

# UK Borders Act 2007

## 2008 CHAPTER 30

An Act to make provision about immigration and asylum; and for connected purposes.

[30th October 2007]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

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### Introduction:

This Act is a miscellany of minor changes of immigration law. It does not have one central theme; nor was it a response to a particular policy paper or consultation. The individual topics are summarised below at the start of each. They are: Powers at ports; Biometric registration; Treatment of claimants; Enforcement; Information; and Border and Immigration Inspectorate.

### Pepper v Hart Note (see General Note: Pepper v Hart):

On the Second Reading in the House of Commons of the Bill for this Act on 5th February 2007 The Minister for Immigration, Citizenship and Nationality (Mr. Liam Byrne) said as follows—

“The Bill should not be dismissed as another Immigration Bill. It is much more ambitious than that. It is part of an ambitious plan of reform that has been co-authored by many immigration and nationality directorate front-line staff. I do not believe—and nor do our officers and other staff—that we can secure our borders in this world of global migration without three measures: first, greater powers for front-line officers to help them secure the border; secondly, a concerted attack on organised crime, which might account for as much as three quarters of illegal entry into Britain; and, thirdly, a much more robust approach not only to detecting and removing those who are in the country illegally, but to attacking the causes of illegal immigration, which are the exploitation of vulnerable illegal labour by racketeers.”

## Detention at ports

### 1 Designated immigration officers

- (1) The Secretary of State may designate immigration officers for the purposes of section 2.
  - (2) The Secretary of State may designate only officers who the Secretary of State thinks are—
    - (a) fit and proper for the purpose, and
    - (b) suitably trained.
  - (3) A designation—
    - (a) may be permanent or for a specified period, and
    - (b) may (in either case) be revoked.
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#### Section 1

##### Introduction:

This section introduces a group of sections about detention at ports. It allows the Secretary of State to designate immigration officers to exercise detention powers granted by section 2.

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"Sections 1-4 provide for the Secretary of State to designate immigration officers acting at ports in England and Wales and Northern Ireland to have the power to detain an individual pending the arrival of a police constable and create offences of absconding from detention, and assaulting or obstructing an immigration officer in the course of exercising this power and the punishments associated with each. The meaning of "port" for these purposes is also defined."

##### Subsection (1):

See General Note: Secretary of State.

See General Note: Immigration Officers.

##### Subsection (2):

"Thinks" – see General Note: Levels of Certainty.

**Pepper v Hart Note** (see General Note: Pepper v Hart):

In the Public Bill Committee in the House of Commons on the Bill for this Act The Minister for Immigration, Citizenship and Nationality (Mr. Liam Byrne) said as follows—

“We also envisage extensive training as part of that process of becoming a fit and proper person. ... when we talk about people being “fit and proper”, we mean fit and proper for the purpose.”

**Subsection (3):**

There is no express provision for suspension (for example, pending investigation) – but the same effect could be produced by revocation and renewal.

## 2 Detention

(1) A designated immigration officer at a port in England, Wales or Northern Ireland may detain an individual if the immigration officer thinks that the individual—

(a) may be liable to arrest by a constable under section 24(1), (2) or (3) of the Police and Criminal Evidence Act 1984 (c.60) or Article 26(1), (2) or (3) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)), or

(b) is subject to a warrant for arrest.

(2) A designated immigration officer who detains an individual—

(a) must arrange for a constable to attend as soon as is reasonably practicable,

(b) may search the individual for, and retain, anything that might be used to assist escape or to cause physical injury to the individual or another person,

(c) must retain anything found on a search which the immigration officer thinks may be evidence of the commission of an offence, and

(d) must, when the constable arrives, deliver to the constable the individual and anything retained on a search.

(3) An individual may not be detained under this section for longer than three hours.

(4) A designated immigration officer may use reasonable force for the purpose of exercising a power under this section.

(5) Where an individual whom a designated immigration officer has detained or attempted to detain under this section leaves the port, a designated immigration officer may—

(a) pursue the individual, and

(b) return the individual to the port.

(6) Detention under this section shall be treated as detention under the Immigration Act 1971 (c. 77) for the purposes of Part 8 of the Immigration and Asylum Act 1999 (c. 33) (detained persons).

### Section 2

#### Introduction:

This section allows designated immigration officers to detain people at ports for up to three hours.

#### Subsection (1):

Designated immigration officer – see section 1.

See General Note: England and Wales.

See General Note: Northern Ireland.

Individual – see General Note: Person.

Port - see section 4.

See General Note: Constable.

Section 24(1), (2) and (3) Police and Criminal Evidence Act 1984; Article 26(1), (2) or (3) of the Police and Criminal Evidence (Northern Ireland) Order 1989 – generally, grounds for when a constable may arrest someone without a warrant. For example, a constable may arrest anyone about to commit an offence.

**Subsection (2):**

**Pepper v Hart Note** (see General Note: Pepper v Hart):

In the Public Bill Committee in the House of Commons on the Bill for this Act The Minister for Immigration, Citizenship and Nationality (Mr. Liam Byrne) said as follows—

“The obligations that we put on immigration officers include summoning a police constable as soon as is reasonably practicable to conduct arrest or interview or to carry out other core police functions. We do not propose that immigration officers take on those responsibilities, so it is important that the oversight arrangements that are put in place are matched to the powers that we give to immigration officers.”

**Subsection (3):**

**Note:**

This subsection presumably does not allow a person to be released and then instantly re-detained for a new period of 3 hours. Equally, however, there is presumably no intention to prevent a person detained on Day 1 and released from being detained again on Day 2 if he or she returns to that port. As so often, the extremes of what is permitted and prohibited will be obvious, but there is likely to be a grey area between them.

**Pepper v Hart Note** (see General Note: Pepper v Hart):

In the Public Bill Committee in the House of Commons on the Bill for this Act The Minister for Immigration, Citizenship and Nationality (Mr. Liam Byrne) said as follows—

“As the law stands, an immigration officer would be in breach of the law if he were to detain somebody for longer than three hours, which is why I needed persuading that three hours is long enough. However, I accept the representations from the Association of Chief Police Officers that three hours is the right margin within which an immigration officer should seek to summon a police constable to conduct an arrest or investigation.”

**Subsection (6):**

Detention under the Immigration Act 1971 (generally, illegal immigrants and others guilty of immigration offences). Part 8 of the Immigration and Asylum Act 1999 (generally, he will be detained within a “detention centre” (s.147) or a “short-term holding facility” (s.157)).

**Note:**

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"Section 2 also enables Detainee Custody Officers to provide detention services in respect of individuals detained under this section. A detainee custody officer is a person who has been authorised by the Secretary of State (under section 154 of Immigration and Asylum Act 1999) to perform escort and or custodial functions in connection with persons detained under the Immigration Act 1971 and the Nationality Immigration and Asylum Act 2002."

### 3 Enforcement

- (1) An offence is committed by a person who—
    - (a) absconds from detention under section 2,
    - (b) assaults an immigration officer exercising a power under section 2, or
    - (c) obstructs an immigration officer in the exercise of a power under section 2.
  - (2) A person guilty of an offence under subsection (1)(a) or (b) shall be liable on summary conviction to—
    - (a) imprisonment for a term not exceeding 51 weeks,
    - (b) a fine not exceeding level 5 on the standard scale, or
    - (c) both.
  - (3) A person guilty of an offence under subsection (1)(c) shall be liable on summary conviction to—
    - (a) imprisonment for a term not exceeding 51 weeks,
    - (b) a fine not exceeding level 3 on the standard scale, or
    - (c) both.
  - (4) In the application of this section to Northern Ireland—
    - (a) the reference in subsection (2)(a) to 51 weeks shall be treated as a reference to six months, and
    - (b) the reference in subsection (3)(a) to 51 weeks shall be treated as a reference to one month.
  - (5) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44) (51 week maximum term of sentences)—
    - (a) the reference in subsection (2)(a) to 51 weeks shall be treated as a reference to six months, and
    - (b) the reference in subsection (3)(a) to 51 weeks shall be treated as a reference to one month.
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### Section 3

#### Introduction:

This section makes it a criminal offence to obstruct the exercise of the detention powers under section 2.

