

Nationality, Immigration and Asylum Act 2002

2002 CHAPTER 41

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An Act to make provision about nationality, immigration and asylum; to create offences in connection with international traffic in prostitution; to make provision about international projects connected with migration; and for connected purposes.

[7th November 2002]

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:—

PART 1

NATIONALITY

1 Naturalisation: knowledge of language and society

(1) The following shall be inserted after the word “and” after paragraph 1(1)(c) of Schedule 1 to the British Nationality Act 1981 (c. 61) (requirements for naturalisation)—

“(ca) that he has sufficient knowledge about life in the United Kingdom; and”.

(2) In paragraph 2(e) of that Schedule (waiver)—

- (a) for “the requirement specified in paragraph 1(1)(c)” there shall be substituted “either or both of the requirements specified in paragraph 1(1)(c) and (ca)”, and
- (b) for “expect him to fulfil it” there shall be substituted “expect him to fulfil that requirement or those requirements”.

(3) The following shall be inserted after section 41(1)(b) of that Act (regulations)—

“(ba) for determining whether a person has sufficient knowledge of a language for the purpose of an application for naturalisation;

(bb) for determining whether a person has sufficient knowledge about life in the United Kingdom for the purpose of an application for naturalisation;”.

(4) The following shall be inserted after section 41(1) of that Act—

“(1A) Regulations under subsection (1)(ba) or (bb) may, in particular—

- (a) make provision by reference to possession of a specified qualification;
- (b) make provision by reference to possession of a qualification of a specified kind;
- (c) make provision by reference to attendance on a specified course;
- (d) make provision by reference to attendance on a course of a specified kind;

- (e) make provision by reference to a specified level of achievement;
- (f) enable a person designated by the Secretary of State to determine sufficiency of knowledge in specified circumstances;
- (g) enable the Secretary of State to accept a qualification of a specified kind as evidence of sufficient knowledge of a language.”

Commencement

Pt 1 s. 1(1)-(2)(b): November 1, 2005 except in relation to the Channel Islands and the Isle of Man; May 1, 2006 otherwise (SI 2005/2782 art. 3)

Pt 1 s. 1(3)-(4): July 6, 2004 (SI 2004/1707 art. 2)

2 Naturalisation: spouse of citizen

(1) Paragraphs 3 and 4 of Schedule 1 to the British Nationality Act 1981 (c. 61) (requirements for naturalisation as British citizen: spouse of citizen) shall be amended as follows—

- (a) in paragraph 3(e) for “requirement specified in paragraph 1(1)(b)” substitute “requirements specified in paragraph 1(1)(b), (c) and (ca)”, and
- (b) in paragraph 4(c) omit “and (e)”.

(2) Paragraphs 7 and 8 of that Schedule (requirements for naturalisation as British overseas territories citizen: spouse of citizen) shall be amended as follows—

- (a) in paragraph 7(e) for “requirement specified in paragraph 5(1)(b)” substitute “requirements specified in paragraph 5(1)(b) and (c)”, and
- (b) in paragraph 8(c) omit “and (e)”.

Commencement

Pt 1 s. 2(1)-(2)(b): July 28, 2004 (SI 2004/1707 art. 3)

3 Citizenship ceremony, oath and pledge

Schedule 1 (which makes provision about citizenship ceremonies, oaths and pledges) shall have effect.

Commencement

Pt 1 s. 3: January 1, 2004 (SI 2003/3156 art. 2(a), art. 3)

4 Deprivation of citizenship

(1) The following shall be substituted for section 40 of the British Nationality Act 1981 (deprivation of citizenship)—

“40 Deprivation of citizenship

- (1) In this section a reference to a person's “citizenship status” is a reference to his status as—

- (a) a British citizen,
 - (b) a British overseas territories citizen,
 - (c) a British Overseas citizen,
 - (d) a British National (Overseas),
 - (e) a British protected person, or
 - (f) a British subject.
- (2) The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that the person has done anything seriously prejudicial to the vital interests of—
- (a) the United Kingdom, or
 - (b) a British overseas territory.
- (3) The Secretary of State may by order deprive a person of a citizenship status which results from his registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of—
- (a) fraud,
 - (b) false representation, or
 - (c) concealment of a material fact.
- (4) The Secretary of State may not make an order under subsection (2) if he is satisfied that the order would make a person stateless.
- (5) Before making an order under this section in respect of a person the Secretary of State must give the person written notice specifying—
- (a) that the Secretary of State has decided to make an order,
 - (b) the reasons for the order, and
 - (c) the person's right of appeal under section 40A(1) or under section 2B of the Special Immigration Appeals Commission Act 1997 (c. 68).
- (6) Where a person acquired a citizenship status by the operation of a law which applied to him because of his registration or naturalisation under an enactment having effect before commencement, the Secretary of State may by order deprive the person of the citizenship status if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of—
- (a) fraud,
 - (b) false representation, or
 - (c) concealment of a material fact.

40A Deprivation of citizenship: appeal

- (1) A person who is given notice under section 40(5) of a decision to make an order in respect of him under section 40 may appeal against the decision to an adjudicator appointed under section 81 of the Nationality, Immigration and Asylum Act 2002 (immigration appeal).
- (2) Subsection (1) shall not apply to a decision if the Secretary of State certifies that it was taken wholly or partly in reliance on information which in his opinion should not be made public—
- (a) in the interests of national security,
 - (b) in the interests of the relationship between the United Kingdom and another country, or

- (c) otherwise in the public interest.
- (3) A party to an appeal to an adjudicator under subsection (1) may, with the permission of the Immigration Appeal Tribunal, appeal to the Tribunal against the adjudicator's determination on a point of law.
- (4) A party to an appeal to the Immigration Appeal Tribunal under subsection (3) may bring a further appeal on a point of law—
- (a) where the decision of the adjudicator was made in Scotland, to the Court of Session, or
 - (b) in any other case, to the Court of Appeal.
- (5) An appeal under subsection (4) may be brought only with the permission of—
- (a) the Tribunal, or
 - (b) if the Tribunal refuses permission, the court referred to in subsection (4)(a) or (b).
- (6) An order under section 40 may not be made in respect of a person while an appeal under this section or section 2B of the Special Immigration Appeals Commission Act 1997 (c. 68)—
- (a) has been instituted and has not yet been finally determined, withdrawn or abandoned, or
 - (b) could be brought (ignoring any possibility of an appeal out of time with permission).
- (7) Rules under section 106 of the Nationality, Immigration and Asylum Act 2002 (immigration appeal: rules) may make provision about an appeal under this section.
- (8) Directions under section 107 of that Act (practice directions) may make provision about an appeal under this section.”
- (2) The following shall be inserted before section 3 of the Special Immigration Appeals Commission Act 1997 (jurisdiction: bail)—

“2B

A person may appeal to the Special Immigration Appeals Commission against a decision to make an order under section 40 of the British Nationality Act 1981 (c. 61) (deprivation of citizenship) if he is not entitled to appeal under section 40A(1) of that Act because of a certificate under section 40A(2).”

- (3) In section 5(1)(a) and (b) and (2) of that Act (procedure) after “section 2” there shall be inserted “or 2B”.
- (4) In exercising a power under section 40 of the British Nationality Act 1981 after the commencement of subsection (1) above the Secretary of State may have regard to anything which—
- (a) occurred before commencement, and
 - (b) he could have relied on (whether on its own or with other matters) in making an order under section 40 before commencement.

Commencement

Pt 1 s. 4(1)-(4)(b): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

 Not yet in force

5 Resumption of citizenship

In the following provisions of the British Nationality Act 1981 (c. 61) the words “, if a woman,” shall cease to have effect—

- (a) section 10(1) and (2) (registration as British citizen following renunciation of citizenship), and
- (b) section 22(1) and (2) (registration as British overseas territories citizen following renunciation of citizenship).

Commencement

Pt 1 s. 5(a)-(b): Date not available (not yet in force) (2002 c. 41 Pt 8 s. 162)

6 Nationality decision: discrimination

(1) Section 19D of the Race Relations Act 1976 (c. 74) (discrimination by public authority: permitted cases) shall be amended as follows.

(2) In subsection (1) for “immigration and nationality functions” substitute “immigration functions”.

(3) For subsections (4) and (5) substitute—

“(4) In subsection (1)“immigration functions” means functions exercisable by virtue of any of the enactments mentioned in subsection (5).

(5) Those enactments are—

- (a) the Immigration Acts (within the meaning of section 158 of the Nationality, Immigration and Asylum Act 2002) excluding sections 28A to 28K of the Immigration Act 1971 (c. 77) so far as they relate to offences under Part III of that Act;
- (b) the Special Immigration Appeals Commission Act 1997 (c. 68);
- (c) provision made under section 2(2) of the European Communities Act 1972 (c. 68) which relates to immigration or asylum; and
- (d) any provision of Community law which relates to immigration or asylum.”

(4) Section 19E of the Race Relations Act 1976 (monitoring of use of section 19D) shall be amended as follows—

- (a) in subsection (3)(a) for “immigration and nationality functions” substitute “immigration functions”, and
- (b) omit subsection (7).

(5) In section 71A of that Act (general statutory duty: special cases)—

- (a) in subsection (1) the words “(within the meaning of section 19D(1))” shall be omitted, and
- (b) the following shall be inserted after subsection (1)—

“(1A) In subsection (1)“immigration and nationality functions” means functions exercisable by virtue of—

- (a) the Immigration Acts (within the meaning of section 158 of the Nationality, Immigration and Asylum Act 2002) excluding sections 28A to

28K of the Immigration Act 1971 so far as they relate to offences under Part III of that Act;

- (b) the British Nationality Act 1981;
- (c) the British Nationality (Falkland Islands) Act 1983 (c. 6);
- (d) the British Nationality (Hong Kong) Act 1990 (c. 34);
- (e) the Hong Kong (War Wives and Widows) Act 1996 (c. 41);
- (f) the British Nationality (Hong Kong) Act 1997 (c. 20);
- (g) the Special Immigration Appeals Commission Act 1997 (c. 68);
- (h) provision made under section 2(2) of the European Communities Act 1972 (c. 68) which relates to the subject matter of an enactment within any of paragraphs (a) to (g); or
- (i) any provision of Community law which relates to the subject matter of an enactment within any of those paragraphs.”

Commencement

Pt 1 s. 6(1)-(5)(b): November 7, 2002

7 Nationality decision: reasons and review

- (1) Section 44(2) and (3) of the British Nationality Act 1981 (c. 61) (no requirement to give reasons for discretionary decision, and no right of appeal) shall cease to have effect.
- (2) Section 1(5) of the British Nationality (Hong Kong) Act 1990 (c. 34) (no requirement to give reasons for discretionary decision, and no right of appeal) shall cease to have effect.

Commencement

Pt 1 s. 7(1)-(2): November 7, 2002

8 Citizenship: registration

In paragraph 3(1)(b) of Schedule 2 to the British Nationality Act 1981 (application by person born in United Kingdom or overseas territory for registration as citizen: age requirement) the words “had attained the age of ten but” shall cease to have effect.

Commencement

Pt 1 s. 8: April 1, 2003 (2002 c. 41 Pt 8 s. 162(4); SI 2003/754 art. 2(2))

9 Legitimacy of child

- (1) The following shall be substituted for section 50(9) of the British Nationality Act 1981 (interpretation: child)—

- “(9) For the purposes of this Act a child's mother is the woman who gives birth to the child.
- (9A) For the purposes of this Act a child's father is—

- (a) the husband, at the time of the child's birth, of the woman who gives birth to the child, or
 - (b) where a person is treated as the father of the child under section 28 of the Human Fertilisation and Embryology Act 1990 (c. 37) (father), that person, or
 - (c) where neither paragraph (a) nor paragraph (b) applies, any person who satisfies prescribed requirements as to proof of paternity.
- (9B) In subsection (9A)(c) "prescribed" means prescribed by regulations of the Secretary of State; and the regulations—
- (a) may confer a function (which may be a discretionary function) on the Secretary of State or another person,
 - (b) may make provision which applies generally or only in specified circumstances,
 - (c) may make different provision for different circumstances,
 - (d) must be made by statutory instrument, and
 - (e) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9C) The expressions "parent", "child" and "descended" shall be construed in accordance with subsections (9) and (9A)."
- (2) In section 3(6) of that Act (registration of minor as British citizen)—
- (a) after paragraph (a) insert "and",
 - (b) the word "and" after paragraph (b) shall cease to have effect, and
 - (c) paragraph (c) (illegitimate child) shall cease to have effect.
- (3) In section 17(6) of that Act (registration of minor as British overseas territories citizen)—
- (a) after paragraph (a) insert "and",
 - (b) the word "and" after paragraph (b) shall cease to have effect, and
 - (c) paragraph (c) (illegitimate child) shall cease to have effect.
- (4) Section 47 of that Act (legitimated children) shall cease to have effect.
- (5) In Schedule 2 to that Act (persons otherwise stateless)—
- (a) in paragraph 1(1)(b) (person born in United Kingdom), the words "he is born legitimate and" shall cease to have effect, and
 - (b) in paragraph 2(1)(b) (person born in British overseas territory), the words "he is born legitimate and" shall cease to have effect.

Commencement

Pt 1 s. 9(1)-(5)(b): June 5, 2006 for purposes specified in SI 2006/1498 art.2(a); July 1, 2006 otherwise (SI 2006/1498 art. 2)

 Partially in force

10 Right of abode: certificate of entitlement

- (1) The Secretary of State may by regulations make provision for the issue to a person of a certificate that he has the right of abode in the United Kingdom.
- (2) The regulations may, in particular—
- (a) specify to whom an application must be made;

- (b) specify the place (which may be outside the United Kingdom) to which an application must be sent;
 - (c) provide that an application must be [accompanied by specified information;]¹
 - (d) provide that an application must be accompanied by specified documents;
 - (e) [...]²
 - (f) specify the consequences of failure to comply with a requirement under any of paragraphs [(a) to (d)]³ above;
 - (g) provide for a certificate to cease to have effect after a period of time specified in or determined in accordance with the regulations;
 - (h) make provision about the revocation of a certificate.
- (3) The regulations may—
- (a) make provision which applies generally or only in specified cases or circumstances;
 - (b) make different provision for different purposes;
 - (c) include consequential, incidental or transitional provision.
- (4) The regulations—
- (a) must be made by statutory instrument, and
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) The Immigration Act 1971 (c. 77) shall be amended as follows—
- (a) in section 3(9)(b) (proof of entitlement to right of abode) the words “issued by or on behalf of the Government of the United Kingdom certifying that he has such a right of abode” shall cease to have effect, and
 - (b) in section 33(1) for the definition of “certificate of entitlement” substitute—
- “certificate of entitlement” means a certificate under section 10 of the Nationality, Immigration and Asylum Act 2002 that a person has the right of abode in the United Kingdom;”.
- (6) Regulations under this section may, in particular, include provision saving, with or without modification, the effect of a certificate which—
- (a) is issued before the regulations come into force, and
 - (b) is a certificate of entitlement for the purposes of sections 3(9) and 33(1) of the Immigration Act 1971 as those sections have effect before the commencement of subsection (5) above.

Commencement

Pt 1 s. 10(1)-(4)(b), (6)-(6)(b): November 7, 2002

Pt 1 s. 10(5), (5)(b): December 21, 2006

Pt 1 s. 10(5)(a): Date not available (not yet in force)

¹ Words substituted by Immigration, Asylum and Nationality Act 2006 c. 13 s.50(5) (November 5, 2007)

² Repealed by Immigration, Asylum and Nationality Act 2006 c. 13 Sch.3 para.1 (April 2, 2007 as SI 2007/1109)

³ Words substituted by Immigration, Asylum and Nationality Act 2006 c. 13 Sch.2 para.4(b) (April 2, 2007)

11 Unlawful presence in United Kingdom

- (1) This section applies for the construction of a reference to being in the United Kingdom “in breach of the immigration laws” in section 4(2) or (4) or 50(5) of, or Schedule 1 to, the British Nationality Act 1981 (c. 61).
- (2) A person is in the United Kingdom in breach of the immigration laws if (and only if) he—
- (a) is in the United Kingdom,
 - (b) does not have the right of abode in the United Kingdom within the meaning of section 2 of the Immigration Act 1971,
 - (c) does not have leave to enter or remain in the United Kingdom (whether or not he previously had leave),
 - (d) is not a qualified person within the meaning of the Immigration (European Economic Area) Regulations 2000 (S.I. 2000/2326) (person entitled to reside in United Kingdom without leave) (whether or not he was previously a qualified person),
 - (e) is not a family member of a qualified person within the meaning of those regulations (whether or not he was previously a family member of a qualified person),
 - (f) is not entitled to enter and remain in the United Kingdom by virtue of section 8(1) of the Immigration Act 1971 (crew) (whether or not he was previously entitled), and
 - (g) does not have the benefit of an exemption under section 8(2) to (4) of that Act (diplomats, soldiers and other special cases) (whether or not he previously had the benefit of an exemption).
- (3) Section 11(1) of the Immigration Act 1971 (person deemed not to be in United Kingdom before disembarkation, while in controlled area or while under immigration control) shall apply for the purposes of this section as it applies for the purposes of that Act.
- (4) This section shall be treated as always having had effect except in relation to a person who on the commencement of this section is, or has been at any time since he last entered the United Kingdom—
- (a) a qualified person within the meaning of the regulations referred to in subsection (2)(d), or
 - (b) a family member of a qualified person within the meaning of those regulations.
- (5) This section is without prejudice to the generality of—
- (a) a reference to being in a place outside the United Kingdom in breach of immigration laws, and
 - (b) a reference in a provision other than one specified in subsection (1) to being in the United Kingdom in breach of immigration laws.

Commencement

Pt 1 s. 11(1)-(5)(b): November 7, 2002

12 British citizenship: registration of certain persons without other citizenship

- (1) The following shall be inserted after section 4A of the British Nationality Act 1981 (c. 61) (registration as British citizen)—

“4B Acquisition by registration: certain persons without other citizenship”

- (1) This section applies to a person who has the status of—
 - (a) British Overseas citizen,
 - (b) British subject under this Act, or
 - (c) British protected person.
- (2) A person to whom this section applies shall be entitled to be registered as a British citizen if—
 - (a) he applies for registration under this section,
 - (b) the Secretary of State is satisfied that the person does not have, apart from the status mentioned in subsection (1), any citizenship or nationality, and
 - (c) the Secretary of State is satisfied that the person has not after 4th July 2002 renounced, voluntarily relinquished or lost through action or inaction any citizenship or nationality.”
- (2) In section 14(1) of that Act (meaning of British citizen “by descent”), in paragraph (d) for “section 5” there shall be substituted “section 4B or 5”.

Commencement

Pt 1 s. 12(1)-(2): April 30, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

13 British citizenship: registration of certain persons born between 1961 and 1983

- (1) The following shall be inserted after section 4B of the British Nationality Act 1981 (registration as British citizen)—

“4C Acquisition by registration: certain persons born between 1961 and 1983”

- (1) A person is entitled to be registered as a British citizen if—
 - (a) he applies for registration under this section, and
 - (b) he satisfies each of the following conditions.
- (2) The first condition is that the applicant was born after 7th February 1961 and before 1st January 1983.
- (3) The second condition is that the applicant would at some time before 1st January 1983 have become a citizen of the United Kingdom and Colonies by virtue of section 5 of the British Nationality Act 1948 (c. 56) if that section had provided for citizenship by descent from a mother in the same terms as it provided for citizenship by descent from a father.
- (4) The third condition is that immediately before 1st January 1983 the applicant would have had the right of abode in the United Kingdom by virtue of section 2 of the Immigration Act 1971 (c. 77) had he become a citizen of the United Kingdom and Colonies as described in subsection (3) above.”
- (2) In section 14(1) of that Act (meaning of British citizen “by descent”), in paragraph (d) after the words “section 4B” (as substituted by section 12(2) of this Act) there shall be inserted “, 4C”.

Commencement

Pt 1 s. 13(1)-(2): April 30, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

14 Hong Kong

A person may not be registered as a British overseas territories citizen under a provision of the British Nationality Act 1981 (c. 61) by virtue of a connection with Hong Kong.

Commencement

Pt 1 s. 14: January 1, 2004 (SI 2003/3156 art. 2(b), art. 3)

15 Repeal of spent provisions

Schedule 2 (which repeals spent provisions) shall have effect.

