



Asylum and Immigration Act 1996

CHAPTER 49

ARRANGEMENT OF SECTIONS

Asylum claims

Section

1. Extension of special appeals procedures.
2. Removal etc. of asylum claimants to safe third countries.
3. Appeals against certificates under section 2.

Immigration offences

4. Obtaining leave by deception.
5. Assisting asylum claimants, and persons seeking to obtain leave by deception.
6. Increased penalties.
7. Power of arrest and search warrants.

Persons subject to immigration control

8. Restrictions on employment.
9. Entitlement to housing accommodation and assistance.
10. Entitlement to child benefit.
11. Saving for social security regulations.

Miscellaneous and supplemental

12. Other amendments and repeals.
13. Short title, interpretation, commencement and extent.

SCHEDULES:

Schedule 1—Modifications of social security regulations.

Part I—Social Security (Persons From Abroad)
Miscellaneous Amendments Regulations 1996.

Part II—Social Security (Persons From Abroad)
(Miscellaneous Amendments) Regulations
(Northern Ireland) 1996.

Schedule 2—Amendments of the 1971 Act and the
Immigration Act 1988.

Schedule 3—Amendments of the 1993 Act.
Schedule 4—Repeals.



Asylum and Immigration Act 1996

1996 CHAPTER 49

An Act to amend and supplement the Immigration Act 1971 and the Asylum and Immigration Appeals Act 1993; to make further provision with respect to persons subject to immigration control and the employment of such persons; and for connected purposes. [24th July 1996]

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:—

Asylum claims

1. For paragraph 5 of Schedule 2 to the Asylum and Immigration Appeals Act 1993 (“the 1993 Act”) there shall be substituted the following paragraph—

Extension of
special appeals
procedures.
1993 c.23.

“5.—(1) This paragraph applies to an appeal by a person on any of the grounds mentioned in subsections (1) to (4) of section 8 of this Act if the Secretary of State has certified that, in his opinion, the person's claim on the ground that it would be contrary to the United Kingdom's obligations under the Convention for him to be removed from, or be required to leave, the United Kingdom is one to which—

- (a) sub-paragraph (2), (3) or (4) below applies; and
- (b) sub-paragraph (5) below does not apply.

(2) This sub-paragraph applies to a claim if the country or territory to which the appellant is to be sent is designated in an order made by the Secretary of State by statutory instrument as a country or territory in which it appears to him that there is in general no serious risk of persecution.

(3) This sub-paragraph applies to a claim if, on his arrival in the United Kingdom, the appellant was required by an immigration officer to produce a valid passport and either—

- (a) he failed to produce a passport without giving a reasonable explanation for his failure to do so; or
 - (b) he produced a passport which was not in fact valid and failed to inform the officer of that fact.
- (4) This sub-paragraph applies to a claim if—
- (a) it does not show a fear of persecution by reason of the appellant's race, religion, nationality, membership of a particular social group, or political opinion;
 - (b) it shows a fear of such persecution, but the fear is manifestly unfounded or the circumstances which gave rise to the fear no longer subsist;
 - (c) it is made at any time after the appellant—
 - (i) has been refused leave to enter under the 1971 Act,
 - (ii) has been recommended for deportation by a court empowered by that Act to do so,
 - (iii) has been notified of the Secretary of State's decision to make a deportation order against him by virtue of section 3(5) of that Act, or
 - (iv) has been notified of his liability to removal under paragraph 9 of Schedule 2 to that Act;
 - (d) it is manifestly fraudulent, or any of the evidence adduced in its support is manifestly false; or
 - (e) it is frivolous or vexatious.
- (5) This sub-paragraph applies to a claim if the evidence adduced in its support establishes a reasonable likelihood that the appellant has been tortured in the country or territory to which he is to be sent.
- (6) Rules of procedure under section 22 of the 1971 Act may make special provision in relation to appeals to which this paragraph applies.
- (7) If on an appeal to which this paragraph applies the special adjudicator agrees that the claim is one to which—
- (a) sub-paragraph (2), (3) or (4) above applies; and
 - (b) sub-paragraph (5) above does not apply,
- section 20(1) of that Act shall not confer on the appellant any right to appeal to the Immigration Appeal Tribunal.
- (8) The first order under this paragraph shall not be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (9) A statutory instrument containing a subsequent order under this paragraph shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) In this paragraph—
- 'immigration officer' means an immigration officer appointed for the purposes of the 1971 Act;
 - 'passport', in relation to an appellant, means a passport with photograph or some other document satisfactorily establishing his identity and nationality or citizenship."

2.—(1) Nothing in section 6 of the 1993 Act (protection of claimants from deportation etc.) shall prevent a person who has made a claim for asylum being removed from the United Kingdom if—

Removal etc. of asylum claimants to safe third countries.