**Subsection (2):**

See General Note: Offences: Summary.

See General Note: Offences: Standard Scale.

**Subsection (5):**

See General Note: Criminal Justice Act 2003, s.281(5).

#### **4 Interpretation: “port”**

- (1) In section 2 “port” includes an airport and a hoverport.
  - (2) A place shall be treated for the purposes of that section as a port in relation to an individual if a designated immigration officer believes that the individual—
    - (a) has gone there for the purpose of embarking on a ship or aircraft, or
    - (b) has arrived there on disembarking from a ship or aircraft.
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#### **Section 4**

##### **Introduction:**

This section defines “port”.

##### **Subsection (1):**

The absence of any attempt to define airport or hoverport is explained by the expansion effected by subsection (2): since any place where a person is likely to board or leave an aircraft or ship is a port for these purposes, there would be no point in trying to define airport or hoverport in general terms.

##### **Subsection (2):**

“Believes”: see General Note: Levels of Certainty – and contrast “thinks” in s.2(1). It is reasonable to assume that “believes” is meant to be a lower threshold than “thinks” in this context, but of course the belief still needs to be based on a reasonable foundation.

“Ship” – is a hovercraft a ship? In some contexts “ship” is defined expressly to include hovercraft. In the context of this section, however, the inclusion can be assumed, since subsection (1)’s reference to hoverports makes it clear that hovercraft are within the legislative contemplation for the section generally.

## Biometric registration

### 5 Registration regulations

- (1) The Secretary of State may make regulations—
  - (a) requiring a person subject to immigration control to apply for the issue of a document recording biometric information (a “biometric immigration document”);
  - (b) requiring a biometric immigration document to be used—
    - (i) for specified immigration purposes,
    - (ii) in connection with specified immigration procedures, or
    - (iii) in specified circumstances, where a question arises about a person's status in relation to nationality or immigration;
  - (c) requiring a person who produces a biometric immigration document by virtue of paragraph (b) to provide information for comparison with information provided in connection with the application for the document.
- (2) Regulations under subsection (1)(a) may, in particular—
  - (a) apply generally or only to a specified class of persons subject to immigration control (for example, persons making or seeking to make a specified kind of application for immigration purposes);
  - (b) specify the period within which an application for a biometric immigration document must be made;
  - (c) make provision about the issue of biometric immigration documents;
  - (d) make provision about the content of biometric immigration documents (which may include non-biometric information);
  - (e) make provision permitting a biometric immigration document to be combined with another document;
  - (f) make provision for biometric immigration documents to begin to have effect, and cease to have effect, in accordance with the regulations;
  - (g) require a person who acquires a biometric immigration document, without the consent of the person to whom it relates or of the Secretary of State, to surrender it to the Secretary of State as soon as is reasonably practicable;
  - (h) permit the Secretary of State to require the surrender of a biometric immigration document in other specified circumstances; (i) permit the Secretary of State on issuing a biometric immigration document to require the surrender of other documents connected with immigration or nationality.
- (3) Regulations under subsection (1)(a) may permit the Secretary of State to cancel a biometric immigration document—

- (a) if the Secretary of State thinks that information provided in connection with the document was or has become false, misleading or incomplete,
  - (b) if the Secretary of State thinks that the document has been lost or stolen,
  - (c) if the Secretary of State thinks that the document (including any information recorded in it) has been altered, damaged or destroyed (whether deliberately or not),
  - (d) if the Secretary of State thinks that an attempt has been made (whether successfully or not) to copy the document or to do anything to enable it to be copied,
  - (e) if the Secretary of State thinks that a person has failed to surrender the document in accordance with subsection (2)(g) or (h),
  - (f) if the Secretary of State thinks that the document should be re-issued (whether because the information recorded in it requires alteration or for any other reason),
  - (g) if the Secretary of State thinks that the holder is to be given leave to enter or remain in the United Kingdom,
  - (h) if the Secretary of State thinks that the holder's leave to enter or remain in the United Kingdom is to be varied, cancelled or invalidated or to lapse,
  - (i) if the Secretary of State thinks that the holder has died,
  - (j) if the Secretary of State thinks that the holder has been removed from the United Kingdom (whether by deportation or otherwise),
  - (k) if the Secretary of State thinks that the holder has left the United Kingdom without retaining leave to enter or remain, and
  - (l) in such other circumstances as the regulations may specify.
- (4) Regulations under subsection (1)(a) may require notification to be given to the Secretary of State by the holder of a biometric immigration document—
- (a) who knows or suspects that the document has been lost or stolen,
  - (b) who knows or suspects that the document has been altered or damaged (whether deliberately or not),
  - (c) who knows or suspects that information provided in connection with the document was or has become false, misleading or incomplete,
  - (d) who was given leave to enter or remain in the United Kingdom in accordance with a provision of rules under section 3 of the Immigration Act 1971 (c. 77) (immigration rules) and knows or suspects that owing to a change of the holder's circumstances the holder would no longer qualify for leave under that provision, or
  - (e) in such other circumstances as the regulations may specify.

(5) Regulations under subsection (1)(a) may require a person applying for the issue of a biometric immigration document to provide information (which may include biographical or other non-biometric information) to be recorded in it or retained by the Secretary of State; and, in particular, the regulations may—

(a) require, or permit an authorised person to require, the provision of information in a specified form;

(b) require an individual to submit, or permit an authorised person to require an individual to submit, to a specified process by means of which biometric information is obtained or recorded;

(c) confer a function (which may include the exercise of a discretion) on an authorised person;

(d) permit the Secretary of State, instead of requiring the provision of information, to use or retain information which is (for whatever reason) already in the Secretary of State's possession.

(6) Regulations under subsection (1)(b) may, in particular, require the production or other use of a biometric immigration document that is combined with another document; and section 16 of the Identity Cards Act 2006 (c. 15) (prohibition of requirement to produce ID card) is subject to this subsection.

(7) Regulations under subsection (1)(b) may not make provision the effect of which would be to require a person to carry a biometric immigration document at all times.

(8) Regulations under subsection (1)(c) may, in particular, make provision of a kind specified in subsection (5)(a) or (b).

(9) Rules under section 3 of the Immigration Act 1971 (c. 77) may require a person applying for the issue of a biometric immigration document to provide nonbiometric information to be recorded in it or retained by the Secretary of State.

(10) Subsections (5) to (9) are without prejudice to the generality of section 50 of the Immigration, Asylum and Nationality Act 2006 (c. 13) (procedure).

## Section 5

### Introduction:

This section introduces a group of sections about biometric registration. It allows the Secretary of State to make regulations introducing compulsory biometric documents for certain people subject to immigration controls.

### Pepper v Hart Note (see General Note: Pepper v Hart):

On the Second Reading in the House of Commons of the Bill for this Act on 5th February 2007 The Minister for Immigration, Citizenship and Nationality (Mr. Liam Byrne) said as follows—

“As we toughen the regime for businesses that break the rules, we must make it easier for employers to double-check who is who and who has the right to work. At present, that is too complicated. Up to 60 different documents could be proffered as evidence of entitlement to be in this country and to work, so clauses 5 to 15 would change that situation by phasing out insecure 20th-century forms of identification and phasing in a single biometric identity card for foreign nationals. The Bill therefore introduces powers to make regulations requiring those subject to immigration control to apply for a biometric immigration document. We will start to issue those documents in 2008 and roll them out incrementally thereafter. As is right and proper, we will return to the House each time that we wish to extend the power to a new category of third-country national.”

