



# Asylum and Immigration (Treatment of Claimants, etc.) Act 2004

## 2004 CHAPTER 19

An Act to make provision about asylum and immigration.

[22nd July 2004]

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:—

### *Offences*

#### **1 Assisting unlawful immigration**

(1) At the end of section 25 of the Immigration Act 1971 (c. 77) (offence of assisting unlawful immigration to member State) add—

“(7) In this section—

- (a) a reference to a member State includes a reference to a State on a list prescribed for the purposes of this section by order of the Secretary of State (to be known as the “Section 25 List of Schengen Acquis States”), and
- (b) a reference to a citizen of the European Union includes a reference to a person who is a national of a State on that list.

(8) An order under subsection (7)(a)—

- (a) may be made only if the Secretary of State thinks it necessary for the purpose of complying with the United Kingdom's obligations under the Community Treaties,
- (b) may include transitional, consequential or incidental provision,
- (c) shall be made by statutory instrument, and
- (d) shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

**Status:** Point in time view as at 14/03/2005. This version of this Act contains provisions that are not valid for this point in time.

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- (2) In section 25C(9)(a) of that Act (forfeiture of vehicle, ship or aircraft) for “(within the meaning of section 25)” substitute “(for which purpose “member State and >“immigration law have the meanings given by section 25(2) and (7))”.

#### Commencement Information

**II** S. 1 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

## 2 Entering United Kingdom without passport, &c.

- (1) A person commits an offence if at a leave or asylum interview he does not have with him an immigration document which—
- (a) is in force, and
  - (b) satisfactorily establishes his identity and nationality or citizenship.
- (2) A person commits an offence if at a leave or asylum interview he does not have with him, in respect of any dependent child with whom he claims to be travelling or living, an immigration document which—
- (a) is in force, and
  - (b) satisfactorily establishes the child’s identity and nationality or citizenship.
- (3) But a person does not commit an offence under subsection (1) or (2) if—
- (a) the interview referred to in that subsection takes place after the person has entered the United Kingdom, and
  - (b) within the period of three days beginning with the date of the interview the person provides to an immigration officer or to the Secretary of State a document of the kind referred to in that subsection.
- (4) It is a defence for a person charged with an offence under subsection (1)—
- (a) to prove that he is an EEA national,
  - (b) to prove that he is a member of the family of an EEA national and that he is exercising a right under the Community Treaties in respect of entry to or residence in the United Kingdom,
  - (c) to prove that he has a reasonable excuse for not being in possession of a document of the kind specified in subsection (1),
  - (d) to produce a false immigration document and to prove that he used that document as an immigration document for all purposes in connection with his journey to the United Kingdom, or
  - (e) to prove that he travelled to the United Kingdom without, at any stage since he set out on the journey, having possession of an immigration document.
- (5) It is a defence for a person charged with an offence under subsection (2) in respect of a child—
- (a) to prove that the child is an EEA national,
  - (b) to prove that the child is a member of the family of an EEA national and that the child is exercising a right under the Community Treaties in respect of entry to or residence in the United Kingdom,
  - (c) to prove that the person has a reasonable excuse for not being in possession of a document of the kind specified in subsection (2),

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- (d) to produce a false immigration document and to prove that it was used as an immigration document for all purposes in connection with the child's journey to the United Kingdom, or
  - (e) to prove that he travelled to the United Kingdom with the child without, at any stage since he set out on the journey, having possession of an immigration document in respect of the child.
- (6) Where the charge for an offence under subsection (1) or (2) relates to an interview which takes place after the defendant has entered the United Kingdom—
- (a) subsections (4)(c) and (5)(c) shall not apply, but
  - (b) it is a defence for the defendant to prove that he has a reasonable excuse for not providing a document in accordance with subsection (3).
- (7) For the purposes of subsections (4) to (6)—
- (a) the fact that a document was deliberately destroyed or disposed of is not a reasonable excuse for not being in possession of it or for not providing it in accordance with subsection (3), unless it is shown that the destruction or disposal was—
    - (i) for a reasonable cause, or
    - (ii) beyond the control of the person charged with the offence, and
  - (b) in paragraph (a)(i) “reasonable cause” does not include the purpose of—
    - (i) delaying the handling or resolution of a claim or application or the taking of a decision,
    - (ii) increasing the chances of success of a claim or application, or
    - (iii) complying with instructions or advice given by a person who offers advice about, or facilitates, immigration into the United Kingdom, unless in the circumstances of the case it is unreasonable to expect non-compliance with the instructions or advice.
- (8) A person shall be presumed for the purposes of this section not to have a document with him if he fails to produce it to an immigration officer or official of the Secretary of State on request.
- (9) A person guilty of an offence under this section shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding twelve months, to a fine not exceeding the statutory maximum or to both.
- (10) If a constable or immigration officer reasonably suspects that a person has committed an offence under this section he may arrest the person without warrant.
- (11) An offence under this section 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 III of that Act (criminal proceedings) for the purposes of sections 28(4), 28E, 28G and 28H (search after arrest, &c.) of that Act.
- (12) In this section—
- “EEA national” means a national of a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as it has effect from time to time),

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“immigration document” means—

- (a) a passport, and
- (b) a document which relates to a national of a State other than the United Kingdom and which is designed to serve the same purpose as a passport, and

“leave or asylum interview” means an interview with an immigration officer or an official of the Secretary of State at which a person—

- (a) seeks leave to enter or remain in the United Kingdom, or
- (b) claims that to remove him from or require him to leave the United Kingdom would breach the United Kingdom’s obligations under the Refugee Convention or would be unlawful under section 6 of the Human Rights Act 1998 (c. 42) as being incompatible with his Convention rights.

(13) For the purposes of this section—

- (a) a document which purports to be, or is designed to look like, an immigration document, is a false immigration document, and
- (b) an immigration document is a false immigration document if and in so far as it is used—
  - (i) outside the period for which it is expressed to be valid,
  - (ii) contrary to provision for its use made by the person issuing it, or
  - (iii) by or in respect of a person other than the person to or for whom it was issued.

(14) Section 11 of the Immigration Act 1971 (c. 77) shall have effect for the purpose of the construction of a reference in this section to entering the United Kingdom.

(15) In so far as this section extends to England and Wales, subsection (9)(b) shall, until the commencement of section 154 of the Criminal Justice Act 2003 (c. 44) (increased limit on magistrates’ power of imprisonment), have effect as if the reference to twelve months were a reference to six months.

(16) In so far as this section extends to Scotland, subsection (9)(b) shall have effect as if the reference to twelve months were a reference to six months.

(17) In so far as this section extends to Northern Ireland, subsection (9)(b) shall have effect as if the reference to twelve months were a reference to six months.

### **3 Immigration documents: forgery**

(1) Section 5 of the Forgery and Counterfeiting Act 1981 (c. 45) (offences relating to various documents) shall be amended as follows.

(2) After subsection (5)(f) (passports) insert—  
“(fa) immigration documents;”.

(3) After subsection (8) add—

“(9) In subsection (5)(fa) “immigration document” means a card, adhesive label or other instrument which satisfies subsection (10) or (11).

(10) A card, adhesive label or other instrument satisfies this subsection if it—

- (a) is designed to be given, in the exercise of a function under the Immigration Acts (within the meaning of section 44 of the Asylum

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and Immigration (Treatment of Claimants, etc.) Act 2004), to a person who has been granted leave to enter or remain in the United Kingdom, and

- (b) carries information (whether or not wholly or partly electronically) about the leave granted.

- (11) A card, adhesive label or other instrument satisfies this subsection if it is given to a person to confirm a right of his under the Community Treaties in respect of entry to or residence in the United Kingdom.”

#### Commencement Information

**I2** S. 3 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

## 4 Trafficking people for exploitation

- (1) A person commits an offence if he arranges or facilitates the arrival in the United Kingdom of an individual (the “passenger”) and—
- (a) he intends to exploit the passenger in the United Kingdom or elsewhere, or
- (b) he believes that another person is likely to exploit the passenger in the United Kingdom or elsewhere.
- (2) A person commits an offence if he arranges or facilitates travel within the United Kingdom by an individual (the “passenger”) in respect of whom he believes that an offence under subsection (1) may have been committed and—
- (a) he intends to exploit the passenger in the United Kingdom or elsewhere, or
- (b) he believes that another person is likely to exploit the passenger in the United Kingdom or elsewhere.
- (3) A person commits an offence if he arranges or facilitates the departure from the United Kingdom of an individual (the “passenger”) and—
- (a) he intends to exploit the passenger outside the United Kingdom, or
- (b) he believes that another person is likely to exploit the passenger outside the United Kingdom.
- (4) For the purposes of this section a person is exploited if (and only if)—
- (a) he is the victim of behaviour that contravenes Article 4 of the Human Rights Convention (slavery and forced labour),
- (b) he is encouraged, required or expected to do anything as a result of which he or another person would commit an offence under the Human Organ Transplants Act 1989 (c. 31) or the Human Organ Transplants (Northern Ireland) Order 1989 (S.I. 1989/2408 (N.I. 21)),
- (c) he is subjected to force, threats or deception designed to induce him—
- (i) to provide services of any kind,
- (ii) to provide another person with benefits of any kind, or
- (iii) to enable another person to acquire benefits of any kind, or
- (d) he is requested or induced to undertake any activity, having been chosen as the subject of the request or inducement on the grounds that—
- (i) he is mentally or physically ill or disabled, he is young or he has a family relationship with a person, and

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- (ii) a person without the illness, disability, youth or family relationship would be likely to refuse the request or resist the inducement.
- (5) A person guilty of an offence under this section shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years, to a fine or to both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding twelve months, to a fine not exceeding the statutory maximum or to both.

#### Commencement Information

- I3** S. 4 in force at 1.12.2004 for S. by [S.S.I. 2004/494](#) , unnumbered provision
- I4** S. 4 in force at 1.12.2004 for E.W.N.I. by [S.I. 2004/2999](#) , [art. 2](#) , [Sch.](#)

## 5 Section 4: supplemental

- (1) Subsections (1) to (3) of section 4 apply to anything done—
- (a) in the United Kingdom,
  - (b) outside the United Kingdom by an individual to whom subsection (2) below applies, or
  - (c) outside the United Kingdom by a body incorporated under the law of a part of the United Kingdom.
- (2) This subsection applies to—
- (a) a British citizen,
  - (b) a British overseas territories citizen,
  - (c) a British National (Overseas),
  - (d) a British Overseas citizen,
  - (e) a person who is a British subject under the British Nationality Act 1981 (c. 61), and
  - (f) a British protected person within the meaning of that Act.
- (3) In section 4(4)(a) “the Human Rights Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4th November 1950.
- (4) Sections 25C and 25D of the Immigration Act 1971 (c. 77) (forfeiture or detention of vehicle, &c.) shall apply in relation to an offence under section 4 of this Act as they apply in relation to an offence under section 25 of that Act.
- (5) At the end of section 25C(9)(b), (10)(b) and (11) of that Act add “ or section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation). ”
- (6) After paragraph 2(n) of Schedule 4 to the Criminal Justice and Court Services Act 2000 (c. 43) (offence against child) insert—
- “(o) an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation).”
- (7) At the end of paragraph 4 of Schedule 2 to the Proceeds of Crime Act 2002 (c. 29) (lifestyle offences: England and Wales: people trafficking) add—

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- “(3) An offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (exploitation).”
- (8) At the end of paragraph 4 of Schedule 4 to the Proceeds of Crime Act 2002 (lifestyle offences: Scotland: people trafficking) add “or under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (exploitation)”.
- (9) At the end of paragraph 4 of Schedule 5 to the Proceeds of Crime Act 2002 (lifestyle offences: Northern Ireland: people trafficking) add—
- “(3) An offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (exploitation).”
- (10) After paragraph 2(1) of the Schedule to the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (S.I. 2003/417 (N.I. 4)) (offence against child) insert—
- “(m) an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation).”
- (11) In so far as section 4 extends to England and Wales, subsection (5)(b) shall, until the commencement of section 154 of the Criminal Justice Act 2003 (c. 44) (increased limit on magistrates' power of imprisonment), have effect as if the reference to twelve months were a reference to six months.
- (12) In so far as section 4 extends to Scotland, subsection (5)(b) shall have effect as if the reference to twelve months were a reference to six months.
- (13) In so far as section 4 extends to Northern Ireland, subsection (5)(b) shall have effect as if the reference to twelve months were a reference to six months.

#### Commencement Information

- I5** S. 5 in force at 1.12.2004 for E.W.N.I. by [S.I. 2004/2999](#), [art. 2](#), [Sch.](#)
- I6** S. 5 in force at 1.12.2004 for S. by [S.S.I. 2004/494](#), unnumbered provision

## 6 Employment

- (1) For section 8(4) of the Asylum and Immigration Act 1996 (c. 49) (employment: penalty) substitute—
- “(4) A person guilty of an offence under this section shall be liable—
- (a) on conviction on indictment, to a fine, or
- (b) on summary conviction, to a fine not exceeding the statutory maximum.”
- (2) Section 8(9) of that Act (extension of time limit for prosecution) shall cease to have effect.

#### Commencement Information

- I7** S. 6 in force at 1.10.2004 by [S.I. 2004/2523](#), [art. 2](#), [Sch.](#)

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## 7 Advice of Director of Public Prosecutions

In section 3(2) of the Prosecution of Offences Act 1985 (c. 23) (functions of Director of Public Prosecutions) after paragraph (eb) insert—

“(ec) to give, to such extent as he considers appropriate, advice to immigration officers on matters relating to criminal offences;”.