- (a) the Secretary of State has certified that, in his opinion, the conditions mentioned in subsection (2) below are fulfilled;
- (b) the certificate has not been set aside on an appeal under section 3 below; and
- (c) except in the case of a person who is to be sent to a country or territory to which subsection (3) below applies, the time for giving notice of such an appeal has expired and no such appeal is pending.

(2) The conditions are—

- (a) that the person is not a national or citizen of the country or territory to which he is to be sent;
- (b) that his life and liberty would not be threatened in that country or territory by reason of his race, religion, nationality, membership of a particular social group, or political opinion; and
- (c) that the government of that country or territory would not send him to another country or territory otherwise than in accordance with the Convention.

(3) This subsection applies to any country or territory which is or forms part of a member State, or is designated for the purposes of this subsection in an order made by the Secretary of State by statutory instrument.

(4) The first order under this section shall not be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

(5) A statutory instrument containing a subsequent order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) For the purposes of this section, an appeal under section 3 below is pending during the period beginning when notice of appeal is duly given and ending when the appeal is finally determined or withdrawn.

(7) In this section “claim for asylum” and “the Convention” have the same meanings as in the 1993 Act.

3.—(1) Where a certificate has been issued under section 2(1) above in respect of any person—

Appeals against certificates under section 2.

- (a) that person may appeal against the certificate to a special adjudicator on the ground that any of the conditions mentioned in section 2(2) above was not fulfilled when the certificate was issued, or has since ceased to be fulfilled; but
- (b) unless and until the certificate is set aside on such an appeal, he shall not be entitled to bring or pursue any appeal under—
 - (i) Part II of the 1971 Act (appeals: general); or

(ii) section 8 of the 1993 Act (appeals to special adjudicator on Convention grounds),
as respects matters arising before his removal from the United Kingdom.

(2) A person who has been, or is to be, sent to a country or territory to which section 2(3) above applies shall not be entitled to bring or pursue an appeal under this section so long as he is in the United Kingdom.

(3) The Lord Chancellor shall designate such number of the adjudicators appointed for the purposes of Part II of the 1971 Act as he thinks necessary to act as special adjudicators for the purposes of this section and may from time to time vary that number and the persons who are so designated.

(4) Subject to subsection (5) below, the following provisions of the 1971 Act, namely—

- (a) section 18 (notice of decisions appealable under that Part and statement of appeal rights etc.);
- (b) section 19 (determination of appeals under that Part by adjudicators);
- (c) section 21 (references of cases by Secretary of State for further consideration);
- (d) section 22(1) to (4), (6) and (7) (rules of procedure for appeals);
- (e) section 23 (grants to voluntary organisations helping persons with rights of appeal); and
- (f) Schedule 5 (provisions about adjudicators and Immigration Appeal Tribunal),

shall have effect as if this section were contained in Part II of that Act.

(5) Rules of procedure under section 22 of the 1971 Act—

- (a) may make special provision in relation to appeals under this section; and
- (b) may make different provision in relation to appeals by persons who have been, or are to be, sent to countries or territories of different descriptions;

and so much of paragraph 5 of Schedule 5 to that Act as relates to the allocation of duties among the adjudicators shall have effect subject to subsection (3) above.

(6) Paragraph 29 of Schedule 2 to the 1971 Act (grant of bail pending appeal) shall have effect as if the references to appeals under sections 13(1), 15(1)(a) and 16 of that Act included references to appeals under this section.

Immigration offences

Obtaining leave
by deception.

4. In subsection (1) of section 24 of the 1971 Act (illegal entry and similar offences), after paragraph (a) there shall be inserted the following paragraph—

- “(aa) if, by means which include deception by him, he obtains or seeks to obtain leave to enter or remain in the United Kingdom;”.

5.—(1) In subsection (1) of section 25 of the 1971 Act (assisting illegal entry, and harbouring), for the words from “the entry” to “illegal entrant” there shall be substituted the following paragraphs—

Assisting asylum claimants, and persons seeking to obtain leave by deception.

- “(a) the entry into the United Kingdom of anyone whom he knows or has reasonable cause for believing to be an illegal entrant;
- (b) the entry into the United Kingdom of anyone whom he knows or has reasonable cause for believing to be an asylum claimant; or
- (c) the obtaining by anyone of leave to remain in the United Kingdom by means which he knows or has reasonable cause for believing to include deception.”.