**Subsection (1):**

See General Note: Secretary of State.

“Regulations” – to be made by statutory instrument subject to draft affirmative procedure – s.6(6).

“Person subject to immigration control” - see section 15(a).

“Biometric information” - see section 15(b) and (c).

“Document” - see section 15(d) (generally, any form of recorded information).

“Immigration” – includes asylum – s.15(1)(f).

Note – regulations may impose a discretionary function – s.15(1)(g).

**Subsection (3):**

“Thinks” - see General Note: Levels of Certainty.

**Subsection (4):**

“Knows or suspects” - see General Note: Levels of Certainty.

**Subsection (5):**

Authorised person: by virtue of s.15(1)(e), see section 141(5) Immigration and Asylum Act 1999 (a constable, an immigration officer, a prison officer, an officer of the Secretary of State authorised for the purpose, or a person who is employed by a contractor in connection with the discharge of the contractor's duties under a removal centre contract.)

**Subsection (6):**

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "If a biometric immigration document were to be combined with an identity card this provision also makes it clear that section 5 take precedence over section 16 of the Identity Card Act 2006 (prohibition of requirement to produce an ID card)".

**Subsection (9):**

Section 3 of the Immigration Act 1971 – the Immigration Rules, dealing with matters “as to the practice to be followed in the administration of this Act for regulating the entry into and stay in the United Kingdom of persons required by this Act to have leave to enter”.

## 6 Regulations: supplemental

- (1) This section applies to regulations under section 5(1).
- (2) Regulations amending or replacing earlier regulations may require a person who holds a biometric immigration document issued under the earlier regulations to apply under the new regulations.
- (3) In so far as regulations require an individual under the age of 16 to submit to a process for the recording of biometric information, or permit an authorised person to require an individual under the age of 16 to submit to a process of that kind, the regulations must make provision similar to section 141(3) to (5) and (13) of the Immigration and Asylum Act 1999 (c. 33) (fingerprints: children).
- (4) Rules under section 3 of the Immigration Act 1971 (immigration rules) may make provision by reference to compliance or non-compliance with regulations.
- (5) Information in the Secretary of State's possession which is used or retained in accordance with regulations under section 5(5)(d) shall be treated, for the purpose of requirements about treatment and destruction, as having been provided in accordance with the regulations at the time at which it is used or retained in accordance with them.
- (6) Regulations—
  - (a) may make provision having effect generally or only in specified cases or circumstances,
  - (b) may make different provision for different cases or circumstances,
  - (c) may include incidental, consequential or transitional provision,
  - (d) shall be made by statutory instrument, and
  - (e) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

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### Section 6

#### Introduction:

This section adds procedural and supplemental provision to section 5 (regulations about biometric documents).

#### Subsection (3):

Section 141(3) to (5) and (13) of the Immigration and Asylum Act 1999 – fingerprints of children must be taken in presence of an adult.

**Subsection (4):**

Section 3 of the Immigration Act 1971 – the Immigration Rules, dealing with matters “as to the practice to be followed in the administration of this Act for regulating the entry into and stay in the United Kingdom of persons required by this Act to have leave to enter”.

**Subsection (5):**

See General Note: Secretary of State.

**Subsection (6)(a) and (b):**

See General Note: Statutory Instruments: Different Provision for Different Purposes.

**Subsection (6)(c):**

See General Note: Statutory Instruments: Ancillary Provision.

**Subsection (6)(d):**

See General Note: Statutory Instruments.

**Subsection (6)(e):**

See General Note: Statutory Instruments: Draft Affirmative Resolution.

## 7 Effect of non-compliance

- (1) Regulations under section 5(1) must include provision about the effect of failure to comply with a requirement of the regulations.
- (2) In particular, the regulations may—
  - (a) require or permit an application for a biometric immigration document to be refused;
  - (b) require or permit an application or claim in connection with immigration to be disregarded or refused;
  - (c) require or permit the cancellation or variation of leave to enter or remain in the United Kingdom;
  - (d) require the Secretary of State to consider giving a notice under section 9;
  - (e) provide for the consequence of a failure to be at the discretion of the Secretary of State.
- (3) The regulations may also permit the Secretary of State to designate an adult as the person responsible for ensuring that a child complies with requirements of the regulations; and for that purpose—
  - (a) “adult” means an individual who has attained the age of 18,
  - (b) “child” means an individual who has not attained the age of 18, and
  - (c) sections 9 to 13 shall apply (with any necessary modifications) to a designated adult's failure to ensure compliance by a child with a requirement of regulations as they apply to a person's own failure to comply with a requirement.

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### Section 7

#### Introduction:

This section deals with enforcement of regulations under section 5 about biometric documents.

**Pepper v Hart Note** (see General Note: Pepper v Hart):

In the Public Bill Committee in the House of Commons on the Bill for this Act The Minister for Immigration, Citizenship and Nationality (Mr. Liam Byrne) said as follows—

“The clause forms an important part of the legal machinery of clauses that we have assembled under this heading. Its purpose is to provide some disincentives for those foreign nationals who might choose to try not to comply with the regulation that we put in place requiring them to apply for a biometric immigration document. We have sought to put a number of sanctions in place—in particular, to provide the Secretary of State with three powers to disincentivise non-compliance.”

“First, there is a civil penalty regime, which subsequent clauses will set out. Secondly, there is the power to curtail leave, and thirdly, there is the power to vary it. The Secretary of State would, of course, have the discretion to decide which sanction it was most appropriate to apply in any particular case. The intention would be to set out the modus operandi for that judgment to be exercised in a code of practice, but we do not want the Secretary of State to be able to pile up these sanctions, one on top of the other, but to choose between them.”

**Subsection (2)(d):**

See General Note: Secretary of State.

**Subsection (3)(c):**

Section 9 - Penalty for non-compliance; section 10 - Objection to penalty; section 11 - rights of appeal; section 12 - enforcement of unpaid penalty; section 13 - code of practice.

## 8 Use and retention of information

- (1) Regulations under section 5(1) must make provision about the use and retention by the Secretary of State of biometric information provided in accordance with the regulations.
- (2) The regulations may include provision permitting the use of information—
  - (a) in connection with the exercise of a function by virtue of the Immigration Acts,
  - (b) in connection with control of the United Kingdom's borders,
  - (c) in connection with the exercise of a function in relation to nationality,
  - (d) in connection with the prevention, investigation or prosecution of an offence,
  - (e) for a purpose which appears to the Secretary of State to be required in order to protect national security, and
  - (f) for such other purposes (whether in connection with functions under an enactment or otherwise) as the regulations may specify.
- (3) Regulations under section 5(1)—
  - (a) must include provision about the destruction of biometric information held by the Secretary of State having been obtained or recorded by virtue of the regulations,
  - (b) must, in particular, require the destruction of biometric information held by the Secretary of State if the Secretary of State thinks that it is no longer likely to be of use in accordance with provision made by virtue of subsection (1) above, and
  - (c) must, in particular, include provision similar to section 143(2) and (10) to (13) of the Immigration and Asylum Act 1999 (c. 33) (fingerprints: destruction of copies and electronic data).
- (4) But a requirement to destroy information shall not apply if and in so far as the information is retained in accordance with and for the purposes of another enactment.

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### Section 8

#### Introduction:

This section requires regulations about biometric registration to include provision controlling the use of biometric information by the Government.