Commencement

Pt 1 s. 15: November 7, 2002

PART 2

ACCOMMODATION CENTRES

Establishment

16 Establishment of centres

- (1) The Secretary of State may arrange for the provision of premises for the accommodation of persons in accordance with this Part.
- (2) A set of premises provided under this section is referred to in this Act as an “accommodation centre”.
- (3) The Secretary of State may arrange for—
 - (a) the provision of facilities at or near an accommodation centre for sittings of adjudicators appointed for the purpose of Part 5 in accordance with a determination [...]⁴ under paragraph 2 of Schedule 4;
 - (b) the provision of facilities at an accommodation centre for the taking of steps in connection with the determination of claims for asylum (within the meaning of section 18(3)).

Commencement

Pt 2 s. 16(1)-(3)(b): November 7, 2002

⁴ Words repealed by Constitutional Reform Act 2005 c. 4 Sch.18(2) para.1 (April 3, 2006 as SI 2006/1014)

Use of centres

 Not yet in force

17 Support for destitute asylum-seeker

- (1) The Secretary of State may arrange for the provision of accommodation for a person in an accommodation centre if—
- (a) the person is an asylum-seeker or the dependant of an asylum-seeker, and
 - (b) the Secretary of State thinks that the person is destitute or is likely to become destitute within a prescribed period.
- (2) The Secretary of State may make regulations about procedure to be followed in respect of the provision of accommodation under this section.
- (3) The regulations may, in particular, make provision—
- (a) specifying procedure to be followed in applying for accommodation in an accommodation centre;
 - (b) providing for an application to be combined with an application under or in respect of another enactment;
 - (c) requiring an applicant to provide information;
 - (d) specifying circumstances in which an application may not be considered (which provision may, in particular, provide for an application not to be considered where the Secretary of State is not satisfied that the information provided is complete or accurate or that the applicant is co-operating with enquiries under paragraph (e));
 - (e) about the making of enquiries by the Secretary of State;
 - (f) requiring a person to notify the Secretary of State of a change in circumstances.
- (4) Sections 18 to 20 define the following expressions for the purpose of this Part—
- (a) asylum-seeker,
 - (b) dependant, and
 - (c) destitute.

Commencement

Pt 2 s. 17(1)-(4)(c): Date not available (not yet in force) (2002 c. 41 Pt 8 s. 162)

 Partially in force

18 Asylum-seeker: definition

- (1) For the purposes of this Part a person is an “asylum-seeker” if—
- (a) he is at least 18 years old,
 - (b) he is in the United Kingdom,
 - (c) a claim for asylum has been made by him at a place designated by the Secretary of State,
 - (d) the Secretary of State has recorded the claim, and
 - (e) the claim has not been determined.
- (2) A person shall continue to be treated as an asylum-seeker despite subsection (1)(e) while—
- (a) his household includes a dependent child who is under 18, and
 - (b) he does not have leave to enter or remain in the United Kingdom.

(3) A claim for asylum is a claim by a person that to remove him from or require him to leave the United Kingdom would be contrary to the United Kingdom's obligations under—

- (a) the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol, or
- (b) Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4th November 1950.

Commencement

Pt 2 s. 18(1)-(3)(b): January 8, 2003 for the purposes specified in SI 2003/1 Sch.1; February 10, 2003 for the purposes specified in SI 2003/1 Sch.1; not yet in force otherwise (SI 2003/1 art. 2, Sch. 1 para. 1)

 Not yet in force

19 Destitution: definition

(1) Where a person has dependants, he and his dependants are destitute for the purpose of this Part if they do not have and cannot obtain both—

- (a) adequate accommodation, and
- (b) food and other essential items.

(2) Where a person does not have dependants, he is destitute for the purpose of this Part if he does not have and cannot obtain both—

- (a) adequate accommodation, and
- (b) food and other essential items.

(3) In determining whether accommodation is adequate for the purposes of subsection (1) or (2) the Secretary of State must have regard to any matter prescribed for the purposes of this subsection.

(4) In determining whether accommodation is adequate for the purposes of subsection (1) or (2) the Secretary of State may not have regard to—

- (a) whether a person has an enforceable right to occupy accommodation,
- (b) whether a person shares all or part of accommodation,
- (c) whether accommodation is temporary or permanent,
- (d) the location of accommodation, or
- (e) any other matter prescribed for the purposes of this subsection.

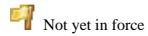
(5) The Secretary of State may by regulations specify items which are or are not to be treated as essential items for the purposes of subsections (1) and (2).

(6) The Secretary of State may by regulations—

- (a) provide that a person is not to be treated as destitute for the purposes of this Part in specified circumstances;
- (b) enable or require the Secretary of State in deciding whether a person is destitute to have regard to income which he or a dependent of his might reasonably be expected to have;
- (c) enable or require the Secretary of State in deciding whether a person is destitute to have regard to support which is or might reasonably be expected to be available to the person or a dependent of his;
- (d) enable or require the Secretary of State in deciding whether a person is destitute to have regard to assets of a prescribed kind which he or a dependent of his has or might reasonably be expected to have;
- (e) make provision as to the valuation of assets.

Commencement

Pt 2 s. 19(1)-(6)(e): Date not available (not yet in force) (2002 c. 41 Pt 8 s. 162)



Not yet in force

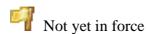
20 Dependant: definition

For the purposes of this Part a person is a “dependant” of an asylum-seeker if (and only if) that person—

- (a) is in the United Kingdom, and
- (b) is within a prescribed class.

Commencement

Pt 2 s. 20(a)-(b): Date not available (not yet in force) (2002 c. 41 Pt 8 s. 162)



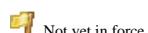
Not yet in force

21 Sections 17 to 20: supplementary

- (1) This section applies for the purposes of sections 17 to 20.
- (2) The Secretary of State may inquire into and decide a person's age.
- (3) A claim for asylum shall be treated as determined at the end of such period as may be prescribed beginning with—
 - (a) the date on which the Secretary of State notifies the claimant of his decision on the claim, or
 - (b) if the claimant appeals against the Secretary of State's decision, the date on which the appeal is disposed of.
- (4) A notice under subsection (3)(a)—
 - (a) must be in writing, and
 - (b) if sent by first class post to the claimant's last known address or to the claimant's representative, shall be treated as being received by the claimant on the second day after the day of posting.
- (5) An appeal is disposed of when it is no longer pending for the purpose of—
 - (a) Part 5 of this Act, or
 - (b) the Special Immigration Appeals Commission Act 1997 (c. 68).

Commencement

Pt 2 s. 21(1)-(5)(b): Date not available (not yet in force) (2002 c. 41 Pt 8 s. 162)



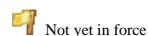
Not yet in force

22 Immigration and Asylum Act 1999, s. 95

The Secretary of State may provide support under section 95 of the Immigration and Asylum Act 1999 (c. 33) (destitute asylum-seeker) by arranging for the provision of accommodation in an accommodation centre.

Commencement

Pt 2 s. 22: Date not available (not yet in force) (2002 c. 41 Pt 8 s. 162)



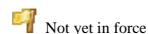
Not yet in force

23 Person subject to United Kingdom entrance control

- (1) A residence restriction may include a requirement to reside at an accommodation centre.
- (2) In subsection (1) “residence restriction” means a restriction imposed under—
 - (a) paragraph 21 of Schedule 2 to the Immigration Act 1971 (c. 77) (temporary admission or release from detention), or
 - (b) paragraph 2(5) of Schedule 3 to that Act (control pending deportation).
- (3) Where a person is required to reside in an accommodation centre by virtue of subsection (1) the Secretary of State must arrange for the provision of accommodation for the person in an accommodation centre.
- (4) But if the person is required to leave an accommodation centre by virtue of section 26 or 30 he shall be treated as having broken the residence restriction referred to in subsection (1).
- (5) The Secretary of State may provide support under section 4 of the Immigration and Asylum Act 1999 (persons subject to entrance control) (including that section as amended by section 49 of this Act) by arranging for the provision of accommodation in an accommodation centre.

Commencement

Pt 2 s. 23(1)-(5): Date not available (not yet in force) (2002 c. 41 Pt 8 s. 162)



Not yet in force

24 Provisional assistance

- (1) If the Secretary of State thinks that a person may be eligible for the provision of accommodation in an accommodation centre under section 17, he may arrange for the provision for the person, pending a decision about eligibility, of—
 - (a) accommodation in an accommodation centre, or
 - (b) other support or assistance (of any kind).
- (2) Section 99 of the Immigration and Asylum Act 1999 (c. 33) (provision of support by local authority) shall have effect in relation to the provision of support for persons under subsection (1) above as it has effect in relation to the provision of support for asylum-seekers under sections 95 and 98 of that Act.

Commencement

Pt 2 s. 24(1)-(2): Date not available (not yet in force) (2002 c. 41 Pt 8 s. 162)

 Not yet in force

25 Length of stay

- (1) The Secretary of State may not arrange for the provision of accommodation for a person in an accommodation centre if he has been a resident of an accommodation centre for a continuous period of six months.
- (2) But—
 - (a) subsection (1) may be disapplied in respect of a person, generally or to a specified extent, by agreement between the Secretary of State and the person, and
 - (b) if the Secretary of State thinks it appropriate in relation to a person because of the circumstances of his case, the Secretary of State may direct that subsection (1) shall have effect in relation to the person as if the period specified in that subsection were the period of nine months.
- (3) Section 51 is subject to this section.
- (4) The Secretary of State may by order amend subsection (1) or (2)(b) so as to substitute a shorter period for a period specified.

Commencement

Pt 2 s. 25(1)-(4): Date not available (not yet in force) (2002 c. 41 Pt 8 s. 162)

 Not yet in force

26 Withdrawal of support

- (1) The Secretary of State may stop providing support for a person under section 17 or 24 if—
 - (a) the Secretary of State suspects that the person or a dependant of his has committed an offence by virtue of section 35, or
 - (b) the person or a dependant of his has failed to comply with directions of the Secretary of State as to the time or manner of travel to accommodation provided under section 17 or 24.
- (2) The Secretary of State may by regulations specify other circumstances in which he may stop providing support for a person under section 17 or 24.
- (3) In determining whether or not to provide a person with support or assistance under section 17 or 24 of this Act or section 4, 95 or 98 of the Immigration and Asylum Act 1999 (asylum-seeker) the Secretary of State may take into account the fact that—
 - (a) he has withdrawn support from the person by virtue of this section or section 30(4) or (5), or
 - (b) circumstances exist which would have enabled the Secretary of State to withdraw support from the person by virtue of this section had he been receiving support.
- (4) This section is without prejudice to section 103 of the Immigration and Asylum Act 1999 (c. 33) (appeal against refusal to support).

Commencement

Pt 2 s. 26(1)-(4): Date not available (not yet in force) (2002 c. 41 Pt 8 s. 162)

Operation of centres Not yet in force**27 Resident of centre**

A reference in this Part to a resident of an accommodation centre is a reference to a person for whom accommodation in the centre is provided—

- (a) under section 17,
- (b) by virtue of section 22,
- (c) by virtue of section 23, or
- (d) under section 24.

Commencement

Pt 2 s. 27(a)-(d): Date not available (not yet in force) (2002 c. 41 Pt 8 s. 162)

 Not yet in force**28 Manager of centre**

A reference in this Part to the manager of an accommodation centre is a reference to a person who agrees with the Secretary of State to be wholly or partly responsible for the management of the centre.

Commencement

Pt 2 s. 28: Date not available (not yet in force) (2002 c. 41 Pt 8 s. 162)

 Not yet in force**29 Facilities**

(1) The Secretary of State may arrange for the following to be provided to a resident of an accommodation centre—

- (a) food and other essential items;
- (b) money;
- (c) assistance with transport for the purpose of proceedings under the Immigration Acts or in connection with a claim for asylum;
- (d) transport to and from the centre;
- (e) assistance with expenses incurred in connection with carrying out voluntary work or other activities;
- (f) education and training;
- (g) facilities relating to health;
- (h) facilities for religious observance;
- (i) anything which the Secretary of State thinks ought to be provided for the purpose of providing a resident with proper occupation and for the purpose of maintaining good order;
- (j) anything which the Secretary of State thinks ought to be provided for a person because of his exceptional circumstances.

(2) The Secretary of State may make regulations specifying the amount or maximum amount of money to be provided under subsection (1)(b).

(3) The Secretary of State may arrange for the provision of facilities in an accommodation centre for the use of a person in providing legal advice to a resident of the centre.

(4) The Secretary of State shall take reasonable steps to ensure that a resident of an accommodation centre has an opportunity to obtain legal advice before any appointment made by an immigration officer or an official of the Secretary of State for the purpose of obtaining information from the resident to be used in determining his claim for asylum.

(5) The Secretary of State may by order amend subsection (1) so as to add a reference to facilities which may be provided.

Commencement

Pt 2 s. 29(1)-(5): Date not available (not yet in force) (2002 c. 41 Pt 8 s. 162)

 Not yet in force

30 Conditions of residence

(1) The Secretary of State may make regulations about conditions to be observed by residents of an accommodation centre.

(2) Regulations under subsection (1) may, in particular, enable a condition to be imposed in accordance with the regulations by—

- (a) the Secretary of State, or
- (b) the manager of an accommodation centre.

(3) A condition imposed by virtue of this section may, in particular—

- (a) require a person not to be absent from the centre during specified hours without the permission of the Secretary of State or the manager;
- (b) require a person to report to an immigration officer or the Secretary of State.

(4) If a resident of an accommodation centre breaches a condition imposed by virtue of this section, the Secretary of State may—

- (a) require the resident and any dependant of his to leave the centre;
- (b) authorise the manager of the centre to require the resident and any dependant of his to leave the centre.

(5) If a dependant of a resident of an accommodation centre breaches a condition imposed by virtue of this section, the Secretary of State may—

- (a) require the resident and any dependant of his to leave the centre;
- (b) authorise the manager of the centre to require the resident and any dependant of his to leave the centre.

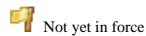
(6) Regulations under this section must include provision for ensuring that a person subject to a condition is notified of the condition in writing.

(7) A condition imposed by virtue of this section is in addition to any restriction imposed under paragraph 21 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry to United Kingdom) or under paragraph 2(5) of Schedule 3 to that Act (control pending deportation).

(8) A reference in this Part to a condition of residence is a reference to a condition imposed by virtue of this section.

Commencement

Pt 2 s. 30(1)-(8): Date not available (not yet in force) (2002 c. 41 Pt 8 s. 162)



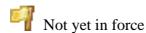
Not yet in force

31 Financial contribution by resident

- (1) A condition of residence may, in particular, require a resident of an accommodation centre to make payments to—
- the Secretary of State, or
 - the manager of the centre.
- (2) The Secretary of State may make regulations enabling him to recover sums representing the whole or part of the value of accommodation and other facilities provided to a resident of an accommodation centre if—
- accommodation is provided for the resident in response to an application by him for support,
 - when the application was made the applicant had assets which were not capable of being realised, and
 - the assets have become realisable.
- (3) In subsection (2) “assets” includes assets outside the United Kingdom.
- (4) An amount recoverable by virtue of regulations made under subsection (2) may be recovered—
- as a debt due to the Secretary of State;
 - by another prescribed method (which may include the imposition or variation of a residence condition).

Commencement

Pt 2 s. 31(1)-(4)(b): Date not available (not yet in force) (2002 c. 41 Pt 8 s. 162)



Not yet in force

32 Tenure

- (1) A resident of an accommodation centre shall not be treated as acquiring a tenancy of or other interest in any part of the centre (whether by virtue of an agreement between the resident and another person or otherwise).
- (2) Subsection (3) applies where—
- the Secretary of State decides to stop arranging for the provision of accommodation in an accommodation centre for a resident of the centre, or
 - a resident of an accommodation centre is required to leave the centre in accordance with section 30.
- (3) Where this subsection applies—
- the Secretary of State or the manager of the centre may recover possession of the premises occupied by the resident, and
 - the right under paragraph (a) shall be enforceable in accordance with procedure prescribed by regulations made by the Secretary of State.

(4) Any licence which a resident of an accommodation centre has to occupy premises in the centre shall be an excluded licence for the purposes of the Protection from Eviction Act 1977 (c. 43).

(5) The following shall be inserted after section 3A(7A) of the Protection from Eviction Act 1977 (disapplication of section 3: Part VI of Immigration and Asylum Act 1999 (c. 33))—

“(7B) Section 32 of the Nationality, Immigration and Asylum Act 2002 (accommodation centre: tenure) provides for a resident's licence to occupy an accommodation centre to be an excluded licence.”

(6) The following shall be inserted after section 23A(5A) of the Rent (Scotland) Act 1984 (c. 58) (excluded tenancies and occupancy rights)—

“(5B) Nothing in section 23 of this Act applies to a resident's occupancy of an accommodation centre provided under section 16 or 24(1)(b) of the Nationality, Immigration and Asylum Act 2002 (“resident” being construed in accordance with section 27 of that Act).”

(7) In this section a reference to an accommodation centre includes a reference to premises in which accommodation is provided under section 24(1)(b).

Commencement

Pt 2 s. 32(1)-(7): Date not available (not yet in force) (2002 c. 41 Pt 8 s. 162)

 Not yet in force

33 Advisory Groups

(1) The Secretary of State shall appoint a group (to be known as an Accommodation Centre Advisory Group) for each accommodation centre.

(2) The Secretary of State may by regulations—

- (a) confer functions on Advisory Groups;
- (b) make provision about the constitution and proceedings of Advisory Groups.

(3) Regulations under subsection (2)(a) must, in particular, provide for members of an accommodation centre's Advisory Group—

- (a) to visit the centre;
- (b) to hear complaints made by residents of the centre;
- (c) to report to the Secretary of State.

(4) The manager of an accommodation centre must permit a member of the centre's Advisory Group on request—

- (a) to visit the centre at any time;
- (b) to visit any resident of the centre at any time, provided that the resident consents.

(5) A member of an Advisory Group shall hold and vacate office in accordance with the terms of his appointment (which may include provision about retirement, resignation or dismissal).

(6) The Secretary of State may—

- (a) defray expenses of members of an Advisory Group;
- (b) make facilities available to members of an Advisory Group.

Commencement

Pt 2 s. 33(1)-(6)(b): Date not available (not yet in force) (2002 c. 41 Pt 8 s. 162)

*General***34 [...]⁵**

 Partially in force

35 Ancillary provisions

(1) The following provisions of the Immigration and Asylum Act 1999 (c. 33) shall apply for the purposes of this Part as they apply for the purposes of Part VI of that Act (support for asylum-seeker)—

- (a) section 105 (false representation),
- (b) section 106 (dishonest representation),
- (c) section 107 (delay or obstruction),
- (d) section 108 (failure of sponsor to maintain),
- (e) section 109 (offence committed by body),
- (f) section 112 (recovery of expenditure),
- (g) section 113 (recovery of expenditure from sponsor),
- (h) section 124 (corporation sole), and
- (i) section 127 (redirection of post).

(2) In the application of section 112 a reference to something done under section 95 or 98 of that Act shall be treated as 00000000 a reference to something done under section 17 or 24 of this Act.

(3) In the application of section 113 a reference to section 95 of that Act shall be treated as a reference to section 17 of this Act.

Commencement

Pt 2 s. 35(1)-(1)(g), (1)(i)-(3): Date not available (not yet in force)

Pt 2 s. 35(1)(h): November 7, 2002

 Not yet in force

36 Education: general

(1) For the purposes of section 13 of the Education Act 1996 (c. 56) (general responsibility of local education authority) a resident of an accommodation centre shall not be treated as part of the population of a local education authority's area.

(2) A child who is a resident of an accommodation centre may not be admitted to a maintained school or a maintained nursery (subject to section 37).