(2) After that subsection there shall be inserted the following subsection—

“(1A) Nothing in subsection (1)(b) above shall apply to anything which is done—

- (a) by a person otherwise than for gain, or in the course of his employment by a bona fide organisation whose purpose it is to assist refugees; or
- (b) in relation to a person who has been detained under paragraph 16 of Schedule 2 to this Act, or has been granted temporary admission under paragraph 21 of that Schedule;

and in that provision ‘asylum claimant’ means a person who intends to make a claim for asylum (within the meaning of the Asylum and Immigration Appeals Act 1993).”

1993 c.23.

(3) In subsection (5) of that section, for the words “Subsection (1)” there shall be substituted the words “Subsection (1)(a)”.

(4) In subsection (6) of that section, for the words “subsection (1)” there shall be substituted the words “subsection (1)(a) or (b)”.

6. In the following provisions, namely—

Increased penalties.

- (a) subsection (1) of section 24 of the 1971 Act (illegal entry and similar offences);
- (b) subsection (1) of section 26 (general offences in connection with administration of Act); and
- (c) section 27 (offences by persons connected with ships or aircraft or with ports),

for the words “level 4” there shall be substituted the words “level 5”.

7.—(1) A constable or immigration officer may arrest without warrant anyone whom he has reasonable grounds for suspecting to have committed an offence to which this section applies.

Power of arrest and search warrants.

(2) If—

- (a) a justice of the peace is by written information on oath satisfied that there is reasonable ground for suspecting that a person who is liable to be arrested under subsection (1) above is to be found on any premises; or

- (b) in Scotland, a sheriff, or a justice of the peace, having jurisdiction in the place where the premises are situated is by evidence on oath so satisfied,

he may grant a warrant authorising any constable to enter, if need be by force, the premises named in the warrant for the purposes of searching for and arresting that person.

- (3) The following provisions, namely—

1984 c. 60.

- (a) section 8 of the Police and Criminal Evidence Act 1984 (power of justice to authorise entry and search of premises); and

S.I. 1989/1341
(N.I.12).

- (b) Article 10 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (corresponding provision for Northern Ireland),

shall have effect as if the reference in subsection (1) of that section or, as the case may be, paragraph (1) of that Article to a serious arrestable offence included a reference to an offence to which this section applies.

- (4) This section applies to the following offences under section 24(1) of the 1971 Act, namely—

- (a) an offence under paragraph (a) (illegal entry);
 (b) an offence under paragraph (aa) (obtaining leave to enter or remain by deception); and
 (c) an offence under paragraph (b) (remaining beyond time limited by leave or failing to observe condition of leave).

- (5) In this section “immigration officer” has the same meaning as in the 1971 Act.

Persons subject to immigration control

Restrictions on
employment.

8.—(1) Subject to subsection (2) below, if any person (“the employer”) employs a person subject to immigration control (“the employee”) who has attained the age of 16, the employer shall be guilty of an offence if—

- (a) the employee has not been granted leave to enter or remain in the United Kingdom; or
 (b) the employee’s leave is not valid and subsisting, or is subject to a condition precluding him from taking up the employment,

and (in either case) the employee does not satisfy such conditions as may be specified in an order made by the Secretary of State.

- (2) Subject to subsection (3) below, in proceedings under this section, it shall be a defence to prove that—

- (a) before the employment began, there was produced to the employer a document which appeared to him to relate to the employee and to be of a description specified in an order made by the Secretary of State; and
 (b) either the document was retained by the employer, or a copy or other record of it was made by the employer in a manner specified in the order in relation to documents of that description.

- (3) The defence afforded by subsection (2) above shall not be available in any case where the employer knew that his employment of the employee would constitute an offence under this section.

(4) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) any director, manager, secretary or other similar officer of the body corporate; or

(b) any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(6) Where the affairs of a body corporate are managed by its members, subsection (5) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(7) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(8) In this section—

“contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether it is oral or in writing;

“employ” means employ under a contract of employment and “employment” shall be construed accordingly.

9.—(1) Each housing authority shall secure that, so far as practicable, no tenancy of, or licence to occupy, housing accommodation provided under the accommodation Part is granted to a person subject to immigration control unless he is of a class specified in an order made by the Secretary of State.

Entitlement to housing accommodation and assistance.

(2) A person subject to immigration control—

(a) shall not be eligible for accommodation or assistance under the homelessness Part; and

(b) shall be disregarded in determining, for the purposes of that Part, whether another person—

(i) is homeless or is threatened with homelessness; or

(ii) has a priority need for accommodation,

unless he is of a class specified in an order made by the Secretary of State.

(3) An order under this section—

(a) may make different provision for different circumstances or for accommodation or assistance of different descriptions; and

(b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) In this section—

“the accommodation Part” and “the homelessness Part” mean respectively—

(a) in relation to England and Wales, Parts II and III of the Housing Act 1985; 1985 c. 68.