**Pepper v Hart Note** (see General Note: Pepper v Hart):

In the Public Bill Committee in the House of Commons on the Bill for this Act The Minister for Immigration, Citizenship and Nationality (Mr. Liam Byrne) said as follows—

“I shall start by clarifying the scope and orbit of the clause. It is not about the transfer of the information concerned to other parts of Government or other parts of public service. Parliament has already spoken on that matter, specifically in section 21 of the Immigration and Asylum Act 1999, which quite properly put in place a rigorous gateway through which the Home Office would have to go to share information with others. That could be done only in line with obligations already on the Secretary of State set out under the Human Rights Act 1998, the Data Protection Act 1998 and other legislation. The subject of the clause is how the Home Secretary can share the information with other parts of his business, as it were.”

**Subsection (1):**

See General Note: Secretary of State.

**Subsection (2)(a):**

See General Note: Immigration Acts.

**Subsection (2)(e):**

“Appears” – see General Note: Levels of Certainty.

**Subsection (3)(b):**

“Thinks” – see General Note: Levels of Certainty.

**Subsection (3)(c):**

Section 143(2) and (10) to (13) of the Immigration and Asylum Act 1999 – fingerprints are required to be destroyed as soon as possible if the person proves that he is either a British citizen or a Commonwealth citizen who has a right of abode in the United Kingdom.

## 9 Penalty

- (1) The Secretary of State may by notice require a person to pay a penalty for failing to comply with a requirement of regulations under section 5(1).
- (2) The notice must—
  - (a) specify the amount of the penalty,
  - (b) specify a date before which the penalty must be paid to the Secretary of State,
  - (c) specify methods by which the penalty may be paid,
  - (d) explain the grounds on which the Secretary of State thinks the person has failed to comply with a requirement of the regulations, and
  - (e) explain the effect of sections 10 to 12.
- (3) The amount specified under subsection (2)(a) may not exceed £1,000.
- (4) The date specified under subsection (2)(b) must be not less than 14 days after the date on which the notice is given.
- (5) A person who has been given a notice under subsection (1) for failing to comply with regulations may be given further notices in the case of continued failure; but a person may not be given a new notice—
  - (a) during the time available for objection or appeal against an earlier notice, or
  - (b) while an objection or appeal against an earlier notice has been instituted and is neither withdrawn nor determined.
- (6) The Secretary of State may by order amend subsection (3) to reflect a change in the value of money.

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### Section 9

#### Introduction:

This section provides for civil penalties for failure to comply with regulations under section 5 about biometric registration.

See General Note: Civil Penalties.

#### Pepper v Hart Note (see General Note: Pepper v Hart):

In the Public Bill Committee in the House of Commons on the Bill for this Act The Minister for Immigration, Citizenship and Nationality (Mr. Liam Byrne) said as follows—

“We did not want a separate scheme in which there would be one kind of civil penalty for non-compliance under the 2006 Act and another that would kick in under the Bill’s biometric immigration document provisions. We therefore wanted to provide a civil penalty regime that was aligned with that approach.”

**Pepper v Hart Note** (see General Note: Pepper v Hart):

In the Public Bill Committee in the House of Commons on the Bill for this Act The Minister for Immigration, Citizenship and Nationality (Mr. Liam Byrne) said as follows—

“A second key point is that we think that the sanctions provided for are sufficient because the Home Secretary has recourse to others should people persist with non-compliance.”

**Subsection (1):**

See General Note: Secretary of State.

**Subsection (6):**

By order – to be made by statutory instrument subject to negative resolution procedure – s.14(2).

“To reflect a change in the value of money” – this gives the Secretary of State complete discretion as to how to judge and reflect inflation: but the discretion is limited to changes for that purpose; if the Secretary of State were challenged by way of judicial review of an order to change the maximum penalty, it would be necessary to show that the sole motive had been to reflect inflation and not, for example, to reflect a view that the penalty at its present rate was an insufficient deterrent.

**10 Penalty: objection**

- (1) A person (P) who is given a penalty notice under section 9(1) may by notice to the Secretary of State object on the grounds—
- (a) that P has not failed to comply with a requirement of regulations under section 5(1),
  - (b) that it is unreasonable to require P to pay a penalty, or
  - (c) that the amount of the penalty is excessive.
- (2) A notice of objection must—
- (a) specify the grounds of objection and P's reasons,
  - (b) comply with any prescribed requirements as to form and content, and
  - (c) be given within the prescribed period.
- (3) The Secretary of State shall consider a notice of objection and—
- (a) cancel the penalty notice,
  - (b) reduce the penalty by varying the penalty notice,
  - (c) increase the penalty by issuing a new penalty notice, or
  - (d) confirm the penalty notice.
- (4) The Secretary of State shall act under subsection (3) and notify P—
- (a) in accordance with any prescribed requirements, and
  - (b) within the prescribed period or such longer period as the Secretary of State and P may agree.

---

**Section 10****Introduction:**

This section allows a person to object to a penalty imposed under section 9 for failure to comply with regulations under section 5 about biometric registration.

**Pepper v Hart Note** (see General Note: Pepper v Hart):

In the Public Bill Committee in the House of Commons on the Bill for this Act The Minister for Immigration, Citizenship and Nationality (Mr. Liam Byrne) said as follows—

“Clause 10’s provisions are quite straightforward. They will ensure that once the civil penalty regime is up and running, it runs fairly. We want to ensure that disputes between foreign nationals and the Secretary of State can be resolved at minimal cost. The clause will not eliminate any right of appeal. It is designed to act in accordance with existing schemes provided for under the Identity Cards Act. The point that I want to underline is that the offence of non-compliance with the provisions in the

Bill will not be a criminal offence but a civil offence. We are suggesting a civil penalty regime because that is how we think compliance can best be secured. A system of criminal offences would be slower—justice would be less swift—and less effective. Having provided for a civil penalty regime, it would be a bit strange for the Committee, and indeed for the House, to remove protections that have long been available in this country and abroad to citizens who disagree with the penalties handed out by the Secretary of State. It is absolutely essential that individuals should be able to object to decisions made by the Secretary of State, backed by the right of appeal if they choose to take the matter to that territory. I commend the clause to the Committee, as it is an essential protection and a consequence of clause 9.”

**Subsection (1):**

See General Note: Secretary of State.

“Excessive” – that is to say, more than is justified in the circumstances (and not excessive in the sense of exceeding the limit in section 9(3)).

**Subsection (2):**

“Prescribed” – see s.14.

**11 Penalty: appeal**

- (1) A person (P) who is given a penalty notice under section 9(1) may appeal to—
- (a) a county court, in England and Wales or Northern Ireland, or
  - (b) the sheriff, in Scotland.
- (2) An appeal may be brought on the grounds—
- (a) that P has not failed to comply with a requirement of regulations under section 5(1),
  - (b) that it is unreasonable to require P to pay a penalty, or
  - (c) that the amount of the penalty is excessive.
- (3) The court or sheriff may—
- (a) cancel the penalty notice,
  - (b) reduce the penalty by varying the penalty notice,
  - (c) increase the penalty by varying the penalty notice (whether because the court or sheriff thinks the original amount insufficient or because the court or sheriff thinks that the appeal should not have been brought), or
  - (d) confirm the penalty notice.
- (4) An appeal may be brought—
- (a) whether or not P has given a notice of objection, and
  - (b) irrespective of the Secretary of State's decision on any notice of objection.
- (5) The court or sheriff may consider matters of which the Secretary of State was not and could not have been aware before giving the penalty notice.
- (6) Rules of court may make provision about the timing of an appeal under this section.

---

**Section 11****Introduction:**

This section allows a person to appeal against a penalty imposed under section 9 for failure to comply with regulations under section 5 about biometric registration.

**Subsection (1):**

See General Note: County Courts.

See General Note: Sheriff.

**Subsection (2):**

“Excessive” – that is to say, more than is justified in the circumstances (and not excessive in the sense of exceeding the limit in section 9(3)).

**Subsection (4):**

Objection – under s.10.

**Subsection (5):**

So the appeal is more in the nature of a re-hearing of the question whether a penalty should be imposed than a review of whether or not the original decision to impose it was reasonable in accordance with the rules of administrative law.