### Commencement Information

**I8** S. 7 in force at 1.12.2004 by S.I. 2004/2999, art. 2, Sch.

## *Treatment of claimants*

## 8 Claimant’s credibility

- (1) In determining whether to believe a statement made by or on behalf of a person who makes an asylum claim or a human rights claim, a deciding authority shall take account, as damaging the claimant’s credibility, of any behaviour to which this section applies.
- (2) This section applies to any behaviour by the claimant that the deciding authority thinks—
  - (a) is designed or likely to conceal information,
  - (b) is designed or likely to mislead, or
  - (c) is designed or likely to obstruct or delay the handling or resolution of the claim or the taking of a decision in relation to the claimant.
- (3) Without prejudice to the generality of subsection (2) the following kinds of behaviour shall be treated as designed or likely to conceal information or to mislead—
  - (a) failure without reasonable explanation to produce a passport on request to an immigration officer or to the Secretary of State,
  - (b) the production of a document which is not a valid passport as if it were,
  - (c) the destruction, alteration or disposal, in each case without reasonable explanation, of a passport,
  - (d) the destruction, alteration or disposal, in each case without reasonable explanation, of a ticket or other document connected with travel, and
  - (e) failure without reasonable explanation to answer a question asked by a deciding authority.
- (4) This section also applies to failure by the claimant to take advantage of a reasonable opportunity to make an asylum claim or human rights claim while in a safe country.
- (5) This section also applies to failure by the claimant to make an asylum claim or human rights claim before being notified of an immigration decision, unless the claim relies wholly on matters arising after the notification.
- (6) This section also applies to failure by the claimant to make an asylum claim or human rights claim before being arrested under an immigration provision, unless—
  - (a) he had no reasonable opportunity to make the claim before the arrest, or
  - (b) the claim relies wholly on matters arising after the arrest.
- (7) In this section—



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“asylum claim” has the meaning given by section 113(1) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (subject to subsection (9) below),

“deciding authority” means—

- (a) an immigration officer,
- (b) the Secretary of State,
- (c) the Asylum and Immigration Tribunal, or
- (d) the Special Immigration Appeals Commission,

“human rights claim” has the meaning given by section 113(1) of the Nationality, Immigration and Asylum Act 2002 (subject to subsection (9) below),

“immigration decision” means—

- (a) refusal of leave to enter the United Kingdom,
- (b) refusal to vary a person’s leave to enter or remain in the United Kingdom,
- (c) grant of leave to enter or remain in the United Kingdom,
- (d) a decision that a person is to be removed from the United Kingdom by way of directions under section 10(1)(a), (b), (ba) or (c) of the Immigration and Asylum Act 1999 (c. 33) (removal of persons unlawfully in United Kingdom),
- (e) a decision that a person is to be removed from the United Kingdom by way of directions under paragraphs 8 to 12 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry: removal),
- (f) a decision to make a deportation order under section 5(1) of that Act, and
- (g) a decision to take action in relation to a person in connection with extradition from the United Kingdom,

“immigration provision” means—

- (a) sections 28A, 28AA, 28B, 28C and 28CA of the Immigration Act 1971 (immigration offences: enforcement),
- (b) paragraph 17 of Schedule 2 to that Act (control of entry),
- (c) section 14 of this Act, and
- (d) a provision of the Extradition Act 1989 (c. 33) or 2003 (c. 41),

“notified” means notified in such manner as may be specified by regulations made by the Secretary of State,

“passport” includes a document which relates to a national of a country other than the United Kingdom and which is designed to serve the same purpose as a passport, and

“safe country” means a country to which Part 2 of Schedule 3 applies.

- (8) A passport produced by or on behalf of a person is valid for the purposes of subsection (3)(b) if it—
  - (a) relates to the person by whom or on whose behalf it is produced,
  - (b) has not been altered otherwise than by or with the permission of the authority who issued it, and
  - (c) was not obtained by deception.
- (9) In subsection (4) a reference to an asylum claim or human rights claim shall be treated as including a reference to a claim of entitlement to remain in a country other than the United Kingdom made by reference to the rights that a person invokes in making an asylum claim or a human rights claim in the United Kingdom.

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- (10) Regulations under subsection (7) specifying a manner of notification may, in particular—
- (a) apply or refer to regulations under section 105 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (notice of immigration decisions);
  - (b) make provision similar to provision that is or could be made by regulations under that section;
  - (c) modify a provision of regulations under that section in its effect for the purpose of regulations under this section;
  - (d) provide for notice to be treated as received at a specified time if sent to a specified class of place in a specified manner.
- (11) Regulations under subsection (7) specifying a manner of notification—
- (a) may make incidental, consequential or transitional provision,
  - (b) shall be made by statutory instrument, and
  - (c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) This section shall not prevent a deciding authority from determining not to believe a statement on the grounds of behaviour to which this section does not apply.
- (13) Before the coming into force of section 26 a reference in this section to the Asylum and Immigration Tribunal shall be treated as a reference to—
- (a) an adjudicator appointed, or treated as if appointed, under section 81 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (appeals), and
  - (b) the Immigration Appeal Tribunal.

#### Commencement Information

**I9** S. 8(1)-(6)(8)(9)(12)(13) in force at 1.1.2005 by S.I. 2004/3398, art. 2

**I10** S. 8(7)(10)(11) in force at 1.10.2004 for specified purposes by S.I. 2004/2523, art. 2, Sch.

**I11** S. 8(7)(10)(11) in force at 1.1.2005 in so far as not already in force by S.I. 2004/3398, art. 2

## 9 Failed asylum seekers: withdrawal of support

- (1) In Schedule 3 to the Nationality, Immigration and Asylum Act 2002 (withholding and withdrawal of support) after paragraph 7 insert—

### “Fifth class of ineligible person: failed asylum-seeker with family

- 7A (1) Paragraph 1 applies to a person if—
- (a) he—
    - (i) is treated as an asylum-seeker for the purposes of Part VI of the Immigration and Asylum Act 1999 (c. 33) (support) by virtue only of section 94(3A) (failed asylum-seeker with dependent child), or
    - (ii) is treated as an asylum-seeker for the purposes of Part 2 of this Act by virtue only of section 18(2),
  - (b) the Secretary of State has certified that in his opinion the person has failed without reasonable excuse to take reasonable steps—
    - (i) to leave the United Kingdom voluntarily, or

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- (ii) to place himself in a position in which he is able to leave the United Kingdom voluntarily,
  - (c) the person has received a copy of the Secretary of State's certificate, and
  - (d) the period of 14 days, beginning with the date on which the person receives the copy of the certificate, has elapsed.
- (2) Paragraph 1 also applies to a dependant of a person to whom that paragraph applies by virtue of sub-paragraph (1).
- (3) For the purpose of sub-paragraph (1)(d) if the Secretary of State sends a copy of a certificate by first class post to a person's last known address, the person shall be treated as receiving the copy on the second day after the day on which it was posted.
- (4) The Secretary of State may by regulations vary the period specified in sub-paragraph (1)(d)."
- (2) In paragraph 14(1) and (2) of Schedule 3 to the Nationality, Immigration and Asylum Act 2002 (local authority to notify Secretary of State) for "paragraph 6 or 7" substitute " paragraph 6, 7 or 7A "
- (3) No appeal may be brought under section 103 of the Immigration and Asylum Act 1999 (asylum support appeal) against a decision—
  - (a) that by virtue of a provision of Schedule 3 to the Nationality, Immigration and Asylum Act 2002 (c. 41) other than paragraph 7A a person is not qualified to receive support, or
  - (b) on the grounds of the application of a provision of that Schedule other than paragraph 7A, to stop providing support to a person.
- (4) On an appeal under section 103 of the Immigration and Asylum Act 1999 (c. 33) against a decision made by virtue of paragraph 7A of Schedule 3 to the Nationality, Immigration and Asylum Act 2002 the adjudicator may, in particular—
  - (a) annul a certificate of the Secretary of State issued for the purposes of that paragraph;
  - (b) require the Secretary of State to reconsider the matters certified.
- (5) An order under section 48 providing for this section to come into force may, in particular, provide for this section to have effect with specified modifications before the coming into force of a provision of the Nationality, Immigration and Asylum Act 2002.

#### Commencement Information

**I12** S. 9 in force at 1.12.2004 by S.I. 2004/2999, art. 2, Sch. (with arts. 3, 4)

## 10 Failed asylum seekers: accommodation

- (1) At the end of section 4 of the Immigration and Asylum Act 1999 (provision of accommodation for failed asylum seekers, &c.) add—
  - "(5) The Secretary of State may make regulations specifying criteria to be used in determining—

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- (a) whether or not to provide accommodation, or arrange for the provision of accommodation, for a person under this section;
  - (b) whether or not to continue to provide accommodation, or arrange for the provision of accommodation, for a person under this section.
- (6) The regulations may, in particular—
- (a) provide for the continuation of the provision of accommodation for a person to be conditional upon his performance of or participation in community activities in accordance with arrangements made by the Secretary of State;
  - (b) provide for the continuation of the provision of accommodation to be subject to other conditions;
  - (c) provide for the provision of accommodation (or the continuation of the provision of accommodation) to be a matter for the Secretary of State’s discretion to a specified extent or in a specified class of case.
- (7) For the purposes of subsection (6)(a)—
- (a) “community activities” means activities that appear to the Secretary of State to be beneficial to the public or a section of the public, and
  - (b) the Secretary of State may, in particular—
    - (i) appoint one person to supervise or manage the performance of or participation in activities by another person;
    - (ii) enter into a contract (with a local authority or any other person) for the provision of services by way of making arrangements for community activities in accordance with this section;
    - (iii) pay, or arrange for the payment of, allowances to a person performing or participating in community activities in accordance with arrangements under this section.
- (8) Regulations by virtue of subsection (6)(a) may, in particular, provide for a condition requiring the performance of or participation in community activities to apply to a person only if the Secretary of State has made arrangements for community activities in an area that includes the place where accommodation is provided for the person.
- (9) A local authority or other person may undertake to manage or participate in arrangements for community activities in accordance with this section.”
- (2) In section 166(5) of that Act (regulations: affirmative instrument) before paragraph (a) insert—
- “(za) section 4(5),”.
- (3) In section 103 of the Immigration and Asylum Act 1999 (c. 33) (support for asylum-seekers: appeal) as it has effect before the commencement of section 53 of the Nationality, Immigration and Asylum Act 2002 (c. 41)—
- (a) after subsection (2) insert—
 

“(2A) If the Secretary of State decides not to provide accommodation for a person under section 4, or not to continue to provide accommodation for a person under section 4, the person may appeal to an adjudicator.”, and
  - (b) in subsections (6) and (7) for “section 95” substitute “ section 4 or 95 ”.

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- (4) In section 103 of the Immigration and Asylum Act 1999 (support for asylum-seekers: appeal) as it has effect after the commencement of section 53 of the Nationality, Immigration and Asylum Act 2002—
- (a) for subsection (1) substitute—
- “(1) This section applies where a person has applied for support under all or any of the following provisions—
- (a) section 4,
- (b) section 95, and
- (c) section 17 of the Nationality, Immigration and Asylum Act 2002.”,
- (b) in subsection (4)(a) for “the other provision” substitute “another of those provisions”, and
- (c) in subsection (7) for “subsection (1)(a) or (b)” substitute “subsection (1)”.
- (5) In section 103A of the Immigration and Asylum Act 1999 (appeal about location of support) in subsection (1) (and in the heading) for “section 95” substitute “section 4 or 95”.
- (6) In an amendment made by this section a reference to providing accommodation includes a reference to arranging for the provision of accommodation.
- (7) Regulations under section 4(5)(b) of the Immigration and Asylum Act 1999 (c. 33) (as inserted by subsection (1) above) may apply to persons receiving support under section 4 when the regulations come into force.

#### Commencement Information

**I13** S. 10(1)(2)(6)(7) in force at 1.12.2004 by S.I. 2004/2999, art. 2, Sch.

## 11 Accommodation for asylum seekers: local connection

- (1) At the end of section 199 of the Housing Act 1996 (c. 52) (local connection) add—
- “(6) A person has a local connection with the district of a local housing authority if he was (at any time) provided with accommodation in that district under section 95 of the Immigration and Asylum Act 1999 (support for asylum seekers).
- (7) But subsection (6) does not apply—
- (a) to the provision of accommodation for a person in a district of a local housing authority if he was subsequently provided with accommodation in the district of another local housing authority under section 95 of that Act, or
- (b) to the provision of accommodation in an accommodation centre by virtue of section 22 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (use of accommodation centres for section 95 support).”
- (2) Subsection (3) applies where—
- (a) a local housing authority would (but for subsection (3)) be obliged to secure that accommodation is available for occupation by a person under section 193 of the Housing Act 1996 (homeless persons),

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- (b) the person was (at any time) provided with accommodation in a place in Scotland under section 95 of the Immigration and Asylum Act 1999 (support for asylum seekers),
  - (c) the accommodation was not provided in an accommodation centre by virtue of section 22 of the Nationality, Immigration and Asylum Act 2002 (use of accommodation centres for section 95 support), and
  - (d) the person has neither—
    - (i) a local connection with the district of a local housing authority (in England or Wales) within the meaning of section 199 of the Housing Act 1996 as amended by subsection (1) above, nor
    - (ii) a local connection with a district (in Scotland) within the meaning of section 27 of the Housing (Scotland) Act 1987 (c. 26).
- (3) Where this subsection applies—
- (a) the duty of the local housing authority under section 193 of the Housing Act 1996 in relation to the person shall not apply, but
  - (b) the local housing authority—
    - (i) may secure that accommodation is available for occupation by the person for a period giving him a reasonable opportunity of securing accommodation for his occupation, and
    - (ii) may provide the person (or secure that he is provided with) advice and assistance in any attempts he may make to secure that accommodation becomes available for his occupation.

