and 41B were inserted into this Act by the Borders, Citizenship and Immigration Act 2009, and provide HMRC and RCPO with the ability to give information to a designated customs official, the Director of Border Revenue (i.e. the Head of Border Force) or the Secretary of State, for use in relation to their customs functions. Section 41B, which mirrors the wording of section 41, places restrictions on how that information can be further disclosed by the recipient. [16]

[16] http://www.legislation.gov.uk/ukpga/2009/11/contents

Section 43: Supply of police information, etc.

Section 43 was commenced on 31 January 2008 (SI 2008/99). The purpose of section 43 was to insert new provisions into section 131 of the Nationality, Immigration and Asylum Act 2002 to provide that the police can provide information to the Secretary of State in relation to the good character of applicants for registration of British citizenship and in respect of those being considered for deprivation of citizenship. Before the 2007 Act amendment the power related only to applicants for naturalisation. Information about character could include information about previous convictions.

Under good character policy for naturalisation or registration, a conviction will usually weigh heavily against an applicant, as will a failure to declare a previous conviction.

We are not aware of any reviews or litigation in connection with section 43.

Sections 44-47 (search for evidence of nationality and seizure of nationality documents)

Sections 44 – 47 were commenced on 29 February 2008 (SI 2008/309).

Section 44 provides a power to search premises where an individual has been arrested for a criminal offence and an immigration officer or a police constable suspects that he might not be a British citizen and that nationality documents might be found on premises connected to him[17]. The power allows the immigration officer or constable to enter and search the premises without a warrant, albeit that the written authority of a senior officer is required, for the purpose of finding those documents.

Under section 45, where it is believed that nationality documents may be held at premises other than those set out in section 44, a warrant may be sought to enter and search those premises. Section 46 allows an immigration officer or constable to seize and retain a document which he thinks is a nationality document relating to the arrested person, provided it is not a document subject to legal privilege.

Section 47 inserts a new paragraph 18A into Part 2 of Schedule 4 to the Police Reform Act 2002 (powers exercisable by police civilian employees: investigating officers). This enables any civilian employee to exercise the powers to enter premises, search for, seize and retain nationality documents, in the same way that an immigration officer or constable can, provided she/he is designated as having these particular powers. Investigating Officers have been designated under this provision.

These powers were introduced to help establish the nationality of a person arrested and to facilitate the deportation of that person if subsequently convicted. The powers have significantly enhanced the police and UK Border Agency's ability to handle foreign national

[17] premises occupied or controlled by the individual, or on which the individual was arrested, or on which the individual was, immediately before being arrested.

offenders as they assist in establishing a person's nationality when that person first enters the criminal justice system.

Before implementing the powers nationally two pilots were carried out at selected sites in Greater London and elsewhere to test the efficacy of the powers and any impacts in terms of equality, diversity and community relations. Overall the pilots demonstrated that where the power is used effectively it closes the previous gaps that hindered the police in being able to identify the nationality of suspects arrested for non-immigration offences, and resulted in the removal or deportation of 16 individuals. The pilots also showed that the powers enable UKBA and joint operations teams to take action to ascertain nationality at an earlier stage in the process which reduces the time that people spend in custody and the associated costs and risks. The pilots demonstrated that the powers could be used without significant harm to community relations in a range of different urban contexts through close working with police community liaison/consultative groups.

The report "UK Borders Act 2007 Search Powers Pilot" details the findings of the pilot scheme[18]. Following the pilot scheme Ministers were satisfied that the powers have been found to be appropriate and proportionate and agreed that they should be rolled out nationally to police, joint operations teams and arrest trained immigration officers.

Following the pilots and the move to implement the new powers nationally, a post implementation assessment of their use was carried out. This survey from 1 April to 30 September 2010 covered 27 sites. It established that the section 44 power (entry without warrant) power had been used on a total of 41 occasions, resulting in the location of 35 identity documents relating to arrested persons. The section 45 power (entry with warrant) was used on one occasion.

Guidance for the use of these powers by immigration officers has been added to the enforcement instructions available on the UK Border Agency website. Sections 44-47 are covered under Chapter 34.10 of Enforcement Instructions and Guidance[19]. The relevant guidance to police was issued through Home Office circular 004-2010[20].

Legislation and guidance makes it clear that before the powers are used a search must first be made of UK Border Agency records to check whether the individual's nationality is already confirmed and documented. It further provides that the powers of entry and search may only be exercised with the written authority of a senior officer (which is a Chief Immigration Officer or, for the police, an Inspector). The senior officer who authorises the search must make a written record of the nature of the documents sought and the grounds for the suspicion in reliance on which the power was exercised.

We are not aware of any review or litigation in respect of the powers in sections 44 – 47.