**Subsection (6):**

See General Note: Rules of Court.

## 12 Penalty: enforcement

- (1) Where a penalty has not been paid before the date specified in the penalty notice in accordance with section 9(2)(b), it may be recovered as a debt due to the Secretary of State.
  - (2) Where a notice of objection is given in respect of a penalty notice, the Secretary of State may not take steps to enforce the penalty notice before—
    - (a) deciding what to do in response to the notice of objection, and
    - (b) informing the objector.
  - (3) The Secretary of State may not take steps to enforce a penalty notice while an appeal under section 11—
    - (a) could be brought (disregarding any possibility of an appeal out of time with permission), or
    - (b) has been brought and has not been determined or abandoned.
  - (4) In proceedings for the recovery of a penalty no question may be raised as to the matters specified in sections 10 and 11 as grounds for objection or appeal.
  - (5) Money received by the Secretary of State in respect of a penalty shall be paid into the Consolidated Fund.
- 

### Section 12

#### Introduction:

This section provides for enforcement of penalties imposed under section 9 for failure to comply with regulations under section 5 about biometric registration.

#### Subsection (1):

See General Note: Secretary of State.

#### Subsection (4):

See General Note: Ouster Clauses.

#### Subsection (5):

See General Note: Consolidated Fund.

### **13 Penalty: code of practice**

- (1) The Secretary of State shall issue a code of practice setting out the matters to be considered in determining—
    - (a) whether to give a penalty notice under section 9(1), and
    - (b) the amount of a penalty.
  - (2) The code may, in particular, require the Secretary of State to consider any decision taken by virtue of section 7.
  - (3) A court or the sheriff shall, when considering an appeal under section 11, have regard to the code.
  - (4) The Secretary of State may revise and re-issue the code.
  - (5) Before issuing or re-issuing the code the Secretary of State must—
    - (a) publish proposals,
    - (b) consult members of the public, and
    - (c) lay a draft before Parliament.
  - (6) The code (or re-issued code) shall come into force at the prescribed time.
- 

#### **Section 13**

##### **Introduction:**

This section requires the Secretary of State to issue a code of practice about penalties under section 9 for failure to comply with regulations under section 5 about biometric registration.

##### **Subsection (1):**

See General Note: Secretary of State.

See General Note: Code of Practice.

##### **Subsection (2):**

Section 7 – power to make decisions in consequence of non-compliance with regulations, such as refusing an immigration application to be refused.

##### **Subsection (3):**

See General Note: Have Regard To.

##### **Subsection (5)(b):**

See General Note: Consultation.

##### **Subsection (5)(c):**

See General Note: Laying Before Parliament.

**Subsection (6):**

“Prescribed” – see s.14.

## **14 Penalty: prescribed matters**

(1) In sections 10 to 13 “prescribed” means prescribed by the Secretary of State by order.

(2) An order under subsection (1) or under section 9(6)–

(a) may make provision generally or only for specified purposes,

(b) may make different provision for different purposes,

(c) shall be made by statutory instrument, and

(d) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) But the first order under section 13(6) shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament (and shall not be subject to annulment).

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### **Section 14**

#### **Introduction:**

This section makes provision for orders about things to be “prescribed” under this group of sections.

#### **Subsection (1):**

See General Note: Secretary of State.

“By order” – to be made by statutory instrument subject to negative resolution procedure – subs.(2).

#### **Subsection (2)(a) and (b):**

See General Note: Statutory Instruments: Different Provision for Different Purposes.

#### **Subsection (2)(c):**

See General Note: Statutory Instruments.

#### **Subsection (2)(d):**

See General Note: Statutory Instruments: Negative Resolution.

#### **Subsection (3):**

Section 13(6) – order commencing code of practice.

See General Note: Statutory Instruments: Draft Affirmative Resolution.

**Note:**

This subsection is now spent, the first order having been made (the Immigration (Biometric Registration) (Civil Penalty Code of Practice) Order 2008 (S.I. 2008/3049)).

## 15 Interpretation

(1) For the purposes of section 5–

(a) “person subject to immigration control” means a person who under the Immigration Act 1971 (c. 77) requires leave to enter or remain in the United Kingdom (whether or not such leave has been given),

(b) “biometric information” means information about external physical characteristics,

(c) “external physical characteristics” includes, in particular–

(i) fingerprints, and

(ii) features of the iris or any other part of the eye,

(d) “document” includes a card or sticker and any other method of recording information (whether in writing or by the use of electronic or other technology or by a combination of methods),

(e) “authorised person” has the meaning given by section 141(5) of the Immigration and Asylum Act 1999 (c. 33) (authority to take fingerprints),

(f) “immigration” includes asylum, and

(g) regulations permitting something to be done by the Secretary of State may (but need not) permit it to be done only where the Secretary of State is of a specified opinion.

(2) An application for a biometric immigration document is an application in connection with immigration for the purposes of–

(a) section 50(1) and (2) of the Immigration, Asylum and Nationality Act 2006 (c. 13) (procedure), and

(b) section 51 of that Act (fees);

and in the application of either of those sections to an application for a biometric immigration document, the prescribed consequences of noncompliance may include any of the consequences specified in section 7(2) above.

### Section 15

#### Introduction:

This section contains definitions for this group of sections.

#### Subsection (1)(g):

See General Note: Secretary of State.

“Opinion” – see General Note: Levels of Certainty.

**Subsection (2)(a):**

Immigration, Asylum and Nationality Act 2006, s.50: The Government's Explanatory Notes (see General Note: Explanatory Notes) for the 2006 Act say: "Section 50 (1) enables the Secretary of State to prescribe, in the immigration rules, forms to be used and procedures to be followed when making an immigration related application. Subsection (2) enables the Secretary of State to prescribe, by administrative means, what information and documents are required to support an application. The section also allows the Secretary of State to set out in the Immigration Rules consequences for failing to comply with any of the prescribed forms and procedures."

**Subsection (2)(b):**

Immigration, Asylum and Nationality Act 2006, s.51: The Government's Explanatory Notes (see General Note: Explanatory Notes) for the 2006 Act say: " Section 51 gives the Secretary of State power to designate, in secondary legislation, any immigration and nationality-related applications and claims, services, processes, advice, and information for which a fee may be charged. The level of fees payable, the consequences of failure to pay a prescribed fee, and any exemptions should be set out in Regulations."

## Treatment of claimants

### 16 Conditional leave to enter or remain

After section 3(1)(c)(iii) of the Immigration Act 1971 (limited leave to enter or remain: conditions) insert–

“ (iv) a condition requiring him to report to an immigration officer or the Secretary of State; and

(v) a condition about residence.”

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#### Section 16

##### Introduction:

This section introduces a miscellaneous group of changes to the way in which immigration claimants are treated. It amends section 3(1)(c) of the Immigration Act 1971. Section 3(1)(c) already provides that a person who is given limited leave to enter or remain in the UK may be subject to specified conditions. This section adds two new conditions: a condition requiring reporting to an immigration officer or the Secretary of State; and a condition about residence.

##### Note:

Section 59(4) makes special provision about transitional provision that may be included in an order commencing this section.

