

These notes refer to the Immigration, Asylum and Nationality Act 2006 (c.13) which received Royal Assent on 30 March 2006

IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006

EXPLANATORY NOTES

SUMMARY

Appeals

8. The provisions:
- insert a new section 83A of the Nationality, Immigration and Asylum Act 2002 to provide a right of appeal for people no longer recognised as refugees but who are being allowed to stay in the UK on another basis. The right of appeal will be solely against the decision that the person in question no longer qualifies as a refugee.
 - amend section 82(2)(g) of the Nationality, Immigration and Asylum Act 2002 to insert a reference to section 10(1)(ba).
 - replace sections 88A, 90 and 91 of the Nationality, Immigration and Asylum Act 2002 with a new provision which will restrict full appeal rights against refusal of entry clearance to those seeking entry clearance as a dependant or a family visitor. These categories of people will be defined in regulations.
 - amend section 23 of the Immigration and Asylum Act 1999 to clarify that refusals of entry clearance that carry only a limited right of appeal shall be monitored by a person appointed by the Secretary of State.
 - provide that the Secretary of State must report on the operation of the entry clearance system in light of the removal of appeal rights under section 4 within three years of that section being commenced.
 - replace section 89 of the Immigration, Nationality and Asylum Act 2002 with a provision that restricts full rights of appeal against a refusal of entry at the port to those who possess an entry clearance issued for the purpose for which entry is sought.
 - amend section 88 (2) of the Nationality, Immigration and Asylum Act 2002 to limit appeal rights if an applicant fails to provide a medical report or medical certificate where to do so is a requirement of the immigration rules.
 - insert a new section 97A into the Nationality, Immigration and Asylum Act 2002 so that an appeal against a decision to make a deportation order which has been certified as having been made on national security grounds would normally only be able to be brought from outside the United Kingdom. Where the appellant has made a human rights claim the appeal can be brought in country unless the Secretary of State certifies that removal would not breach the European Convention on Human Rights (ECHR). There is an appeal against this decision to the Special Immigration Appeals Commission (SIAC).

These notes refer to the Immigration, Asylum and Nationality Act 2006 (c.13) which received Royal Assent on 30 March 2006

- amend section 103D of the Nationality, Immigration and Asylum Act 2002 to allow payment from the Community Legal Service Fund for preparatory work by legal representatives on a case where reconsideration has been ordered but does then not proceed.
- amend section 104(4) of the Nationality, Immigration and Asylum Act 2002 so that an appeal brought from outside the UK shall not be abandoned if the appellant is granted leave to enter or remain. An appeal brought on race discrimination grounds shall not be treated as abandoned following a grant of leave to enter or remain where the appellant provides notice that he wishes to continue the appeal. An appeal on Refugee Convention grounds shall not be abandoned if leave is granted for a period of more than 12 months and the appellant provides notice that he wishes to continue the appeal.
- provide that section 110 of the Immigration, Nationality and Asylum Act 2002 shall cease to have effect.
- amend section 3C of the Immigration Act 1971 so that it is clear that leave is continued under this section while an appeal could be brought from within the United Kingdom.
- create a new section 3D in the Immigration Act 1971 to provide for continuing leave while an in country appeal could be brought or is pending against curtailment or revocation of leave. Repeal section 82(3) of the Nationality, Immigration and Asylum Act 2002 in consequence.
- provide that the power to certify clearly unfounded asylum and human rights claims in variation appeals under section 94 of the Nationality, Immigration and Asylum Act 2002 may be limited in relation to persons previously granted a specified form of leave. The relevant forms of leave will be specified in regulations.
- amend section 113 of the Nationality, Immigration and Asylum Act 2002, in particular the definitions of “asylum claim” and “human rights claim” by removing the requirement for such claims to be made in person at a designated place; and clarify that further submissions which follow the refusal of an asylum or human rights claim but which do not amount to a fresh claim will not carry a further right of appeal. Requirements on when asylum and human rights claims must be made in person will be moved to Immigration Rules to be made under section 47.
- make consequential amendments to the Nationality, Immigration and Asylum Act 2002, British Nationality Act 1981 and Special Immigration Appeals Commission Act 1997 to insert reference to the new right of appeal (section 83A) and changes to the continuation of leave provisions; and updating a reference in the Race Relations Act 1976 to the immigration appellate body.

Employment

9. The provisions:

- create a power for the Secretary of State to apply a civil penalty, determined by a Code of Practice, to an employer of an adult subject to immigration control who has not been granted leave to enter or remain, whose leave is invalid, has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise) or whose conditions of entry or stay prevent them from undertaking the employment. The provisions allow for objection and/or appeal by the employer against the imposition of a penalty and the amount. An employer who complies with requirements prescribed in an order of the Secretary of State is excused from paying a penalty.