[18] http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2010/004-2010/annex-b-2?view=Binary

[19] http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/oemsectione/

[20] http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2010/004-2010/

BORDER AND IMMIGRATION INSPECTORATE

Sections 48-56: Border and Immigration Inspectorate

Sections 48-56 of the 2007 Act were commenced on 1 April 2008 (sections 51 – 53 in part) and 6 January 2009 (completing the commencement of sections 51 – 53) through SI 2008/309 and SI 2008/3136.

The Government's stated purpose in enacting sections 48-56 was to establish an independent inspectorate covering the immigration and nationality functions of (what is now) the UK Border Agency and Border Force, which would:

- provide assurance to Ministers, Parliament and the public about the safe, proper and effective delivery of its functions
- drive the improvements in the efficiency and effectiveness of its services

The provisions set out the role of the Chief Inspector and the arrangements for his appointment, resourcing and planning, as well as for the reports he is to produce and his position with regard other bodies.

The Chief Inspector's remit was expanded by the Borders, Citizenship and Immigration Act 2009 to reflect the arrangements under that Act for the concurrent exercise of customs functions by the UK Border Agency and HMRC respectively. These new arrangements saw responsibility for what had been HMRC's custody suites pass to the UK Border Agency, a fact that necessitated a clarification of the remit of the Chief Inspector in relation to detention facilities. The 2009 Act made it clear that the inspection of the UK Border Agency's pre-existing immigration detention facilities would continue to be the responsibility of HM Inspectorate of Prisons and that the custody suites would continue to come under the remit of the HM Inspectorate of Constabulary.

The establishment of the role of the Chief Inspector has been successful in terms of the objectives set out above. An Independent Chief Inspector was appointed in 2008. He has a delegated budget and staff; he has developed inspection criteria and plan; and produced his first annual report in 2009.

In the subsequent two years he has produced over 35 individual inspection reports. All reports have been influential both in terms of increasing Parliamentary and public understanding of the UK Border Agency's and Border Force's business - and in terms of driving improvements to their operations. The vast majority of the recommendations he has made have been accepted; and most of the accepted recommendations have been fully implemented. Both the UK Border Agency, Border Force and various organisations that represent the Agency's customers have been clear about the value of the Chief Inspector's function.

The splitting of Border Force from UKBA in 2012 did not impact on the Chief Inspector's responsibilities as these are defined in terms of specific functions rather than specific organisations – i.e. he continues to inspect the functions of both the UK Border Agency and Border Force. The Chief Inspector decided, in the light of this change, to refer to himself as the Independent Chief Inspector of Borders and Immigration, which reflects the title given to the relevant section of the Borders Act (ie 'Border and Immigration Inspectorate').

The provisions in sections 49 to 50 on the Chief Inspector's appointment, remuneration and funding, his ability to appoint staff, the preparation of an annual report and reports requested by the Secretary of State (including the omitting of material) have all been utilised and proved effective.

The provisions in section 51, that require the Chief Inspector to prepare plans describing the objectives and terms of reference of proposed inspections, have been followed.

The powers set out in sections 52, 53 and 55 which provide for the Secretary of State's to regulate how the Chief Inspector works with prescribed persons and for the Chief Inspector to issue non-interference notices (these notices prevent a person (specified by the Secretary of State) from conducting an investigation of the UK Border Agency and / or Border Force if the Chief Inspector thinks that it may place an unreasonable burden on them) in respect of such persons - have not been used to date.

No secondary legislation has been made through the order making powers in sections 48 – 56 and we are not aware of any reviews or litigation in connection with these sections.

Conclusion

The UK Border Act 2007 was introduced to overhaul the immigration system and to give immigration officers vital new powers to do their job better, to secure our borders, control migration, including visa, citizenship and asylum applications as well as tackling illegal working.

The Act introduced a points based system to attract and retain the right mix of skills to help keep wealth creation, employment and productivity high and rising. Whilst offering humanitarian protection to people requiring legitimate sanctuary and fleeing persecution.

The Act removed appeal rights for those seeking to avoid deportation save for a limited class of persons whose removal would be either a breach of their rights under the Refugee Convention, the ECHR or under EU law.

Overall the Act has met its intended effect.