(3) But subsection (2) does not prevent a child's admission to a school which is—
(a) a community special school or a foundation special school, and

⁵ Repealed, never in force, by UK Borders Act 2007 c. 30 Sch.1 para.1 (April 1, 2008 as SI 2008/309)

- (b) named in a statement in respect of the child under section 324 of the Education Act 1996 (c. 56) (special educational needs).
- (4) In subsections (2) and (3)—
- (a) “maintained school” means a maintained school within the meaning of section 20(7) of the School Standards and Framework Act 1998 (c. 31) (definition), and
 - (b) “maintained nursery” means a facility for nursery education, within the meaning of section 117 of that Act, provided by a local education authority.
- (5) The following shall not apply in relation to a child who is a resident of an accommodation centre (subject to section 37)—
- (a) section 86(1) and (2) of the School Standards and Framework Act 1998 (parental preference),
 - (b) section 94 of that Act (appeal),
 - (c) section 19 of the Education Act 1996 (education out of school),
 - (d) section 316(2) and (3) of that Act (child with special educational needs to be educated in mainstream school), and
 - (e) paragraphs 3 and 8 of Schedule 27 to that Act (special education needs: making of statement: parental preference).
- (6) The power of the Special Educational Needs Tribunal under section 326(3) of the Education Act 1996 (appeal against content of statement) is subject to subsection (2) above.
- (7) A person exercising a function under this Act or the Education Act 1996 shall (subject to section 37) secure that a child who is a resident of an accommodation centre and who has special educational needs shall be educated by way of facilities provided under section 29(1)(f) of this Act unless that is incompatible with—
- (a) his receiving the special educational provision which his learning difficulty calls for,
 - (b) the provision of efficient education for other children who are residents of the centre, or
 - (c) the efficient use of resources.
- (8) A person may rely on subsection (7)(b) only where there is no action—
- (a) which could reasonably be taken by that person or by another person who exercises functions, or could exercise functions, in respect of the accommodation centre concerned, and
 - (b) as a result of which subsection (7)(b) would not apply.
- (9) An accommodation centre is not a school within the meaning of section 4 of the Education Act 1996 (definition); but—
- (a) the School Inspections Act 1996 (c. 57) shall apply to educational facilities provided at an accommodation centre as if the centre were a school (for which purpose a reference to the appropriate authority shall be taken as a reference to the person (or persons) responsible for the provision of education at the accommodation centre),
 - (b) section 329A of the Education Act 1996 (review or assessment of educational needs at request of responsible body) shall have effect as if—
 - (i) an accommodation centre were a relevant school for the purposes of that section,
 - (ii) a child for whom education is provided at an accommodation centre under section 29(1)(f) were a registered pupil at the centre, and

- (iii) a reference in section 329A to the responsible body in relation to an accommodation centre were a reference to any person providing education at the centre under section 29(1)(f), and
 - (c) section 140 of the Learning and Skills Act 2000 (c. 21) (learning difficulties: assessment of post-16 needs) shall have effect as if an accommodation centre were a school.
- (10) Subsections (1), (2) and (5) shall not apply in relation to an accommodation centre if education is not provided for children who are residents of the centre under section 29(1)(f).
- (11) An expression used in this section and in the Education Act 1996 (c. 56) shall have the same meaning in this section as in that Act.

Commencement

Pt 2 s. 36(1)-(11): Date not available (not yet in force) (2002 c. 41 Pt 8 s. 162)

Amendments Pending

Pt 2 s. 36(6): words substituted (date to be announced - substitution came into force on November 3, 2008 but cannot take effect until the commencement of 2002 c.41 s.36(6)) by SI 2008/2833 Sch. 3 para. 197

Pt 2 s. 36(9)(a): substituted (date to be announced - substitution came in to force on September 1, 2005 as specified in SI 2005/2034 art.4 but cannot take effect until the commencement of 2002 c.41 s.36) by 2005 c. 18 Sch. 9 para. 30

Pt 2 s. 36(9)(a): words substituted (date to be announced - substitution came in to force on September 1, 2006 as specified in as SI 2006/1338 but cannot take effect until the commencement of 2002 c.41 s.36) by 2005 c. 18 Sch. 9 para. 30

 Not yet in force

37 Education: special cases

- (1) This section applies to a child if a person who provides education to residents of an accommodation centre recommends in writing to the local education authority for the area in which the centre is that this section should apply to the child on the grounds that his special circumstances call for provision that can only or best be arranged by the authority.
- (2) A local education authority may—
 - (a) arrange for the provision of education for a child to whom this section applies;
 - (b) disapply a provision of section 36 in respect of a child to whom this section applies.
- (3) In determining whether to exercise a power under subsection (2) in respect of a child a local education authority shall have regard to any relevant guidance issued by the Secretary of State.
- (4) The governing body of a maintained school shall comply with a requirement of the local education authority to admit to the school a child to whom this section applies.
- (5) Subsection (4) shall not apply where compliance with a requirement would prejudice measures taken for the purpose of complying with a duty arising under section 1(6) of the School Standards and Framework Act 1998 (c. 31) (limit on infant class size).
- (6) A local education authority may not impose a requirement under subsection (4) in respect of a school unless the authority has consulted the school in accordance with regulations made by the Secretary of State.

(7) In the case of a maintained school for which the local education authority are the admission authority, the authority may not arrange for the admission of a child to whom this section applies unless the authority has notified the school in accordance with regulations made by the Secretary of State.

(8) In this section—

- (a) “maintained school” means a maintained school within the meaning of section 20(7) of the School Standards and Framework Act 1998 (definition), and
- (b) an expression which is also used in the Education Act 1996 (c. 56) shall have the same meaning as it has in that Act.

Commencement

Pt 2 s. 37(1)-(8)(b): Date not available (not yet in force) (2002 c. 41 Pt 8 s. 162)

38 Local authority

(1) A local authority may in accordance with arrangements made by the Secretary of State—

- (a) assist in arranging for the provision of an accommodation centre;
- (b) make premises available for an accommodation centre;
- (c) provide services in connection with an accommodation centre.

(2) In particular, a local authority may—

- (a) incur reasonable expenditure;
- (b) provide services outside its area;
- (c) provide services jointly with another body;
- (d) form a company;
- (e) tender for or enter into a contract;
- (f) do anything (including anything listed in paragraphs (a) to (e)) for a preparatory purpose.

(3) In this section “local authority” means—

- (a) a local authority within the meaning of section 94 of the Immigration and Asylum Act 1999 (c. 33), and
- (b) a Northern Ireland authority within the meaning of section 110 of that Act and an Education and Library Board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3)).

Commencement

Pt 2 s. 38(1)-(3)(b): November 7, 2002

 Not yet in force

39 “Prescribed”: orders and regulations

(1) In this Part “prescribed” means prescribed by the Secretary of State by order or regulations.

(2) An order or regulations under this Part may—

- (a) make provision which applies generally or only in specified cases or circumstances (which may be determined wholly or partly by reference to location);
- (b) make different provision for different cases or circumstances;

- (c) include consequential, transitional or incidental provision.
- (3) An order or regulations under this Part must be made by statutory instrument.
- (4) An order or regulations under any of the following provisions of this Part shall be subject to annulment in pursuance of a resolution of either House of Parliament—
- (a) section 17,
 - (b) section 19,
 - (c) section 20,
 - (d) section 21,
 - (e) section 26,
 - (f) section 29,
 - (g) section 31,
 - (h) section 32,
 - (i) section 33,
 - (j) section 37,
 - (k) section 40, and
 - (l) section 41.
- (5) An order under section 25 or regulations under section 30 may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

Commencement

Pt 2 s. 39(1)-(5): Date not available (not yet in force) (2002 c. 41 Pt 8 s. 162)

 Partially in force

40 Scotland

- (1) The Secretary of State may not make arrangements under section 16 for the provision of premises in Scotland unless he has consulted the Scottish Ministers.
- (2) The Secretary of State may by order make provision in relation to the education of residents of accommodation centres in Scotland.
- (3) An order under subsection (2) may, in particular—
- (a) apply, disapply or modify the effect of an enactment (which may include a provision made by or under an Act of the Scottish Parliament);
 - (b) make provision having an effect similar to the effect of a provision of section 36 or 37.

Commencement

Pt 2 s. 40(1): November 7, 2002

Pt 2 s. 40(2)-(3)(b): Date not available (not yet in force)

 Partially in force

41 Northern Ireland

- (1) The Secretary of State may not make arrangements under section 16 for the provision of premises in Northern Ireland unless he has consulted the First Minister and the deputy First Minister.

(2) The Secretary of State may by order make provision in relation to the education of residents of accommodation centres in Northern Ireland.

(3) An order under subsection (2) may, in particular—

- (a) apply, disapply or modify the effect of an enactment (which may include a provision made by or under Northern Ireland legislation);
- (b) make provision having an effect similar to the effect of a provision of section 36 or 37.

Commencement

Pt 2 s. 41(1): November 7, 2002

Pt 2 s. 41(2)-(3)(b): Date not available (not yet in force)

42 Wales

The Secretary of State may not make arrangements under section 16 for the provision of premises in Wales unless he has consulted the National Assembly for Wales.

Commencement

Pt 2 s. 42: November 7, 2002

PART 3

OTHER SUPPORT AND ASSISTANCE

43 Asylum-seeker: form of support

(1) The Secretary of State may make an order restricting the application of section 96(1)(b) of the Immigration and Asylum Act 1999 (c. 33) (support for asylum-seeker: essential living needs)—

- (a) in all circumstances, to cases in which support is being provided under section 96(1)(a) (accommodation), or
- (b) in specified circumstances only, to cases in which support is being provided under section 96(1)(a).

(2) An order under subsection (1)(b) may, in particular, make provision by reference to—

- (a) location;
- (b) the date of an application.

(3) An order under subsection (1) may include transitional provision.

(4) An order under subsection (1)—

- (a) must 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.

Commencement

Pt 3 s. 43(1)-(4)(b): November 7, 2002

 Not yet in force

44 Destitute asylum-seeker

(1) Section 94 of the Immigration and Asylum Act 1999 (c. 33) (support for destitute asylum-seeker) shall be amended as follows.

(2) In subsection (1) for the definition of “asylum-seeker” substitute—

““asylum-seeker” means a person—

- (a) who is at least 18 years old,
- (b) who is in the United Kingdom,
- (c) who has made a claim for asylum at a place designated by the Secretary of State,
- (d) whose claim has been recorded by the Secretary of State, and
- (e) whose claim has not been determined;”.

(3) In subsection (1) for the definition of “dependant” substitute—

““dependant” in relation to an asylum-seeker or a supported person means a person who—

- (a) is in the United Kingdom, and
- (b) is within a prescribed class;”.

(4) For subsection (3) substitute—

“(3) A claim for asylum shall be treated as determined for the purposes of subsection (1) at the end of such period as may be prescribed beginning with—

- (a) the date on which the Secretary of State notifies the claimant of his decision on the claim, or
- (b) if the claimant appeals against the Secretary of State's decision, the date on which the appeal is disposed of.

(3A) A person shall continue to be treated as an asylum-seeker despite paragraph (e) of the definition of “asylum-seeker” in subsection (1) while—

- (a) his household includes a dependant child who is under 18, and
- (b) he does not have leave to enter or remain in the United Kingdom.”

(5) Omit subsections (5) and (6).

(6) The following shall be substituted for section 95(2) to (8) of the Immigration and Asylum Act 1999 (c. 33) (support for destitute asylum-seeker: interpretation)—

“(2) Where a person has dependants, he and his dependants are destitute for the purpose of this section if they do not have and cannot obtain both—

- (a) adequate accommodation, and
- (b) food and other essential items.

(3) Where a person does not have dependants, he is destitute for the purpose of this section if he does not have and cannot obtain both—

- (a) adequate accommodation, and
- (b) food and other essential items.

- (4) In determining whether accommodation is adequate for the purposes of subsection (2) or (3) the Secretary of State must have regard to any matter prescribed for the purposes of this subsection.
- (5) In determining whether accommodation is adequate for the purposes of subsection (2) or (3) the Secretary of State may not have regard to—
 - (a) whether a person has an enforceable right to occupy accommodation,
 - (b) whether a person shares all or part of accommodation,
 - (c) whether accommodation is temporary or permanent,
 - (d) the location of accommodation, or
 - (e) any other matter prescribed for the purposes of this subsection.
- (6) The Secretary of State may by regulations specify items which are or are not to be treated as essential items for the purposes of subsections (2) and (3).
- (7) The Secretary of State may by regulations—
 - (a) provide that a person is not to be treated as destitute for the purposes of this Part in specified circumstances;
 - (b) enable or require the Secretary of State in deciding whether a person is destitute to have regard to income which he or a dependant of his might reasonably be expected to have;
 - (c) enable or require the Secretary of State in deciding whether a person is destitute to have regard to support which is or might reasonably be expected to be available to the person or a dependant of his;
 - (d) enable or require the Secretary of State in deciding whether a person is destitute to have regard to assets of a prescribed kind which he or a dependant of his has or might reasonably be expected to have;
 - (e) make provision as to the valuation of assets.”

Commencement

Pt 3 s. 44(1)-(6): Date not available (not yet in force) (2002 c. 41 Pt 8 s. 162)

 Not yet in force

45 Section 44: supplemental

- (1) The following shall be substituted for section 96(1)(b) of the Immigration and Asylum Act 1999 (ways of providing support)—

“(b) by providing the supported person and his dependants (if any) with food and other essential items;”.
- (2) In section 97 of the Immigration and Asylum Act 1999 (c. 33) (support: supplemental)—
 - (a) in subsection (4) for “essential living needs” there shall be substituted “food and other essential items”,
 - (b) in subsection (5) for “essential living needs” there shall be substituted “food and other essential items”, and
 - (c) in subsection (6) for “living needs” there shall be substituted “items”.
- (3) Paragraphs 2 and 6 of Schedule 8 to the Immigration and Asylum Act 1999 (support: regulations) shall cease to have effect.

(4) In paragraph 3 of Schedule 9 to the Immigration and Asylum Act 1999 (support: interim provision)—

- (a) for “Subsections (3) to (8) of section 95” substitute “Subsections (2) to (6) of section 95”, and
- (b) for “subsections (5) and (7)” substitute “subsections (4) and (5)”.

(5) The following shall be substituted for section 21(1B) of the National Assistance Act 1948 (c. 29) (duty of local authority to provide accommodation: exclusion of destitute asylum-seeker: interpretation)—

“(1B) Section 95(2) to (7) of that Act shall apply for the purposes of subsection (1A) above; and for that purpose a reference to the Secretary of State in section 95(4) or (5) shall be treated as a reference to a local authority.”

(6) The following shall be substituted for section 45(4B) of the Health Services and Public Health Act 1968 (c. 46) (local authority promotion of welfare of elderly: exclusion of destitute asylum-seeker: interpretation)—

“(4B) Section 95(2) to (7) of that Act shall apply for the purposes of subsection (4A) above; and for that purpose a reference to the Secretary of State in section 95(4) or (5) shall be treated as a reference to a local authority.”

(7) The following shall be substituted for paragraph 2(2B) of Schedule 8 to the National Health Service Act 1977 (c. 49) (local authority arrangements for prevention and care: exclusion of asylum-seeker: interpretation)—

“(2B) Section 95(2) to (7) of that Act shall apply for the purposes of sub-paragraph (2A) above; and for that purpose a reference to the Secretary of State in section 95(4) or (5) shall be treated as a reference to a local social services authority.”

Commencement

Pt 3 s. 45(1)-(7): Date not available (not yet in force) (2002 c. 41 Pt 8 s. 162)

Amendments Pending

Pt 3 s. 45(7): repealed (date to be announced) by 2006 c. 43 Sch. 4 para. 1

 Not yet in force

46 Section 44: supplemental: Scotland and Northern Ireland

(1) The following shall be substituted for section 12(2B) of the Social Work (Scotland) Act 1968 (c. 49) (general social welfare services of local authorities — exclusion of destitute asylum seeker: interpretation)—

“(2B) Section 95(2) to (7) of that Act shall apply for the purposes of subsection (2A) of this section; and for that purpose a reference to the Secretary of State in section 95(4) or (5) shall be treated as a reference to a local authority.”

(2) The following shall be substituted for section 13A(5) of that Act (provision of residential accommodation with nursing — exclusion of destitute asylum seeker: interpretation)—

“(5) Section 95(2) to (7) of that Act shall apply for the purposes of subsection (4) of this section; and for that purpose a reference to the Secretary of State in section 95(4) or (5) shall be treated as a reference to a local authority.”

(3) The following shall be substituted for section 13B(4) of that Act (provision of care and after-care — exclusion of destitute asylum seeker: interpretation)—

“(4) Section 95(2) to (7) of that Act shall apply for the purposes of subsection (3) of this section; and for that purpose a reference to the Secretary of State in section 95(4) or (5) shall be treated as a reference to a local authority.”

(4) The following shall be substituted for section 7(4) of the Mental Health (Scotland) Act 1984 (c. 36) (functions of local authorities — exclusion of destitute asylum seeker: interpretation)—

“(4) Section 95(2) to (7) of that Act shall apply for the purposes of subsection (3) of this section; and for that purpose a reference to the Secretary of State in section 95(4) or (5) shall be treated as a reference to a local authority.”

(5) The following shall be substituted for section 8(5) of that Act (provision of after-care services — exclusion of destitute asylum seeker: interpretation)—

“(5) Section 95(2) to (7) of that Act shall apply for the purposes of subsection (4) of this section; and for that purpose a reference to the Secretary of State in section 95(4) or (5) shall be treated as a reference to a local authority.”

(6) The following shall be substituted for Article 7(3A) of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)) (prevention of illness, care and after-care: exclusion of asylum-seeker: interpretation)—

“(3A) Section 95(2) to (7) of that Act shall apply for the purpose of paragraph (3); and for that purpose a reference to the Secretary of State in section 95(4) or (5) shall be treated as a reference to the Department.”

(7) The following shall be substituted for Article 15(7) of that Order (general social welfare: exclusion of destitute asylum-seeker: interpretation)—

“(7) Section 95(2) to (7) of that Act shall apply for the purpose of paragraph (6); and for that purpose a reference to the Secretary of State in section 95(4) or (5) shall be treated as a reference to the Department.”

Commencement

Pt 3 s. 46(1)-(7): Date not available (not yet in force) (2002 c. 41 Pt 8 s. 162)

Amendments Pending

Pt 3 s. 46(4): s.46(4) substituted for s.46(4) and (5) (date to be announced - substitution came into force on October 5, 2005 but could not take effect until the commencement of 2002 c.41 s.46) by SI 2005/2078 Sch. 1 para. 6

Pt 3 s. 46(5): s.46(4) substituted for s.46(4) and (5) (date to be announced - substitution came into force on October 5, 2005 but could not take effect until the commencement of 2002 c.41 s.46) by SI 2005/2078 Sch. 1 para. 6

 Not yet in force

47 Asylum-seeker: family with children

The following shall be substituted for section 122 of the Immigration and Asylum Act 1999 (c. 33) (destitute asylum-seeker with child: duty to support)—

“122 Family with children

- (1) This section applies where a person (“the asylum-seeker”) applies for support under section 95 of this Act or section 17 of the Nationality, Immigration and Asylum Act 2002 (accommodation centres) if—
 - (a) the Secretary of State thinks that the asylum-seeker is eligible for support under either or both of those sections, and
 - (b) the asylum-seeker's household includes a dependant child who is under 18.
- (2) The Secretary of State must offer the provision of support for the child, as part of the asylum-seeker's household, under one of the sections mentioned in subsection (1).
- (3) A local authority (or, in Northern Ireland, an authority) may not provide assistance for a child if—
 - (a) the Secretary of State is providing support for the child in accordance with an offer under subsection (2),
 - (b) an offer by the Secretary of State under subsection (2) remains open in respect of the child, or
 - (c) the Secretary of State has agreed that he would make an offer in respect of the child under subsection (2) if an application were made as described in subsection (1).
- (4) In subsection (3) “assistance” means assistance under—
 - (a) section 17 of the Children Act 1989 (c. 41) (local authority support),
 - (b) section 22 of the Children (Scotland) Act 1995 (c. 36) (similar provision for Scotland), or
 - (c) Article 18 of the Children (Northern Ireland) Order 1995 (S.I. 1995/775 (N.I. 2)) (similar provision for Northern Ireland).
- (5) The Secretary of State may by order disapply subsection (3) in specified circumstances.
- (6) Where subsection (3) ceases to apply to a child because the Secretary of State stops providing support, no local authority may provide assistance for the child except the authority for the area within which the support was provided.”