- 1987 c. 26. (b) in relation to Scotland, Parts I and II of the Housing (Scotland) Act 1987;
- S.I. 1981/156 (N.I.3). (c) in relation to Northern Ireland, Part II of the Housing (Northern Ireland) Order 1981 and Part II of the Housing (Northern Ireland) Order 1988;
- S.I. 1988/1990 (N.I.23). “housing authority” means—
- 1985 c. 68. (a) in relation to England and Wales, a local housing authority within the meaning of the Housing Act 1985;
- (b) in relation to Scotland, a local authority within the meaning of the Housing (Scotland) Act 1987;
- (c) in relation to Northern Ireland, the Northern Ireland Housing Executive;
- “licence to occupy”, in relation to Scotland, means a permission or right to occupy;
- “tenancy”, in relation to England and Wales, has the same meaning as it has in the Housing Act 1985.

Entitlement to child benefit. **10.—(1)** The provision set out in subsection (2) below shall be inserted—

- 1992 c. 4. (a) after section 146 of the Social Security Contributions and Benefits Act 1992, as section 146A of that Act; and
- 1992 c. 7. (b) after section 142 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, as section 142A of that Act.

(2) The provision is as follows—

“Persons subject to immigration control. . No person subject to immigration control within the meaning of the Asylum and Immigration Act 1996 shall be entitled to child benefit for any week unless he satisfies prescribed conditions.”

Saving for social security regulations. **11.—(1)** Notwithstanding any enactment or rule of law, regulations may exclude any person who has made a claim for asylum from entitlement to any of the following benefits, namely—

- (a) income support, housing benefit and council tax benefit under the Social Security Contributions and Benefits Act 1992;
- (b) income support and housing benefit under the Social Security Contributions and Benefits (Northern Ireland) Act 1992; and
- 1995 c. 18. (c) jobseeker’s allowance under the Jobseekers Act 1995 or the
- S.I. 1995/2705. Jobseekers (Northern Ireland) Order 1995.

(2) Regulations may provide that, where such a person who is so excluded is subsequently recorded by the Secretary of State as a refugee within the meaning of the Convention—

- (a) that person may, within a prescribed period, claim the whole or any prescribed proportion of any income support, housing benefit or council tax benefit to which he would have been entitled had he been recorded as a refugee immediately after he made the claim for asylum; and
- (b) where he makes such a claim as is mentioned in paragraph (a) above in respect of housing benefit or council tax benefit having resided in the areas of two or more local authorities in Great

Britain, the claim shall be investigated and determined, and any benefit awarded shall be paid or allowed, by such one of those authorities as may be prescribed.

(3) Regulations making such provision as is mentioned in subsection (2)(b) above may require the other authorities there mentioned to supply the prescribed authority with such information as it may reasonably require in connection with the exercise of its functions under the regulations.

(4) Schedule 1 to this Act—

- | | |
|---|--------------------------|
| (a) Part I of which modifies the Social Security (Persons from Abroad) Miscellaneous Amendments Regulations 1996; and | S.I. 1996/30. |
| (b) Part II of which modifies the Social Security (Persons from Abroad) (Miscellaneous Amendments) Regulations (Northern Ireland) 1996, | S.R. (N.I.) 1996 No. 11. |

shall have effect.

(5) The Jobseeker's Allowance (Amendment) Regulations 1996 shall have effect as if they had been made on the day on which this Act is passed. S.I. 1996/1516.

(6) In this section—

“claim for asylum” and “the Convention” have the same meanings as in the 1993 Act;

“prescribed” means prescribed by regulations;

“regulations”—

(a) in relation to income support, housing benefit or council tax benefit under the Social Security Contributions and Benefits Act 1992, means regulations under that Act or the Social Security Administration Act 1992; 1992 c. 4.
1992 c. 5.

(b) in relation to income support or housing benefit under the Social Security Contributions and Benefits (Northern Ireland) Act 1992, means regulations under that Act or the Social Security Administration (Northern Ireland) Act 1992; 1992 c. 7.
1992 c. 8.

(c) in relation to jobseeker's allowance under the Jobseekers Act 1995, means regulations under that Act or the Social Security Administration Act 1992; 1995 c. 18.

(d) in relation to jobseeker's allowance under the Jobseekers (Northern Ireland) Order 1995, means regulations under that Order or the Social Security Administration (Northern Ireland) Act 1992. S.I. 1995/2705.

Miscellaneous and supplemental

12.—(1) Schedule 2 to this Act (which contains amendments of the 1971 Act and a related amendment of the Immigration Act 1988) shall have effect. Other amendments and repeals.
1988 c. 14.

(2) Schedule 3 to this Act (which contains amendments of the 1993 Act) shall have effect.

