



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

## 2004 CHAPTER 19

### *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.”

- (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))”.

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### 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),
  - (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

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- (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 [<sup>F1</sup> [<sup>F2</sup> a constable or]] [<sup>F2</sup> [<sup>F1</sup> an]] 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),
  - “immigration document” means—
    - (a) a passport, and

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- (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.

#### Textual Amendments

- F1** Word in s. 2(10) substituted (E.W.) (1.1.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\), s. 178\(8\), Sch. 7 para. 63\(a\)](#); S.I. 2005/3495, art. 2(1)(m)
- F2** Word in s. 2(10) substituted (N.I.) (1.3.2007) by [The Police and Criminal Evidence \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/288\), art. 1\(2\), Sch. 1 para. 39\(1\)](#)

### <sup>F3</sup> Immigration documents: forgery

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#### Textual Amendments

- F3** [S. 3](#) repealed (7.6.2006) by [Identity Cards Act 2006 \(c. 15\), s. 44\(3\), Sch. 2](#); S.I. 2006/1439, art. 2(e)  
[Editorial Note: The repealing Sch. 2 is induced by s. 44(2) of the 2006 Act and that section is in force at 30.3.2006 by virtue of s. 44(3) of that Act. However, Sch. 2 itself is expressly brought into force at 7.6.2006 by [S.I. 2006/1439, art. 2\(e\)](#)]

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#### 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<sup>[F4]</sup>, or the entry into, ] 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<sup>[F5]</sup> the Human Organ Transplants Act 1989 (c. 31) [<sup>[F5]</sup>Part 1 of the [Human Tissue \(Scotland\) Act 2006 \(asp 4\)](#)]] or [<sup>[F6]</sup>under section 32 or 33 of the Human Tissue Act 2004 ],
  - (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
  - <sup>[F7]</sup>(d) a person uses or attempts to use him for any purpose within sub-paragraph (i), (ii) or (iii) of paragraph (c), having chosen him for that purpose 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
    - (ii) a person without the illness, disability, youth or family relationship would be likely to refuse to be used for that purpose.]
- (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.

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#### Textual Amendments

- F4** Words in s. 4(1) inserted (E.W. N.I.) (31.1.2008) by [UK Borders Act 2007 \(c. 30\)](#) , **ss. 31(1)** , 59(2) ; [S.I. 2008/99](#) , [art. 2\(1\)](#)
- F5** Words in s. 4(4)(b) substituted (S.) (24.6.2008) by [Human Tissue \(Scotland\) Act 2006 \(Consequential Amendment\) Order 2008 \(S.S.I. 2008/259\)](#) , [arts. 1\(1\)](#) , **2**
- F6** Words in s. 4 substituted (20.10.2005) by [Human Tissue Act 2004 \(c. 30\)](#) , [s. 60\(2\)](#) , **Sch. 6 para. 7** (with [s. 58](#) ) ; [S.I. 2005/2792](#) , [art. 2\(2\)\(i\)](#) (with [art. 3\(1\)\(a\)](#) )
- F7** S. 4(4)(d) substituted (10.11.2009) by [Borders, Citizenship and Immigration Act 2009 \(c. 11\)](#) , **ss. 54** , 58(4)(b) ; [S.I. 2009/2731](#) , [art. 3\(b\)](#)

#### 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) [<sup>F8</sup>Subsections (1) to (3) of section 4 apply to anything done whether inside or outside the United Kingdom.]
- (2)
- (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—
- “(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).”

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- (10) After paragraph 2(l) 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.

#### Textual Amendments

- F8** S. 5(1) substituted for s. 5(1)(2) (E.W.N.I.) (31.1.2008) by [UK Borders Act 2007 \(c. 30\)](#), **ss. 31(2), 59(2)**; [S.I. 2008/99](#), **art. 2(1)**

#### 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.**

## 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;”.

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#### **Commencement Information**

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



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