Commencement

Pt 3 s. 47: Date not available (not yet in force) (2002 c. 41 Pt 8 s. 162)

48 Young asylum-seeker

The following provisions of the Immigration and Asylum Act 1999 (c. 33) shall have effect as if the definition of asylum-seeker in section 94(1) of that Act did not exclude persons who are under 18—

- (a) section 110 (local authority expenditure on asylum-seekers), and
- (b) section 111 (grants to voluntary organisations).

Commencement

Pt 3 s. 48(a)-(b): November 7, 2002

49 Failed asylum-seeker

(1) The following shall be added at the end of section 4 of the Immigration and Asylum Act 1999 (accommodation for person on temporary admission or release)—

“(2) The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of a person if—

- (a) he was (but is no longer) an asylum-seeker, and
- (b) his claim for asylum was rejected.

(3) The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of a dependant of a person for whom facilities may be provided under subsection (2).

(4) The following expressions have the same meaning in this section as in Part VI of this Act (as defined in section 94)—

- (a) asylum-seeker,
- (b) claim for asylum, and
- (c) dependant.”

(2) The present section 4 of the Immigration and Asylum Act 1999 (c. 33) becomes subsection (1) (and its heading becomes “Accommodation”).

Commencement

Pt 3 s. 49(1)-(2): November 7, 2002

50 Conditions of support

(1) The following shall be inserted after section 95(9) of the Immigration and Asylum Act 1999 (support for asylum-seeker: condition)—

“(9A) A condition imposed under subsection (9) may, in particular, relate to—

- (a) any matter relating to the use of the support provided, or
- (b) compliance with a restriction imposed under paragraph 21 of Schedule 2 to the 1971 Act (temporary admission or release from detention) or paragraph 2 or 5 of Schedule 3 to that Act (restriction pending deportation).”

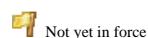
(2) The following shall be inserted after paragraph 6 of Schedule 9 to that Act (asylum-seeker: interim support)—

“6A.

The regulations may, in particular, require support to be provided subject to a condition of compliance with any restriction imposed under paragraph 21 of Schedule 2 to the 1971 Act (temporary admission or release from detention) or paragraph 2 or 5 of Schedule 3 to that Act (restriction pending deportation).”

Commencement

Pt 3 s. 50(1)-(2): November 7, 2002



Not yet in force

51 Choice of form of support

(1) The Secretary of State may refuse to provide support for a person under a provision specified in subsection (2) on the grounds that an offer has been made to the person of support under another provision specified in that subsection.

(2) The provisions are—

- (a) sections 17 and 24 of this Act,
- (b) section 4 of the Immigration and Asylum Act 1999 (accommodation for person temporarily admitted or released from detention), and
- (c) sections 95 and 98 of that Act (support for destitute asylum-seeker).

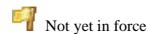
(3) In deciding under which of the provisions listed in subsection (2) to offer support to a person the Secretary of State may—

- (a) have regard to administrative or other matters which do not concern the person's personal circumstances;
- (b) regard one of those matters as conclusive;
- (c) apply different criteria to different persons for administrative reasons (which may include the importance of testing the operation of a particular provision).

Commencement

Pt 3 s. 51(1)-(3)(c): Date not available (not yet in force) (2002 c. 41 Pt 8 s. 162)

52 [...]⁶



Not yet in force

53 Asylum-seeker: appeal against refusal to support

The following shall be substituted for section 103 of the Immigration and Asylum Act 1999 (asylum support appeal)—

⁶ Repealed, never in force, subject to transitional provisions specified in SI 2007/1602 art.2(3) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.4 para.1 (June 14, 2007: repeal has effect on June 14, 2007 as specified in SI 2007/1602 subject to transitional provisions specified in SI 2007/1602 art.2(3))

“103 Appeals: general

- (1) This section applies where a person has applied for support under—
 - (a) section 95,
 - (b) section 17 of the Nationality, Immigration and Asylum Act 2002, or
 - (c) both.
- (2) The person may appeal to an adjudicator against a decision that the person is not qualified to receive the support for which he has applied.
- (3) The person may also appeal to an adjudicator against a decision to stop providing support under a provision mentioned in subsection (1).
- (4) But subsection (3) does not apply—
 - (a) to a decision to stop providing support under one of the provisions mentioned in subsection (1) if it is to be replaced immediately by support under the other provision, or
 - (b) to a decision taken on the ground that the person is no longer an asylum-seeker or the dependant of an asylum-seeker.
- (5) On an appeal under this section an adjudicator may—
 - (a) require the Secretary of State to reconsider a matter;
 - (b) substitute his decision for the decision against which the appeal is brought;
 - (c) dismiss the appeal.
- (6) An adjudicator must give his reasons in writing.
- (7) If an appeal under this section is dismissed the Secretary of State shall not consider any further application by the appellant for support under a provision mentioned in subsection (1)(a) or (b) unless the Secretary of State thinks there has been a material change in circumstances.
- (8) An appeal under this section may not be brought or continued by a person who is outside the United Kingdom.

103A Appeals: location of support under section 95

- (1) The Secretary of State may by regulations provide for a decision as to where support provided under section 95 is to be provided to be appealable to an adjudicator under this Part.
- (2) Regulations under this section may provide for a provision of section 103 to have effect in relation to an appeal under the regulations with specified modifications.

103B Appeals: travelling expenses

The Secretary of State may pay reasonable travelling expenses incurred by an appellant in connection with attendance for the purposes of an appeal under or by virtue of section 103 or 103A.”

Commencement

Pt 3 s. 53: Date not available (not yet in force)

54 Withholding and withdrawal of support

Schedule 3 (which makes provision for support to be withheld or withdrawn in certain circumstances) shall have effect.

Commencement

Pt 3 s. 54: December 8, 2002 for the purpose of enabling the Secretary of State to exercise the power to make subordinate legislation; January 8, 2003 otherwise (SI 2002/2811 art. 2, Sch. 1 para. 1)

55 Late claim for asylum: refusal of support

- (1) The Secretary of State may not provide or arrange for the provision of support to a person under a provision mentioned in subsection (2) if—
 - (a) the person makes a claim for asylum which is recorded by the Secretary of State, and
 - (b) the Secretary of State is not satisfied that the claim was made as soon as reasonably practicable after the person's arrival in the United Kingdom.
- (2) The provisions are—
 - (a) sections 4, 95 and 98 of the Immigration and Asylum Act 1999 (c. 33) (support for asylum-seeker, &c.), and
 - (b) sections 17 and 24 of this Act (accommodation centre).
- (3) An authority may not provide or arrange for the provision of support to a person under a provision mentioned in subsection (4) if—
 - (a) the person has made a claim for asylum, and
 - (b) the Secretary of State is not satisfied that the claim was made as soon as reasonably practicable after the person's arrival in the United Kingdom.
- (4) The provisions are—
 - (a) section 29(1)(b) of the Housing (Scotland) Act 1987 (c. 26) (accommodation pending review),
 - (b) section 188(3) or 204(4) of the Housing Act 1996 (c. 52) (accommodation pending review or appeal), and
 - (c) section 2 of the Local Government Act 2000 (c. 22) (promotion of well-being).
- (5) This section shall not prevent—
 - (a) the exercise of a power by the Secretary of State to the extent necessary for the purpose of avoiding a breach of a person's Convention rights (within the meaning of the Human Rights Act 1998 (c. 42)),
 - (b) the provision of support under section 95 of the Immigration and Asylum Act 1999 (c. 33) or section 17 of this Act in accordance with section 122 of that Act (children), or
 - (c) the provision of support under section 98 of the Immigration and Asylum Act 1999 or section 24 of this Act (provisional support) to a person under the age of 18 and the household of which he forms part.
- (6) An authority which proposes to provide or arrange for the provision of support to a person under a provision mentioned in subsection (4)—
 - (a) must inform the Secretary of State if the authority believes that the person has made a claim for asylum,

- (b) must act in accordance with any guidance issued by the Secretary of State to determine whether subsection (3) applies, and
 - (c) shall not be prohibited from providing or arranging for the provision of support if the authority has complied with paragraph (a) and (b) and concluded that subsection (3) does not apply.
- (7) The Secretary of State may by order—
- (a) add, remove or amend an entry in the list in subsection (4);
 - (b) provide for subsection (3) not to have effect in specified cases or circumstances.
- (8) An order under subsection (7)—
- (a) may include transitional, consequential or incidental provision,
 - (b) must be made by statutory instrument, and
 - (c) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (9) For the purposes of this section “claim for asylum” has the same meaning as in section 18.
- (10) A decision of the Secretary of State that this section prevents him from providing or arranging for the provision of support to a person is not a decision that the person does not qualify for support for the purpose of section 103 of the Immigration and Asylum Act 1999 (appeals).
- (11) This section does not prevent a person's compliance with a residence restriction imposed in reliance on section 70 (induction).

Commencement

Pt 3 s. 55(1)-(11): January 8, 2003 (SI 2002/2811 art. 2, Sch. 1 para. 1)

56 Provision of support by local authority

- (1) Section 99 of the Immigration and Asylum Act 1999 (provision of support by local authority) shall be amended as follows.
- (2) In subsection (1)—
- (a) after “local authority” insert “or Northern Ireland authority”, and
 - (b) at the end add “or 98”.
- (3) For subsections (2) and (3) substitute—
- “(2) Support may be provided by an authority in accordance with arrangements made with the authority or with another person.
- (3) Support may be provided by an authority in accordance with arrangements made under section 95 only in one or more of the ways mentioned in section 96(1) and (2).”
- (4) In subsection (4)—
- (a) for “A local authority” substitute “An authority”, and
 - (b) at the end add “or 98”.
- (5) In subsection (5)—
- (a) for “a local authority” substitute “an authority”, and
 - (b) in paragraph (b) for “bodies who are not local authorities” substitute “other bodies”.

Commencement

Pt 3 s. 56(1)-(5)(b): November 7, 2002

57 Application for support: false or incomplete information

At the end of paragraph 12(c) of Schedule 8 to the Immigration and Asylum Act 1999 (c. 33) (asylum-seeker support: procedure: disregarding of application) there shall be inserted “(which may, in particular, provide for an application not to be entertained where the Secretary of State is not satisfied that the information provided is complete or accurate or that the applicant is co-operating with enquiries under paragraph (d))”.

Commencement

Pt 3 s. 57: December 8, 2002 (SI 2002/2811 art. 2, Sch. 1 para. 1)

58 Voluntary departure from United Kingdom

- (1) A person is a “voluntary leaver” for the purposes of this section if—
 - (a) he is not a British citizen or an EEA national,
 - (b) he leaves the United Kingdom for a place where he hopes to take up permanent residence (his “new place of residence”), and
 - (c) the Secretary of State thinks that it is in the person's interest to leave the United Kingdom and that the person wishes to leave.
- (2) The Secretary of State may make arrangements to—
 - (a) assist voluntary leavers;
 - (b) assist individuals to decide whether to become voluntary leavers.
- (3) The Secretary of State may, in particular, make payments (whether to voluntary leavers or to organisations providing services for them) which relate to—
 - (a) travelling and other expenses incurred by or on behalf of a voluntary leaver, or a member of his family or household, in leaving the United Kingdom;
 - (b) expenses incurred by or on behalf of a voluntary leaver, or a member of his family or household, on or shortly after arrival in his new place of residence;
 - (c) the provision of services designed to assist a voluntary leaver, or a member of his family or household, to settle in his new place of residence;
 - (d) expenses in connection with a journey undertaken by a person (with or without his family or household) to prepare for, or to assess the possibility of, his becoming a voluntary leaver.
- (4) In subsection (1)(a) “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).
- (5) The following provisions of the Immigration Act 1971 (c. 77) shall cease to have effect—
 - (a) section 29 (contributions to expenses of persons returning abroad), and
 - (b) section 31(d) (expenses).

Commencement

Pt 3 s. 58(1)-(5)(b): November 7, 2002

59 International projects

- (1) The Secretary of State may participate in a project which is designed to—
 - (a) reduce migration,
 - (b) assist or ensure the return of migrants,
 - (c) facilitate co-operation between States in matters relating to migration,
 - (d) conduct or consider research about migration, or
 - (e) arrange or assist the settlement of migrants (whether in the United Kingdom or elsewhere).
- (2) In particular, the Secretary of State may—
 - (a) provide financial support to an international organisation which arranges or participates in a project of a kind described in subsection (1);
 - (b) provide financial support to an organisation in the United Kingdom or another country which arranges or participates in a project of that kind;
 - (c) provide or arrange for the provision of financial or other assistance to a migrant who participates in a project of that kind;
 - (d) participate in financial or other arrangements which are agreed between Her Majesty's Government and the government of one or more other countries and which are or form part of a project of that kind.
- (3) In this section—
 - (a) “migrant” means a person who leaves the country where he lives hoping to settle in another country (whether or not he is a refugee within the meaning of any international Convention), and
 - (b) “migration” shall be construed accordingly.
- (4) Subsection (1) does not—
 - (a) confer a power to remove a person from the United Kingdom, or
 - (b) affect a person's right to enter or remain in the United Kingdom.

Commencement

Pt 3 s. 59(1)-(4)(b): November 7, 2002

60 Northern Ireland authorities

- (1) In section 110(9) of the Immigration and Asylum Act 1999 (c. 33) (support: payment to local authority: Northern Ireland authority) after paragraph (b) there shall be added—

“; or

 - (c) a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1).”

(2) In section 94(1) of that Act (support: interpretation) after the definition of “local authority” there shall be inserted—

““Northern Ireland authority” has the meaning given by section 110(9).”

Commencement

Pt 3 s. 60(1)-(2): February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

61 Repeal of spent provisions

The following provisions of the Immigration and Asylum Act 1999 shall cease to have effect—

- (a) section 96(4) to (6) (which relate to a provision about support for asylum-seekers which has been repealed by order), and
- (b) section 166(4)(e) (order under section 96(5): procedure).

Commencement

Pt 3 s. 61(a)-(b): November 7, 2002

PART 4**DETENTION AND REMOVAL***Detention***62 Detention by Secretary of State**

- (1) A person may be detained under the authority of the Secretary of State pending—
 - (a) a decision by the Secretary of State whether to give directions in respect of the person under paragraph 10, 10A or 14 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry: removal), or
 - (b) removal of the person from the United Kingdom in pursuance of directions given by the Secretary of State under any of those paragraphs.
- (2) Where the Secretary of State is empowered under section 3A of that Act (powers of Secretary of State) to examine a person or to give or refuse a person leave to enter the United Kingdom, the person may be detained under the authority of the Secretary of State pending—
 - (a) the person's examination by the Secretary of State,
 - (b) the Secretary of State's decision to give or refuse the person leave to enter,
 - (c) a decision by the Secretary of State whether to give directions in respect of the person under paragraph 8 or 9 of Schedule 2 to that Act (removal), or
 - (d) removal of the person in pursuance of directions given by the Secretary of State under either of those paragraphs.
- (3) A provision of Schedule 2 to that Act about a person who is detained or liable to detention under that Schedule shall apply to a person who is detained or liable to detention under this section: and for that purpose—

- (a) a reference to paragraph 16 of that Schedule shall be taken to include a reference to this section,
 - (b) a reference in paragraph 21 of that Schedule to an immigration officer shall be taken to include a reference to the Secretary of State, and
 - (c) a reference to detention under that Schedule or under a provision or Part of that Schedule shall be taken to include a reference to detention under this section.
- (4) In the case of a restriction imposed under paragraph 21 of that Schedule by virtue of this section—
- (a) a restriction imposed by an immigration officer may be varied by the Secretary of State, and
 - (b) a restriction imposed by the Secretary of State may be varied by an immigration officer.
- (5) In subsection (1) the reference to paragraph 10 of that Schedule includes a reference to that paragraph as applied by virtue of section 10 of the Immigration and Asylum Act 1999 (c. 33) (persons unlawfully in United Kingdom: removal).
- (6) Subsection (5) is without prejudice to the generality of section 159.
- (7) A power under this section which is exercisable pending a decision of a particular kind by the Secretary of State is exercisable where the Secretary of State has reasonable grounds to suspect that he may make a decision of that kind.
- (8) At the end of section 11(1) of the Immigration Act 1971 (c. 77) (person not deemed to have entered United Kingdom while detained, &c.) there shall be inserted “or section 62 of the Nationality, Immigration and Asylum Act 2002”.
- (9) In section 24(1)(e) of the Immigration Act 1971 (offence: failure to comply with restriction) for “or to an immigration officer” there shall be substituted “, to an immigration officer or to the Secretary of State”.
- (10) In the Mental Health Act 1983 (c. 20)—
- (a) at the end of section 48(2)(d) (detained persons susceptible to transfer for mental treatment: immigration) there shall be added “or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State)”, and
 - (b) in the heading of section 53 (supplemental provision) the reference to the Immigration Act 1971 becomes a reference to the Immigration Acts.
- (11) In the Mental Health (Scotland) Act 1984 (c. 36)—
- (a) at the end of section 71(2)(c) (detained persons who may be transferred to hospital for mental treatment) there shall be added “or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by the Secretary of State)”, and
 - (b) at the end of section 74(1)(b) (further provision about such persons) there shall be added “or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by the Secretary of State)”.
- (12) In the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4))—
- (a) at the end of Article 54(2)(d) (detained persons susceptible to transfer for mental treatment: immigration) there shall be added “or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State)”, and
 - (b) in the heading of Article 59 (supplemental provision) the reference to the Immigration Act 1971 becomes a reference to the Immigration Acts.

(13) Section 53 of the Immigration and Asylum Act 1999 (c. 33) (bail) shall be amended as follows—

- (a) at the end of subsection (1) add “or under section 62 of the Nationality, Immigration and Asylum Act 2002”, and
- (b) at the end of subsection (3)(a) add “or under section 62 of the Nationality, Immigration and Asylum Act 2002”.

(14) In section 147 of that Act (detention centres: interpretation) at the end of the definition of “detained persons” there shall be inserted “or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State);”.

(15)-(16) [...]⁷

Commencement

Pt 4 s. 62(1)-(16): February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

63 Control of entry to United Kingdom, &c.: use of force

In paragraph 17(2) of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry, &c.: person liable to detention: use of force) for “if need be by force” there shall be substituted “if need be by reasonable force”.

Commencement

Pt 4 s. 63: February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

64 Escorts

The following shall be added after paragraph 17(2) of Schedule 2 to the Immigration Act 1971 (detention for examination or removal: right to enter premises)—

- “(3) Sub-paragraph (4) applies where an immigration officer or constable—
 - (a) enters premises in reliance on a warrant under sub-paragraph (2), and
 - (b) detains a person on the premises.
- (4) A detainee custody officer may enter the premises, if need be by reasonable force, for the purpose of carrying out a search.
- (5) In sub-paragraph (4)—
 - “detainee custody officer” means a person in respect of whom a certificate of authorisation is in force under section 154 of the Immigration and Asylum Act 1999 (c. 33) (detained persons: escort and custody), and
 - “search” means a search under paragraph 2(1)(a) of Schedule 13 to that Act (escort arrangements: power to search detained person).”

Commencement

Pt 4 s. 64: February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

⁷ Repealed by Prevention of Terrorism Act 2005 c. 2 s.16(2)(c) (March 14, 2005)

65 Detention centres: custodial functions

(1) The following shall be substituted for section 154(5) of the Immigration and Asylum Act 1999 (power to confer functions of detainee custody officers on prison officers and prisoner custody officers)—

“(5) The Secretary of State may confer functions of detainee custody officers on prison officers or prisoner custody officers.”

(2) The following shall be added at the end of Schedule 11 to that Act (detainee custody officers)—

“8 Prison officers and prisoner custody officers

A reference in this Schedule to a detainee custody officer includes a reference to a prison officer or prisoner custody officer exercising custodial functions.”

(3) The following shall be added at the end of Schedule 12 to that Act (discipline at detention centre)—

“9 Prison officers and prisoner custody officers

A reference in this Schedule to a detainee custody officer includes a reference to a prison officer or prisoner custody officer exercising custodial functions.”

Commencement

Pt 4 s. 65(1)-(3): February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

66 Detention centres: change of name

(1) In section 147 of the Immigration and Asylum Act 1999 (c. 33) (Part VIII: interpretation)—

- (a) the definition of “detention centre” shall cease to have effect, and
- (b) the following shall be inserted after the definition of “prisoner custody officer”—

“removal centre” means a place which is used solely for the detention of detained persons but which is not a short-term holding facility, a prison or part of a prison;”.