#### Commencement Information

**I14** S. 11 in force at 4.1.2005 by S.I. 2004/2999, art. 2, Sch.

VALID FROM 14/06/2007

## 12 Refugee: back-dating of benefits

- (1) Section 123 of the Immigration and Asylum Act 1999 (c. 33) (back-dating of benefits for refugees) shall cease to have effect.
- (2) Accordingly (and without prejudice to any other implied repeal, revocation or amendment) the following (each of which concerns the treatment of refugees) lapse—
  - (a) in the Income Support (General) Regulations 1987 (S.I. 1987/1967)—
    - (i) regulation 21ZB,
    - (ii) paragraph 18A of Schedule 1B, and
    - (iii) paragraph 57 of Schedule 9,
  - (b) in the Income Support (General) Regulations (Northern Ireland) 1987 (S.R. 1987 No. 459)—
    - (i) regulation 21A,
    - (ii) paragraph 18A of Schedule 1B, and
    - (iii) paragraph 57 of Schedule 9,

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- (c) in the Social Security (Claims and Payments) Regulations 1987 (S.I. 1987/1968)—
    - (i) regulation 4(3C),
    - (ii) regulation 6(4D), and
    - (iii) regulation 19(8),
  - (d) in the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 (S.R. 1987 No. 465)—
    - (i) regulation 4(3C),
    - (ii) regulation 6(4D), and
    - (iii) regulation 19(8),
  - (e) in the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971)—
    - (i) regulation 7B,
    - (ii) Schedule A1,
    - (iii) paragraphs 61 and 62 of Schedule 4, and
    - (iv) paragraphs 50 and 51 of Schedule 5,
  - (f) in the Housing Benefit (General) Regulations (Northern Ireland) 1987 (S.R. 1987 No. 461)—
    - (i) regulation 7B,
    - (ii) Schedule A1,
    - (iii) paragraphs 62 and 63 of Schedule 4, and
    - (iv) paragraphs 48 and 49 of Schedule 5, and
  - (g) in the Council Tax Benefit (General) Regulations 1992 (S.I. 1992/ 1814)—
    - (i) regulation 4D,
    - (ii) Schedule A1,
    - (iii) paragraphs 60 and 61 of Schedule 4, and
    - (iv) paragraphs 50 and 51 of Schedule 5.
- (3) Regulation 12(1) and (2) of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 (S.I. 2000/636) (which save for transitional purposes the effect of provision made for back-payment of benefits for refugees under section 11(2) of the Asylum and Immigration Act 1996 (c. 49)) shall cease to have effect.
- (4) Regulation 11(1) and (2) of the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000 (S.R. 2000 No. 71) (which make similar transitional savings) shall cease to have effect.
- (5) An order under section 48 bringing this section into force may, in particular, provide for this section to have effect in relation to persons recorded as refugees after a specified date (irrespective of when the process resulting in the record was begun).

VALID FROM 29/06/2006

### 13 Integration loan for refugees

- (1) The Secretary of State may make regulations enabling him to make loans to refugees.
- (2) A person is a refugee for the purpose of subsection (1) if the Secretary of State has—

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- (a) recorded him as a refugee within the meaning of the Convention relating to the Status of Refugees done at Geneva on 28 July 1951, and
  - (b) granted him indefinite leave to enter or remain in the United Kingdom (within the meaning of section 33(1) of the Immigration Act 1971 (c. 77)).
- (3) Regulations under subsection (1)—
- (a) shall specify matters which the Secretary of State shall, in addition to other matters appearing to him to be relevant, take into account in determining whether or not to make a loan (and those matters may, in particular, relate to—
    - (i) a person’s income or assets,
    - (ii) a person’s likely ability to repay a loan, or
    - (iii) the length of time since a person was recorded as a refugee),
  - (b) shall enable the Secretary of State to specify (and vary from time to time) a minimum and a maximum amount of a loan,
  - (c) shall prevent a person from receiving a loan if—
    - (i) he is under the age of 18,
    - (ii) he is insolvent, within a meaning given by the regulations, or
    - (iii) he has received a loan under the regulations,
  - (d) shall make provision about repayment of a loan (and may, in particular, make provision—
    - (i) about interest;
    - (ii) for repayment by deduction from a social security benefit or similar payment due to the person to whom the loan is made),
  - (e) shall enable the Secretary of State to attach conditions to a loan (which may include conditions about the use of the loan),
  - (f) shall make provision about—
    - (i) the making of an application for a loan, and
    - (ii) the information, which may include information about the intended use of a loan, to be provided in or with an application,
  - (g) may make provision about steps to be taken by the Secretary of State in establishing an applicant’s likely ability to repay a loan,
  - (h) may make provision for a loan to be made jointly to more than one refugee, and
  - (i) may confer a discretion on the Secretary of State.
- (4) Regulations under this section—
- (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

### *Enforcement powers*

#### **14 Immigration officer: power of arrest**

- (1) Where an immigration officer in the course of exercising a function under the Immigration Acts forms a reasonable suspicion that a person has committed or



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attempted to commit an offence listed in subsection (2), he may arrest the person without warrant.

- (2) Those offences are—
- (a) the offence of conspiracy at common law (in relation to conspiracy to defraud),
  - (b) at common law in Scotland, any of the following offences—
    - (i) fraud,
    - (ii) conspiracy to defraud,
    - (iii) uttering and fraud,
    - (iv) bigamy,
    - (v) theft, and
    - (vi) reset,
  - (c) an offence under section 57 of the Offences against the Person Act 1861 (c. 100) (bigamy),
  - (d) an offence under section 3 or 4 of the Perjury Act 1911 (c. 6) (false statements),
  - (e) an offence under section 7 of that Act (aiding, abetting &c.) if it relates to an offence under section 3 or 4 of that Act,
  - (f) an offence under section 53 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c. 49) (knowingly giving false information to district registrar, &c.),
  - (g) an offence under any of the following provisions of the Theft Act 1968 (c. 60)—
    - (i) section 1 (theft),
    - (ii) section 15 (obtaining property by deception),
    - (iii) section 16 (obtaining pecuniary advantage by deception),
    - (iv) section 17 (false accounting), and
    - (v) section 22 (handling stolen goods),
  - (h) an offence under section 1, 15, 16, 17 or 21 of the Theft Act (Northern Ireland) 1969 (c. 16) (N.I.),
  - (i) an offence under section 1 or 2 of the Theft Act 1978 (c. 31) (obtaining services, or evading liability, by deception),
  - (j) an offence under Article 3 or 4 of the Theft (Northern Ireland) Order 1978 (S.I. 1978/1407 (N.I. 23)),
  - (k) an offence under Article 8 or 9 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)),
  - (l) an offence under Article 12 of that Order if it relates to an offence under Article 8 or 9 of that Order,
  - (m) an offence under any of the following provisions of the Forgery and Counterfeiting Act 1981 (c. 45)—
    - (i) section 1 (forgery),
    - (ii) section 2 (copying false instrument),
    - (iii) section 3 (using false instrument),
    - (iv) section 4 (using copy of false instrument), and
    - (v) section 5(1) and (3) (false documents),
  - (n) an offence under any of sections 57 to 59 of the Sexual Offences Act 2003 (c. 42) (trafficking for sexual exploitation),

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- (o) an offence under section 22 of the Criminal Justice (Scotland) Act 2003 (asp 7) (trafficking in prostitution), and
  - (p) an offence under section 4 of this Act.
- (3) The following provisions of the Immigration Act 1971 (c. 77) shall have effect for the purpose of making, or in connection with, an arrest under this section as they have effect for the purpose of making, or in connection with, arrests for offences under that Act—
- (a) section 28C (entry and search before arrest),
  - (b) sections 28E and 28F (entry and search after arrest),
  - (c) sections 28G and 28H (search of arrested person), and
  - (d) section 28I (seized material).
- (4) In section 19D(5)(a) of the Race Relations Act 1976 (c. 74) (permitted discrimination)
- (a) for “(within the meaning of section 158 of the Nationality, Immigration and Asylum Act 2002)” substitute “ (within the meaning of section 44 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004) ”, and
  - (b) at the end add “and excluding section 14 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004”.

#### Commencement Information

**I15** S. 14 in force at 1.12.2004 by [S.I. 2004/2999](#), art. 2, [Sch.](#)

## 15 Fingerprinting

- (1) Section 141 of the Immigration and Asylum Act 1999 (c. 33) (fingerprinting) shall be amended as follows.
- (2) In subsection (7) for paragraph (c) substitute—
- “(c) any person (“C”) in respect of whom a relevant immigration decision has been made;”.
- (3) In subsection (8) for paragraph (c) substitute—
- “(c) for C, on the service on him of notice of the relevant immigration decision by virtue of section 105 of the Nationality, Immigration and Asylum Act 2002 (c. 41);”.
- (4) In subsection (9) for paragraph (c) substitute—
- “(c) for C—
    - (i) the time when the relevant immigration decision ceases to have effect, whether as a result of an appeal or otherwise, or
    - (ii) if a deportation order has been made against him, its revocation or its otherwise ceasing to have effect;”.
- (5) After subsection (15) add—
- “(16) “Relevant immigration decision” means a decision of the kind mentioned in section 82(2)(g), (h), (i), (j) or (k) of the Nationality, Immigration and Asylum Act 2002 (c. 41).”

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#### Commencement Information

**I16** S. 15 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

PROSPECTIVE

### 16 Information about passengers

In paragraph 27B of Schedule 2 to the Immigration Act 1971 (c. 77) (control on entry: provision of information about passengers) after sub-paragraph (4) insert—

“(4A) The officer may ask the carrier to provide a copy of all or part of a document that relates to a passenger and contains passenger information.”

### 17 Retention of documents

Where a document comes into the possession of the Secretary of State or an immigration officer in the course of the exercise of an immigration function, the Secretary of State or an immigration officer may retain the document while he suspects that—

- (a) a person to whom the document relates may be liable to removal from the United Kingdom in accordance with a provision of the Immigration Acts, and
- (b) retention of the document may facilitate the removal.

#### Commencement Information

**I17** S. 17 in force at 1.12.2004 by S.I. 2004/2999, art. 2, Sch.

### 18 Control of entry

After paragraph 2A(2) of Schedule 2 to the Immigration Act 1971 (control of entry: persons arriving with leave to enter) insert—

“(2A) Where the person’s leave to enter derives, by virtue of section 3A(3), from an entry clearance, he may also be examined by an immigration officer for the purpose of establishing whether the leave should be cancelled on the grounds that the person’s purpose in arriving in the United Kingdom is different from the purpose specified in the entry clearance.”

#### Commencement Information

**I18** S. 18 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

### *Procedure for marriage*

### 19 England and Wales

- (1) This section applies to a marriage—

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- (a) which is to be solemnised on the authority of certificates issued by a superintendent registrar under Part III of the Marriage Act 1949 (c. 76), and
  - (b) a party to which is subject to immigration control.
- (2) In relation to a marriage to which this section applies, the notices under section 27 of the Marriage Act 1949—
- (a) shall be given to the superintendent registrar of a registration district specified for the purpose of this paragraph by regulations made by the Secretary of State,
  - (b) shall be delivered to the superintendent registrar in person by the two parties to the marriage,
  - (c) may be given only if each party to the marriage has been resident in a registration district for the period of seven days immediately before the giving of his or her notice (but the district need not be that in which the notice is given and the parties need not have resided in the same district), and
  - (d) shall state, in relation to each party, the registration district by reference to which paragraph (c) is satisfied.
- (3) The superintendent registrar shall not enter in the marriage notice book notice of a marriage to which this section applies unless satisfied, by the provision of specified evidence, that the party subject to immigration control—
- (a) has an entry clearance granted expressly for the purpose of enabling him to marry in the United Kingdom,
  - (b) has the written permission of the Secretary of State to marry in the United Kingdom, or
  - (c) falls within a class specified for the purpose of this paragraph by regulations made by the Secretary of State.
- (4) For the purposes of this section—
- (a) a person is subject to immigration control if—
    - (i) he is not an EEA national, and
    - (ii) under the Immigration Act 1971 (c. 77) he requires leave to enter or remain in the United Kingdom (whether or not leave has been given),
  - (b) “EEA national” means a national of a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as it has effect from time to time),
  - (c) “entry clearance” has the meaning given by section 33(1) of the Immigration Act 1971, and
  - (d) “specified evidence” means such evidence as may be specified in guidance issued by the Registrar General.

#### Commencement Information

**I19** S. 19(1) in force at 1.2.2005 by S.I. 2004/3398, art. 3

**I20** S. 19(2)(3) in force at 1.12.2004 for specified purposes by S.I. 2004/2999, art. 2, Sch.

**I21** S. 19(2)(3)(4) in force at 1.2.2005 in so far as not already in force by S.I. 2004/3398, art. 3

**I22** S. 19(4) in force at 1.12.2004 for specified purposes by S.I. 2004/2999, art. 2, Sch.

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## 20 England and Wales: supplemental

- (1) The Marriage Act 1949 (c. 76) shall have effect in relation to a marriage to which section 19 applies—
  - (a) subject to that section, and
  - (b) with any necessary consequential modification.
- (2) In particular—
  - (a) section 28(1)(b) of that Act (declaration: residence) shall have effect as if it required a declaration that—
    - (i) the notice of marriage is given in compliance with section 19(2) above, and
    - (ii) the party subject to immigration control satisfies section 19(3)(a), (b) or (c), and
  - (b) section 48 of that Act (proof of certain matters not essential to validity of marriage) shall have effect as if the list of matters in section 48(1)(a) to (e) included compliance with section 19 above.
- (3) Regulations of the Secretary of State under section 19(2)(a) or (3)(c)—
  - (a) may make transitional provision,
  - (b) shall be made by statutory instrument, and
  - (c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Before making regulations under section 19(2)(a) the Secretary of State shall consult the Registrar General.
- (5) An expression used in section 19 or this section and in Part III of the Marriage Act 1949 (c. 76) has the same meaning in section 19 or this section as in that Part.
- (6) An order under the Regulatory Reform Act 2001 (c. 6) may include provision—
  - (a) amending section 19, this section or section 25 in consequence of other provision of the order, or
  - (b) repealing section 19, this section and section 25 and re-enacting them with modifications consequential upon other provision of the order.