## 17 Support for failed asylum-seekers

- (1) This section applies for the purposes of—
- (a) Part 6 (and section 4) of the Immigration and Asylum Act 1999 (support and accommodation for asylum-seekers),
  - (b) Part 2 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (accommodation centres), and
  - (c) Schedule 3 to that Act (withholding and withdrawal of support).
- (2) A person (A– S) remains (or again becomes) an asylum-seeker, despite the fact that the claim for asylum made by A– S has been determined, during any period when—
- (a) A– S can bring an in-country appeal against an immigration decision under section 82 of the 2002 Act or section 2 of the Special Immigration Appeals Commission Act 1997 (c. 68), or
  - (b) an in-country appeal, brought by A-S under either of those sections against an immigration decision, is pending (within the meaning of section 104 of the 2002 Act).
- (3) For the purposes of subsection (2)—
- (a) “in-country” appeal means an appeal brought while the appellant is in the United Kingdom, and
  - (b) the possibility of an appeal out of time with permission shall be ignored.
- (4) For the purposes of the provisions mentioned in subsection (1)(a) and (b), a person’s status as an asylum-seeker by virtue of subsection (2)(b) continues for a prescribed period after the appeal ceases to be pending.
- (5) In subsection (4) “prescribed” means prescribed by regulations made by the Secretary of State; and the regulations—
- (a) may contain incidental or transitional provision,
  - (b) may make different provision for different classes of case,
  - (c) shall be made by statutory instrument, and
  - (d) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) This section shall be treated as always having had effect.

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### Section 17

#### Introduction:

The Government’s Explanatory Notes (see General Note: Explanatory Notes) say—

"Section 17 provides that a person whose claim for asylum has been determined and who can bring or has brought an in-country appeal against an immigration decision will remain an asylum-seeker for the purposes of section 4 and Part 6 of the Immigration and Asylum Act 1999 (the 1999 Act), Part 2 of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act) and Schedule 3 to the 2002 Act. The effect of this provision is that, whilst an in-country appeal against the immigration decision can be brought or is pending, such a person will be eligible for support on the same basis as asylum-seekers who have not yet received a decision on their claim. Support will continue for a prescribed period after the appeal ceases to be pending.

"A judgment by the Court of Appeal in May 2006 (in the case of *Slough Borough Council v M*) held that, for the purposes of Schedule 3 to the 2002 Act, save for when a right of appeal arises under section 83 of that Act, a person ceases to be an asylum-seeker at the time at which the Secretary of State notifies his decision on the claim and not when the appeal related to his asylum claim had been disposed of. Section 17(3) defines an in country appeal as one brought while the appellant is in the United Kingdom and specifies that the possibility of bringing an appeal out of time with permission is to be ignored for the purpose of this section.

The purpose of section 17 is to avoid a situation where a person has made a claim for asylum and an in-country appeal against an immigration decision can be brought or is pending but support under Part 6 of the 1999 Act or Part 2 of the 2002 Act (currently not in force) is not available because the claim for asylum is deemed to be determined on conclusion of the prescribed period after the Secretary of State has notified his decision on the claim. Further, the section ensures that such a person will not fall within any of the classes of ineligible person within Schedule 3 of the 2002 Act."

**Pepper v Hart Note** (see General Note: *Pepper v Hart*):

In the Public Bill Committee in the House of Commons on the Bill for this Act the Parliamentary Under-Secretary of State for the Home Department (Joan Ryan) said as follows—

"... the clause seeks to maintain the status quo, whereby we can make available asylum support for those individuals who have had an initial decision refused and are awaiting their appeal. Previously, that was always the case, but it has been called into question in the courts and it is currently stayed in the House of Lords while we are seeking to legislate in order to clarify the position. If we cannot continue to pay asylum support during that period, we would have to consider making available support under section 4 of the Immigration and Asylum Act 1999, which is accommodation and a voucher method of payment. It has never been our intention that we should move towards that situation while someone is still in the process of an asylum application. That support is aimed at those who have exhausted all means of appeal in the asylum process, but are not able to be removed at that point in time. Clearly, we would not wish for those individuals to be destitute and therefore there is the provision of support under section 4 of the 1999 Act. That support should not apply to people who are between the point of initial application and appeal."

**Subsection (5)(a):**

See General Note: Statutory Instruments: Ancillary Provision.

**Subsection (5)(b):**

See General Note: Statutory Instruments: Different Provision for Different Purposes.

**Subsection (5)(c):**

See General Note: Statutory Instruments.

**Subsection (5)(d):**

See General Note: Statutory Instruments: Negative Resolution.

**Subsection (6):**

Because this section is both clarifying the original intention, and beneficial to the claimant, retrospection is considered both appropriate and justifiable. See General Note: Retrospection.

## 18 Support for asylum-seekers: enforcement

In Part 6 of the Immigration and Asylum Act 1999 (c. 33) (support for asylum seekers) after section 109 (offences: supplemental) insert—

### “ 109A Arrest

An immigration officer may arrest without warrant a person whom the immigration officer reasonably suspects has committed an offence under section 105 or 106.

### 109B Entry, search and seizure

(1) An offence under section 105 or 106 shall be treated as—

(a) a relevant offence for the purposes of sections 28B and 28D of the Immigration Act 1971, and

(b) an offence under Part 3 of that Act (criminal proceedings) for the purposes of sections 28(4), 28E, 28G and 28H (search after arrest, &c.) of that Act.

(2) The following provisions of the Immigration Act 1971 (c. 77) shall have effect in connection with an offence under section 105 or 106 of this Act as they have effect in connection with an offence under that Act—

(a) section 28I (seized material: access and copying),

(b) section 28J (search warrants: safeguards),

(c) section 28K (execution of warrants), and

(d) section 28L(1) (interpretation).”

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## Section 18

### Introduction:

This section amends Part 6 of the Immigration and Asylum Act 1999. Its effect is described by the Government's Explanatory Notes (see General Note: Explanatory Notes) as follows: "This section applies existing immigration officer powers of arrest, entry, search and seizure in the Immigration Act 1971 (the 1971 Act) to the offences of dishonestly obtaining asylum support."

**Pepper v Hart Note** (see General Note: Pepper v Hart):

In the Public Bill Committee in the House of Commons on the Bill for this Act the Parliamentary Under-Secretary of State for the Home Department (Joan Ryan) said as follows—

“Clause 18 will amend the Immigration and Asylum Act 1999 to give an “immigration officer the power to arrest without warrant a person whom” he or she “reasonably suspects has committed an offence under section 105 or 106”, which are about seeking to obtain asylum support by making false or dishonest representations. The clause will also ensure that the same powers that allow an immigration officer to enter premises to arrest or search and seize relevant evidence will apply to that type of offence. Giving immigration officers a power of arrest for those offences will enable

them to pursue independent operations against asylum support fraud, which is as the Government intend. The measure is an essential part of the immigration and nationality directorate's deterrence policy against what are, as everyone will agree, serious offences, which can involve a significant amount of money. ... I would like, however, to reassure the hon. Gentleman about the exercise of this power. As I said, it is comparable to existing powers of arrest that are exercised without warrant. For example, officers have the power to arrest for fraud under section 14 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. It is right that an officer can arrest without warrant, because that is a serious offence and in certain circumstances officers need to be able to act quickly. Only immigration officers who have the appropriate training will be able to exercise the power of arrest."

## 19 Points-based applications: no new evidence on appeal

(1) For section 85(5) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (appeal: new evidence may be considered: exception) substitute—

“ (5) But subsection (4) is subject to the exceptions in section 85A.”

(2) After section 85 of that Act insert—

### “ 85A Matters to be considered: new evidence: exceptions

(1) This section sets out the exceptions mentioned in section 85(5).

(2) Exception 1 is that in relation to an appeal under section 82(1) against an immigration decision of a kind specified in section 82(2)(b) or (c) the Tribunal may consider only the circumstances appertaining at the time of the decision.

(3) Exception 2 applies to an appeal under section 82(1) if—

(a) the appeal is against an immigration decision of a kind specified in section 82(2)(a) or (d),

(b) the immigration decision concerned an application of a kind identified in immigration rules as requiring to be considered under a “ Points Based System” ,  
and

(c) the appeal relies wholly or partly on grounds specified in section 84(1)(a), (e) or (f).