(2) In the provisions listed in subsection (3) (and any relevant headings)—

- (a) for the words “detention centre” there shall be substituted the words “removal centre”, and
- (b) for the words “detention centres” there shall be substituted the words “removal centres”.

(3) The provisions are—

- (a) in section 147 of the Immigration and Asylum Act 1999 (Part VIII: interpretation), the definitions of “contracted out detention centre”, “contractor”, “custodial functions”, “detention centre contract”, “detention centre rules”, and “directly managed detention centre”,
- (b) section 148 of that Act (management of centre),
- (c) sections 149 and 150 of that Act (contracting out),
- (d) section 151 of that Act (intervention by Secretary of State),
- (e) section 152 of that Act (visiting committee),
- (f) section 153 of that Act (rules),

- (g) section 155 of that Act (custodial functions),
- (h) section 157 of that Act (short-term holding facility),
- (i) section 158 of that Act (disclosure of information),
- (j) section 159 of that Act (power of constable),
- (k) Schedule 11 to that Act (detainee custody officer),
- (l) Schedule 12 to that Act (procedure at detention centre),
- (m) Schedule 13 to that Act (escort),
- (n) section 141(5)(e) and (6) of that Act (fingerprinting),
- (o) section 5A(5A) of the Prison Act 1952 (c. 52) (Chief Inspector of Prisons), and
- (p) paragraph 13 of Schedule 4A to the Water Industry Act 1991 (c. 56) (disconnection).

(4) A reference in an enactment or instrument to a detention centre within the meaning of Part VIII of the Immigration and Asylum Act 1999 (c. 33) shall be construed as a reference to a removal centre within the meaning of that Part.

Commencement

Pt 4 s. 66(1)-(4): February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

67 Construction of reference to person liable to detention

- (1) This section applies to the construction of a provision which—
 - (a) does not confer power to detain a person, but
 - (b) refers (in any terms) to a person who is liable to detention under a provision of the Immigration Acts.
- (2) The reference shall be taken to include a person if the only reason why he cannot be detained under the provision is that—
 - (a) he cannot presently be removed from the United Kingdom, because of a legal impediment connected with the United Kingdom's obligations under an international agreement,
 - (b) practical difficulties are impeding or delaying the making of arrangements for his removal from the United Kingdom, or
 - (c) practical difficulties, or demands on administrative resources, are impeding or delaying the taking of a decision in respect of him.
- (3) This section shall be treated as always having had effect.

Commencement

Pt 4 s. 67(1)-(3): November 7, 2002

Temporary release

68 Bail

- (1) This section applies in a case where an immigration officer not below the rank of chief immigration officer has sole or shared power to release a person on bail in accordance with—

- (a) a provision of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry) (including a provision of that Schedule applied by a provision of that Act or by another enactment), or
 - (b) section 9A of the Asylum and Immigration Appeals Act 1993 (c. 23) (pending appeal from Immigration Appeal Tribunal).
- (2) In respect of an application for release on bail which is instituted after the expiry of the period of eight days beginning with the day on which detention commences, the power to release on bail—
- (a) shall be exercisable by the Secretary of State (as well as by any person with whom the immigration officer's power is shared under the provision referred to in subsection (1)), and
 - (b) shall not be exercisable by an immigration officer (except where he acts on behalf of the Secretary of State).
- (3) In relation to the exercise by the Secretary of State of a power to release a person on bail by virtue of subsection (2), a reference to an immigration officer shall be construed as a reference to the Secretary of State.
- (4) The Secretary of State may by order amend or replace subsection (2) so as to make different provision for the circumstances in which the power to release on bail may be exercised by the Secretary of State and not by an immigration officer.
- (5) An order under subsection (4)—
- (a) may include consequential or transitional provision,
 - (b) must be made by statutory instrument, and
 - (c) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (6) The following provisions of Part III of the Immigration and Asylum Act 1999 (c. 33) (Bail) shall cease to have effect—
- (a) sections 44 to 52 (routine bail hearings),
 - (b) section 53(5) (bail under regulations to match bail under Part III), and
 - (c) section 55 (grants to advisory organisations).

Commencement

Pt 4 s. 68(1)-(5)(c): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

Pt 4 s. 68(6)-(6)(c): February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

69 Reporting restriction: travel expenses

- (1) The Secretary of State may make a payment to a person in respect of travelling expenses which the person has incurred or will incur for the purpose of complying with a reporting restriction.
- (2) In subsection (1) “reporting restriction” means a restriction which—
- (a) requires a person to report to the police, an immigration officer or the Secretary of State, and
 - (b) is imposed under a provision listed in subsection (3).
- (3) Those provisions are—
- (a) paragraph 21 of Schedule 2 to the Immigration Act 1971 (c. 77) (temporary admission or release from detention),

- (b) paragraph 29 of that Schedule (bail), and
- (c) paragraph 2 or 5 of Schedule 3 to that Act (pending deportation).

Commencement

Pt 4 s. 69(1)-(3)(c): November 7, 2002

70 Induction

- (1) A residence restriction may be imposed on an asylum-seeker or a dependant of an asylum-seeker without regard to his personal circumstances if—
 - (a) it requires him to reside at a specified location for a period not exceeding 14 days, and
 - (b) the person imposing the residence restriction believes that a programme of induction will be made available to the asylum-seeker at or near the specified location.
- (2) In subsection (1) “residence restriction” means a restriction imposed under—
 - (a) paragraph 21 of Schedule 2 to the Immigration Act 1971 (temporary admission or release from detention), or
 - (b) paragraph 2(5) of Schedule 3 to that Act (control pending deportation).
- (3) In this section—
 - “asylum-seeker” has the meaning given by section 18 of this Act but disregarding section 18(1)(a),
 - “dependant of an asylum-seeker” means a person who appears to the Secretary of State to be making a claim or application in respect of residence in the United Kingdom by virtue of being a dependant of an asylum-seeker, and
 - “programme of induction” means education about the nature of the asylum process.
- (4) Regulations under subsection (3)—
 - (a) may make different provision for different circumstances,
 - (b) must be made by statutory instrument, and
 - (c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Subsection (6) applies where the Secretary of State arranges for the provision of a programme of induction (whether or not he also provides other facilities to persons attending the programme and whether or not all the persons attending the programme are subject to residence restrictions).
- (6) A local authority may arrange for or participate in the provision of the programme or other facilities.
- (7) In particular, a local authority may—
 - (a) incur reasonable expenditure;
 - (b) provide services outside its area;
 - (c) provide services jointly with another body;
 - (d) form a company;
 - (e) tender for or enter into a contract;
 - (f) do anything (including anything listed in paragraphs (a) to (e)) for a preparatory purpose.
- (8) In this section “local authority” means—
 - (a) a local authority within the meaning of section 94 of the Immigration and Asylum Act 1999 (c. 33), and

- (b) a Northern Ireland authority within the meaning of section 110 of that Act.

Commencement

Pt 4 s. 70(1)-(8)(b): November 7, 2002

71 Asylum-seeker: residence, &c. restriction

- (1) This section applies to—
(a) a person who makes a claim for asylum at a time when he has leave to enter or remain in the United Kingdom, and
(b) a dependant of a person within paragraph (a).
- (2) The Secretary of State or an immigration officer may impose on a person to whom this section applies any restriction which may be imposed under paragraph 21 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry: residence, reporting and occupation restrictions) on a person liable to detention under paragraph 16 of that Schedule.
- (3) Where a restriction is imposed on a person under subsection (2)—
(a) the restriction shall be treated for all purposes as a restriction imposed under paragraph 21 of that Schedule, and
(b) if the person fails to comply with the restriction he shall be liable to detention under paragraph 16 of that Schedule.
- (4) A restriction imposed on a person under this section shall cease to have effect if he ceases to be an asylum-seeker or the dependant of an asylum-seeker.
- (5) In this section—
“asylum-seeker” has the same meaning as in section 70,
“claim for asylum” has the same meaning as in section 18, and
“dependant” means a person who appears to the Secretary of State to be making a claim or application in respect of residence in the United Kingdom by virtue of being a dependant of another person.
- (6) Regulations under subsection (5)—
(a) may make different provision for different circumstances,
(b) must be made by statutory instrument, and
(c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Commencement

Pt 4 s. 71(1)-(6)(c): February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

*Removal***72 Serious criminal**

- (1) This section applies for the purpose of the construction and application of Article 33(2) of the Refugee Convention (exclusion from protection).

- (2) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if he is—
- (a) convicted in the United Kingdom of an offence, and
 - (b) sentenced to a period of imprisonment of at least two years.
- (3) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if—
- (a) he is convicted outside the United Kingdom of an offence,
 - (b) he is sentenced to a period of imprisonment of at least two years, and
 - (c) he could have been sentenced to a period of imprisonment of at least two years had his conviction been a conviction in the United Kingdom of a similar offence.
- (4) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if—
- (a) he is convicted of an offence specified by order of the Secretary of State, or
 - (b) he is convicted outside the United Kingdom of an offence and the Secretary of State certifies that in his opinion the offence is similar to an offence specified by order under paragraph (a).
- (5) An order under subsection (4)—
- (a) must be made by statutory instrument, and
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) A presumption under subsection (2), (3) or (4) that a person constitutes a danger to the community is rebuttable by that person.
- (7) A presumption under subsection (2), (3) or (4) does not apply while an appeal against conviction or sentence—
- (a) is pending, or
 - (b) could be brought (disregarding the possibility of appeal out of time with leave).
- (8) Section 34(1) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (no need to consider gravity of fear or threat of persecution) applies for the purpose of considering whether a presumption mentioned in subsection (6) has been rebutted as it applies for the purpose of considering whether Article 33(2) of the Refugee Convention applies.
- (9) Subsection (10) applies where—
- (a) a person appeals under [section 82, 83, 83A or 101]⁸ of this Act or under section 2 of the Special Immigration Appeals Commission Act 1997 (c. 68) wholly or partly on the ground that to remove him from or to require him to leave the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention, and
 - (b) the Secretary of State issues a certificate that presumptions under subsection (2), (3) or (4) apply to the person (subject to rebuttal).
- (10) The [...]⁹ Tribunal or Commission hearing the appeal—
- (a) must begin substantive deliberation on the appeal by considering the certificate, and

⁸ Word inserted by Immigration, Asylum and Nationality Act 2006 c. 13 Sch.1 para.2 (August 31, 2006)

⁹ Word repealed by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.17 (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

(b) if in agreement that presumptions under subsection (2), (3) or (4) apply (having given the appellant an opportunity for rebuttal) must dismiss the appeal in so far as it relies on the ground specified in subsection (9)(a).

(11) For the purposes of this section—

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

(b) a reference to a person who is sentenced to a period of imprisonment of at least two years—

(i) does not include a reference to a person who receives a suspended sentence [(unless a court subsequently orders that the sentence or any part of it is to take effect)]¹⁰,

[(ia) does not include a reference to a person who is sentenced to a period of imprisonment of at least two years only by virtue of being sentenced to consecutive sentences which amount in aggregate to more than two years,]¹¹

(ii) includes a reference to a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders), and

(iii) includes a reference to a person who is sentenced to imprisonment or detention, or ordered or directed to be detained, for an indeterminate period (provided that it may last for two years).

Commencement

Pt 4 s. 72(1)-(8), (11)-(11)(b)(iii): February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

Pt 4 s. 72(9)-(10)(b): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

73 Family

(1) The following shall be inserted after paragraph 10 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry: removal)—

“10A.

Where directions are given in respect of a person under any of paragraphs 8 to 10 above, directions to the same effect may be given under that paragraph in respect of a member of the person's family.”

(2) Section 10 of the Immigration and Asylum Act 1999 (c. 33) (removal of person unlawfully in United Kingdom) shall be amended as follows.

(3) In subsection (1)(c) omit—

- (a) “(“the first directions””), and
- (b) “(“the other person””).

(4) The following shall be substituted for subsections (3) to (5) (removal of family)—

¹⁰ Words substituted by UK Borders Act 2007 c. 30 s.39(2) (August 1, 2008)

¹¹ Added by UK Borders Act 2007 c. 30 s.39(3) (August 1, 2008)

“(3) Directions for the removal of a person may not be given under subsection (1)(c) unless the Secretary of State has given the person written notice of the intention to remove him.

(4) A notice under subsection (3) may not be given if—

- (a) the person whose removal under subsection (1)(a) or (b) is the cause of the proposed directions under subsection (1)(c) has left the United Kingdom, and
- (b) more than eight weeks have elapsed since that person's departure.

(5) If a notice under subsection (3) is sent by first class post to a person's last known address, that subsection shall be taken to be satisfied at the end of the second day after the day of posting.

(5A) Directions for the removal of a person under subsection (1)(c) cease to have effect if he ceases to belong to the family of the person whose removal under subsection (1)(a) or (b) is the cause of the directions under subsection (1)(c).”

(5) In paragraph 16(2) of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry, &c.: detention) for the words “8 to 10” there shall be substituted “8 to 10A”.

Commencement

Pt 4 s. 73(1)-(5): February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

74 Deception

In section 10(1) of the Immigration and Asylum Act 1999 (c. 33) (removal) the following shall be substituted for paragraph (b)—

“(b) he uses deception in seeking (whether successfully or not) leave to remain;”.

Commencement

Pt 4 s. 74: February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

75 Exemption from deportation

(1) Section 7 of the Immigration Act 1971 (existing residents exempt from deportation) shall be amended as follows.

(2) Subsection (1)(a) (which is redundant) shall cease to have effect.

(3) The following shall be substituted for subsection (1)(b)—

“(b) shall not be liable to deportation under section 3(5) if at the time of the Secretary of State's decision he had for the last five years been ordinarily resident in the United Kingdom and Islands;”.

(4) The following shall be added at the end of section 10 of the Immigration and Asylum Act 1999 (removal)—

“(10) A person shall not be liable to removal from the United Kingdom under this section at a time when section 7(1)(b) of the Immigration Act 1971 (Commonwealth and Irish citizens ordinarily resident in United Kingdom) would prevent a decision to deport him.”

Commencement

Pt 4 s. 75(1)-(4): February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

76 Revocation of leave to enter or remain

- (1) The Secretary of State may revoke a person's indefinite leave to enter or remain in the United Kingdom if the person—
- (a) is liable to deportation, but
 - (b) cannot be deported for legal reasons.
- (2) The Secretary of State may revoke a person's indefinite leave to enter or remain in the United Kingdom if—
- (a) the leave was obtained by deception,
 - (b) the person would be liable to removal because of the deception, but
 - (c) the person cannot be removed for legal or practical reasons.
- (3) The Secretary of State may revoke a person's indefinite leave to enter or remain in the United Kingdom if the person, or someone of whom he is a dependant, ceases to be a refugee as a result of—
- (a) voluntarily availing himself of the protection of his country of nationality,
 - (b) voluntarily re-acquiring a lost nationality,
 - (c) acquiring the nationality of a country other than the United Kingdom and availing himself of its protection, or
 - (d) voluntarily establishing himself in a country in respect of which he was a refugee.
- (4) In this section—
- “indefinite leave” has the meaning given by section 33(1) of the Immigration Act 1971 (c. 77) (interpretation),
 - “liable to deportation” has the meaning given by section 3(5) and (6) of that Act (deportation),
 - “refugee” has the meaning given by the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol, and
 - “removed” means removed from the United Kingdom under—
 - (a) paragraph 9 or 10 of Schedule 2 to the Immigration Act 1971 (control of entry: directions for removal), or
 - (b) section 10(1)(b) of the Immigration and Asylum Act 1999 (c. 33) (removal of persons unlawfully in United Kingdom: deception).
- (5) A power under subsection (1) or (2) to revoke leave may be exercised—
- (a) in respect of leave granted before this section comes into force;
 - (b) in reliance on anything done before this section comes into force.
- (6) A power under subsection (3) to revoke leave may be exercised—
- (a) in respect of leave granted before this section comes into force, but
 - (b) only in reliance on action taken after this section comes into force.

(7) In section 10(1) of the Immigration and Asylum Act 1999 (removal of persons unlawfully in United Kingdom) after paragraph (b) (and before the word “or”) there shall be inserted—

“(ba) his indefinite leave to enter or remain has been revoked under section 76(3) of the Nationality, Immigration and Asylum Act 2002 (person ceasing to be refugee);”.

Commencement

Pt 4 s. 76(1)-(7): February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

77 No removal while claim for asylum pending

- (1) While a person's claim for asylum is pending he may not be—
 - (a) removed from the United Kingdom in accordance with a provision of the Immigration Acts, or
 - (b) required to leave the United Kingdom in accordance with a provision of the Immigration Acts.
- (2) In this section—
 - (a) “claim for asylum” means a claim by a person that it would be contrary to the United Kingdom's obligations under the Refugee Convention to remove him from or require him to leave the United Kingdom, and
 - (b) a person's claim is pending until he is given notice of the Secretary of State's decision on it.
- (3) In subsection (2) “the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol.
- (4) Nothing in this section shall prevent any of the following while a claim for asylum is pending—
 - (a) the giving of a direction for the claimant's removal from the United Kingdom,
 - (b) the making of a deportation order in respect of the claimant, or
 - (c) the taking of any other interim or preparatory action.
- (5) Section 15 of the Immigration and Asylum Act 1999 (c. 33) (protection from removal or deportation) shall cease to have effect.

Commencement

Pt 4 s. 77(1)-(5): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

78 No removal while appeal pending

- (1) While a person's appeal under section 82(1) is pending he may not be—
 - (a) removed from the United Kingdom in accordance with a provision of the Immigration Acts, or
 - (b) required to leave the United Kingdom in accordance with a provision of the Immigration Acts.
- (2) In this section “pending” has the meaning given by section 104.

- (3) Nothing in this section shall prevent any of the following while an appeal is pending—
- the giving of a direction for the appellant's removal from the United Kingdom,
 - the making of a deportation order in respect of the appellant (subject to section 79), or
 - the taking of any other interim or preparatory action.
- (4) This section applies only to an appeal brought while the appellant is in the United Kingdom in accordance with section 92.

Commencement

Pt 4 s. 78(1)-(4): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

79 Deportation order: appeal

- (1) A deportation order may not be made in respect of a person while an appeal under section 82(1) against the decision to make the order—
- could be brought (ignoring any possibility of an appeal out of time with permission),
or
 - is pending.
- (2) In this section “pending” has the meaning given by section 104.
- [(3) This section does not apply to a deportation order which states that it is made in accordance with section 32(5) of the UK Borders Act 2007.
- (4) But a deportation order made in reliance on subsection (3) does not invalidate leave to enter or remain, in accordance with section 5(1) of the Immigration Act 1971, if and for so long as section 78 above applies.]¹²

Commencement

Pt 4 s. 79(1)-(2): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

80 [...]¹³

¹² Added by UK Borders Act 2007 c. 30 s.35(2) (August 1, 2008 for the purpose specified in SI 2008/1818 art.2(a); not yet in force otherwise)

¹³ Repealed by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.4 para.1 (October 1, 2004 as SI 2004/2523)

PART 5

IMMIGRATION AND ASYLUM APPEALS

[Appeal to Tribunal]¹⁴

[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.
]

Commencement

Pt 5 s. 81(1)-(8): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

82 Right of appeal: general

- (1) Where an immigration decision is made in respect of a person he may appeal [to the Tribunal]¹⁶.
- (2) In this Part “immigration decision” means—
 - (a) refusal of leave to enter the United Kingdom,
 - (b) refusal of entry clearance,
 - (c) refusal of a certificate of entitlement under section 10 of this Act,
 - (d) refusal to vary a person's leave to enter or remain in the United Kingdom if the result of the refusal is that the person has no leave to enter or remain,
 - (e) variation of a person's leave to enter or remain in the United Kingdom if when the variation takes effect the person has no leave to enter or remain,
 - (f) revocation under section 76 of this Act of indefinite leave to enter or remain in the United Kingdom,
 - (g) 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)]¹⁷ (removal of person unlawfully in United Kingdom),
 - (h) a decision that an illegal entrant is to be removed from the United Kingdom by way of directions under paragraphs 8 to 10 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry: removal),

¹⁴ Substituted by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.26(1) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁵ Substituted by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.26(1) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁶ Words substituted by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.26(2) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁷ Words substituted by Immigration, Asylum and Nationality Act 2006 c. 13 s.2 (August 31, 2006)

[(ha) a decision that a person is to be removed from the United Kingdom by way of directions under section 47 of the Immigration, Asylum and Nationality Act 2006 (removal: persons with statutorily extended leave),]¹⁸

(i) a decision that a person is to be removed from the United Kingdom by way of directions given by virtue of paragraph 10A of that Schedule (family),

[(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),]¹⁹

[(ib) a decision to make an order under section 2A of that Act (deprivation of right of abode),]²⁰

(j) a decision to make a deportation order under section 5(1) of that Act, and

(k) refusal to revoke a deportation order under section 5(2) of that Act.