Annex A

Relevant publications

http://www.parliament.uk/documents/commons/lib/research/rp2007/rp07-011.pdf

Section 18

http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2008/003-2008/

Sections 44 - 47

http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2010/004-2010/annex-b-2?view=Binary

http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/oemsectione/

http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2010/004-2010/

Annex B

Commencement Orders for the Act by section

Provision	*Date of Commencement*	*Statutory Instrument number*
Sections 1 to 4 (detention at ports)	31.01.2008	2008/99
Section 5 to 8 (biometric registration)	31.01.2008	2008/99
Section 9 (biometric registration: penalty)	25.11.2008	2008/2822
Section 10 (biometric registration: objection to penalty)	31.01.2008 and 25.11.2008	2008/99
Section 11 (biometric registration: appeal in respect of penalty)	31.01.2008 and 25.11.2008	2008/99
Section 12 (biometric registration: enforcement of penalty)	25.11.2008	2008/2822
Section 13 (biometric registration: code of practice regarding penalty)	31.01.2008 and 25.11.2008	2008/99
Sections 14 and 15 (biometric registration: prescribed matters and interpretation)	31.01.2008	2008/99
Section 16 (conditional leave to enter or remain)	31.01.2008	2008/99
(Section 17 (support for asylum seekers: while appeals extant)	*30.10.2007*	*n/a – on Royal Assent)*
Section 18 (support for asylum-seekers: enforcement)	31.01.2008	2008/99
Section 19 (Points-based applications: no new evidence on appeal)	23.05.2011	2011/1293
Section 20 (fees)	31.01.2008	2008/99
Section 21 (children)	06.01.2009	2008/3136
Section 22 and 23 (assaulting an immigration officer: offence and power of arrest)	31.01.2008	2008/99
Section 24 (seizure of cash)	01.04.2010	2010/606
Section 25 (forfeiture of detained property)	29.02.2008	2008/309

Section 26 (disposal of property)	31.01.2008 and 01.04.2008	2008/99
Section 27 and 28 (employment: arrest and search for personnel records)	29.02.2008	2008/309
Section 29 to 31 (facilitation and trafficking)	31.01.2008	2008/99
Section 32 to 38 (automatic deportation) (partially)	01.08.2008	2008/1818
Section 39 (automatic deportation: consequential amendments)	01.08.2008	2008/1818
Sections 40 to 43 (supply and wrongful disclosure of information)	31.01.2008	2008/99
Sections 44 to 47 (search for evidence of nationality and seizure of nationality documents)	29.02.2008	2008/309
Sections 48 to 50 (Border and Immigration Inspectorate: appointment, office and reports)	01.04.2008	2008/309
Section 51 (Border and Immigration Inspectorate: plans)	01.04.2008 and 06.01.2009	2008/309 and 2008/3136
Sections 52 and 53 (Border and Immigration Inspectorate: relationship with other bodies)	01.04.2008 and 06.01.2009	2008/309 and 2008/3136
Section 54 (Border and Immigration Inspectorate: abolition of other bodies)	01.04.2008	2008/309
Section 55 (Border and Immigration Inspectorate: prescribed matters)	01.04.2008	2008/309
Section 56 (Border and Immigration Inspectorate: Senior President of Tribunals)	01.04.2008	2008/309
Schedule	31.01.2008 and 01.04.2008	2008/309

Annex C

Secondary legislation, other relevant legislation and codes of practice issued under the UK Borders Act 2007

Sections 1 – 4 – Detention at port

Section 52 of Part 3 of the Borders, Citizenship and Immigration Act 2009 provides for similar powers in Scotland to those in sections 1 – 4.

Sections 5 – 15 – Biometric Registration

The Immigration (Biometric Registration) (Pilot) Regulations 2008

The Immigration (Biometric Registration) (Civil Penalty Code of Practice) Order 2008

The Immigration (Biometric Registration) (Amendment) Regulations 2009

The Immigration (Biometric Registration) (Amendment No. 2) Regulations 2009

The Immigration (Biometric Registration) (Amendment) Regulations 2010

The Immigration (Biometric Registration) (Amendment) Regulations 2012

Section 17 – (support for asylum seekers: while appeal extant)

The Asylum Support (Prescribed Period following Appeal) Regulations 2007

Section 20 – fees

The Immigration and Nationality (Fees) (Amendment) Regulations 2008

The Immigration and Nationality (Fees) (Amendment No. 2) Regulations 2008

The Immigration and Nationality (Fees) (Amendment No. 3) Regulations 2008

The Immigration and Nationality (Fees) Regulations 2009

The Immigration and Nationality (Fees) Regulations 2010

The Immigration and Nationality (Fees)(No. 2) Regulations 2010

The Immigration and Nationality (Fees) Regulations 2011

The Immigration and Nationality (Fees) Regulations 2012

Section 21 – Children

Code of Practice for Keeping Children Safe from Harm

Section 21 was repealed by the Borders, Citizenship and Immigration Act 2009 when section 55 of the 2009 Act (Duty regarding the welfare of children) came into force through SI 2009/2731

Sections 25 and 26 - Forfeiture and disposal of property

Immigration (Disposal of Property) Regulations 2008

Sections 40 – 42 – Information (HMRC)

Section 20 of the Borders, Citizenship and Immigration Act 2009 insert sections 41A and 41B into the UK Borders Act 2007

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