These notes refer to the Immigration, Asylum and Nationality Act 2006 (c.13) which received Royal Assent on 30 March 2006

- create a new criminal offence of knowingly employing an adult who has not been granted leave to enter or remain, whose leave is invalid, has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise) or whose conditions of entry or stay prevent them from undertaking the employment in question.
- allow the Secretary of State to issue a code of practice to employers on how to avoid unlawful racial discrimination when applying these provisions.

Information

10. The provisions:

- amend paragraph 4 of Schedule 2 to the [Immigration Act 1971 \(c.77\)](#) to enable Immigration Officers to verify and detain passengers' identity documents and to enable Immigration Officers to require the holders of such documents to provide biometric information (which may include in particular fingerprints or features of the iris or any other part of the eye).
- Amend section 141 of the Immigration and Asylum Act 1999, which sets out a number of categories of person from whom fingerprints can be taken and stored, to allow fingerprints to be taken from a person who has been detained under paragraph 16 of Schedule 2 to the Immigration Act 1971.
- amend section 3(9) of the [Immigration Act 1971 \(c.77\)](#) to enable British citizens and British subjects with a right of abode to enter the United Kingdom using identity cards issued under the current Identity Cards Bill, and make minor amendments relating to British passport holders.
- amend paragraphs 27 and 27B of Schedule 2 to the 1971 Act to allow the Secretary of State by order to require or enable an immigration officer to require passenger lists or particulars of crew of ships or aircraft and to specify the time and manner of provision. The current power in 27(2) applies only to ships or aircraft arriving in the UK. The new power extends the power to apply to ships or aircraft expected to arrive in the UK or leaving or expected to leave the UK. The power is also extended to apply to the owner or agent of a ship or aircraft as well as the captain, as is currently the case. Paragraph 27B is amended to apply to service information in the same way as it currently applies to passenger information. Service information is information relating to the voyage or flight undertaken by the ship or aircraft as may be specified by order. Consequent amendments to the offence in section 27 of the Immigration Act 1971 are also made.
- create a new power to enable a constable of the rank of Superintendent or above to request passenger, service and crew information from an owner or agent of a ship or aircraft in the form and manner directed by the Secretary of State by Order. Create a new offence for failure to comply with this requirement.
- create a new power to enable a constable of the rank of Superintendent or above to request freight information from an owner or agent of a ship or aircraft, an owner or hirer of a vehicle, or any other person responsible for the import or export of freight in the form and manner directed by the Secretary of State by Order. Create a new offence for failure to comply with this requirement.
- create a requirement for the Secretary of State in so far as he has functions under the Immigration Acts, the police and Her Majesty's Revenue and Customs to share with each other passenger, crew, service and freight information obtained or held by them in the course of their functions to the extent that the information is likely to be of use for immigration, police or Revenue and Customs purposes (as defined in sections 20 and 21 of the Immigration and Asylum Act 1999. Information collected

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by HM Revenue and Customs under the former Inland Revenue's powers will be excluded from this duty to share.

- make provision for the issue of codes of practice about the use of the information shared and the extent to which or form or manner in which shared information is to be made available to the Secretary of State, the police or HM Revenue and Customs.
- enable the police to disclose passenger, crew and freight information acquired from owners or agents of ships and aircraft to police in Jersey, Guernsey, the Isle of Man or a foreign law enforcement agency.
- amend the Customs and Excise Management Act 1979 to allow for the provision of passenger information in advance of a ship or aircrafts arrival in the UK.
- provide that the Secretary of State in so far as he has functions under the Immigration Acts, the police and HM Revenue and Customs may disclose travel or freight information (to be specified by Order) which is obtained or held by them in the course of their functions to the Security Service, the Secret Intelligence Service and the Government Communications Headquarters to the extent that the information is likely to be of use for a purpose specified in section 1 of the Security Service Act 1989 and sections 1 or 3 of the Intelligence Services Act 1994.
- amend paragraph 3 of Schedule 2 to the Immigration Act 1971 to allow an immigration officer to examine a departing passenger to establish immigration status as well as identity, and to subject a person to further examination and short-term detention where necessary to establish identity and/or immigration status.
 - introduce a new power for the Secretary of State to allow an Authorised Person (AP) to search a ship, aircraft, vehicle or other thing to satisfy themselves as to the presence of illegal entrants and, if an illegal entrant is found, to search, detain and deliver the individual to an immigration officer. Contain a power to authorise police constables and officers of HM Revenue and Customs.
- create an offence for an individual to obstruct or assault an AP while exercising these search powers, or to abscond while being detained or delivered to an immigration officer by an AP.