### Commencement Information

**I23** S. 20(1)(2)(5)(6) in force at 1.2.2005 by S.I. 2004/3398, art. 3

**I24** S. 20(3)(4) in force at 1.12.2004 for specified purposes by S.I. 2004/2999, art. 2, Sch.

**I25** S. 20(3)(4) in force at 1.2.2005 in so far as not already in force by S.I. 2004/3398, art. 3

## 21 Scotland

- (1) This section applies to a marriage—
  - (a) which is intended to be solemnised in Scotland, and
  - (b) a party to which is subject to immigration control.
- (2) In relation to a marriage to which this section applies, notice under section 3 of the Marriage (Scotland) Act 1977 (c. 15)—
  - (a) may be submitted to the district registrar of a registration district prescribed for the purposes of this section, and

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- (b) may not be submitted to the district registrar of any other registration district.
- (3) Where the district registrar to whom notice is submitted by virtue of subsection (2) is the district registrar for the registration district in which the marriage is to be solemnised, he shall not make an entry under section 4, or complete a Marriage Schedule under section 6, of the Marriage (Scotland) Act 1977 in respect of the marriage unless satisfied, by the provision of specified evidence, that the party subject to immigration control—
- (a) has an entry clearance granted expressly for the purpose of enabling him to marry in the United Kingdom,
  - (b) has the written permission of the Secretary of State to marry in the United Kingdom, or
  - (c) falls within a class specified for the purpose of this paragraph by regulations made by the Secretary of State.
- (4) Where the district registrar to whom notice is submitted by virtue of subsection (2) (here the “notified registrar”) is not the district registrar for the registration district in which the marriage is to be solemnised (here the “second registrar”)—
- (a) the notified registrar shall, if satisfied as is mentioned in subsection (3), send the notices and any fee, certificate or declaration which accompanied them, to the second registrar, and
  - (b) the second registrar shall be treated as having received the notices from the parties to the marriage on the dates on which the notified registrar received them.
- (5) Subsection (4) of section 19 applies for the purposes of this section as it applies for the purposes of that section except that for the purposes of this section the reference in paragraph (d) of that subsection to guidance issued by the Registrar General shall be construed as a reference to guidance issued by the Secretary of State after consultation with the Registrar General for Scotland.

#### Commencement Information

**I26** S. 21(1)(4) in force at 1.2.2005 by [S.I. 2004/3398, art. 3](#)

**I27** S. 21(2)(3) in force at 1.12.2004 for specified purposes by [S.I. 2004/2999, art. 2, Sch.](#)

**I28** S. 21(2)(3)(5) in force at 1.2.2005 in so far as not already in force by [S.I. 2004/3398, art. 3](#)

**I29** S. 21(5) in force at 1.12.2004 for specified purposes by [S.I. 2004/2999, art. 2, Sch.](#)

## 22 Scotland: supplemental

- (1) The Marriage (Scotland) Act 1977 shall have effect in relation to a marriage to which section 21 applies—
- (a) subject to that section, and
  - (b) with any necessary consequential modification.
- (2) In subsection (2)(a) of that section “prescribed” means prescribed by regulations made by the Secretary of State after consultation with the Registrar General for Scotland; and other expressions used in subsections (1) to (4) of that section and in the Marriage (Scotland) Act 1977 have the same meaning in those subsections as in that Act.
- (3) Regulations made by of the Secretary of State under subsection (2)(a) or (3)(c) of that section—

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- (a) may make transitional provision,
- (b) shall be made by statutory instrument, and
- (c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Commencement Information

**I30** S. 22(1) in force at 1.2.2005 by S.I. 2004/3398, art. 3

**I31** S. 22(2)(3) in force at 1.12.2004 for specified purposes by S.I. 2004/2999, art. 2, Sch.

**I32** S. 22(2)(3) in force at 1.2.2005 in so far as not already in force by S.I. 2004/3398, art. 3

## 23 Northern Ireland

- (1) This section applies to a marriage—
  - (a) which is intended to be solemnised in Northern Ireland, and
  - (b) a party to which is subject to immigration control.
- (2) In relation to a marriage to which this section applies, the marriage notices—
  - (a) shall be given only to a prescribed registrar, and
  - (b) shall, in prescribed cases, be given by both parties together in person at a prescribed register office.
- (3) The prescribed registrar shall not act under Article 4 or 7 of the Marriage (Northern Ireland) Order 2003 (S.I. 2003/413 (N.I.3)) (marriage notice book, list of intended marriages and marriage schedule) unless he is satisfied, by the provision of specified evidence, that the party subject to immigration control—
  - (a) has an entry clearance granted expressly for the purpose of enabling him to marry in the United Kingdom,
  - (b) has the written permission of the Secretary of State to marry in the United Kingdom, or
  - (c) falls within a class specified for the purpose of this paragraph by regulations made by the Secretary of State.
- (4) Subject to subsection (5), if the prescribed registrar is not the registrar for the purposes of Article 4 of that Order, the prescribed registrar shall send him the marriage notices and he shall be treated as having received them from the parties to the marriage on the dates on which the prescribed registrar received them.
- (5) The prescribed registrar shall not act under subsection (4) unless he is satisfied as mentioned in subsection (3).
- (6) For the purposes of this section—
  - (a) a person is subject to immigration control if—
    - (i) he is not an EEA national, and
    - (ii) under the Immigration Act 1971 (c. 77) he requires leave to enter or remain in the United Kingdom (whether or not leave has been given),
  - (b) “EEA national” means a national of a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as it has effect from time to time),
  - (c) “entry clearance” has the meaning given by section 33(1) of the Immigration Act 1971, and



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- (d) “specified evidence” means such evidence as may be specified in guidance issued by the Secretary of State after consulting the Registrar General for Northern Ireland.

#### Commencement Information

- I33** S. 23(1)(4)(5) in force at 1.2.2005 by S.I. 2004/3398, **art. 3**  
**I34** S. 23(2)(3) in force at 1.12.2004 for specified purposes by S.I. 2004/2999, **art. 2, Sch.**  
**I35** S. 23(2)(3)(6) in force at 1.2.2005 in so far as not already in force by S.I. 2004/3398, **art. 3**  
**I36** S. 23(6) in force at 1.12.2004 for specified purposes by S.I. 2004/2999, **art. 2, Sch.**

## 24 Northern Ireland: supplemental

- (1) The Marriage (Northern Ireland) Order 2003 (S.I. 2003/413 (N.I.3)) shall have effect in relation to a marriage to which section 23 applies—
- subject to section 23, and
  - with any necessary consequential modification.
- (2) In section 23 “prescribed” means prescribed for the purposes of that section by regulations made by the Secretary of State after consulting the Registrar General for Northern Ireland and other expressions used in that section or this section and the Marriage (Northern Ireland) Order 2003 have the same meaning in section 23 or this section as in that Order.
- (3) Section 18(3) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)) (provisions as to holders of offices) shall apply to section 23 as if that section were an enactment within the meaning of that Act.
- (4) Regulations of the Secretary of State under section 23—
- may make transitional provision,
  - shall be made by statutory instrument, and
  - shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Commencement Information

- I37** S. 24(1)(3) in force at 1.2.2005 by S.I. 2004/3398, **art. 3**  
**I38** S. 24(2)(4) in force at 1.12.2004 for specified purposes by S.I. 2004/2999, **art. 2, Sch.**  
**I39** S. 24(2)(4) in force at 1.2.2005 in so far as not already in force by S.I. 2004/3398, **art. 3**

## 25 Application for permission under section 19(3)(b), 21(3)(b) or 23(3)(b)

- (1) The Secretary of State may make regulations requiring a person seeking permission under section 19(3)(b), 21(3)(b) or 23(3)(b)—
- to make an application in writing, and
  - to pay a fee.
- (2) The regulations shall, in particular, specify—
- the information to be contained in or provided with the application,
  - the amount of the fee, and



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- (c) how and to whom the fee is to be paid.
- (3) The regulations may, in particular, make provision—
  - (a) excepting a specified class of persons from the requirement to pay a fee;
  - (b) permitting a specified class of persons to pay a reduced fee;
  - (c) for the refund of all or part of a fee in specified circumstances.
- (4) Regulations under this section—
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Commencement Information

**I40** S. 25 in force at 1.12.2004 by S.I. 2004/2999, art. 2, Sch.

### *Appeals*

VALID FROM 04/04/2005

#### **26 Unification of appeal system**

- (1) For section 81 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (appeals: adjudicators) substitute—

#### *“Appeal to Tribunal*

#### **81 The Asylum and Immigration Tribunal**

- (1) There shall be a tribunal to be known as the Asylum and Immigration Tribunal.
- (2) Schedule 4 (which makes provision about the Tribunal) shall have effect.
- (3) A reference in this Part to the Tribunal is a reference to the Asylum and Immigration Tribunal.”
- (2) In section 82(1) of that Act (right of appeal: general) for “to an adjudicator” substitute “to the Tribunal”.
- (3) In section 83(2) of that Act (appeal: asylum claim) for “to an adjudicator” substitute “to the Tribunal”.
- (4) For Schedule 4 to that Act (adjudicators) substitute the Schedule set out in Schedule 1 to this Act (Asylum and Immigration Tribunal).
- (5) The following provisions of that Act shall cease to have effect—
  - (a) sections 100 to 103 (Immigration Appeal Tribunal), and
  - (b) Schedule 5 (Immigration Appeal Tribunal).
- (6) Before section 104 of that Act (pending appeal) insert—

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#### “103A Review of Tribunal’s decision

- (1) A party to an appeal under section 82 or 83 may apply to the appropriate court, on the grounds that the Tribunal made an error of law, for an order requiring the Tribunal to reconsider its decision on the appeal.
- (2) The appropriate court may make an order under subsection (1)—
  - (a) only if it thinks that the Tribunal may have made an error of law, and
  - (b) only once in relation to an appeal.
- (3) An application under subsection (1) must be made—
  - (a) in the case of an application by the appellant made while he is in the United Kingdom, within the period of 5 days beginning with the date on which he is treated, in accordance with rules under section 106, as receiving notice of the Tribunal’s decision,
  - (b) in the case of an application by the appellant made while he is outside the United Kingdom, within the period of 28 days beginning with the date on which he is treated, in accordance with rules under section 106, as receiving notice of the Tribunal’s decision, and
  - (c) in the case of an application brought by a party to the appeal other than the appellant, within the period of 5 days beginning with the date on which he is treated, in accordance with rules under section 106, as receiving notice of the Tribunal’s decision.
- (4) But—
  - (a) rules of court may specify days to be disregarded in applying subsection (3)(a), (b) or (c), and
  - (b) the appropriate court may permit an application under subsection (1) to be made outside the period specified in subsection (3) where it thinks that the application could not reasonably practicably have been made within that period.
- (5) An application under subsection (1) shall be determined by reference only to—
  - (a) written submissions of the applicant, and
  - (b) where rules of court permit, other written submissions.
- (6) A decision of the appropriate court on an application under subsection (1) shall be final.
- (7) In this section a reference to the Tribunal’s decision on an appeal does not include a reference to—
  - (a) a procedural, ancillary or preliminary decision, or
  - (b) a decision following remittal under section 103B, 103C or 103E.
- (8) This section does not apply to a decision of the Tribunal where its jurisdiction is exercised by three or more legally qualified members.
- (9) In this section “the appropriate court” means—
  - (a) in relation to an appeal decided in England or Wales, the High Court,
  - (b) in relation to an appeal decided in Scotland, the Court of Session, and

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(c) in relation to an appeal decided in Northern Ireland, the High Court in Northern Ireland.

(10) An application under subsection (1) to the Court of Session shall be to the Outer House.

### **103B Appeal from Tribunal following reconsideration**

(1) Where an appeal to the Tribunal has been reconsidered, a party to the appeal may bring a further appeal on a point of law to the appropriate appellate court.

(2) In subsection (1) the reference to reconsideration is to reconsideration pursuant to—

- (a) an order under section 103A(1), or
- (b) remittal to the Tribunal under this section or under section 103C or 103E.

(3) An appeal under subsection (1) may be brought only with the permission of—

- (a) the Tribunal, or
- (b) if the Tribunal refuses permission, the appropriate appellate court.

(4) On an appeal under subsection (1) the appropriate appellate court may—

- (a) affirm the Tribunal's decision;
- (b) make any decision which the Tribunal could have made;
- (c) remit the case to the Tribunal;
- (d) affirm a direction under section 87;
- (e) vary a direction under section 87;
- (f) give a direction which the Tribunal could have given under section 87.

(5) In this section “the appropriate appellate court” means—

- (a) in relation to an appeal decided in England or Wales, the Court of Appeal,
- (b) in relation to an appeal decided in Scotland, the Court of Session, and
- (c) in relation to an appeal decided in Northern Ireland, the Court of Appeal in Northern Ireland.