(3) The enactments specified in Schedule 4 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

13.—(1) This Act may be cited as the Asylum and Immigration Act 1996. Short title, interpretation, commencement and extent.

(2) In this Act—

1971 c.77.

“the 1971 Act” means the Immigration Act 1971;

1993 c.23.

“the 1993 Act” means the Asylum and Immigration Appeals Act 1993;

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

(3) This Act, except section 11 and Schedule 1, shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be appointed for different purposes.

(4) An order under subsection (3) above may make such transitional and supplemental provision as the Secretary of State thinks necessary or expedient.

(5) Her Majesty may by Order in Council direct that any of the provisions of this Act shall extend, with such modifications as appear to Her Majesty to be appropriate, to any of the Channel Islands or the Isle of Man.

(6) This Act extends to Northern Ireland.

SCHEDULES

SCHEDULE 1

Section 11(4).

MODIFICATIONS OF SOCIAL SECURITY REGULATIONS

PART I

SOCIAL SECURITY (PERSONS FROM ABROAD) MISCELLANEOUS AMENDMENTS
REGULATIONS 1996*Preliminary*

1. In this Part of this Schedule—

- (a) “the 1996 Regulations” means the Social Security (Persons from Abroad) Miscellaneous Amendments Regulations 1996; and
- (b) expressions which are used in the 1996 Regulations have the same meanings as in those Regulations.

Income support

2. In regulation 8 of the 1996 Regulations (amendment of the Income Support Regulations)—

- (a) paragraph (2) so far as relating to the sub-paragraph added to regulation 21(3) of the Income Support Regulations as sub-paragraph (j); and
- (b) paragraph (3)(c) and (d),

shall have effect as if the 1996 Regulations had been made, and had come into force, on the day on which this Act is passed.

Housing benefit

3. In regulation 7 of the 1996 Regulations (amendment of regulation 7A of the Housing Benefit Regulations)—

- (a) paragraph (a) so far as relating to the sub-paragraph added to regulation 7A(4) of the Housing Benefit Regulations as sub-paragraph (g);
- (b) paragraph (b) so far as relating to sub-paragraphs (a) and (b) of the paragraph substituted for regulation 7A(5) of those Regulations; and
- (c) paragraph (c),

shall have effect as if the 1996 Regulations had been made, and had come into force, on the day on which this Act is passed.

Council tax benefit

4. In regulation 3 of the 1996 Regulations (amendment of regulation 4A of the Council Tax Benefit Regulations)—

- (a) paragraph (a) so far as relating to the sub-paragraph added to regulation 4A(4) of the Council Tax Benefit Regulations as sub-paragraph (g);
- (b) paragraph (b) so far as relating to sub-paragraphs (a) and (b) of the paragraph substituted for regulation 4A(5) of those Regulations; and
- (c) paragraph (c),

shall have effect as if the 1996 Regulations had been made, and had come into force, on the day on which this Act is passed.

SCH. 1

General

5. Regulation 12(1) of the 1996 Regulations (saving) shall have effect as if after the words "shall continue to have effect" there were inserted the words "(both as regards him and as regards persons who are members of his family at the coming into force of these Regulations)".

6.—(1) Subject to sub-paragraph (2) below, any person who is excluded from entitlement to income support, housing benefit or council tax benefit by any of the provisions which are modified by the preceding provisions of this Part of this Schedule—

- (a) shall not be entitled to the benefit for any period beginning on or after the day on which this Act is passed; and
- (b) shall not be entitled to the benefit for any period beginning on or after 5th February 1996 except on a claim made before the day on which this Act is passed, or an application made before that day for the review of a decision.

(2) Nothing in this paragraph shall apply in any case where a person is entitled to the benefit in question either—

- (a) by virtue of regulation 12(1) of the 1996 Regulations (saving); or
- (b) by virtue of regulations making such provision as is mentioned in section 11(2) of this Act.

PART II

SOCIAL SECURITY (PERSONS FROM ABROAD) (MISCELLANEOUS AMENDMENTS)
REGULATIONS (NORTHERN IRELAND) 1996*Preliminary*

S.R. (N.I.) 1996
No. 11.

7. In this Part of this Schedule "the 1996 Regulations" means the Social Security (Persons from Abroad) (Miscellaneous Amendments) Regulations (Northern Ireland) 1996.

Income support

8. In regulation 4 of the 1996 Regulations (amendment of the Income Support (General) Regulations)—

S.R. (N.I.) 1987
No. 459.

- (a) paragraph (2) so far as relating to the paragraph added to regulation 21(3) of the Income Support (General) Regulations (Northern Ireland) 1987 as paragraph (j); and
- (b) paragraph (3)(b),

shall have effect as if the 1996 Regulations had been made, and had come into operation, on the day on which this Act is passed.