(4) Where Exception 2 applies the Tribunal may consider evidence adduced by the appellant only if it—

(a) was submitted in support of, and at the time of making, the application to which the immigration decision related,

(b) relates to the appeal in so far as it relies on grounds other than those specified in subsection (3)(c),

(c) is adduced to prove that a document is genuine or valid, or

(d) is adduced in connection with the Secretary of State's reliance on a discretion under immigration rules, or compliance with a requirement of immigration rules, to refuse an application on grounds not related to the acquisition of “ points” under the “ Points Based System” .”

(3) In section 106(2) of that Act after paragraph (u) insert— “ (ua) may make provision, for the purposes of section 85A(4)(a), about the circumstances in which evidence is to be treated, or not treated, as submitted in support of, and at the time of making, an application;” .

## Section 19

### Introduction:

This section inserts a new section 85A into the Nationality, Immigration and Asylum Act 2002. The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"This section inserts a new section 85A into the 2002 Act which lists the exceptions to the general rule that the AIT can consider any evidence that is relevant to the substance of the decision, including any evidence which arises after the date of decision. It re-enacts the existing evidential restriction in appeals against the refusal of an entry clearance or a certificate of entitlement (subsection (2)), and adds a new restriction in relation to appeals against a refusal of leave to enter or a variation of leave to enter or remain. In appeals against a refusal of leave to enter or a variation of leave to enter or remain the AIT will be prevented from considering evidence adduced by the appellant which was not submitted at the time of making the original application, where that application was one made under a Points-based immigration rule.

The point in time during the application process after which further evidence is excluded will be defined in the AIT Procedure Rules. This exclusionary rule will not, however, apply insofar as the appeal is brought on the grounds that the decision was racially discriminatory or in breach of the appellant's rights under the Community Treaties, the Refugee Convention or section 6 of the Human Rights Act 1998. Additionally, evidence which was not submitted with the original application may still be adduced to rebut any reason for refusing an application which does not relate to the attainment of points under a Points-based immigration rule or in order to prove that a document is genuine or valid."

### Pepper v Hart Note (see General Note: Pepper v Hart):

In the Public Bill Committee in the House of Commons on the Bill for this Act the Parliamentary Under-Secretary of State for the Home Department (Joan Ryan) said as follows—

"I want to give hon. Members some reassurance about how the effects of clause 19 will be scrutinised. They will be scrutinised in the following ways. The independent inspectorate will include a number of key themes relevant to the operation of the points-based system, including its appeals process and the operation of clause 19. The inspectorate will report annually to the Secretary of State, who will have to lay its report before Parliament. ... Furthermore, in accordance with Cabinet Office guidelines, our regulatory impact assessment commits us to conducting a post-implementation review of the whole Bill, again including clause 19. We will place a copy of the review's report in the Library."

## 20 Fees

(1) Section 42 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19) (fees: power to set amount in excess of costs) is amended as follows.

(2) In subsection (2) after paragraph (d) insert–

“(da) an application or process in connection with sponsorship of persons seeking leave to enter or remain in the United Kingdom,” .

(3) After that subsection insert–

“(2A) Regulations under section 51(3) of the Immigration, Asylum and Nationality Act 2006, specifying the amount of 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), may specify an amount which reflects (in addition to any costs referable to the claim, application, service, process or other matter) costs referable to–

(a) any other claim, application, service, process or matter in respect of which the Secretary of State has made an order under section 51(1) or (2),

(b) the determination of applications for entry clearances (within the meaning given by section 33(1) of the Immigration Act 1971),

(c) the determination of applications for transit visas under section 41 of the Immigration and Asylum Act 1999, or

(d) 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.”

(4) After subsection (3) insert–

“(3A) The amount of a fee under section 1 of the Consular Fees Act 1980 in respect of a matter specified in subsection (2A)(b) to (d) above may be set so as to reflect costs referable to any claim, application, service, process or other matter in respect of which the Secretary of State has made an order under section 51(1) or (2) of the Immigration, Asylum and Nationality Act 2006.”

## Section 20

### Introduction:

This section allows fees for various purposes to be set above the level sufficient to cover the relevant administrative costs. It applies to: fees for applications or processes in connection with sponsorship of persons seeking leave to enter or remain in the UK; fees for in-country services in connection with immigration or nationality under section 51 of the 2006 Act; fees under section 1 of the Consular Fees Act 1980 in respect of certain visa services, in particular applications for entry clearance, transit visas and certificates of entitlement to the right of abode in the United Kingdom. The section operates by amendment of section 42 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

**Pepper v Hart Note** (see General Note: Pepper v Hart):

In the Public Bill Committee in the House of Commons on the Bill for this Act the Minister for Immigration, Citizenship and Nationality (Mr. Liam Byrne) said as follows—

“There are currently a number of limitations to the powers, however, and I should like to sketch out two or three of them for the benefit of the Committee. First, we do not have the power to charge for the introduction of sponsorship arrangements. That is significant, because we are shortly to introduce a points-based system, which means that sponsoring organisations, whether businesses or colleges, will have a much more important role. At the moment, there is no law that allows us to charge for such arrangements, and they are expensive. They allow us to put in place an enforcement and compliance network of people throughout the country to ensure that sponsors behave appropriately. Given the conversations that we had about illegal working and bogus colleges, it is important that that network is robust and effective, so I would like the power to charge for introducing sponsorship arrangements.

The second limitation is a vires issue, which affects UK visas. UK visas is allowed to charge for its services under section 1 of the Consular Fees Act 1980. There are constraints on what it can charge for, however. In effect, it can charge only for administrative services that relate directly to consular activity, rather than for any aspect of enforcement of an effective immigration system that entails cost...

“The new clause allows us to do three things: it allows the IND to cross-subsidise between in-country fee streams, it allows us to cross-subsidise between out-of-country and in-country fees, and it allows us to over-cost charge where necessary for new sponsorship arrangements. The fees to be proposed for such over-cost charging will, of course, be subject to the affirmative procedure, as they are today, and we will have to consult on fees where we plan to recover over costs. Crucially, the new clause will allow us to set fees at the market value and retain the flexibility to protect key segments of the population, as we proposed to do recently with students and visitors. It is not in our interest, of course, to hike up fees to such an extent that people do not want to come to this country anymore.”

## 21 Children

(1) The Secretary of State shall issue a code of practice designed to ensure that in exercising functions in the United Kingdom the Border and Immigration Agency takes appropriate steps to ensure that while children are in the United Kingdom they are safe from harm.

(2) The Agency shall—

(a) have regard to the code in the exercise of its functions, and

(b) take appropriate steps to ensure that persons with whom it makes arrangements for the provision of services have regard to the code.

(3) The code shall come into force in accordance with provision made by order of the Secretary of State; and an order—

(a) shall be made by statutory instrument, and

(b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) The Secretary of State shall from time to time review and, if necessary, revise the code; and subsection (3) applies to a revision as to the original code.

(5) In this section—

(a) “the Border and Immigration Agency” means—

(i) immigration officers, and

(ii) other officials of the Secretary of State, and the Secretary of State, in respect of functions relating to immigration, asylum or nationality, and

(b) “child” means an individual who is less than 18 years old.

### Section 21

#### Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "Section 21 requires the Secretary of State to issue a code of practice to ensure that in exercising its functions in the United Kingdom the Border and Immigration Agency takes appropriate steps to ensure that while children are in the United Kingdom they are safe from harm."

#### Subsection (1):

See General Note: Secretary of State.

See General Note: Code of Practice.

“Border and Immigration Agency” – see subsection (5). The effect of the definition is to carve out from the Home Office a notional set of civil servants and functions and to describe an operational group within that Department which does not have separate legal personality but which can be referred to in legislation as a separate unit. (Note that there is presently an Agency within the Home Office known as the UK Border Agency dealing with matters previously addressed by the Border and Immigration Agency, customs detection work by HMRC and UK Visa Services in the Foreign & Commonwealth Office.)