(3) [...]²¹

[(3A) Subsection (2)(j) does not apply to a decision to make a deportation order which states that it is made in accordance with section 32(5) of the UK Borders Act 2007; but—

(a) a decision that section 32(5) applies is an immigration decision for the purposes of this Part, and

(b) a reference in this Part to an appeal against an automatic deportation order is a reference to an appeal against a decision of the Secretary of State that section 32(5) applies.

]²²

(4) The right of appeal under subsection (1) is subject to the exceptions and limitations specified in this Part.

Commencement

Pt 5 s. 82(1)-(4): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

83 Appeal: asylum claim

(1) This section applies where a person has made an asylum claim and—

(a) his claim has been rejected by the Secretary of State, but

(b) he has been granted leave to enter or remain in the United Kingdom for a period exceeding one year (or for periods exceeding one year in aggregate).

(2) The person may appeal [to the Tribunal]²³ against the rejection of his asylum claim.

¹⁸ Added by Immigration, Asylum and Nationality Act 2006 c. 13 s.47(6) (April 1, 2008 as SI 2008/310)

¹⁹ Added by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.31 (October 1, 2004)

²⁰ Added by Immigration, Asylum and Nationality Act 2006 c. 13 s.57(2) (June 16, 2006)

²¹ Repealed subject to transitional provision specified in SI 2006/2226 art.4(5) by Immigration, Asylum and Nationality Act 2006 c. 13 Sch.3 para.1 (August 31, 2006: repeal has effect subject to transitional provision specified in SI 2006/2226 art.4(5))

²² Added by UK Borders Act 2007 c. 30 s.35(3) (August 1, 2008 for the purpose specified in SI 2008/1818 art.2(a); not yet in force otherwise)

²³ Words substituted by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.26(3) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

Commencement

Pt 5 s. 83(1)-(2): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

[83A Appeal: variation of limited leave

(1) This section applies where—

- (a) a person has made an asylum claim,
- (b) he was granted limited leave to enter or remain in the United Kingdom as a refugee within the meaning of the Refugee Convention,
- (c) a decision is made that he is not a refugee, and
- (d) following the decision specified in paragraph (c) he has limited leave to enter or remain in the United Kingdom otherwise than as a refugee.

(2) The person may appeal to the Tribunal against the decision to curtail or to refuse to extend his limited leave.

]²⁴

84 Grounds of appeal

(1) An appeal under section 82(1) against an immigration decision must be brought on one or more of the following grounds—

- (a) that the decision is not in accordance with immigration rules;
- (b) that the decision is unlawful by virtue of section 19B of the Race Relations Act 1976 (c. 74) (discrimination by public authorities);
- (c) that the decision is unlawful under section 6 of the Human Rights Act 1998 (c. 42) (public authority not to act contrary to Human Rights Convention) as being incompatible with the appellant's Convention rights;
- (d) that the appellant is an EEA national or a member of the family of an EEA national and the decision breaches the appellant's rights under the Community Treaties in respect of entry to or residence in the United Kingdom;
- (e) that the decision is otherwise not in accordance with the law;
- (f) that the person taking the decision should have exercised differently a discretion conferred by immigration rules;
- (g) that removal of the appellant from the United Kingdom in consequence of the immigration decision would breach the United Kingdom's obligations under the Refugee Convention or would be unlawful under section 6 of the Human Rights Act 1998 as being incompatible with the appellant's Convention rights.

(2) In subsection (1)(d) “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).

(3) An appeal under section 83 must be brought on the grounds that removal of the appellant from the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention.

²⁴ Added by Immigration, Asylum and Nationality Act 2006 c. 13 s.1 (August 31, 2006)

[(4) An appeal under section 83A must be brought on the grounds that removal of the appellant from the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention.]²⁵

Commencement

Pt 5 s. 84(1)-(3): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

85 Matters to be considered

(1) An appeal under section 82(1) against a decision shall be treated by [the Tribunal]²⁶ as including an appeal against any decision in respect of which the appellant has a right of appeal under section 82(1).

(2) If an appellant under section 82(1) makes a statement under section 120 , [the Tribunal]²⁶ shall consider any matter raised in the statement which constitutes a ground of appeal of a kind listed in section 84(1) against the decision appealed against.

(3) Subsection (2) applies to a statement made under section 120 whether the statement was made before or after the appeal was commenced.

(4) On an appeal under [section 82(1), 83(2) or 83A(2)]²⁷ against a decision [the Tribunal]²⁸ may consider evidence about any matter which [it]²⁹ thinks relevant to the substance of the decision, including evidence which concerns a matter arising after the date of the decision.

(5) But in relation to an appeal under section 82(1) against refusal of entry clearance or refusal of a certificate of entitlement under section 10—

- (a) subsection (4) shall not apply, and
- (b) [the Tribunal]²⁶ may consider only the circumstances appertaining at the time of the decision to refuse.

Commencement

Pt 5 s. 85(1)-(5)(b): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

²⁵ Added by Immigration, Asylum and Nationality Act 2006 c. 13 s.3 (August 31, 2006)

²⁶ Words substituted by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.18(1)(b) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

²⁷ Words substituted by Immigration, Asylum and Nationality Act 2006 c. 13 Sch.1 para.3 (August 31, 2006)

²⁸ Words substituted by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.18(1)(a) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

²⁹ Word substituted by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.18(1)(c) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

Amendments Pending

Pt 5 s. 85(5): substituted (date to be announced) by 2007 c. 30 s. 19(1)

86 Determination of appeal

- (1) This section applies on an appeal under [section 82(1), 83 or 83A]³⁰.
- (2) [The Tribunal]³¹ must determine—
 - (a) any matter raised as a ground of appeal (whether or not by virtue of section 85(1)), and
 - (b) any matter which section 85 requires [it]³² to consider.
- (3) [The Tribunal]³¹ must allow the appeal in so far as [it]³³ thinks that—
 - (a) a decision against which the appeal is brought or is treated as being brought was not in accordance with the law (including immigration rules), or
 - (b) a discretion exercised in making a decision against which the appeal is brought or is treated as being brought should have been exercised differently.
- (4) For the purposes of subsection (3) a decision that a person should be removed from the United Kingdom under a provision shall not be regarded as unlawful if it could have been lawfully made by reference to removal under another provision.
- (5) In so far as subsection (3) does not apply, [the Tribunal]³¹ shall dismiss the appeal.
- (6) Refusal to depart from or to authorise departure from immigration rules is not the exercise of a discretion for the purposes of subsection (3)(b).

Commencement

Pt 5 s. 86(1)-(6): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

87 Successful appeal: direction

- (1) If [the Tribunal]³⁴ allows an appeal under [section 82, 83 or 83A]³⁵ [it]³⁶ may give a direction for the purpose of giving effect to [its]³⁷ decision.

³⁰ Words substituted by Immigration, Asylum and Nationality Act 2006 c. 13 Sch.1 para.4 (August 31, 2006)

³¹ Words substituted by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.18(1)(b) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

³² Word substituted by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.18(1)(d) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

³³ Word substituted by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.18(1)(c) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

³⁴ Words substituted by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.18(1)(a) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

³⁵ Words substituted by Immigration, Asylum and Nationality Act 2006 c. 13 Sch.1 para.5 (August 31, 2006)

³⁶ Word substituted by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.18(1)(c) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

³⁷ Word substituted by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.18(1)(e) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

(2) A person responsible for making an immigration decision shall act in accordance with any relevant direction under subsection (1).

[(3) But a direction under this section shall not have effect while—

- (a) an application under section 103A(1) (other than an application out of time with permission) could be made or is awaiting determination,
- (b) reconsideration of an appeal has been ordered under section 103A(1) and has not been completed,
- (c) an appeal has been remitted to the Tribunal and is awaiting determination,
- (d) an application under section 103B or 103E for permission to appeal (other than an application out of time with permission) could be made or is awaiting determination,
- (e) an appeal under section 103B or 103E is awaiting determination, or
- (f) a reference under section 103C is awaiting determination.

]³⁸

(4) A direction under subsection (1) shall be treated [as part of the Tribunal's decision on the appeal for the purposes of section 103A]³⁹.

Commencement

Pt 5 s. 87(1)-(4): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

Amendments Pending

Pt 5 s. 87(4): repealed (date to be announced) by 2004 c. 19 Sch. 4 para. 1

Exceptions and limitations

88 Ineligibility

(1) This section applies to an immigration decision of a kind referred to in section 82(2)(a), (b), (d) or (e).

(2) A person may not appeal under section 82(1) against an immigration decision which is taken on the grounds that he or a person of whom he is a dependant—

- (a) does not satisfy a requirement as to age, nationality or citizenship specified in immigration rules,
- (b) does not have an immigration document of a particular kind (or any immigration document),
- [(ba) has failed to supply a medical report or a medical certificate in accordance with a requirement of immigration rules,]⁴⁰
- (c) is seeking to be in the United Kingdom for a period greater than that permitted in his case by immigration rules, or

³⁸ Substituted by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.19(a) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

³⁹ Words substituted by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.19(b) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

⁴⁰ Added by Immigration, Asylum and Nationality Act 2006 c. 13 s.5 (August 31, 2006)

(d) is seeking to enter or remain in the United Kingdom for a purpose other than one for which entry or remaining is permitted in accordance with immigration rules.

(3) In subsection (2)(b) “immigration document” means—

- (a) entry clearance,
- (b) a passport,
- (c) a work permit or other immigration employment document within the meaning of section 122, and
- (d) 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.

(4) Subsection (2) does not prevent the bringing of an appeal on any or all of the grounds referred to in section 84(1)(b), (c) and (g).

Commencement

Pt 5 s. 88(1)-(4): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

[88A] Entry clearance

(1) A person may not appeal under section 82(1) against refusal of an application for entry clearance unless the application was made for the purpose of—

- (a) visiting a person of a class or description prescribed by regulations for the purpose of this subsection, or
- (b) entering as the dependant of a person in circumstances prescribed by regulations for the purpose of this subsection.

(2) Regulations under subsection (1) may, in particular—

- (a) make provision by reference to whether the applicant is a member of the family (within such meaning as the regulations may assign) of the person he seeks to visit;
- (b) provide for the determination of whether one person is dependent on another;
- (c) make provision by reference to the circumstances of the applicant, of the person whom the applicant seeks to visit or on whom he depends, or of both (and the regulations may, in particular, include provision by reference to—
 - (i) whether or not a person is lawfully settled in the United Kingdom within such meaning as the regulations may assign;
 - (ii) the duration of two individuals' residence together);
- (d) make provision by reference to an applicant's purpose in entering as a dependant;
- (e) make provision by reference to immigration rules;
- (f) confer a discretion.

(3) 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.

]⁴¹

[89 Refusal of leave to enter

- (1) A person may not appeal under section 82(1) against refusal of leave to enter the United Kingdom unless–
 - (a) on his arrival in the United Kingdom he had entry clearance, and
 - (b) the purpose of entry specified in the entry clearance is the same as that specified in his application for leave to enter.
- (2) Subsection (1) does not prevent the bringing of an appeal on any or all of the grounds referred to in section 84(1)(b), (c) and (g).

]⁴²

Commencement

Pt 5 s. 89(1)-(3): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

90 [...]⁴³

91 [...]⁴⁴

92 Appeal from within United Kingdom: general

- (1) A person may not appeal under section 82(1) while he is in the United Kingdom unless his appeal is of a kind to which this section applies.
- (2) This section applies to an appeal against an immigration decision of a kind specified in [section 82(2)(c), (d), (e), (f), (ha) and (j)]⁴⁵.
- [(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.

⁴¹ S.88A substituted for ss.88A, 90 and 91 subject to savings specified in SI 2008/310 art.4 by Immigration, Asylum and Nationality Act 2006 c. 13 s.4(1) (April 1, 2008: substitution has effect on April 1, 2008 as specified in SI 2008/310 subject to savings specified in SI 2008/310 art.4)

⁴² Substituted by Immigration, Asylum and Nationality Act 2006 c. 13 s.6 (August 31, 2006)

⁴³ S.88A substituted for ss.88A, 90 and 91 subject to savings and transitional provisions specified in SI 2008/310 art.4 by Immigration, Asylum and Nationality Act 2006 c. 13 s.4(1) (April 1, 2008: repeal has effect on April 1, 2008 as specified in SI 2008/310 subject to savings and transitional provisions specified in SI 2008/310 art.4)

⁴⁴ S.88A substituted for ss.88A, 90 and 91 subject to savings and transitional provisions specified in SI 2008/310 art.4 by Immigration, Asylum and Nationality Act 2006 c. 13 s.4(1) (April 1, 2008: repeal has effect on April 1, 2008 as specified in SI 2008/310 subject to savings and transitional provisions specified in SI 2008/310 art.4)

⁴⁵ Word inserted by Immigration, Asylum and Nationality Act 2006 c. 13 s.47(7) (April 1, 2008 as SI 2008/310)

(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(2) 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.

]⁴⁶

(4) This section also applies to an appeal against an immigration decision if the appellant—

- (a) has made an asylum claim, or a human rights claim, while in the United Kingdom, or
- (b) is an EEA national or a member of the family of an EEA national and makes a claim to the Secretary of State that the decision breaches the appellant's rights under the Community Treaties in respect of entry to or residence in the United Kingdom.

Commencement

Pt 5 s. 92(1)-(4)(b): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

93 [...]⁴⁷

94 Appeal from within United Kingdom: unfounded human rights or asylum claim

(1) This section applies to an appeal under section 82(1) where the appellant has made an asylum claim or a human rights claim (or both).

[(1A) A person may not bring an appeal against an immigration decision of a kind specified in [section 82(2)(c), (d), (e) or (ha)]⁴⁸ 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.]⁴⁹

⁴⁶ S.92(3)-(3D) substituted for s.92(3) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.28 (October 1, 2004)

⁴⁷ Repealed by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.4 para.1 (October 1, 2004 as SI 2004/2523)

⁴⁸ Words substituted by Immigration, Asylum and Nationality Act 2006 c. 13 s.47(8) (April 1, 2008 as SI 2008/310)

⁴⁹ Added by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.27(2) (October 1, 2004)

(2) A person may not bring an appeal to which this section applies [in reliance on section 92(4)(a)]⁵⁰ if the Secretary of State certifies that the claim or claims mentioned in subsection (1) is or are clearly unfounded.

(3) If the Secretary of State is satisfied that an asylum claimant or human rights claimant is entitled to reside in a State listed in subsection (4) he shall certify the claim under subsection (2) unless satisfied that it is not clearly unfounded.

(4) Those States are—

- (a)-(j) [...]⁵¹
- [(k) the Republic of Albania,
- (l) [...]⁵²
- (m) [...]⁵³
- (n) Jamaica,
- (o) Macedonia,
- (p) the Republic of Moldova, and
- (q) [...]⁵²

]⁵⁴ [

- (r) [...]⁵⁵
- (s) Bolivia,
- (t) Brazil,
- (u) Ecuador,
- (v) [...]⁵⁶
- (w) South Africa, [...]⁵⁷
- (x) Ukraine [, and]]⁵⁷⁵⁸
- [(y) India.]⁵⁷
- [(z) Mongolia,
- (aa) Ghana (in respect of men),
- (bb) Nigeria (in respect of men).]⁵⁹
- [(cc) Bosnia-Herzegovina,
- (dd) Gambia (in respect of men),
- (ee) Kenya (in respect of men),
- (ff) Liberia (in respect of men),
- (gg) Malawi (in respect of men),

⁵⁰ Words substituted by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.27(3) (October 1, 2004)

⁵¹ Repealed by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.4 para.1 (October 1, 2004 as SI 2004/2523)

⁵² Repealed by Asylum (Designated States) (Amendment) Order 2006/3215 art.2 (January 1, 2007)

⁵³ Entries repealed by Asylum (Designated States) Order 2007/2221 art.3 (July 27, 2007)

⁵⁴ Added by Asylum (Designated States) Order 2003/970 art.3 (April 1, 2003 being the day on which 2002 c.41 s.94(4) comes into force)

⁵⁵ Repealed by Asylum (Designated States) (Amendment) Order 2005/1016 art.2 (April 22, 2005)

⁵⁶ Repealed by Asylum (Designated States) (Amendment) (No. 2) Order 2006/3275 art.2 (December 13, 2006)

⁵⁷ Added by Asylum (Designated States) Order 2005/330 art.2 (February 15, 2005)

⁵⁸ Added by Asylum (Designated States) (No. 2) Order 2003/1919 art.2 (July 23, 2003)

⁵⁹ Added by Asylum (Designated States) (No. 2) Order 2005/3306 art.2 (December 2, 2005)

- (hh) Mali (in respect of men),
- (ii) Mauritius,
- (jj) Montenegro,
- (kk) Peru,
- (ll) Serbia,
- (mm) Sierra Leone (in respect of men).]⁶⁰

(5) The Secretary of State may by order add a State, or part of a State, to the list in subsection (4) if satisfied that—

- (a) there is in general in that State or part no serious risk of persecution of persons entitled to reside in that State or part, and
- (b) removal to that State or part of persons entitled to reside there will not in general contravene the United Kingdom's obligations under the Human Rights Convention.

[(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 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.

]⁶¹

[(5D) In deciding whether the statements in subsection (5) (a) and (b) are true of a State or part of a State, the Secretary of State—

- (a) shall have regard to all the circumstances of the State or part (including its laws and how they are applied), and
- (b) shall have regard to information from any appropriate source (including other member States and international organisations).

]⁶²

[(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.

]⁶³

⁶⁰ Entries inserted by Asylum (Designated States) Order 2007/2221 art.2 (July 27, 2007)

⁶¹ Added by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.27(5) (October 1, 2004)

⁶² Added by Asylum (Procedures) Regulations 2007/3187 reg.3 (December 1, 2007)

[(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.

]⁶⁴

(7) A person may not bring an appeal to which this section applies in reliance on section 92(4) if the Secretary of State certifies that—

- (a) it is proposed to remove the person to a country of which he is not a national or citizen, and
- (b) there is no reason to believe that the person's rights under the Human Rights Convention will be breached in that country.

(8) In determining whether a person in relation to whom a certificate has been issued under subsection (7) may be removed from the United Kingdom, the country specified in the certificate is to be regarded as—

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

(9) Where a person in relation to whom a certificate is issued under this section subsequently brings an appeal under section 82(1) while outside the United Kingdom, the appeal shall be considered as if he had not been removed from the United Kingdom.

Commencement

Pt 5 s. 94(1)-(4)(j), (6)-(9): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

Pt 5 s. 94(5)-(5)(b): February 10, 2003 for the purpose of making regulations; April 1, 2003 otherwise (SI 2003/249 art. 2, Sch. 1; SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

Amendments Pending

Pt 5 s. 94(6B): added (date to be announced) by 2006 c. 13 s. 13

[94A— European Common List of Safe Countries of Origin

(1) The Secretary of State shall by order prescribe a list of States to be known as the “European Common List of Safe Countries of Origin”.

⁶³ Substituted by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.27(6) (October 1, 2004)

⁶⁴ Added by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.27(7) (October 1, 2004)

(2) Subsections (3) and (4) apply where a person makes an asylum claim or a human rights claim (or both) and that person is—

- (a) a national of a State which is listed in the European Common List of Safe Countries of Origin, or
- (b) a Stateless person who was formerly habitually resident in such a State.

(3) The Secretary of State shall consider the claim or claims mentioned in subsection (2) to be unfounded unless satisfied that there are serious grounds for considering that the State in question is not safe in the particular circumstances of the person mentioned in that subsection.