Housing benefit

9. In regulation 5 of the 1996 Regulations (amendment of the Housing Benefit (General) Regulations)—

S.R. (N.I.) 1987
No. 461.

- (a) paragraph (a) so far as relating to the sub-paragraph added to regulation 7A(4) of the Housing Benefit (General) Regulations (Northern Ireland) 1987 as sub-paragraph (g);
- (b) paragraph (b) so far as relating to sub-paragraphs (a) and (b) of the paragraph substituted for regulation 7A(5) of those Regulations; and
- (c) paragraph (c),

shall have effect as if the 1996 Regulations had been made, and had come into operation, on the day on which this Act is passed.

General

10. Regulation 11(1) of the 1996 Regulations (saving) shall have effect as if after the words "shall have effect" there were inserted the words "(both as regards him and as regards persons who are members of his family at the coming into operation of these Regulations)".

11.—(1) Subject to sub-paragraph (2) below, any person who is excluded from entitlement to income support or housing benefit by any of the provisions which are modified by the preceding provisions of this Part of this Schedule—

- (a) shall not be entitled to the benefit for any period beginning on or after the day on which this Act is passed; and
- (b) shall not be entitled to the benefit for any period beginning on or after 5th February 1996 except on a claim made before the day on which this Act is passed, or an application made before that day for the review of a decision.

(2) Nothing in this paragraph shall apply in any case where a person is entitled to the benefit in question either—

- (a) by virtue of regulation 11(1) of the 1996 Regulations (saving); or
- (b) by virtue of regulations making such provision as is mentioned in section 11(2) of this Act.

SCHEDULE 2

Section 12(1).

AMENDMENTS OF THE 1971 ACT AND THE IMMIGRATION ACT 1988

General provisions for regulation and control, &c.

1.—(1) In subsection (1) of section 3 of the 1971 Act (general provisions for regulation and control), for paragraph (c) there shall be substituted the following paragraph—

- “(c) if he is given limited leave to enter or remain in the United Kingdom, it may be given subject to all or any of the following conditions, namely—
 - (i) a condition restricting his employment or occupation in the United Kingdom;
 - (ii) a condition requiring him to maintain and accommodate himself, and any dependants of his, without recourse to public funds; and
 - (iii) a condition requiring him to register with the police.”

(2) In subsection (5) (persons liable to deportation) of that section, after paragraph (a) there shall be inserted the following paragraph—

- “(aa) if he has obtained leave to remain by deception; or”.

(3) In subsection (1) of section 5 of the Immigration Act 1988 (restricted right of appeal against deportation), after paragraph (a) there shall be inserted the following paragraph—

1988 c. 14.

- “(aa) by virtue of section 3(5)(aa) of that Act (leave obtained by deception); or”.

Persons belonging to another's family

2. In subsection (4) of section 5 of the 1971 Act (persons belonging to another's family), for paragraph (b) there shall be substituted the following paragraph—

- “(b) where that other person is a woman, her husband and her or his children under the age of eighteen;”.

SCH. 2

Appeals against conditions

3.—(1) After subsection (2) of section 14 of the 1971 Act (appeals against conditions), there shall be inserted the following subsection—

“(2ZA) A person shall not be entitled to appeal under subsection (1) above against—

- (a) a variation of his leave which adds such a condition as is mentioned in section 3(1)(c)(ii) above; or
- (b) a refusal to vary his leave by revoking such a condition.”

(2) In subsection (2B) of that section, for paragraph (c) there shall be substituted the following paragraph—

“(c) work permits, or equivalent documents issued after entry.”

Interpretation

4.—(1) In subsection (1) of section 33 of the 1971 Act (interpretation), for the definitions of “entrant” and “illegal entrant” there shall be substituted the following definitions—

“‘entrant’ means a person entering or seeking to enter the United Kingdom and ‘illegal entrant’ means a person—

- (a) unlawfully entering or seeking to enter in breach of a deportation order or of the immigration laws, or
 - (b) entering or seeking to enter by means which include deception by another person,
- and includes also a person who has entered as mentioned in paragraph (a) or (b) above;”.

(2) In subsection (4) of that section, after the words “determined or withdrawn”, in the first place where they occur, there shall be inserted the words “or is abandoned by reason of the appellant leaving the United Kingdom”.

Information and documents

5.—(1) In sub-paragraph (2)(b) of paragraph 4 of Schedule 2 to the 1971 Act (information and documents), after the words “is carrying or conveying”, in the first place where they occur, there shall be inserted the words “, or has carried or conveyed,”.