(6) An appeal under subsection (1) to the Court of Session shall be to the Inner House.

### **103C Appeal from Tribunal instead of reconsideration**

(1) On an application under section 103A in respect of an appeal the appropriate court, if it thinks the appeal raises a question of law of such importance that it should be decided by the appropriate appellate court, may refer the appeal to that court.

(2) On a reference under subsection (1) the appropriate appellate court may—

- (a) affirm the Tribunal's decision;

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- (b) make any decision which the Tribunal could have made;
- (c) remit the case to the Tribunal;
- (d) affirm a direction under section 87;
- (e) vary a direction under section 87;
- (f) give a direction which the Tribunal could have given under section 87;
- (g) restore the application under section 103A to the appropriate court.

(3) In this section—

“the appropriate court” has the same meaning as in section 103A, and

“the appropriate appellate court” has the same meaning as in section 103B.

(4) A reference under subsection (1) to the Court of Session shall be to the Inner House.

#### 103D Reconsideration: legal aid

- (1) On the application of an appellant under section 103A, the appropriate court may order that the appellant’s costs in respect of the application under section 103A shall be paid out of the Community Legal Service Fund established under section 5 of the Access to Justice Act 1999 (c. 22).
- (2) Subsection (3) applies where the Tribunal has decided an appeal following reconsideration pursuant to an order made—
  - (a) under section 103A(1), and
  - (b) on the application of the appellant.
- (3) The Tribunal may order that the appellant’s costs—
  - (a) in respect of the application for reconsideration, and
  - (b) in respect of the reconsideration,
 shall be paid out of that Fund.
- (4) The Secretary of State may make regulations about the exercise of the powers in subsections (1) and (3).
- (5) Regulations under subsection (4) may, in particular, make provision—
  - (a) specifying or providing for the determination of the amount of payments;
  - (b) about the persons to whom the payments are to be made;
  - (c) restricting the exercise of the power (whether by reference to the prospects of success in respect of the appeal at the time when the application for reconsideration was made, the fact that a reference has been made under section 103C(1), the circumstances of the appellant, the nature of the appellant’s legal representatives, or otherwise).
- (6) Regulations under subsection (4) may make provision—
  - (a) conferring a function on the Legal Services Commission;
  - (b) modifying a duty or power of the Legal Services Commission in respect of compliance with orders under subsection (3);

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- (c) applying (with or without modifications), modifying or disapplying a provision of, or of anything done under, an enactment relating to the funding of legal services.
- (7) Before making regulations under subsection (4) the Secretary of State shall consult such persons as he thinks appropriate.
- (8) This section has effect only in relation to an appeal decided in—
  - (a) England,
  - (b) Wales, or
  - (c) Northern Ireland.
- (9) In relation to an appeal decided in Northern Ireland this section shall have effect—
  - (a) as if a reference to the Community Legal Service Fund were to the fund established under paragraph 4(2)(a) of Schedule 3 to the Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/ 435 (N.I. 10)), and
  - (b) with any other necessary modifications.

#### 103E Appeal from Tribunal sitting as panel

- (1) This section applies to a decision of the Tribunal on an appeal under section 82 or 83 where its jurisdiction is exercised by three or more legally qualified members.
- (2) A party to the appeal may bring a further appeal on a point of law to the appropriate appellate court.
- (3) An appeal under subsection (2) may be brought only with the permission of—
  - (a) the Tribunal, or
  - (b) if the Tribunal refuses permission, the appropriate appellate court.
- (4) On an appeal under subsection (2) the appropriate appellate court may—
  - (a) affirm the Tribunal's decision;
  - (b) make any decision which the Tribunal could have made;
  - (c) remit the case to the Tribunal;
  - (d) affirm a direction under section 87;
  - (e) vary a direction under section 87;
  - (f) give a direction which the Tribunal could have given under section 87.
- (5) In this section “the appropriate appellate court” means—
  - (a) in relation to an appeal decided in England or Wales, the Court of Appeal,
  - (b) in relation to an appeal decided in Scotland, the Court of Session, and
  - (c) in relation to an appeal decided in Northern Ireland, the Court of Appeal in Northern Ireland.

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- (6) A further appeal under subsection (2) to the Court of Session shall be to the Inner House.
- (7) In this section a reference to the Tribunal's decision on an appeal does not include a reference to—
  - (a) a procedural, ancillary or preliminary decision, or
  - (b) a decision following remittal under section 103B or 103C.”
- (7) Schedule 2 (which makes amendments consequential on this section, and transitional provision) shall have effect.
- (8) The Lord Chancellor may by order vary a period specified in—
  - (a) section 103A(3)(a), (b) or (c) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (review of Tribunal's decision) (as inserted by subsection (6) above), or
  - (b) paragraph 30(5)(b) of Schedule 2 to this Act.
- (9) An order under subsection (8)—
  - (a) may make provision generally or only for specified cases or circumstances,
  - (b) may make different provision for different cases or circumstances,
  - (c) shall be made by statutory instrument, and
  - (d) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) Before making an order under subsection (8) the Lord Chancellor shall consult—
  - (a) the Lord Chief Justice, if the order affects proceedings in England and Wales,
  - (b) the Lord President of the Court of Session, if the order affects proceedings in Scotland, and
  - (c) the Lord Chief Justice of Northern Ireland, if the order affects proceedings in Northern Ireland.

## 27 **Unfounded human rights or asylum claim**

- (1) Section 94 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (no appeal from within United Kingdom for unfounded human rights or asylum claim) shall be amended as follows.
- (2) After subsection (1) insert—
 

“(1A) A person may not bring an appeal against an immigration decision of a kind specified in section 82(2)(c), (d) or (e) in reliance on section 92(2) if the Secretary of State certifies that the claim or claims mentioned in subsection (1) above is or are clearly unfounded.”
- (3) In subsection (2) for “in reliance on section 92(4)” substitute “ in reliance on section 92(4)(a) ”.
- (4) In subsection (4) omit paragraphs (a) to (j).
- (5) After subsection (5) insert—
 

“(5A) If the Secretary of State is satisfied that the statements in subsection (5) (a) and (b) are true of a State or part of a State in relation to a description of

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person, an order under subsection (5) may add the State or part to the list in subsection (4) in respect of that description of person.

(5B) Where a State or part of a State is added to the list in subsection (4) in respect of a description of person, subsection (3) shall have effect in relation to a claimant only if the Secretary of State is satisfied that he is within that description (as well as being satisfied that he is entitled to reside in the State or part).

(5C) A description for the purposes of subsection (5A) may refer to—

- (a) gender,
- (b) language,
- (c) race,
- (d) religion,
- (e) nationality,
- (f) membership of a social or other group,
- (g) political opinion, or
- (h) any other attribute or circumstance that the Secretary of State thinks appropriate.”

(6) For subsection (6) substitute—

“(6) The Secretary of State may by order amend the list in subsection (4) so as to omit a State or part added under subsection (5); and the omission may be—

- (a) general, or
- (b) effected so that the State or part remains listed in respect of a description of person.”

(7) After subsection (6) insert—

“(6A) Subsection (3) shall not apply in relation to an asylum claimant or human rights claimant who—

- (a) is the subject of a certificate under section 2 or 70 of the Extradition Act 2003 (c. 41),
- (b) is in custody pursuant to arrest under section 5 of that Act,
- (c) is the subject of a provisional warrant under section 73 of that Act,
- (d) is the subject of an authority to proceed under section 7 of the Extradition Act 1989 (c. 33) or an order under paragraph 4(2) of Schedule 1 to that Act, or
- (e) is the subject of a provisional warrant under section 8 of that Act or of a warrant under paragraph 5(1)(b) of Schedule 1 to that Act.”

(8) After section 112(5) of that Act (orders, &c.) insert—

“(5A) If an instrument makes provision under section 94(5) and 94(6)—

- (a) subsection (4)(b) above shall apply, and
- (b) subsection (5)(b) above shall not apply.”

#### Commencement Information

**I41** S. 27 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.



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## 28 Appeal from within United Kingdom

For section 92(3) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (appeal from within United Kingdom: person with entry clearance or work permit) substitute—

- “(3) This section also applies to an appeal against refusal of leave to enter the United Kingdom if—
- (a) at the time of the refusal the appellant is in the United Kingdom, and
  - (b) on his arrival in the United Kingdom the appellant had entry clearance.
- (3A) But this section does not apply by virtue of subsection (3) if subsection (3B) or (3C) applies to the refusal of leave to enter.
- (3B) This subsection applies to a refusal of leave to enter which is a deemed refusal under paragraph 2A(9) of Schedule 2 to the Immigration Act 1971 (c. 77) resulting from cancellation of leave to enter by an immigration officer—
- (a) under paragraph 2A(8) of that Schedule, and
  - (b) on the grounds specified in paragraph 2A(2A) of that Schedule.
- (3C) This subsection applies to a refusal of leave to enter which specifies that the grounds for refusal are that the leave is sought for a purpose other than that specified in the entry clearance.
- (3D) This section also applies to an appeal against refusal of leave to enter the United Kingdom if at the time of the refusal the appellant—
- (a) is in the United Kingdom,
  - (b) has a work permit, and
  - (c) is any of the following (within the meaning of the British Nationality Act 1981 (c. 61))—
    - (i) a British overseas territories citizen,
    - (ii) a British Overseas citizen,
    - (iii) a British National (Overseas),
    - (iv) a British protected person, or
    - (v) a British subject.”

### Commencement Information

**I42** S. 28 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

## 29 Entry clearance

- (1) After section 88 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (appeal: ineligibility) insert—

### “88A Ineligibility: entry clearance

- (1) A person may not appeal under section 82(1) against refusal of entry clearance if the decision to refuse is taken on grounds which—
- (a) relate to a provision of immigration rules, and



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- (b) are specified for the purpose of this section by order of the Secretary of State.
- (2) Subsection (1)—
  - (a) does not prevent the bringing of an appeal on either or both of the grounds referred to in section 84(1)(b) and (c), and
  - (b) is without prejudice to the effect of section 88 in relation to an appeal under section 82(1) against refusal of entry clearance.”
- (2) In section 112 of that Act (regulations, &c.) after subsection (3) insert—
  - “(3A) An order under section 88A—
    - (a) must be made by statutory instrument,
    - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament, and
    - (c) may include transitional provision.”

#### Commencement Information

**I43** S. 29 in force at 1.10.2004 by [S.I. 2004/2523](#), art. 2, [Sch.](#)

### 30 Earlier right of appeal

- (1) Section 96 of the Nationality, Immigration and Asylum Act 2002 (earlier right of appeal) shall be amended as follows.
- (2) For subsections (1) to (3) substitute—
  - “(1) An appeal under section 82(1) against an immigration decision (“the new decision”) in respect of a person may not be brought if the Secretary of State or an immigration officer certifies—
    - (a) that the person was notified of a right of appeal under that section against another immigration decision (“the old decision”) (whether or not an appeal was brought and whether or not any appeal brought has been determined),
    - (b) that the claim or application to which the new decision relates relies on a matter that could have been raised in an appeal against the old decision, and
    - (c) that, in the opinion of the Secretary of State or the immigration officer, there is no satisfactory reason for that matter not having been raised in an appeal against the old decision.
  - (2) An appeal under section 82(1) against an immigration decision (“the new decision”) in respect of a person may not be brought if the Secretary of State or an immigration officer certifies—
    - (a) that the person received a notice under section 120 by virtue of an application other than that to which the new decision relates or by virtue of a decision other than the new decision,
    - (b) that the new decision relates to an application or claim which relies on a matter that should have been, but has not been, raised in a statement made in response to that notice, and

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- (c) that, in the opinion of the Secretary of State or the immigration officer, there is no satisfactory reason for that matter not having been raised in a statement made in response to that notice.”
- (3) In subsection (5) for “Subsections (1) to (3) apply to prevent or restrict” substitute “Subsections (1) and (2) apply to prevent”.
- (4) At the end add—
  - “(7) A certificate under subsection (1) or (2) shall have no effect in relation to an appeal instituted before the certificate is issued.”

**Commencement Information**  
**I44** S. 30 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

**31 Seamen and aircrews: right of appeal**

In section 82(2) of the Nationality, Immigration and Asylum Act 2002 (c. 41) after paragraph (i) insert—

“(ia) a decision that a person is to be removed from the United Kingdom by way of directions under paragraph 12(2) of Schedule 2 to the Immigration Act 1971 (c. 77) (seamen and aircrews),”.

**Commencement Information**  
**I45** S. 31 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

**F132 Suspected international terrorist: bail**

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**Textual Amendments**  
**F1** S. 32 repealed (14.3.2005) by Prevention of Terrorism Act 2005 (c. 2), s. 16(2)(d)(3) (with s. 16(4))

**Commencement Information**  
**I46** S. 32 partly in force; s. 32(2) in force at 22.9.2004 see s. 48

*Removal and detention*

**33 Removing asylum seeker to safe country**

- (1) Schedule 3 (which concerns the removal of persons claiming asylum to countries known to protect refugees and to respect human rights) shall have effect.
- (2) Sections 11 and 12 of the Immigration and Asylum Act 1999 (c. 33) (removal of asylum claimant to country under standing or other arrangements) shall cease to have effect.

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- (3) The following provisions of the Nationality, Immigration and Asylum Act 2002 (c. 41) shall cease to have effect—
- (a) section 80 (new section 11 of 1999 Act), and
  - (b) section 93 (appeal from within United Kingdom: “third country” removal).