**Subsection (3):**

See General Note: Statutory Instruments.

See General Note: Statutory Instruments: Negative Resolution.

## Enforcement

### 22 Assaulting an immigration officer: offence

- (1) A person who assaults an immigration officer commits an offence.
  - (2) A person guilty of an offence under this section shall be liable on summary conviction to—
    - (a) imprisonment for a period not exceeding 51 weeks,
    - (b) a fine not exceeding level 5 on the standard scale, or
    - (c) both.
  - (3) In the application of this section to Northern Ireland the reference in subsection (2)(a) to 51 weeks shall be treated as a reference to 6 months.
  - (4) In the application of this section to Scotland the reference in subsection (2)(a) to 51 weeks shall be treated as a reference to 12 months.
  - (5) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44) (51 week maximum term of sentences) the reference in subsection (2)(a) to 51 weeks shall be treated as a reference to 6 months.
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### Section 22

#### Introduction:

This section makes it a criminal offence to assault an Immigration Officer.

#### Subsection (1):

See General Note: Immigration Officers.

#### Subsection (2):

See General Note: Offences: Summary.

See General Note: Offences: Standard Scale.

#### Subsection (5):

See General Note: Criminal Justice Act 2003, s.281(5).

## 23 Assaulting an immigration officer: powers of arrest, &c.

- (1) An immigration officer may arrest a person without warrant if the officer reasonably suspects that the person has committed or is about to commit an offence under section 22.
- (2) An offence under section 22 shall be treated as—
- (a) a relevant offence for the purposes of sections 28B and 28D of the Immigration Act 1971 (c. 77) (search, entry and arrest), and
  - (b) an offence under Part 3 of that Act (criminal proceedings) for the purposes of sections 28(4), 28E, 28G and 28H (search after arrest, etc.) of that Act.
- (3) The following provisions of the Immigration Act 1971 shall have effect in connection with an offence under section 22 of this Act as they have effect in connection with an offence under that Act—
- (a) section 28I (seized material: access and copying),
  - (b) section 28J (search warrants: safeguards),
  - (c) section 28K (execution of warrants), and
  - (d) section 28L(1) (interpretation).

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### Section 23

#### Introduction:

This section gives immigration officers a power of arrest without warrant on suspicion of committing or being about to commit the offence under section 22 of assaulting an immigration officer.

#### Subsection (1):

See General Note: Immigration Officers.

“Suspects” – see General Note: Levels of Certainty.

#### Subsections (2) and (3):

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "The section also applies existing immigration officer powers of entry, search and seizure in the Immigration Act 1971 to the offence of assaulting an immigration officer."

## 24 Seizure of cash

(1) Chapter 3 of Part 5 of the Proceeds of Crime Act 2002 (c. 29) (recovery of cash) shall apply in relation to an immigration officer as it applies in relation to a constable.

(2) For that purpose—

(a) “unlawful conduct”, in or in relation to section 289, means an offence under the Immigration Acts,

(b) “unlawful conduct”, in or in relation to other provisions, means an offence—

(i) under the Immigration Acts, or

(ii) listed in section 14(2) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19),

(c) “senior officer” in section 290 means an official of the Secretary of State who is a civil servant of the rank of at least Assistant Director,

(d) in section 292 the words “ “ (in relation to England and Wales and Northern Ireland)” ” shall be disregarded,

(e) section 293 shall not apply,

(f) an application for an order under section 295(2) must be made—

(i) in relation to England and Wales or Northern Ireland, by an immigration officer, and

(ii) in relation to Scotland, by the Scottish Ministers in connection with their functions under section 298 or by a procurator fiscal,

(g) an application for forfeiture under section 298 must be made—

(i) in relation to England and Wales or Northern Ireland, by an immigration officer, and

(ii) in relation to Scotland, by the Scottish Ministers, and

(h) any compensation under section 302 shall be paid by the Secretary of State.

(3) The Secretary of State may by order amend subsection (2)(c) to reflect a change in nomenclature; and an order— (a) shall be made by statutory instrument, and

(b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Section 24****Introduction:**

This section allows Chapter 3 of Part 5 of the Proceeds of Crime Act 2002 to be used by immigration officers (as well as police constables) in connection with immigration offences.

**Note:**

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "Chapter 3 of Part 5 of the Proceeds of Crime Act 2002 allows a police constable or customs officer 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 unlawful conduct. The provisions also empower a police constable or customs officer to seize and detain any such cash. Seized cash can be further detained and forfeited on an application made to a court of summary jurisdiction. The power to apply for further detention and forfeiture of cash does not depend upon a criminal prosecution and the proceedings focus on the source of the cash which has been seized rather than the guilt of any individual. These sections will extend the powers so that they may be exercised by immigration officers."

**Subsection (1):**

See General Note: Immigration Officers.

**Subsection (2)(a):**

See General Note: Immigration Acts.

**Subsection (2)(c):**

See General Note: Civil Service; "Assistant Director" – the civil service is no longer organised with centralised grades of fixed title and salary. The term "Assistant Director" is therefore not an exact term: but it is presently used in different Departments to cover grades approximating variously to the grades previously known centrally as Grades 5, 6 and 7 (or before that as Assistant Secretary, Senior Principal and Principal. As to the possibility of changes in title, see subs.(3).

**Subsection (3):**

"To reflect a change in nomenclature" – this gives the Secretary of State complete discretion as to how to reflect changes that may be made informally to the titles of civil service grades in the Home Office. But the discretion is limited to changes for that purpose; if the Secretary of State were challenged by way of judicial review of an order to amend subs.(2)(c), it would be necessary to show that the sole motive had been to reflect a change of titles and grade-responsibilities, and not, for example, to reflect a view that the appropriate level of authorising officer should be lowered.

See General Note: Statutory Instruments.

See General Note: Statutory Instruments: Negative Resolution.

## 25 Forfeiture of detained property

- (1) A court making a forfeiture order about property may order that the property be taken into the possession of the Secretary of State (and not of the police).
- (2) An order may be made under subsection (1) only if the court thinks that the offence in connection with which the order is made—
- (a) related to immigration or asylum, or
  - (b) was committed for a purpose connected with immigration or asylum.
- (3) In subsection (1) “forfeiture order” means an order under—
- (a) section 143 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), or
  - (b) Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)).

### Section 25

#### Introduction:

This section allows a court to give the Secretary of State, rather than the police, custody of forfeited property in an immigration case.

#### Pepper v Hart Note (see General Note: Pepper v Hart):

In the Public Bill Committee in the House of Commons on the Bill for this Act the Parliamentary Under-Secretary of State for the Home Department (Joan Ryan) was asked “I assume that that allows the property to be forfeited to immigration officers, but I should be grateful for clarification as to what the practical effect of that part of the clause would be.” and replied “The hon. Gentleman’s assumption is correct. The purpose of the clause is to give the courts extended powers so that property can be forfeited to the Secretary of State and immigration officers acting on behalf of the Secretary of State. At the moment, forfeiture is to the police rather than to the Secretary of State. The purpose of the clause is, therefore, exactly as he outlines.”

#### Subsection (1):

“A court making a forfeiture order” - The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "A “forfeiture order” means an order under section 143 of the Powers of Criminal Courts (Sentencing) Act 2000 (which extends to England and Wales) or Article 11 of the Criminal Justice (Northern Ireland) Order 1994 which allow the court to deprive a convicted offender of property used, essentially, for the commission of a crime or to facilitate the commission of a crime, or intended to be used in this way."

See General Note: Secretary of State.

**Subsection (2):**

“Thinks” – see General Note: Levels of Certainty.

**Note:**

Section 59(4) makes special provision about transitional provision that may be included in an order commencing this section.

**The remainder of this Act has not been reproduced for the purposes of this sample.**