(2) In sub-paragraph (3) of that paragraph—

- (a) after the words “is carrying or conveying” there shall be inserted the words “, or has carried or conveyed,”;
- (b) for the words from “he and any” to “control” there shall be substituted the following paragraphs—
 - “(a) he and any baggage or vehicle belonging to him or under his control; and
 - (b) any ship, aircraft or vehicle in which he arrived in the United Kingdom,”; and
- (c) after the words “is doing” there shall be inserted the words “or, as the case may be, has done”.

Removal of illegal entrants

6. Paragraph 9 of Schedule 2 to the 1971 Act (removal of illegal entrants) shall be renumbered as sub-paragraph (1) of that paragraph; and after that provision as so renumbered there shall be inserted the following sub-paragraph—

“(2) Any leave to enter the United Kingdom which is obtained by deception shall be disregarded for the purposes of this paragraph.”

Arrest of persons liable to detention

7. In sub-paragraph (2)(b) of paragraph 17 of Schedule 2 to the 1971 Act (arrest of persons liable to detention), the words “magistrate or” shall cease to have effect.

Recovery of expenses incurred in detaining persons refused leave to enter

8. In sub-paragraph (1) of paragraph 19 of Schedule 2 to the 1971 Act (recovery of expenses incurred in detaining persons refused leave to enter), for the words “at any time” there shall be substituted the words “for any period (not exceeding 14 days)”.

Recovery of expenses incurred in detaining illegal entrants

9.—(1) In sub-paragraph (1) of paragraph 20 of Schedule 2 to the 1971 Act (recovery of expenses incurred in detaining illegal entrants), for the words “at any time” there shall be substituted the words “for any period (not exceeding 14 days)”.

(2) After that sub-paragraph there shall be inserted the following sub-paragraph—

“(1A) Sub-paragraph (1) above shall not apply to expenses in respect of an illegal entrant if he obtained leave to enter by deception and the leave has not been cancelled under paragraph 6(2) above.”.

Temporary admission of persons liable to detention

10. After sub-paragraph (2) of paragraph 21 of Schedule 2 to the 1971 Act (temporary admission of persons liable to detention) there shall be inserted the following sub-paragraphs—

“(3) Sub-paragraph (4) below applies where a person who is at large in the United Kingdom by virtue of this paragraph is subject to a restriction as to reporting to an immigration officer with a view to the conclusion of his examination under paragraph 2 above.

(4) If the person fails at any time to comply with that restriction—

- (a) an immigration officer may direct that the person’s examination under paragraph 2 above shall be treated as concluded at that time; but
- (b) nothing in paragraph 6 above shall require the notice giving or refusing him leave to enter the United Kingdom to be given within twenty-four hours after that time.”

Temporary release of persons liable to detention

11.—(1) For sub-paragraph (1) of paragraph 22 of Schedule 2 to the 1971 Act (temporary release of persons liable to detention) there shall be substituted the following sub-paragraphs—

“(1) The following, namely—

- (a) a person detained under paragraph 16(1) above pending examination; and
- (b) a person detained under paragraph 16(2) above pending the giving of directions,

may be released on bail in accordance with this paragraph.

(1A) An immigration officer not below the rank of chief immigration officer or an adjudicator may release a person so detained on his entering into a recognizance or, in Scotland, bail bond conditioned for his

SCH. 2

appearance before an immigration officer at a time and place named in the recognizance or bail bond or at such other time and place as may in the meantime be notified to him in writing by an immigration officer.

(1B) Sub-paragraph (1)(a) above shall not apply unless seven days have elapsed since the date of the person's arrival in the United Kingdom."

(2) In sub-paragraph (2) of that paragraph—

(a) for the word "adjudicator", in the first place where it occurs, there shall be substituted the words "immigration officer or adjudicator"; and

(b) for the word "adjudicator", in the second place where it occurs, there shall be substituted the words "officer or adjudicator".

(3) In sub-paragraph (3) of that paragraph—

(a) for the word "adjudicator", in the first place where it occurs, there shall be substituted the words "immigration officer or adjudicator"; and

(b) for the word "adjudicator", in the second and third places where it occurs, there shall be substituted the words "officer or adjudicator".

Grant of bail pending removal

12. After paragraph 33 of Schedule 2 to the 1971 Act there shall be inserted the following paragraph—

"Grant of bail pending removal

34.—(1) Paragraph 22 above shall apply in relation to a person—

(a) directions for whose removal from the United Kingdom are for the time being in force; and

(b) who is for the time being detained under Part I of this Schedule, as it applies in relation to a person detained under paragraph 16(1) above pending examination or detained under paragraph 16(2) above pending the giving of directions.

(2) Paragraphs 23 to 25 above shall apply as if any reference to paragraph 22 above included a reference to that paragraph as it applies by virtue of this paragraph."

