



information sheet

UK Borders Act 2007

18 March 2008

The UK Borders Act 2007 was enacted on 30 October 2007. However, most of its provisions did not immediately come into force.

This information sheet provides an update as to the provisions that are now in force; and when other provisions will come into force. The March 2007 information sheet entitled "UK Borders Bill" gave information about a number of these provisions as they first appeared in the Bill. Although there have been some amendments since that information sheet, the explanations given there continue to provide a reasonable description of the provisions as enacted. However, the following additional points should be noted:

- The power to enter and search a person's home in order to search for and seize that person's passport has been significantly extended. Other premises may be entered and searched; and certain other documents that may indicate a place to which the person could be deported may be seized.
- The new provisions relating to deportation were extended so that a person who receives a suspended sentence can be subjected to these new provisions if any part of the suspended sentence is later ordered by a court to take effect.

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How an Act's provisions come into force

An Act begins its life as a Bill. It is called a Bill during its passage through Parliament; and it does not become an Act until it is passed into law by Parliament. Its passing into law is called its enactment.

Each Act of Parliament sets out when or how its various provisions (or sections) will come into force (commencement). Until a provision comes into force, it is not law despite the passing (enactment) of the Act by Parliament.

The Act may explicitly state when a particular provision is to come into force. Alternatively, the Act may state that a provision will come into force by the making of an order. These orders are called Commencement Orders.

UK Borders Act 2007 Commencement Orders

There have been two Commencement Orders so far:

- The UK Borders Act 2007 (Commencement Order No. 1 and Transitional Provisions) Order 2008 which was made on 17 January 2008
- The UK Borders Act 2007 (Commencement Order No. 2 and Transitional Provisions) Order 2008 which was made on 8 February 2008

Transitional provisions are what allows the circumstances of people who have been subject to the previous law (i.e. before changes made by the Act) to be taken into account – sometimes by delaying implementation for these people; sometimes by allowing the previous law to continue for these people. There are very few transitional provisions in these two Commencement Orders.

Key provisions now in force

The following provisions of the Act came into force on 31 January 2008:

- sections 1-4, which empower certain immigration officers, appointed by the Home Secretary, to detain anyone for up to 3 hours if they think the person may be liable to arrest by the police

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- section 16, which allows the Border and Immigration Agency (BIA) to require anyone granted limited leave to enter or remain to report regularly to the BIA or to reside at a particular address
- section 18, which increases immigration officers' powers of search and arrest in connection with criminal offences relating to dishonest claims for asylum support
- sections 29-31, which allow anyone, of any nationality, who has assisted trafficking or someone's illegal entry into the UK or a EU state to be prosecuted in the UK wherever the offence took place

The following provisions of the Act came into force on 29 February 2008:

- sections 27-28, which provide immigration officers with powers of search and arrest in relation to new offences of illegal working

Key provisions soon to be in force

The following provisions of the Act will come into force on 1 April 2008:

- sections 44-47, which empower immigration and police officers to search premises in order to seize documents that may establish a country to which a person may be deported, when that person is arrested and the police or an immigration officer suspects the person is not British
- sections 48-55, which allow for the establishment of a new body to be responsible for monitoring the functions of the BIA

Other provisions

There remain a number of provisions of the Act for which there is still no date for their coming into force.

The automatic deportation provisions in the Act (sections 32-39) are not in force. The Government have indicated these provisions may be brought into force within the next four months. However, there is power to make these provisions have retrospective effect so that some people who have received their sentence before the coming into force of these provisions may nevertheless be caught by these provisions whenever they are brought into force. This may affect people who have not completed their sentence when the provisions are brought into force.

Although many of the Act's provisions relating to biometric registration and biometric identity cards for immigrants (called biometric immigration documents) (sections 5-15) have come into force, these do no more than empower the Home Secretary to make various Regulations to bring this biometric scheme into effect. The Government have recently published its plans in a paper called *Introducing Compulsory Identity Cards for Foreign Nationals*. A copy of this is available at:

<http://www.bia.homeoffice.gov.uk/sitecontent/documents/managingourborders/compulsoryidcards/IDcards/foreignnationalsforidcards.pdf?view=Binary>

Section 21, which requires the Government to introduce a code of practice on keeping children safe from harm, was a late addition to the Bill. The Government are currently consulting on a draft code of practice, which is to apply to both the BIA (soon to be renamed the UK Borders Agency) and private organisations with whom the BIA contracts to provide immigration-related services. A copy of the consultation paper and draft code is available at:

<http://www.ind.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/keepingchildrensafe/>