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**Commencement Information**

**I47** S. 33 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch. (with art. 3)

### 34 Detention pending deportation

- (1) In paragraph 2(1) of Schedule 3 to the Immigration Act 1971 (c. 77) (detention pending deportation on recommendation by court) for the words “and that person is neither detained in pursuance of the sentence or order of any court nor for the time being released on bail by any court having power so to release him” substitute “ and that person is not detained in pursuance of the sentence or order of any court ”.
- (2) In paragraph 2(2) of that Schedule (detention following notice of deportation) for the words “and he is neither detained in pursuance of the sentence or order of a court nor for the time being released on bail by a court having power so to release him” substitute “ and he is not detained in pursuance of the sentence or order of a court ”.

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**Commencement Information**

**I48** S. 34 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

### 35 Deportation or removal: cooperation

- (1) The Secretary of State may require a person to take specified action if the Secretary of State thinks that—
- (a) the action will or may enable a travel document to be obtained by or for the person, and
  - (b) possession of the travel document will facilitate the person’s deportation or removal from the United Kingdom.
- (2) In particular, the Secretary of State may require a person to—
- (a) provide information or documents to the Secretary of State or to any other person;
  - (b) obtain information or documents;
  - (c) provide fingerprints, submit to the taking of a photograph or provide information, or submit to a process for the recording of information, about external physical characteristics (including, in particular, features of the iris or any other part of the eye);
  - (d) make, or consent to or cooperate with the making of, an application to a person acting for the government of a State other than the United Kingdom;
  - (e) cooperate with a process designed to enable determination of an application;
  - (f) complete a form accurately and completely;
  - (g) attend an interview and answer questions accurately and completely;
  - (h) make an appointment.

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- (3) A person commits an offence if he fails without reasonable excuse to comply with a requirement of the Secretary of State under subsection (1).
- (4) A person guilty of an offence under subsection (3) shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding twelve months, to a fine not exceeding the statutory maximum or to both.
- (5) If a constable or immigration officer reasonably suspects that a person has committed an offence under subsection (3) he may arrest the person without warrant.
- (6) An offence under subsection (3) 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 III of that Act (criminal proceedings) for the purposes of sections 28(4), 28E, 28G and 28H (search after arrest, &c.) of that Act.
- (7) In subsection (1)—
- “travel document” means a passport or other document which is issued by or for Her Majesty’s Government or the government of another State and which enables or facilitates travel from the United Kingdom to another State, and
- “removal from the United Kingdom” means removal under—
- (a) Schedule 2 to the Immigration Act 1971 (control on entry) (including a provision of that Schedule as applied by another provision of the Immigration Acts),
  - (b) section 10 of the Immigration and Asylum Act 1999 (c. 33) (removal of person unlawfully in United Kingdom), or
  - (c) Schedule 3 to this Act.
- (8) While sections 11 and 12 of the Immigration and Asylum Act 1999 continue to have effect, the reference in subsection (7)(c) above to Schedule 3 to this Act shall be treated as including a reference to those sections.
- (9) In so far as subsection (3) extends to England and Wales, subsection (4)(b) shall, until the commencement of section 154 of the Criminal Justice Act 2003 (c. 44) (increased limit on magistrates' power of imprisonment), have effect as if the reference to twelve months were a reference to six months.
- (10) In so far as subsection (3) extends to Scotland, subsection (4)(b) shall have effect as if the reference to twelve months were a reference to six months.
- (11) In so far as subsection (3) extends to Northern Ireland, subsection (4)(b) shall have effect as if the reference to twelve months were a reference to six months.

### **36 Electronic monitoring**

- (1) In this section—
- (a) “residence restriction” means a restriction as to residence imposed under—
    - (i) paragraph 21 of Schedule 2 to the Immigration Act 1971 (c. 77) (control on entry) (including that paragraph as applied by another provision of the Immigration Acts), or
    - (ii) Schedule 3 to that Act (deportation),

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- (b) “reporting restriction” means a requirement to report to a specified person imposed under any of those provisions,
  - (c) “employment restriction” means a restriction as to employment or occupation imposed under any of those provisions, and
  - (d) “immigration bail” means—
    - (i) release under a provision of the Immigration Acts on entry into a recognizance or bail bond,
    - (ii) bail granted in accordance with a provision of the Immigration Acts by a court, a justice of the peace, the sheriff, the Asylum and Immigration Tribunal, the Secretary of State or an immigration officer (but not by a police officer), and
    - (iii) bail granted by the Special Immigration Appeals Commission.
- (2) Where a residence restriction is imposed on an adult—
- (a) he may be required to cooperate with electronic monitoring, and
  - (b) failure to comply with a requirement under paragraph (a) shall be treated for all purposes of the Immigration Acts as failure to observe the residence restriction.
- (3) Where a reporting restriction could be imposed on an adult—
- (a) he may instead be required to cooperate with electronic monitoring, and
  - (b) the requirement shall be treated for all purposes of the Immigration Acts as a reporting restriction.
- (4) Immigration bail may be granted to an adult subject to a requirement that he cooperate with electronic monitoring; and the requirement may (but need not) be imposed as a condition of a recognizance or bail bond.
- (5) In this section a reference to requiring an adult to cooperate with electronic monitoring is a reference to requiring him to cooperate with such arrangements as the person imposing the requirement may specify for detecting and recording by electronic means the location of the adult, or his presence in or absence from a location—
- (a) at specified times,
  - (b) during specified periods of time, or
  - (c) throughout the currency of the arrangements.
- (6) In particular, arrangements for the electronic monitoring of an adult—
- (a) may require him to wear a device;
  - (b) may require him to make specified use of a device;
  - (c) may prohibit him from causing or permitting damage of or interference with a device;
  - (d) may prohibit him from taking or permitting action that would or might prevent the effective operation of a device;
  - (e) may require him to communicate in a specified manner and at specified times or during specified periods of time;
  - (f) may involve the performance of functions by persons other than the person imposing the requirement to cooperate with electronic monitoring (and those functions may relate to any aspect or condition of a residence restriction, of a reporting restriction, of an employment restriction, of a requirement under this section or of immigration bail).
- (7) In this section “adult” means an individual who is at least 18 years old.

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- (8) The Secretary of State—
- (a) may make rules about arrangements for electronic monitoring for the purposes of this section, and
  - (b) when he thinks that satisfactory arrangements for electronic monitoring are available in respect of an area, shall notify persons likely to be in a position to exercise power under this section in respect of the area.
- (9) Rules under subsection (8)(a) may, in particular, require that arrangements for electronic monitoring impose on a person of a specified description responsibility for specified aspects of the operation of the arrangements.
- (10) A requirement to cooperate with electronic monitoring—
- (a) shall comply with rules under subsection (8)(a), and
  - (b) may not be imposed in respect of an adult who is or is expected to be in an area unless the person imposing the requirement has received a notification from the Secretary of State under subsection (8)(b) in respect of that area.
- (11) Rules under subsection (8)(a)—
- (a) may include incidental, consequential or transitional provision,
  - (b) may make provision generally or only in relation to specified cases, circumstances or areas,
  - (c) shall be made by statutory instrument, and
  - (d) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) Before the commencement of section 26 a reference in this section to the Asylum and Immigration Tribunal shall be treated as a reference to—
- (a) a person appointed, or treated as if appointed, as an adjudicator under section 81 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (appeals), and
  - (b) the Immigration Appeal Tribunal.

#### Commencement Information

**I49** S. 36 in force at 1.10.2004 by [S.I. 2004/2523](#), art. 2, [Sch.](#)

### *Immigration services*

#### **37 Provision of immigration services**

- (1) For section 84(2) and (3) of the Immigration and Asylum Act 1999 (c. 33) (person qualified to provide immigration services) substitute—
- “(2) A person is a qualified person if he is—
- (a) a registered person,
  - (b) authorised by a designated professional body to practise as a member of the profession whose members the body regulates,
  - (c) the equivalent in an EEA State of—
    - (i) a registered person, or
    - (ii) a person within paragraph (b),

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- (d) a person permitted, by virtue of exemption from a prohibition, to provide in an EEA State advice or services equivalent to immigration advice or services, or
    - (e) acting on behalf of, and under the supervision of, a person within any of paragraphs (a) to (d) (whether or not under a contract of employment).
  - (3) Subsection (2)(a) and (e) are subject to any limitation on the effect of a person's registration imposed under paragraph 2(2) of Schedule 6."
- (2) In section 85(1) of that Act (registration by the Commissioner) omit "and (b)".
- (3) In section 89 of that Act (disciplinary charge upheld by Immigration Services Tribunal)—
  - (a) for subsections (2) and (3) substitute—
    - "(2) If the person charged is a registered person or acts on behalf of a registered person, the Tribunal may—
      - (a) direct the Commissioner to record the charge and the Tribunal's decision for consideration in connection with the registered person's next application for continued registration;
      - (b) direct the registered person to apply for continued registration as soon as is reasonably practicable.", and
    - (b) in subsection (8) for "employed by him or working" substitute "acting on his behalf or".
- (4) In section 90(4) of that Act (orders by disciplinary bodies) for "works under the supervision of" substitute "is acting on behalf of".
- (5) In Schedule 5 to that Act (Immigration Services Commissioner)—
  - (a) for paragraph 1(1)(b) substitute—
    - "(b) those acting on behalf of registered persons,"
  - (b) for paragraph 1(3)(b) substitute—
    - "(b) any person acting on behalf of that person,"
  - (c) for paragraph 3(3)(b) substitute—
    - "(b) a person who is acting on behalf of a person who is within paragraph (a);",
  - (d) for paragraph 4(1)(b) substitute—
    - "(b) persons acting on behalf of persons who are within paragraph (a).",
  - (e) in paragraph 5(3)(b) for "employed by, or working under the supervision of," substitute "acting on behalf of",
  - (f) for paragraph 5(3)(e) substitute—
    - "(e) an alleged breach of a rule of a relevant regulatory body,"
  - (g) for paragraph 6(3)(c) substitute—
    - "(c) in any other case, refer the matter to any relevant regulatory body.",
  - (h) in paragraphs 9(1)(a) and (b) for "or a person employed by, or working under the supervision of," substitute "or is acting on behalf of",
  - (i) for paragraph 9(1)(c) substitute—

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- “(c) refer the complaint and his decision on it to a relevant regulatory body;”,
- (j) for paragraphs 9(3)(a) and (b) substitute—
  - “(a) imposing restrictions on the provision of immigration advice or immigration services by the relevant person or by a person acting on his behalf or under his supervision;
  - (b) prohibiting the provision of immigration advice or immigration services by the relevant person or a person acting on his behalf or under his supervision.”, and
- (k) for paragraphs 9(4)(b) to (d) substitute—
  - “(b) a person acting on behalf of a registered person;”.
- (6) In Schedule 6 to that Act (registration)—
  - (a) in paragraph 1(1) omit “or (b)”, and
  - (b) in paragraph 3(7)(a) for “section 89(3)(b)” substitute “section 89(2)(b)”.

#### Commencement Information

**I50** S. 37 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

### 38 Immigration Services Commissioner: power of entry

- (1) After section 92 of the Immigration and Asylum Act 1999 (c. 33) (offences: enforcement) insert—

#### “92A Investigation of offence: power of entry

- (1) On an application made by the Commissioner a justice of the peace may issue a warrant authorising the Commissioner to enter and search premises.
- (2) A justice of the peace may issue a warrant in respect of premises only if satisfied that there are reasonable grounds for believing that—
- (a) an offence under section 91 has been committed,
  - (b) there is material on the premises which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence, and
  - (c) any of the conditions specified in subsection (3) is satisfied.
- (3) Those conditions are—
- (a) that it is not practicable to communicate with a person entitled to grant entry to the premises,
  - (b) that it is not practicable to communicate with a person entitled to grant access to the evidence,
  - (c) that entry to the premises will be prevented unless a warrant is produced, and
  - (d) that the purpose of a search may be frustrated or seriously prejudiced unless the Commissioner can secure immediate entry on arrival at the premises.



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- (4) The Commissioner may seize and retain anything for which a search is authorised under this section.
  - (5) A person commits an offence if without reasonable excuse he obstructs the Commissioner in the exercise of a power by virtue of this section.
  - (6) A person guilty of an offence under subsection (5) shall be liable on summary conviction to—
    - (a) imprisonment for a term not exceeding six months,
    - (b) a fine not exceeding level 5 on the standard scale, or
    - (c) both.
  - (7) In this section—
    - (a) a reference to the Commissioner includes a reference to a member of his staff authorised in writing by him,
    - (b) a reference to premises includes a reference to premises used wholly or partly as a dwelling, and
    - (c) a reference to material—
      - (i) includes material subject to legal privilege within the meaning of the Police and Criminal Evidence Act 1984 (c. 60),
      - (ii) does not include excluded material or special procedure material within the meaning of that Act, and
      - (iii) includes material whether or not it would be admissible in evidence at a trial.
  - (8) In the application of this section to Scotland—
    - (a) a reference to a justice of the peace shall be taken as a reference to the sheriff,
    - (b) for sub-paragraph (i) of subsection (7)(c) there is substituted—

“(i) includes material comprising items subject to legal privilege (as defined by section 412 of the Proceeds of Crime Act 2002 (c. 29)),”  
and
    - (c) sub-paragraph (ii) of subsection (7)(c) shall be ignored.
  - (9) In the application of this section to Northern Ireland the reference to the Police and Criminal Evidence Act 1984 shall be taken as a reference to the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).”
- (2) In paragraph 7 of Schedule 5 to the Immigration and Asylum Act 1999 (c. 33) (investigation of complaints, &c.: power of entry)—
- (a) in sub-paragraph (1)(b) after “(b)” insert “, (c)”,
  - (b) in sub-paragraph (1)(c) for “registered person.” substitute “ registered or exempt person. ”,
  - (c) in sub-paragraph (1A)(a) after “(b)” insert “, (c)”,
  - (d) in sub-paragraph (1A)(b) for “registered person.” substitute “ registered or exempt person. ”, and
  - (e) after sub-paragraph (8) insert—

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“(9) Sub-paragraphs (7) and (8) shall apply to an exempt person as they apply to a registered person, but with a reference to cancellation of registration being treated as a reference to withdrawal of exemption.