Supplementary provisions as to deportation

13. In paragraph 2(5) of Schedule 3 to the 1971 Act (supplementary provisions as to deportation), after the words "the police" there shall be inserted the words "or an immigration officer".

Section 12(2).

SCHEDULE 3

AMENDMENTS OF THE 1993 ACT

Curtailment of leave to enter or remain

1.—(1) After subsection (1) of section 7 of the 1993 Act (curtailment of leave to enter or remain) there shall be inserted the following subsection—

"(1A) Where the Secretary of State by notice under subsection (1) above curtails the duration of any person's leave to enter or remain in the United Kingdom, he may also by notice in writing given to any dependant of that person curtail to the same extent the duration of that dependant's leave so to enter or remain."

(2) In subsections (2), (3) and (4) of that section, for the words "subsection (1) above" there shall be substituted the words "subsection (1) or (1A) above".

Appeals to special adjudicator

2.—(1) In subsection (3) of section 8 of the 1993 Act (appeals to special adjudicator), the words from “but a person” to the end shall cease to have effect.

(2) After that subsection there shall be inserted the following subsection—

“(3A) A person may not appeal under paragraph (b) of subsection (3) above if he has had the right to appeal under paragraph (a) of that subsection, whether or not he has exercised it.”

Bail pending appeal from Immigration Appeal Tribunal

3. After section 9 of the 1993 Act there shall be inserted the following section—

“Bail pending
appeal from
Immigration
Appeal Tribunal

9A.—(1) Where a person (‘an appellant’)—

(a) has an appeal under Part II of the 1971 Act which is pending by reason of an appeal, or an application for leave to appeal, under section 9 above; and

(b) is for the time being detained under Part I of Schedule 2 to that Act (general provisions as to control on entry etc.),

he may be released on bail in accordance with this section.

(2) An immigration officer not below the rank of chief immigration officer, a police officer not below the rank of inspector or an adjudicator may release an appellant on his entering into a recognizance or, in Scotland, bail bond conditioned for his appearance before the appropriate appeal court at a time and place named in the recognizance or bail bond.

(3) The Immigration Appeal Tribunal may release an appellant on his entering into a recognizance or, in Scotland, bail bond conditioned for his appearance before the appropriate appeal court at a time and place named in the recognizance or bail bond; and where—

(a) the appeal, or the application for leave to appeal, under section 9 above is by the Secretary of State; or

(b) the appellant has been granted leave to appeal under that section, and has duly given notice of appeal,

the Tribunal shall, if the appellant so requests, exercise its powers under this subsection.

(4) Sub-paragraphs (5) and (6) of paragraph 29 (grant of bail pending appeal) of Schedule 2 to the 1971 Act shall apply for the purposes of this section as they apply for the purposes of that paragraph.

(5) Paragraphs 30 to 33 of that Schedule shall apply as if—

(a) any reference to paragraph 29 included a reference to this section;

(b) the reference in paragraph 30(2) to paragraph 29(3) or (4) included a reference to subsection (3) above; and

(c) any reference in paragraphs 31 to 33 to the Immigration Appeal Tribunal included a reference to the appropriate appeal court.

(6) In this section ‘the appropriate appeal court’ has the same meaning as in section 9 above.”

SCH. 3

Security of tenure

4. In paragraph 6(1) of Schedule 1 to the 1993 Act (security of tenure)—

(a) after the words “Part III of the Act of 1985” there shall be inserted the words “or Part II of the Act of 1987”; and

1988 c.50.
1988 c.43.

(b) after the words “ the Housing Act 1988” there shall be inserted the words “or the Housing (Scotland) Act 1988”.

Appeals to special adjudicator: supplementary

5. In paragraph 4(2) of Schedule 2 to the 1993 Act (appeals to special adjudicator: supplementary), for the word “and” immediately following paragraph (f) there shall be substituted the following paragraph—

“(ff) section 33(4) (duration of appeals); and”.

Section 12(3).

SCHEDULE 4

REPEALS

Chapter	Short title	Extent of repeal
1971 c.77.	Immigration Act 1971.	In Schedule 2, in paragraph 17(2)(b), the words “magistrate or”.
1993 c.23.	Asylum and Immigration Appeals Act 1993.	In section 8(3), the words from “but a person” to the end.

© Crown copyright 1996

Printed in the UK for The Stationery Office Limited
under the authority and superintendence of Carol Tullo,
Controller of Her Majesty's Stationery Office
and Queen's Printer of Acts of Parliament

Dd 5068799 4/99 76937 Job No. J80190

1st Impression July 1996
3rd Impression April 1999

LONDON : The Stationery Office Ltd

ISBN 0-10-544996-2



9 780105 449966