Claimants and applicants

11. The provisions:

- amend section 99(1) and 99(4) of the Immigration and Asylum Act 1999 to enable local authorities to provide support, in accordance with arrangements made with the Secretary of State, under section 4 of the same Act and to incur reasonable expenditure in connection with the preparation of proposals for entering into those arrangements.
- amend section 118(1)(b) of the Immigration and Asylum Act 1999 so as to allow local authorities to use their powers under existing housing legislation to grant tenancies or licences to occupy to persons subject to immigration control, including those provided with accommodation pursuant to sections 4 and 98 of the 1999 Act. The provision will ensure that accommodation provided under section 4 does not give rise to a secure tenancy among recipients of such accommodation and make other amendments to UK housing legislation to achieve the same result across the UK. The section will also make amendments to UK housing legislation similar to those made in Schedule 14 to the 1999 Act.
- amend section 4 of the Immigration and Asylum Act 1999 to enable the Secretary of State to make regulations to provide specified goods and services for those in section 4 accommodation.

These notes refer to the Immigration, Asylum and Nationality Act 2006 (c.13) which received Royal Assent on 30 March 2006

- enable the Secretary of State to repeal by order paragraph 7A of Schedule 3 to the Nationality, Immigration and Asylum Act 2002 and certain other provisions of section 9 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 by which paragraph 7A was inserted. The order is subject to the negative resolution procedure.
- amend section 13 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 to enable those with leave to enter or remain (rather than indefinite leave to enter or remain) and who have been recognised as refugees to access integration loans and enable the Secretary of State to extend eligibility, in the regulations, to other categories of migrants.
- amend section 5A(5A) of the Prison Act 1952 to enable HM Chief Inspector of Prisons to inspect short-term holding facilities and escorts on a statutory basis.
- provide that a decision to remove a person from the UK may be made while their leave is continued by virtue of sections 3C(2)(b) or 3D(2)(a) of the Immigration Act 1971. Provide that this decision will be an immigration decision under section 82(2) of the Nationality, Immigration and Asylum Act 2002.
- amend section 10(8) of the Immigration and Asylum Act 1999 to allow an individual's leave to be invalidated by the giving of a notice of a decision to remove.
- insert a new section 44A into the British Nationality Act 1981, conferring on the Secretary of State a discretion to waive the requirement (for the purposes of naturalisation and the renunciation and resumption of citizenship) to be "of full capacity" in cases where he considers it in the applicant's best interests to do so.
- allow the Secretary of State to prescribe, in the immigration rules, procedures to be followed in making an application, and to prescribe what will happen to that application if the procedures are not followed. The Secretary of State also has power to specify that particular forms are used, and to reject applications which are not made on that form.
- enable the Secretary of State to designate, in secondary legislation, any immigration or nationality-related applications, claims, services, processes, information or advice for which a fee may be charged. Regulations may specify the amount of the fee and provide for matters such as exemptions or the consequences of failing to pay a required fee.

Miscellaneous

12. The provisions:
- confirm that the power of entry and arrest in deportation cases is available when a notice of intention to deport is ready but has not yet been given to a prospective deportee.
 - provide an interpretation of Article 1F (c) in the 1951 Geneva Convention relating to the Status of Refugees to clarify that acts of committing, preparing or instigating terrorism or of encouraging or inducing others to do so constitute acts contrary to the principles and purposes of the United Nations and will result in exclusion from asylum.
 - allow the Secretary of State to certify that an appellant is not entitled to the protection of Article 33 (1) of the Refugee Convention because Article 1F applies or Article 33 (2) applies on national security grounds; and require the Asylum and Immigration Tribunal and the Special Immigration Appeals Commission to dismiss the asylum appeal if they agree with the statements in the certificate.

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- replace one of the current criteria for deprivation of nationality that the person concerned has done something seriously prejudicial to vital national interests with the criterion that the Secretary of State is satisfied that such deprivation is conducive to the public good.
- confer on the Secretary of State a new power to withdraw the right of abode in the United Kingdom from any person whose exclusion or removal from this country he considers to be conducive to the public good.
- extend the requirement to be “of good character”, which at present applies only to those seeking British citizenship by naturalisation, to virtually all other applicants for British nationality.
- insert a new section 153A into the Immigration and Asylum Act 1999 to exempt detained persons from the national minimum wage.

General

13. General provisions on money, repeals, commencement, extent and the title of the Act.