(4) The Secretary of State shall also certify the claim or claims mentioned in subsection (2) under section 94(2) unless satisfied that the claim or claims is or are not clearly unfounded.

(5) An order under subsection (1)—

- (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 Community law,
- (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.

]⁶⁵

95 Appeal from outside United Kingdom: removal

A person who is outside the United Kingdom may not appeal under section 82(1) on the ground specified in section 84(1)(g) (except in a case to which section 94(9) applies).

Commencement

Pt 5 s. 95: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

96 Earlier right of appeal

[(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,

⁶⁵ Added by Asylum (Procedures) Regulations 2007/3187 reg.4 (December 1, 2007)

(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

(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.

]⁶⁶

(4) In subsection (1) “notified” means notified in accordance with regulations under section 105.

(5) [Subsections (1) and (2) apply to prevent]⁶⁷ a person's right of appeal whether or not he has been outside the United Kingdom since an earlier right of appeal arose or since a requirement under section 120 was imposed.

(6) In this section a reference to an appeal under section 82(1) includes a reference to an appeal under section 2 of the Special Immigration Appeals Commission Act 1997 (c. 68) which is or could be brought by reference to an appeal under section 82(1).

[(7) A certificate under subsection (1) or (2) shall have no effect in relation to an appeal instituted before the certificate is issued.]⁶⁸

Commencement

Pt 5 s. 96(1)-(6): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

97 National security, &c.

(1) An appeal under [section 82(1), 83(2) or 83A(2)]⁶⁹ against a decision in respect of a person may not be brought or continued if the Secretary of State certifies that the decision is or was taken—

- (a) by the Secretary of State wholly or partly on a ground listed in subsection (2), or
- (b) in accordance with a direction of the Secretary of State which identifies the person to whom the decision relates and which is given wholly or partly on a ground listed in subsection (2).

(2) The grounds mentioned in subsection (1) are that the person's exclusion or removal from the United Kingdom is—

- (a) in the interests of national security, or
- (b) in the interests of the relationship between the United Kingdom and another country.

(3) An appeal under [section 82(1), 83(2) or 83A(2)]⁶⁹ against a decision may not be brought or continued if the Secretary of State certifies that the decision is or was taken wholly or partly in reliance on information which in his opinion should not be made public—

- (a) in the interests of national security,
- (b) in the interests of the relationship between the United Kingdom and another country, or

⁶⁶ Substituted by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.30(2) (October 1, 2004)

⁶⁷ Words substituted by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.30(3) (October 1, 2004)

⁶⁸ Added by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.30(4) (October 1, 2004)

⁶⁹ Words substituted by Immigration, Asylum and Nationality Act 2006 c. 13 Sch.1 para.6 (August 31, 2006)

(c) otherwise in the public interest.

(4) In subsections (1)(a) and (b) and (3) a reference to the Secretary of State is to the Secretary of State acting in person.

Commencement

Pt 5 s. 97(1)-(4): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

[97A] National security: deportation

(1) This section applies where the Secretary of State certifies that the decision to make a deportation order in respect of a person was taken on the grounds that his removal from the United Kingdom would be in the interests of national security.

(2) Where this section applies—

- (a) section 79 shall not apply,
- (b) the Secretary of State shall be taken to have certified the decision to make the deportation order under section 97, and
- (c) for the purposes of section 2(5) of the Special Immigration Appeals Commission Act 1997 (c. 68) (appeals from within United Kingdom) it shall be assumed that section 92 of this Act—
 - (i) would not apply to an appeal against the decision to make the deportation order by virtue of section 92(2) to (3D),
 - (ii) would not apply to an appeal against that decision by virtue of section 92(4)(a) in respect of an asylum claim, and
 - (iii) would be capable of applying to an appeal against that decision by virtue of section 92(4)(a) in respect of a human rights claim unless the Secretary of State certifies that the removal of the person from the United Kingdom would not breach the United Kingdom's obligations under the Human Rights Convention.

(3) A person in respect of whom a certificate is issued under subsection (2)(c)(iii) may appeal to the Special Immigration Appeals Commission against the issue of the certificate; and for that purpose the Special Immigration Appeals Commission Act 1997 shall apply as to an appeal against an immigration decision to which section 92 of this Act applies.

(4) The Secretary of State may repeal this section by order.

]⁷⁰

98 Other grounds of public good

- (1) This section applies to an immigration decision of a kind referred to in section 82(2)(a) or (b).
- (2) An appeal under section 82(1) against an immigration decision may not be brought or continued if the Secretary of State certifies that the decision is or was taken—
 - (a) by the Secretary of State wholly or partly on the ground that the exclusion or removal from the United Kingdom of the person to whom the decision relates is conducive to the public good, or

⁷⁰ Added by Immigration, Asylum and Nationality Act 2006 c. 13 s.7(1) (August 31, 2006)

- (b) in accordance with a direction of the Secretary of State which identifies the person to whom the decision relates and which is given wholly or partly on that ground.
- (3) In subsection (2)(a) and (b) a reference to the Secretary of State is to the Secretary of State acting in person.
- (4) Subsection (2) does not prevent the bringing of an appeal on either or both of the grounds referred to in section 84(1)(b) and (c).
- (5) Subsection (2) does not prevent the bringing of an appeal against an immigration decision of the kind referred to in section 82(2)(a) on the grounds referred to in section 84(1)(g).

Commencement

Pt 5 s. 98(1)-(5): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

99 Sections 96 to 98: appeal in progress

- (1) This section applies where a certificate is issued under section 96(1) or (2), 97 or 98 in respect of a pending appeal.
- (2) The appeal shall lapse.

Commencement

Pt 5 s. 99(1)-(2): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

Appeal from adjudicator

100 [...]⁷¹

101 [...]⁷²

102 [...]⁷³

103 [...]⁷⁴

⁷¹ Repealed subject to transitional provisions specified in SI 2005/565 arts.3-9 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.26(5)(a) (April 4, 2005: repeal has effect subject to transitional provisions specified in SI 2005/565 arts.3-9)

⁷² Repealed subject to transitional provisions specified in SI 2005/565 arts.3-9 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.26(5)(a) (April 4, 2005: repeal has effect subject to transitional provisions specified in SI 2005/565 arts.3-9)

⁷³ Repealed subject to transitional provisions specified in SI 2005/565 arts.3-9 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.26(5)(a) (April 4, 2005: repeal has effect subject to transitional provisions specified in SI 2005/565 arts.3-9)

⁷⁴ Repealed subject to transitional provisions specified in SI 2005/565 arts.3-9 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.26(5)(a) (April 4, 2005: repeal has effect subject to transitional provisions specified in SI 2005/565 arts.3-9)

[103A] Review of Tribunal's decision

- (1) A party to an appeal under [section 82, 83 or 83A]⁷⁵ 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
 - (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.

⁷⁵ Words substituted by Immigration, Asylum and Nationality Act 2006 c. 13 Sch.1 para.7 (August 31, 2006)

]⁷⁶

[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.
-]⁷⁷

[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;
 - (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;

⁷⁶ Inserted subject to transitional provisions specified in SI 2005/565 arts.3-9 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.26(6) (April 4, 2005: insertion has effect subject to transitional provisions specified in SI 2005/565 arts.3-9)

⁷⁷ Inserted subject to transitional provisions specified in SI 2005/565 arts.3-9 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.26(6) (April 4, 2005: insertion has effect subject to transitional provisions specified in SI 2005/565 arts.3-9)

- (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.
]⁷⁸

[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 an order for reconsideration is made]⁷⁹ –
 - (a) under section 103A(1), and
 - (b) on the application of the appellant.
- [(3) The Tribunal may order payment out of that Fund of the appellant's costs–
 - (a) in respect of the application for reconsideration;
 - (b) in respect of preparation for reconsideration;
 - (c) in respect of the reconsideration.
-]⁸⁰
- (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);
 - (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.

⁷⁸ Inserted subject to transitional provisions specified in SI 2005/565 arts.3-9 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.26(6) (April 4, 2005: insertion has effect subject to transitional provisions specified in SI 2005/565 arts.3-9)

⁷⁹ Words substituted by Immigration, Asylum and Nationality Act 2006 c. 13 s.8(2) (April 30, 2007)

⁸⁰ Substituted by Immigration, Asylum and Nationality Act 2006 c. 13 s.8(3) (April 30, 2007)

- (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.

]⁸¹

[103E Appeal from Tribunal sitting as panel

- (1) This section applies to a decision of the Tribunal on an appeal under [section 82, 83 or 83A]⁸² 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.
- (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.

⁸¹ Inserted subject to transitional provisions specified in SI 2005/565 arts.3-9 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.26(6) (April 4, 2005: insertion has effect subject to transitional provisions specified in SI 2005/565 arts.3-9)

⁸² Words substituted by Immigration, Asylum and Nationality Act 2006 c. 13 Sch.1 para.8 (August 31, 2006)

]⁸³

Procedure

104 Pending appeal

- (1) An appeal under section 82(1) is pending during the period—
 - (a) beginning when it is instituted, and
 - (b) ending when it is finally determined, withdrawn or abandoned (or when it lapses under section 99).
- [(2) An appeal under section 82(1) is not finally determined for the purposes of subsection (1)(b) while—
 - (a) an application under section 103A(1) (other than an application out of time with permission) could be made or is awaiting determination,
 - (b) reconsideration of an appeal has been ordered under section 103A(1) and has not been completed,
 - (c) an appeal has been remitted to the Tribunal and is awaiting determination,
 - (d) an application under section 103B or 103E for permission to appeal (other than an application out of time with permission) could be made or is awaiting determination,
 - (e) an appeal under section 103B or 103E is awaiting determination, or
 - (f) a reference under section 103C is awaiting determination.

]⁸⁴

- (3) [...]⁸⁵

[(4) An appeal under section 82(1) brought by a person while he is in the United Kingdom shall be treated as abandoned if the appellant leaves the United Kingdom.

(4A) An appeal under section 82(1) brought by a person while he is in the United Kingdom shall be treated as abandoned if the appellant is granted leave to enter or remain in the United Kingdom (subject to subsections (4B) and (4C)).

(4B) Subsection (4A) shall not apply to an appeal in so far as it is brought on the ground relating to the Refugee Convention specified in section 84(1)(g) where the appellant—

- (a) is granted leave to enter or remain in the United Kingdom for a period exceeding 12 months, and
- (b) gives notice, in accordance with any relevant procedural rules (which may include provision about timing), that he wishes to pursue the appeal in so far as it is brought on that ground.

⁸³ Inserted subject to transitional provisions specified in SI 2005/565 arts.3-9 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.26(6) (April 4, 2005: insertion has effect subject to transitional provisions specified in SI 2005/565 arts.3-9)

⁸⁴ Substituted by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.20(a) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

⁸⁵ Repealed by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.20(b) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

(4C) Subsection (4A) shall not apply to an appeal in so far as it is brought on the ground specified in section 84(1)(b) where the appellant gives notice, in accordance with any relevant procedural rules (which may include provision about timing), that he wishes to pursue the appeal in so far as it is brought on that ground.]⁸⁶

(5) An appeal under section 82(2)(a), (c), (d), (e) or (f) shall be treated as finally determined if a deportation order is made against the appellant.

Commencement

Pt 5 s. 104(1)-(5): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

Amendments Pending

Pt 5 s. 104(3): repealed (date to be announced) by 2004 c. 19 Sch. 4 para. 1

105 Notice of immigration decision

- (1) The Secretary of State may make regulations requiring a person to be given written notice where an immigration decision is taken in respect of him.
- (2) The regulations may, in particular, provide that a notice under subsection (1) of a decision against which the person is entitled to appeal under section 82(1) must state—
 - (a) that there is a right of appeal under that section, and
 - (b) how and when that right may be exercised.
- (3) The regulations may make provision (which may include presumptions) about service.

Commencement

Pt 5 s. 105(1)-(3): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

106 Rules

- (1) The Lord Chancellor may make rules—
 - (a) regulating the exercise of the right of appeal under [section 82, 83 or 83A by virtue of section 109];⁸⁷
 - (b) prescribing procedure to be followed in connection with proceedings under [section 82, 83 or 83A by virtue of section 109].⁸⁷
- [(1A) In making rules under subsection (1) the Lord Chancellor shall aim to ensure—
 - (a) that the rules are designed to ensure that proceedings before the Tribunal are handled as fairly, quickly and efficiently as possible, and
 - (b) that the rules where appropriate confer on members of the Tribunal responsibility for ensuring that proceedings before the Tribunal are handled as fairly, quickly and efficiently as possible.

⁸⁶ Ss.104(4)-(4C) substituted for s.104(4) by Immigration, Asylum and Nationality Act 2006 c. 13 s.9 (November 13, 2006)

⁸⁷ Words substituted by Immigration, Asylum and Nationality Act 2006 c. 13 Sch.1 para.9 (August 31, 2006)

]⁸⁸

(2) In particular, rules under subsection (1)—

- (a) must entitle an appellant to be legally represented at any hearing of his appeal;
- (b) may enable or require an appeal to be determined without a hearing;
- (c) may enable or require an appeal to be dismissed without substantive consideration where practice or procedure has not been complied with;
- (d) may enable or require [the Tribunal]⁸⁹ to treat an appeal as abandoned in specified circumstances;
- (e) may enable or require [...]⁹⁰ the Tribunal to determine an appeal in the absence of parties in specified circumstances;
- (f) may enable or require [...]⁹⁰ the Tribunal to determine an appeal by reference only to written submissions in specified circumstances;
- (g) may make provision about the adjournment of an appeal by [the Tribunal]⁹¹ (which may include provision prohibiting [the Tribunal]⁹¹ from adjourning except in specified circumstances);
- (h) may make provision about the treatment of adjourned appeals by [the Tribunal]⁹² (which may include provision requiring [the Tribunal]⁹² to determine an appeal within a specified period);
- (i) may make provision about the use of electronic communication in the course of or in connection with a hearing;
- (j)-(k) [...]⁹³
- (l) may enable the Tribunal to set aside a decision of the Tribunal;
- (m) must make provision about the consolidation of appeals [...]⁹⁴ ;
- (n) may make provision (which may include presumptions) about service;
- (o) may confer ancillary powers on [...]⁹⁵ the Tribunal;
- (p) may confer a discretion on [...]⁹⁶ the Tribunal;

⁸⁸ Added by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.21(c) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

⁸⁹ Words substituted by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.21(d) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

⁹⁰ Words repealed by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.21(e) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

⁹¹ Words substituted by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.21(f) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

⁹² Words substituted by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.21(g) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

⁹³ Repealed by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.21(h) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

⁹⁴ Words repealed by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.21(i) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

⁹⁵ Words repealed by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.21(j) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

⁹⁶ Words repealed by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.21(k) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

- (q) may require [...] ⁹⁷ the Tribunal to give notice of a determination to a specified person;
- (r) may require or enable notice of a determination to be given on behalf of [...] ⁹⁸ the Tribunal;
- (s) may make provision about the grant of bail by [...] ⁹⁹ the Tribunal (which may, in particular, include provision which applies or is similar to any enactment).
- [(t) may make provision about the number of members exercising the Tribunal's jurisdiction;
- (u) may make provision about the allocation of proceedings among members of the Tribunal (which may include provision for transfer);
- (v) may make provision about reconsideration of a decision pursuant to an order under section 103A(1) (which may, in particular, include provision about the action that may be taken on reconsideration and about the matters and evidence to which the Tribunal may have regard);
- (w) shall provide that a party to an appeal is to be treated as having received notice of the Tribunal's decision, unless the contrary is shown, at such time as may be specified in, or determined in accordance with, the rules;
- (x) may make provision about proceedings under paragraph 30 of Schedule 2 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (transitional filter of applications for reconsideration from High Court to Tribunal) (and may, in particular, make provision of a kind that may be made by rules of court under section 103A(5)(b));
- (y) may make provision about the form and content of decisions of the Tribunal.]¹⁰⁰

(3) Rules under subsection (1)—

- (a) may enable [...] ¹⁰¹ the Tribunal to make an award of costs or expenses,
- (b) may make provision (which may include provision conferring discretion on a court) for the taxation or assessment of costs or expenses,
- (c) may make provision about interest on an award of costs or expenses (which may include provision conferring a discretion or providing for interest to be calculated in accordance with provision made by the rules),
- (d) may enable [...] ¹⁰² the Tribunal to disallow all or part of a representative's costs or expenses,
- (e) may enable [...] ¹⁰³ the Tribunal to require a representative to pay specified costs or expenses, and

⁹⁷ Words repealed by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.21(l) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

⁹⁸ Words repealed by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.21(m) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

⁹⁹ Words repealed by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.21(n) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁰⁰ Added by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.21(o) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁰¹ Words repealed by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.21(p) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁰² Words repealed by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.21(q) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁰³ Words repealed by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.21(r) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

[(f) may enable the Tribunal to certify that an appeal had no merit (and shall make provision for the consequences of the issue of a certificate).]¹⁰⁴

(4) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed in accordance with rules under subsection (1) to attend before [...]¹⁰⁵ the Tribunal—

- (a) to give evidence, or
- (b) to produce a document.

(5) A person who is guilty of an offence under subsection (4) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Commencement

Pt 5 s. 106(1)-(5): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

Amendments Pending

Pt 5 s. 106(2)(e): words repealed (date to be announced) by 2004 c. 19 Sch. 4 para. 1

Pt 5 s. 106(2)(f): words repealed (date to be announced) by 2004 c. 19 Sch. 4 para. 1

Pt 5 s. 106(2)(j): repealed (date to be announced) by 2004 c. 19 Sch. 4 para. 1

Pt 5 s. 106(2)(k): repealed (date to be announced) by 2004 c. 19 Sch. 4 para. 1

Pt 5 s. 106(2)(m): words repealed (date to be announced) by 2004 c. 19 Sch. 4 para. 1

Pt 5 s. 106(2)(o): words repealed (date to be announced) by 2004 c. 19 Sch. 4 para. 1

Pt 5 s. 106(2)(p): words repealed (date to be announced) by 2004 c. 19 Sch. 4 para. 1

Pt 5 s. 106(2)(q): words repealed (date to be announced) by 2004 c. 19 Sch. 4 para. 1

Pt 5 s. 106(2)(r): words repealed (date to be announced) by 2004 c. 19 Sch. 4 para. 1

Pt 5 s. 106(2)(s): words repealed (date to be announced) by 2004 c. 19 Sch. 4 para. 1

Pt 5 s. 106(2)(ua): added (date to be announced) by 2007 c. 30 s. 19(3)

Pt 5 s. 106(3)(a): words repealed (date to be announced) by 2004 c. 19 Sch. 4 para. 1

Pt 5 s. 106(3)(d): words repealed (date to be announced) by 2004 c. 19 Sch. 4 para. 1

Pt 5 s. 106(3)(e): words repealed (date to be announced) by 2004 c. 19 Sch. 4 para. 1

Pt 5 s. 106(4): words repealed (date to be announced) by 2004 c. 19 Sch. 4 para. 1

107 Practice directions

(1) The President of [the Tribunal]¹⁰⁶ may give directions as to the practice to be followed by the Tribunal.

¹⁰⁴ Substituted by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.21(s) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁰⁵ Words repealed by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.21(t) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁰⁶ Words substituted by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.22(1)(a) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

[(1A) The Senior President of Tribunals may give directions as to the practice to be followed by the Tribunal.]¹⁰⁷

(2) [...]¹⁰⁸

[(3) A practice direction may, in particular, require the Tribunal to treat a specified decision of the Tribunal as authoritative in respect of a particular matter.]¹⁰⁹

[(4) Directions under subsection (1) may not be given without the approval of—

- (a) the Senior President of Tribunals, and
- (b) the Lord Chancellor.

(5) Directions under subsection (1A) may not be given without the approval of the Lord Chancellor.

(6) Subsections (4)(b) and (5) do not apply to directions to the extent that they consist of guidance about any of the following—

- (a) the application or interpretation of the law;
- (b) the making of decisions by members of the Tribunal.

(7) Subsections (4)(b) and (5) do not apply to directions to the extent that they consist of criteria for determining which members of the Tribunal may be chosen to decide particular categories of matter; but the directions may, to that extent, be given only after consulting the Lord Chancellor.
]¹¹⁰

Commencement

Pt 5 s. 107(1)-(2): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

Amendments Pending

Pt 5 s. 107(2): repealed (date to be announced) by 2004 c. 19 Sch. 4 para. 1

108 Forged document: proceedings in private

(1) This section applies where it is alleged—

- (a) that a document relied on by a party to an appeal under [section 82, 83 or 83A]¹¹¹ is a forgery, and
- (b) that disclosure to that party of a matter relating to the detection of the forgery would be contrary to the public interest.