(10) In this paragraph “exempt person” means a person certified by the Commissioner as exempt under section 84(4)(a).”

#### Commencement Information

**I51** S. 38 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

### 39 Offence of advertising services

After section 92A of the Immigration and Asylum Act 1999 (c. 33) (inserted by section 38 above) insert—

#### “92B Advertising

- (1) A person commits an offence if—
  - (a) he offers to provide immigration advice or immigration services, and
  - (b) provision by him of the advice or services would constitute an offence under section 91.
- (2) For the purpose of subsection (1) a person offers to provide advice or services if he—
  - (a) makes an offer to a particular person or class of person,
  - (b) makes arrangements for an advertisement in which he offers to provide advice or services, or
  - (c) makes arrangements for an advertisement in which he is described or presented as competent to provide advice or services.
- (3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) Subsections (3) to (7) of section 91 shall have effect for the purposes of this section as they have effect for the purposes of that section.
- (5) An information relating to an offence under this section may in England and Wales be tried by a magistrates' court if—
  - (a) it is laid within the period of six months beginning with the date (or first date) on which the offence is alleged to have been committed, or
  - (b) it is laid—
    - (i) within the period of two years beginning with that date, and
    - (ii) within the period of six months beginning with a date certified by the Immigration Services Commissioner as the date on which the commission of the offence came to his notice.
- (6) In Scotland, proceedings for an offence under this section may be commenced—
  - (a) at any time within the period of six months beginning with the date (or first date) on which the offence is alleged to have been committed, or

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- (b) at any time within both—
  - (i) the period of two years beginning with that date, and
  - (ii) the period of six months beginning with a date specified, in a certificate signed by or on behalf of the procurator fiscal, as the date on which evidence sufficient in his opinion to warrant such proceedings came to his knowledge,and any such certificate purporting to be so signed shall be deemed so signed unless the contrary is proved and be conclusive as to the facts stated in it.
- (7) Subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995 (c. 46) (date on which proceedings are deemed commenced) has effect to the purposes of subsection (6) as it has effect for the purposes of that section.
- (8) A complaint charging the commission of an offence under this section may in Northern Ireland be heard and determined by a magistrates' court if—
  - (a) it is made within the period of six months beginning with the date (or first date) on which the offence is alleged to have been committed, or
  - (b) it is made—
    - (i) within the period of two years beginning with that date, and
    - (ii) within the period of six months beginning with a date certified by the Immigration Services Commissioner as the date on which the commission of the offence came to his notice.”

#### Commencement Information

I52 S. 39 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

### 40 Appeal to Immigration Services Tribunal

Section 87(3)(f) of the Immigration and Asylum Act 1999 (c. 33) (appeal to Tribunal against deferral of decision) shall cease to have effect.

#### Commencement Information

I53 S. 40 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

### 41 Professional bodies

- (1) Section 86 of the Immigration and Asylum Act 1999 (designated professional bodies) shall be amended as follows.
- (2) For subsection (2) substitute—
  - “(2) The Secretary of State may by order remove a body from the list in subsection (1) if he considers that the body—
    - (a) has failed to provide effective regulation of its members in their provision of immigration advice or immigration services, or

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- (b) has failed to comply with a request of the Commissioner for the provision of information (whether general or in relation to a particular case or matter).”
- (3) For subsection (9)(b) substitute—
- “(b) report to the Secretary of State if the Commissioner considers that a designated professional body—
- (i) is failing to provide effective regulation of its members in their provision of immigration advice or immigration services, or
- (ii) has failed to comply with a request of the Commissioner for the provision of information (whether general or in relation to a particular case or matter).”
- (4) After subsection (9) insert—
- “(9A) A designated professional body shall comply with a request of the Commissioner for the provision of information (whether general or in relation to a specified case or matter).”
- (5) In section 166(2) of the Immigration and Asylum Act 1999 (c. 33) (regulations and orders) after “in relation to” insert “ orders made under section 90(1), ”.
- (6) For paragraph 21(2) of Schedule 5 to the Immigration and Asylum Act 1999 (Commissioner: annual report) substitute—
- “(2) The report must, in particular, set out the Commissioner’s opinion as to the extent to which each designated professional body has—
- (a) provided effective regulation of its members in their provision of immigration advice or immigration services, and
- (b) complied with requests of the Commissioner for the provision of information.”

#### Commencement Information

**I54** S. 41 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

### Fees

#### 42 Amount of fees

- (1) In prescribing a fee for an application or process under a provision specified in subsection (2) the Secretary of State may, with the consent of the Treasury, prescribe an amount which is intended to—
- (a) exceed the administrative costs of determining the application or undertaking the process, and
- (b) reflect benefits that the Secretary of State thinks are likely to accrue to the person who makes the application, to whom the application relates or by or for whom the process is undertaken, if the application is successful or the process is completed.
- (2) Those provisions are—

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- (a) section 41(2) of the British Nationality Act 1981 (c. 61) (fees for applications, &c. under that Act),
  - (b) section 5(1)(a) and (b) of the Immigration and Asylum Act 1999 (fees for application for leave to remain, &c.), and
  - (c) sections 10 and 122 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (certificate of entitlement to right of abode; and fees for work permit, &c.).
- (3) An Order in Council under section 1 of the Consular Fees Act 1980 (c. 23) (fees) which prescribes a fee in relation to an application for the issue of a certificate under section 10 of the Nationality, Immigration and Asylum Act 2002 (right of abode: certificate of entitlement) may prescribe an amount which is intended to—
  - (a) exceed the administrative costs of determining the application, and
  - (b) reflect benefits that in the opinion of Her Majesty in Council are likely to accrue to the applicant if the application is successful.
- (4) Where an instrument prescribes a fee in reliance on this section it may include provision for the refund, where an application is unsuccessful or a process is not completed, of that part of the fee which is intended to reflect the matters specified in subsection (1)(b) or (3)(b).
- (5) Provision included by virtue of subsection (4)—
  - (a) may determine, or provide for the determination of, the amount to be refunded;
  - (b) may confer a discretion on the Secretary of State or another person (whether in relation to determining the amount of a refund or in relation to determining whether a refund should be made).
- (6) An instrument may not be made in reliance on this section unless the Secretary of State has consulted with such persons as appear to him to be appropriate.
- (7) An instrument may not be made in reliance on this section unless a draft has been laid before and approved by resolution of each House of Parliament (and any provision making the instrument subject to annulment in pursuance of a resolution of either House of Parliament shall not apply).
- (8) This section is without prejudice to the power to make an order under section 102 of the Finance (No. 2) Act 1987 (c. 51) (government fees and charges) in relation to a power under a provision specified in this section.

#### Commencement Information

**I55** S. 42 in force at 1.10.2004 by [S.I. 2004/2523](#), art. 2, [Sch.](#)

### 43 Transfer of leave stamps

- (1) Section 5 of the Immigration and Asylum Act 1999 (c. 33) (charges) shall be amended as follows.
- (2) For subsection (1)(c) (transfer of indefinite leave stamp to new document) substitute—
  - “(c) the fixing of a limited leave stamp or indefinite leave stamp on a passport or other document issued to the applicant where the stamp was previously fixed on another passport or document issued to the applicant.”

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(3) For subsection (5) substitute—

“(5) In this section—

- (a) “limited leave stamp” means a stamp, sticker or other attachment which indicates that a person has been granted limited leave to enter or remain in the United Kingdom, and
- (b) “indefinite leave stamp” means a stamp, sticker or other attachment which indicates that a person has been granted indefinite leave to enter or remain in the United Kingdom.”

#### Commencement Information

**I56** S. 43 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

### General

#### 44 Interpretation: “the Immigration Acts”

(1) A reference to “the Immigration Acts” is to—

- (a) the Immigration Act 1971 (c. 77),
- (b) the Immigration Act 1988 (c. 14),
- (c) the Asylum and Immigration Appeals Act 1993 (c. 23),
- (d) the Asylum and Immigration Act 1996 (c. 49),
- (e) the Immigration and Asylum Act 1999,
- (f) the Nationality, Immigration and Asylum Act 2002 (c. 41), and
- (g) this Act.

(2) This section has effect in relation to a reference in this Act or any other enactment (including an enactment passed or made before this Act).

(3) For section 158(1) and (2) of the Nationality, Immigration and Asylum Act 2002 (c. 41) substitute—

“(1) A reference to “the Immigration Acts” shall be construed in accordance with section 44 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.”

(4) In the following provisions for “section 158 of the Nationality, Immigration and Asylum Act 2002” substitute “ section 44 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 ”

- (a) section 32(5) of the Immigration Act 1971 (c. 77), and
- (b) section 167(1) of the Immigration and Asylum Act 1999 (c. 33).

#### Commencement Information

**I57** S. 44 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

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**Status:** Point in time view as at 14/03/2005. This version of this Act contains provisions that are not valid for this point in time.  
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## 45 Interpretation: immigration officer

In this Act “immigration officer” means a person appointed by the Secretary of State as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971.

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### Commencement Information

**I58** S. 45 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

## 46 Money

There shall be paid out of money provided by Parliament—

- (a) any expenditure incurred by a Minister of the Crown in connection with this Act, and
- (b) any increase attributable to this Act in the sums payable under any other enactment out of money provided by Parliament.

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### Commencement Information

**I59** S. 46 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

## 47 Repeals

The enactments listed in Schedule 4 are hereby repealed to the extent specified.

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### Commencement Information

**I60** S. 47 in force at 1.10.2004 for specified purposes by S.I. 2004/2523, art. 2, Sch.

## 48 Commencement

- (1) Sections 2, 32(2) and 35 shall come into force at the end of the period of two months beginning with the date on which this Act is passed.
- (2) Section 32(1) shall have effect in relation to determinations of the Special Immigration Appeals Commission made after the end of the period of two months beginning with the date on which this Act is passed.
- (3) The other preceding provisions of this Act shall come into force in accordance with provision made—
  - (a) in the case of section 26 or Schedule 1 or 2, by order of the Lord Chancellor,
  - (b) in the case of sections 4 and 5 in so far as they extend to Scotland, by order of the Scottish Ministers, and
  - (c) in any other case, by order of the Secretary of State.
- (4) An order under subsection (3)—
  - (a) may make transitional or incidental provision,
  - (b) may make different provision for different purposes, and
  - (c) shall be made by statutory instrument.

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- (5) Transitional provision under subsection (4)(a) in relation to the commencement of section 26 may, in particular, make provision in relation to proceedings which, immediately before commencement—
- (a) are awaiting determination by an adjudicator appointed, or treated as if appointed, under section 81 of the Nationality, Immigration and Asylum Act 2002 (c. 41),
  - (b) are awaiting determination by the Immigration Appeal Tribunal,
  - (c) having been determined by an adjudicator could be brought before the Immigration Appeal Tribunal,
  - (d) are awaiting the determination of a further appeal brought in accordance with section 103 of that Act,
  - (e) having been determined by the Immigration Appeal Tribunal could be brought before another court by way of further appeal under that section,
  - (f) are or could be made the subject of an application under section 101 of that Act (review of decision on permission to appeal to Tribunal), or
  - (g) are or could be made the subject of another kind of application to the High Court or the Court of Session.
- (6) Provision made under subsection (5) may, in particular—
- (a) provide for the institution or continuance of an appeal of a kind not generally available after the commencement of section 26,
  - (b) provide for the termination of proceedings, or
  - (c) make any other provision that the Lord Chancellor thinks appropriate.

## 49 Extent

- (1) This Act extends (subject to subsection (2)) to—
- (a) England and Wales,
  - (b) Scotland, and
  - (c) Northern Ireland.
- (2) An amendment effected by this Act has the same extent as the enactment, or as the relevant part of the enactment, amended (ignoring extent by virtue of an Order in Council).
- (3) Her Majesty may by Order in Council direct that a provision of this Act is to extend, with or without modification or adaptation, to—
- (a) any of the Channel Islands;
  - (b) the Isle of Man.

## 50 Short title

This Act may be cited as the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.



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## SCHEDULES

VALID FROM 04/04/2005

### SCHEDULE 1

Section 26

NEW SCHEDULE 4 TO THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002  
.....

VALID FROM 04/04/2005

### SCHEDULE 2

Section 26

ASYLUM AND IMMIGRATION TRIBUNAL: CONSEQUENTIAL  
AMENDMENTS AND TRANSITIONAL PROVISION  
.....

### SCHEDULE 3

Section 33

REMOVAL OF ASYLUM SEEKER TO SAFE COUNTRY

#### PART 1

##### INTRODUCTORY

1 (1) In this Schedule—

“asylum claim” means a claim by a person that to remove him from or require him to leave the United Kingdom would breach the United Kingdom’s obligations under the Refugee Convention,

“Convention rights” means the rights identified as Convention rights by section 1 of the Human Rights Act 1998 (c. 42) (whether or not in relation to a State that is a party to the Convention),

“human rights claim” means a claim by a person that to remove him from or require him to leave the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Convention) as being incompatible with his Convention rights,

“immigration appeal” means an appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (appeal against immigration decision), and

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“the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol.

- (2) In this Schedule a reference to anything being done in accordance with the Refugee Convention is a reference to the thing being done in accordance with the principles of the Convention, whether or not by a signatory to it.

**Commencement Information**

**I61** Sch. 3 para. 1 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

**PART 2**

FIRST LIST OF SAFE COUNTRIES (REFUGEE CONVENTION AND HUMAN RIGHTS (1))

- 2 This Part applies to—
- (a) Austria,
  - (b) Belgium,
  - (c) Republic of Cyprus,
  - (d) Czech Republic,
  - (e) Denmark,
  - (f) Estonia,
  - (g) Finland,
  - (h) France,
  - (i) Germany,
  - (j) Greece,
  - (k) Hungary,
  - (l) Iceland,
  - (m) Ireland,
  - (n) Italy,
  - (o) Latvia,
  - (p) Lithuania,
  - (q) Luxembourg,
  - (r) Malta,
  - (s) Netherlands,
  - (t) Norway,
  - (u) Poland,
  - (v) Portugal,
  - (w) Slovak Republic,
  - (x) Slovenia,
  - (y) Spain, and
  - (z) Sweden.

**Commencement Information**

**I62** Sch. 3 para. 2 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

**Status:** Point in time view as at 14/03/2005. This version of this Act contains provisions that are not valid for this point in time.

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- 3 (1) This paragraph applies for the purposes of the determination by any person, tribunal or court whether a person who has made an asylum claim or a human rights claim may be removed—
- (a) from the United Kingdom, and
  - (b) to a State of which he is not a national or citizen.
- (2) A State to which this Part applies shall be treated, in so far as relevant to the question mentioned in sub-paragraph (1), as a place—
- (a) where a person's life and liberty are not threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion,
  - (b) from which a person will not be sent to another State in contravention of his Convention rights, and
  - (c) from which a person will not be sent to another State otherwise than in accordance with the Refugee Convention.

#### Commencement Information

**I63** Sch. 3 para. 3 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

- 4 Section 77 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (no removal while claim for asylum pending) shall not prevent a person who has made a claim for asylum from being removed—
- (a) from the United Kingdom, and
  - (b) to a State to which this Part applies;
- provided that the Secretary of State certifies that in his opinion the person is not a national or citizen of the State.

#### Commencement Information

**I64** Sch. 3 para. 4 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

- 5 (1) This paragraph applies where the Secretary of State certifies that—
- (a) it is proposed to remove a person to a State to which this Part applies, and
  - (b) in the Secretary of State's opinion the person is not a national or citizen of the State.
- (2) The person may not bring an immigration appeal by virtue of section 92(2) or (3) of that Act (appeal from within United Kingdom: general).
- (3) The person may not bring an immigration appeal by virtue of section 92(4)(a) of that Act (appeal from within United Kingdom: asylum or human rights) in reliance on—
- (a) an asylum claim which asserts that to remove the person to a specified State to which this Part applies would breach the United Kingdom's obligations under the Refugee Convention, or
  - (b) a human rights claim in so far as it asserts that to remove the person to a specified State to which this Part applies would be unlawful under section 6 of the Human Rights Act 1998 because of the possibility of removal from that State to another State.

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- (4) The person may not bring an immigration appeal by virtue of section 92(4)(a) of that Act in reliance on a human rights claim to which this sub-paragraph applies if the Secretary of State certifies that the claim is clearly unfounded; and the Secretary of State shall certify a human rights claim to which this sub-paragraph applies unless satisfied that the claim is not clearly unfounded.
- (5) Sub-paragraph (4) applies to a human rights claim if, or in so far as, it asserts a matter other than that specified in sub-paragraph (3)(b).

**Commencement Information**

**I65** Sch. 3 para. 5 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

- 6 A person who is outside the United Kingdom may not bring an immigration appeal on any ground that is inconsistent with treating a State to which this Part applies as a place—
- (a) where a person's life and liberty are not threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion,
  - (b) from which a person will not be sent to another State in contravention of his Convention rights, and
  - (c) from which a person will not be sent to another State otherwise than in accordance with the Refugee Convention.

**Commencement Information**

**I66** Sch. 3 para. 6 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

**PART 3**

SECOND LIST OF SAFE COUNTRIES (REFUGEE CONVENTION AND HUMAN RIGHTS (2))

- 7 (1) This Part applies to such States as the Secretary of State may by order specify.
- (2) An order under this paragraph—
- (a) shall be made by statutory instrument, and
  - (b) shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

**Commencement Information**

**I67** Sch. 3 para. 7 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

- 8 (1) This paragraph applies for the purposes of the determination by any person, tribunal or court whether a person who has made an asylum claim may be removed—
- (a) from the United Kingdom, and
  - (b) to a State of which he is not a national or citizen.
- (2) A State to which this Part applies shall be treated, in so far as relevant to the question mentioned in sub-paragraph (1), as a place—

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- (a) where a person's life and liberty are not threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion, and
- (b) from which a person will not be sent to another State otherwise than in accordance with the Refugee Convention.

#### Commencement Information

**I68** Sch. 3 para. 8 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

- 9 Section 77 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (no removal while claim for asylum pending) shall not prevent a person who has made a claim for asylum from being removed—
- (a) from the United Kingdom, and
  - (b) to a State to which this Part applies;
- provided that the Secretary of State certifies that in his opinion the person is not a national or citizen of the State.

#### Commencement Information

**I69** Sch. 3 para. 9 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

- 10 (1) This paragraph applies where the Secretary of State certifies that—
- (a) it is proposed to remove a person to a State to which this Part applies, and
  - (b) in the Secretary of State's opinion the person is not a national or citizen of the State.
- (2) The person may not bring an immigration appeal by virtue of section 92(2) or (3) of that Act (appeal from within United Kingdom: general).
- (3) The person may not bring an immigration appeal by virtue of section 92(4)(a) of that Act (appeal from within United Kingdom: asylum or human rights) in reliance on an asylum claim which asserts that to remove the person to a specified State to which this Part applies would breach the United Kingdom's obligations under the Refugee Convention.
- (4) The person may not bring an immigration appeal by virtue of section 92(4)(a) of that Act in reliance on a human rights claim if the Secretary of State certifies that the claim is clearly unfounded; and the Secretary of State shall certify a human rights claim where this paragraph applies unless satisfied that the claim is not clearly unfounded.

#### Commencement Information

**I70** Sch. 3 para. 10 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

- 11 A person who is outside the United Kingdom may not bring an immigration appeal on any ground that is inconsistent with treating a State to which this Part applies as a place—
- (a) where a person's life and liberty are not threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion, and

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- (b) from which a person will not be sent to another State otherwise than in accordance with the Refugee Convention.

**Commencement Information**

**I71** Sch. 3 para. 11 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

**PART 4**

THIRD LIST OF SAFE COUNTRIES (REFUGEE CONVENTION ONLY)

- 12 (1) This Part applies to such States as the Secretary of State may by order specify.
- (2) An order under this paragraph—
- (a) shall be made by statutory instrument, and
- (b) shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

**Commencement Information**

**I72** Sch. 3 para. 12 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

- 13 (1) This paragraph applies for the purposes of the determination by any person, tribunal or court whether a person who has made an asylum claim may be removed—
- (a) from the United Kingdom, and
- (b) to a State of which he is not a national or citizen.
- (2) A State to which this Part applies shall be treated, in so far as relevant to the question mentioned in sub-paragraph (1), as a place—
- (a) where a person's life and liberty are not threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion, and
- (b) from which a person will not be sent to another State otherwise than in accordance with the Refugee Convention.

**Commencement Information**

**I73** Sch. 3 para. 13 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

- 14 Section 77 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (no removal while claim for asylum pending) shall not prevent a person who has made a claim for asylum from being removed—
- (a) from the United Kingdom, and
- (b) to a State to which this Part applies;
- provided that the Secretary of State certifies that in his opinion the person is not a national or citizen of the State.

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#### Commencement Information

**I74** Sch. 3 para. 14 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

- 15 (1) This paragraph applies where the Secretary of State certifies that—
- (a) it is proposed to remove a person to a State to which this Part applies, and
  - (b) in the Secretary of State’s opinion the person is not a national or citizen of the State.
- (2) The person may not bring an immigration appeal by virtue of section 92(2) or (3) of that Act (appeal from within United Kingdom: general).
- (3) The person may not bring an immigration appeal by virtue of section 92(4)(a) of that Act (appeal from within United Kingdom: asylum or human rights) in reliance on an asylum claim which asserts that to remove the person to a specified State to which this Part applies would breach the United Kingdom’s obligations under the Refugee Convention.
- (4) The person may not bring an immigration appeal by virtue of section 92(4)(a) of that Act in reliance on a human rights claim if the Secretary of State certifies that the claim is clearly unfounded.

#### Commencement Information

**I75** Sch. 3 para. 15 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

- 16 A person who is outside the United Kingdom may not bring an immigration appeal on any ground that is inconsistent with treating a State to which this Part applies as a place—
- (a) where a person’s life and liberty are not threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion, and
  - (b) from which a person will not be sent to another State otherwise than in accordance with the Refugee Convention.

#### Commencement Information

**I76** Sch. 3 para. 16 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

## PART 5

### COUNTRIES CERTIFIED AS SAFE FOR INDIVIDUALS

- 17 This Part applies to a person who has made an asylum claim if the Secretary of State certifies that—
- (a) it is proposed to remove the person to a specified State,
  - (b) in the Secretary of State’s opinion the person is not a national or citizen of the specified State, and
  - (c) in the Secretary of State’s opinion the specified State is a place—

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- (i) where the person's life and liberty will not be threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion, and
- (ii) from which the person will not be sent to another State otherwise than in accordance with the Refugee Convention.

**Commencement Information**

**I77** Sch. 3 para. 17 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

- 18 Where this Part applies to a person section 77 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (no removal while claim for asylum pending) shall not prevent his removal to the State specified under paragraph 17.

**Commencement Information**

**I78** Sch. 3 para. 18 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

- 19 Where this Part applies to a person—
- (a) he may not bring an immigration appeal by virtue of section 92(2) or (3) of that Act (appeal from within United Kingdom: general),
  - (b) he may not bring an immigration appeal by virtue of section 92(4)(a) of that Act (appeal from within United Kingdom: asylum or human rights) in reliance on an asylum claim which asserts that to remove the person to the State specified under paragraph 17 would breach the United Kingdom's obligations under the Refugee Convention,
  - (c) he may not bring an immigration appeal by virtue of section 92(4)(a) of that Act in reliance on a human rights claim if the Secretary of State certifies that the claim is clearly unfounded, and
  - (d) he may not while outside the United Kingdom bring an immigration appeal on any ground that is inconsistent with the opinion certified under paragraph 17(c).

**Commencement Information**

**I79** Sch. 3 para. 19 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

## PART 6

### AMENDMENT OF LISTS

- 20 (1) The Secretary of State may by order add a State to the list specified in paragraph 2.
- (2) The Secretary of State may by order —
- (a) add a State to a list specified under paragraph 7 or 12, or
  - (b) remove a State from a list specified under paragraph 7 or 12.



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#### Commencement Information

**180** Sch. 3 para. 20 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

- 21 (1) An order under paragraph 20(1) or (2)(a)—
- (a) shall be made by statutory instrument,
  - (b) shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament, and
  - (c) may include transitional provision.
- (2) An order under paragraph 20(2)(b)—
- (a) shall be made by statutory instrument,
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament, and
  - (c) may include transitional provision.

#### Commencement Information

**181** Sch. 3 para. 21 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

## SCHEDULE 4

Section 47

### REPEALS

#### Commencement Information

**182** Sch. 4 in force at 1.10.2004 for specified purposes by S.I. 2004/2523, art. 2, Sch.

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Immigration Act 1971 (c. 77)	In Schedule 2— (a) in paragraph 29(3), the words from “and where an adjudicator dismisses” to the end, and (b) paragraph 29(4).
House of Commons Disqualification Act 1975 (c. 24)	In Part III of Schedule 1, the entry relating to immigration adjudicators.
Northern Ireland Assembly Disqualification Act 1975 (c. 25)	In Part III of Schedule 1, the entry relating to immigration adjudicators.
British Nationality Act 1981 (c. 61)	Section 40A(6) to (8).
Tribunals and Inquiries Act 1992 (c. 53)	Section 7(3).
Asylum and Immigration Appeals Act 1993 (c. 23)	Section 9A.
Asylum and Immigration Act 1996 (c. 49)	Section 8(9).

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Immigration and Asylum Act 1999 (c. 33)	Sections 11 and 12. In section 72(10), “adjudicator”. In section 85(1), “and (b)”. Section 87(3)(f). Section 123. In Schedule 6, in paragraph 1(1), “or (b)”.
State Pension Credit Act 2002 (c. 16)	In Schedule 2, paragraph 42.
Tax Credits Act 2002 (c. 21)	In Schedule 4, paragraph 22.
Nationality, Immigration and Asylum Act 2002 (c. 41)	Section 52. Section 80. Section 87(4). Section 93. Section 94(4)(a) to (j). Sections 100 to 103. Section 104(3). In section 106— (a) in subsection (2)(e) and (f), “an adjudicator or”, (b) subsection (2)(j) and (k), (c) in subsection (2)(m), the words from “(which may” to the end, and (d) in subsections (2)(o), (p), (q), (r) and (s), (3)(a), (d), (e) and (4), “an adjudicator or”. Section 107(2). Schedule 5.
State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.))	In Schedule 2, paragraph 31.

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**Status:**

Point in time view as at 14/03/2005. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are outstanding changes not yet made by the legislation.gov.uk editorial team to Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. Any changes that have already been made by the team appear in the content and are referenced with annotations.