(2) [The Tribunal]¹¹² —

- (a) must investigate the allegation in private, and

¹⁰⁷ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.8 para.54(2) (November 3, 2008)

¹⁰⁸ Repealed by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.22(1)(b) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁰⁹ Added by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.22(1)(c) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹¹⁰ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.8 para.54(3) (November 3, 2008)

¹¹¹ Words substituted by Immigration, Asylum and Nationality Act 2006 c. 13 Sch.1 para.10 (August 31, 2006)

¹¹² Words substituted by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.23(b) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

- (b) may proceed in private so far as necessary to prevent disclosure of the matter referred to in subsection (1)(b).

Commencement

Pt 5 s. 108(1)-(2)(b): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

General

109 European Union and European Economic Area

- (1) Regulations may provide for, or make provision about, an appeal against an immigration decision taken in respect of a person who has or claims to have a right under any of the Community Treaties.
- (2) The regulations may—
 - (a) apply a provision of this Act or the Special Immigration Appeals Commission Act 1997 (c. 68) with or without modification;
 - (b) make provision similar to a provision made by or under this Act or that Act;
 - (c) disapply or modify the effect of a provision of this Act or that Act.
- (3) In subsection (1) “immigration decision” means a decision about—
 - (a) a person's entitlement to enter or remain in the United Kingdom, or
 - (b) removal of a person from the United Kingdom.

Commencement

Pt 5 s. 109(1)-(3)(b): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

110 [...]¹¹³

111 [...]¹¹⁴

112 Regulations, &c.

- (1) Regulations under this Part shall be made by the Secretary of State.
- (2) Regulations and rules under this Part [, other than regulations under section 103D(4),]¹¹⁵ —
 - (a) must be made by statutory instrument, and
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Regulations and rules under this Part—
 - (a) may make provision which applies generally or only in a specified case or in specified circumstances,
 - (b) may make different provision for different cases or circumstances,

¹¹³ Repealed by Immigration, Asylum and Nationality Act 2006 c. 13 s.10 (June 16, 2006)

¹¹⁴ Repealed by UK Borders Act 2007 c. 30 Sch.1 para.1 (April 1, 2008 as SI 2008/309)

¹¹⁵ Words inserted by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.24(2) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

- (c) may include consequential, transitional or incidental provision, and
- (d) may include savings.

[(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.

]¹¹⁶

(4) An order under section 94(5) or 115(8)—

- (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.

(5) An order under section 94(6) or 115(9)—

- (a) must 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.

[(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.

]¹¹⁷

[(5B) An order under section 97A(4)—

- (a) must 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.

]¹¹⁸

[(6) Regulations under section 103D(4)—

- (a) must 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.

(7) An order under paragraph 4 of Schedule 4—

- (a) may include consequential or incidental provision (which may include provision amending, or providing for the construction of, a reference in an enactment, instrument or other document to a member of the Asylum and Immigration Tribunal),
- (b) must be made by statutory instrument, and
- (c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

]¹¹⁹

¹¹⁶ Added by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.29(2) (October 1, 2004)

¹¹⁷ Added by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.27(8) (October 1, 2004)

¹¹⁸ Added by Immigration, Asylum and Nationality Act 2006 c. 13 s.7(2) (August 31, 2006)

Commencement

Pt 5 s. 112(1)-(6)(d): February 10, 2003 (SI 2003/249 art. 2, Sch. 1)

Amendments Pending

Pt 5 s. 112(5): word substituted (date to be announced) by 2006 c. 13 Sch. 1 para. 11

113 Interpretation

(1) In this Part, unless a contrary intention appears—

“asylum claim” means a claim made by a person to the Secretary of State at a place designated by the Secretary of State that to remove the person from or require him to leave the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention,

“entry clearance” has the meaning given by section 33(1) of the Immigration Act 1971 (c. 77) (interpretation),

“human rights claim” means a claim made by a person to the Secretary of State at a place designated by the Secretary of State that to remove the person from or require him to leave the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998 (c. 42) (public authority not to act contrary to Convention) as being incompatible with his Convention rights,

“the Human Rights Convention” has the same meaning as “the Convention” in the Human Rights Act 1998 and “Convention rights” shall be construed in accordance with section 1 of that Act,

“illegal entrant” has the meaning given by section 33(1) of the Immigration Act 1971,

“immigration rules” means rules under section 1(4) of that Act (general immigration rules),
“prescribed” means prescribed by regulations,

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

“visitor” means a visitor in accordance with immigration rules, and

“work permit” has the meaning given by section 33(1) of the Immigration Act 1971 (c. 77) (interpretation).

(2) A reference to varying leave to enter or remain in the United Kingdom does not include a reference to adding, varying or revoking a condition of leave.

Commencement

Pt 5 s. 113(1)-(2): February 10, 2003 (SI 2003/249 art. 2, Sch. 1)

Amendments Pending

Pt 5 s. 113(1) definition of “asylum claim”: definition substituted (date to be announced) by 2006 c. 13 s. 12(2)

¹¹⁹ S.112(6)-(7) substituted for s.112(6) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.2(1) para.24(3) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

Pt 5 s. 113(1) definition of "human rights claim": substituted (date to be announced) by 2006 c. 13 s. 12(3)

114 Repeal

- (1) Part IV of the Immigration and Asylum Act 1999 (c. 33) (appeals) shall cease to have effect.
- (2) Schedule 6 (which makes transitional provision in connection with the repeal of Part IV of that Act and its replacement by this Part) shall have effect.
- (3) Schedule 7 (consequential amendments) shall have effect.

Commencement

Pt 5 s. 114(1)-(2): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

Pt 5 s. 114(3): February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

115 Appeal from within United Kingdom: unfounded human rights or asylum claim: transitional provision

- (1) A person may not bring an appeal under section 65 or 69 of the Immigration and Asylum Act 1999 (human rights and asylum) while in the United Kingdom if—
 - (a) the Secretary of State certifies that the appeal relates to a human rights claim or an asylum claim which is clearly unfounded, and
 - (b) the person does not have another right of appeal while in the United Kingdom under Part IV of that Act.
- (2) A person while in the United Kingdom may not bring an appeal under section 69 of that Act, or raise a question which relates to the Human Rights Convention under section 77 of that Act, if the Secretary of State certifies that—
 - (a) it is proposed to remove the person to a country of which he is not a national or citizen, and
 - (b) there is no reason to believe that the person's rights under the Human Rights Convention will be breached in that country.
- (3) A person while in the United Kingdom may not bring an appeal under section 65 of that Act (human rights) if the Secretary of State certifies that—
 - (a) it is proposed to remove the person to a country of which he is not a national or citizen, and
 - (b) there is no reason to believe that the person's rights under the Human Rights Convention will be breached in that country.
- (4) In determining whether a person in relation to whom a certificate has been issued under subsection (2) or (3) may be removed from the United Kingdom, the country specified in the certificate is to be regarded as—
 - (a) a place where a person's life and liberty is not threatened by reason of his race, religion, nationality, membership of a particular social group, or political opinion, and
 - (b) a place from which a person will not be sent to another country otherwise than in accordance with the Refugee Convention.

(5) Where a person in relation to whom a certificate is issued under this section subsequently brings an appeal or raises a question under section 65, 69 or 77 of that Act while outside the United Kingdom, the appeal or question shall be considered as if he had not been removed from the United Kingdom.

(6) If the Secretary of State is satisfied that a person who makes a human rights claim or an asylum claim is entitled to reside in a State listed in subsection (7), he shall issue a certificate under subsection (1) unless satisfied that the claim is not clearly unfounded.

(7) Those States are—

- (a) the Republic of Cyprus,
- (b) the Czech Republic,
- (c) the Republic of Estonia,
- (d) the Republic of Hungary,
- (e) the Republic of Latvia,
- (f) the Republic of Lithuania,
- (g) the Republic of Malta,
- (h) the Republic of Poland,
- (i) the Slovak Republic, [...] ¹²⁰
- (j) the Republic of Slovenia [,] ¹²⁰
- [(k) the Republic of Albania,
- (l) Bulgaria,
- (m) Serbia and Montenegro,
- (n) Jamaica,
- (o) Macedonia,
- (p) the Republic of Moldova, and
- (q) Romania.] ¹²⁰

(8) The Secretary of State may by order add a State, or part of a State, to the list in subsection (7) if satisfied that—

- (a) there is in general in that State or part no serious risk of persecution of persons entitled to reside in that State or part, and
- (b) removal to that State or part of persons entitled to reside there will not in general contravene the United Kingdom's obligations under the Human Rights Convention.

(9) The Secretary of State may by order remove from the list in subsection (7) a State or part added under subsection (8).

(10) In this section “asylum claim” and “human rights claim” have the meanings given by section 113 but—

- (a) a reference to a claim in that section shall be treated as including a reference to an allegation, and
- (b) a reference in that section to making a claim at a place designated by the Secretary of State shall be ignored.

Commencement

Pt 5 s. 115(1)-(10)(b): November 7, 2002

¹²⁰ Added by Asylum (Designated States) Order 2003/970 art.4 (April 1, 2003)

116 Special Immigration Appeals Commission: Community Legal Service

In paragraph 2(1) of Schedule 2 to the Access to Justice Act 1999 (c. 22) (Community Legal Service: courts and tribunals in which advocacy may be funded) the following shall be inserted after paragraph (h) (and before the word “or” which appears immediately after that paragraph)—

“(ha) the Special Immigration Appeals Commission.”.

Commencement

Pt 5 s. 116: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

117 Northern Ireland appeals: legal aid

(1) In Part 1 of Schedule 1 to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (S.I. 1981/228 (N.I. 8)) (proceedings for which legal aid may be given under Part II of that Order) the following shall be inserted after paragraph 6—

“6A.

Proceedings before an adjudicator appointed for the purposes of Part 5 of the Nationality, Immigration and Asylum Act 2002, the Immigration Appeal Tribunal or the Special Immigration Appeals Commission.”

(2) The amendment made by subsection (1) is without prejudice to the power to make regulations under Article 10(2) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 amending or revoking the provision inserted by that subsection.

Commencement

Pt 5 s. 117(1)-(2): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

PART 6**IMMIGRATION PROCEDURE***Applications***118 Leave pending decision on variation application**

The following shall be substituted for section 3C of the Immigration Act 1971 (c. 77) (continuation of leave to enter or remain pending decision on application for variation)—

“3C Continuation of leave pending variation decision

(1) This section applies if—

- (a) a person who has limited leave to enter or remain in the United Kingdom applies to the Secretary of State for variation of the leave,
- (b) the application for variation is made before the leave expires, and
- (c) the leave expires without the application for variation having been decided.

- (2) The leave is extended by virtue of this section during any period when—
- the application for variation is neither decided nor withdrawn,
 - an appeal under section 82(1) of the Nationality, Asylum and Immigration Act 2002 could be brought against the decision on the application for variation (ignoring any possibility of an appeal out of time with permission), or
 - an appeal under that section against that decision is pending (within the meaning of section 104 of that Act).
- (3) Leave extended by virtue of this section shall lapse if the applicant leaves the United Kingdom.
- (4) A person may not make an application for variation of his leave to enter or remain in the United Kingdom while that leave is extended by virtue of this section.
- (5) But subsection (4) does not prevent the variation of the application mentioned in subsection (1)(a).
- (6) In this section a reference to an application being decided is a reference to notice of the decision being given in accordance with regulations under section 105 of that Act (notice of immigration decision)."

Commencement

Pt 6 s. 118: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

119 Deemed leave on cancellation of notice

In paragraph 6(3) of Schedule 2 to the Immigration Act 1971 (c. 77) (deemed leave on cancellation of notice of refusal) after “and the immigration officer does not at the same time give him indefinite or limited leave to enter” there shall be inserted “or require him to submit to further examination”.

Commencement

Pt 6 s. 119: January 8, 2003 (SI 2002/2811 art. 2, Sch. 1 para. 1)

120 Requirement to state additional grounds for application

- (1) This section applies to a person if—
- he has made an application to enter or remain in the United Kingdom, or
 - an immigration decision within the meaning of section 82 has been taken or may be taken in respect of him.
- (2) The Secretary of State or an immigration officer may by notice in writing require the person to state—
- his reasons for wishing to enter or remain in the United Kingdom,
 - any grounds on which he should be permitted to enter or remain in the United Kingdom, and
 - any grounds on which he should not be removed from or required to leave the United Kingdom.
- (3) A statement under subsection (2) need not repeat reasons or grounds set out in—

- (a) the application mentioned in subsection (1)(a), or
- (b) an application to which the immigration decision mentioned in subsection (1)(b) relates.

Commencement

Pt 6 s. 120(1)-(3)(b): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

121 Compliance with procedure

The following shall be inserted after section 31A(3) of the Immigration Act 1971 (procedural requirements for application)—

- “(3A) Regulations under this section may provide that a failure to comply with a specified requirement of the regulations—
- (a) invalidates an application,
 - (b) does not invalidate an application, or
 - (c) invalidates an application in specified circumstances (which may be described wholly or partly by reference to action by the applicant, the Secretary of State, an immigration officer or another person).”

Commencement

Pt 6 s. 121: February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

Work permit
122 [...]¹²¹
123 Advice about work permit, &c.

(1) Section 82 of the Immigration and Asylum Act 1999 (c. 33) (immigration advice and services: interpretation) shall be amended as follows.

(2) In the definition of “relevant matters” in subsection (1), after paragraph (b) there shall be inserted—

“(ba) an application for an immigration employment document;”.

(3) At the end of the section add—

“(3) In the definition of “relevant matters” in subsection (1) “immigration employment document” means—

(a) a work permit (within the meaning of section 33(1) of the Immigration Act 1971 (interpretation)), and

¹²¹ Repealed by Immigration, Asylum and Nationality Act 2006 c. 13 Sch.3 para.1 (April 2, 2007: repeal has effect subject to saving specified in SI 2007/1109 Sch.1)

- (b) any other document which relates to employment and is issued for a purpose of immigration rules or in connection with leave to enter or remain in the United Kingdom.”

Commencement

Pt 6 s. 123(1): April 1, 2004 by SI 2003/754 Sch.1 as amended by SI 2003/2993 art.3 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1; SI 2003/1339 art. 3; SI 2003/2993 art. 3)

Pt 6 s. 123(2)-(3): December 1, 2003 april 1, 2004 by SI 2003/754 Sch.1 as amended by SI 2003/2993 art.3

Authority-to-carry scheme

 Not yet in force

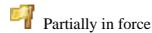
124 Authority to carry

- (1) Regulations made by the Secretary of State may authorise him to require a person (a “carrier”) to pay a penalty if the carrier brings a passenger to the United Kingdom and—
- (a) the carrier was required by an authority-to-carry scheme to seek authority under the scheme to carry the passenger, and
 - (b) the carrier did not seek authority before the journey to the United Kingdom commenced or was refused authority under the scheme.
- (2) An “authority-to-carry scheme” is a scheme operated by the Secretary of State which requires carriers to seek authority to bring passengers to the United Kingdom.
- (3) An authority-to-carry scheme must specify—
- (a) the class of carrier to which it applies (which may be defined by reference to a method of transport or otherwise), and
 - (b) the class of passenger to which it applies (which may be defined by reference to nationality, the possession of specified documents or otherwise).
- (4) The Secretary of State may operate different authority-to-carry schemes for different purposes.
- (5) Where the Secretary of State makes regulations under subsection (1) he must—
- (a) identify in the regulations the authority-to-carry scheme to which they refer, and
 - (b) lay the authority-to-carry scheme before Parliament.
- (6) Regulations under subsection (1) may, in particular—
- (a) apply or make provision similar to a provision of sections 40 to 43 of and Schedule 1 to the Immigration and Asylum Act 1999 (c. 33) (charge for passenger without document);
 - (b) do anything which may be done under a provision of any of those sections;
 - (c) amend any of those sections.
- (7) Regulations by virtue of subsection (6)(a) may, in particular—
- (a) apply a provision with modification;
 - (b) apply a provision which confers power to make legislation.
- (8) The grant or refusal of authority under an authority-to-carry scheme shall not be taken to determine whether a person is entitled or permitted to enter the United Kingdom.
- (9) Regulations under this section—
- (a) must 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.

Commencement

Pt 6 s. 124(1)-(9)(b): Date not available (not yet in force) (2002 c. 41 Pt 8 s. 162)

Evasion of procedure

Partially in force

125 Carriers' liability

Schedule 8 (which amends Part II of the Immigration and Asylum Act 1999 (carriers' liability)) shall have effect.

Commencement

Pt 6 s. 125: November 14, 2002 for the purposes specified in SI 2002/2811 Sch.1; December 8, 2002 for the purposes specified in SI 2002/2811 Sch.1; December 8, 2002 for provisions specified in SI 2002/2811 Sch.1; not yet in force otherwise (SI 2002/2811 art. 2, Sch. 1 para. 1)

*Provision of information by traveller***126 Physical data: compulsory provision**

- (1) The Secretary of State may by regulations—
- (a) require an immigration application to be accompanied by specified information about external physical characteristics of the applicant;
 - (b) enable an authorised person to require an individual who makes an immigration application to provide information about his external physical characteristics;
 - (c) enable an authorised person to require an entrant to provide information about his external physical characteristics.
- (2) In subsection (1) “immigration application” means an application for—
- (a) entry clearance,
 - (b) leave to enter or remain in the United Kingdom, or
 - (c) variation of leave to enter or remain in the United Kingdom.
- (3) Regulations under subsection (1) may not—
- (a) impose a requirement in respect of a person to whom section 141 of the Immigration and Asylum Act 1999 (c. 33) (fingerprinting) applies, during the relevant period within the meaning of that section, or
 - (b) enable a requirement to be imposed in respect of a person to whom that section applies, during the relevant period within the meaning of that section.
- (4) Regulations under subsection (1) may, in particular—
- (a) require, or enable an authorised person to require, the provision of information in a specified form;

- (b) require an individual to submit, or enable an authorised person to require an individual to submit, to a specified process by means of which information is obtained or recorded;
- (c) make provision about the effect of failure to provide information or to submit to a process (which may, in particular, include provision for an application to be disregarded or dismissed if a requirement is not satisfied);
- (d) confer a function (which may include the exercise of a discretion) on an authorised person;
- (e) require an authorised person to have regard to a code (with or without modification);
- (f) require an authorised person to have regard to such provisions of a code (with or without modification) as may be specified by direction of the Secretary of State;
- (g) make provision about the use and retention of information provided (which may include provision permitting the use of information for specified purposes which do not relate to immigration);
- (h) make provision which applies generally or only in specified cases or circumstances;
- (i) make different provision for different cases or circumstances.

(5) Regulations under subsection (1) must—

- (a) include provision about the destruction of information obtained or recorded by virtue of the regulations,
- (b) require the destruction of information at the end of the period of ten years beginning with the day on which it is obtained or recorded in a case for which destruction at the end of another period is not required by or in accordance with the regulations, and
- (c) include provision similar to section 143(2) and (10) to (13) of the Immigration and Asylum Act 1999 (c. 33) (fingerprints: destruction of copies and electronic data).

(6) In so far as regulations under subsection (1) require an individual under the age of 16 to submit to a process, the regulations must make provision similar to section 141(3) to (5) and (13) of the Immigration and Asylum Act 1999 (fingerprints: children).

(7) In so far as regulations under subsection (1) enable an authorised person to require an individual under the age of 16 to submit to a process, the regulations must make provision similar to section 141(3) to (5), (12) and (13) of that Act (fingerprints: children).

(8) Regulations under subsection (1)—

- (a) must be made by statutory instrument, and
- (b) shall not be made unless a draft of the regulations has been laid before and approved by resolution of each House of Parliament.

(9) In this section—

- “authorised person” has the meaning given by section 141(5) of the Immigration and Asylum Act 1999 (authority to take fingerprints),
- “code” has the meaning given by section 145(6) of that Act (code of practice),
- “entrant” has the meaning given by section 33(1) of the Immigration Act 1971 (c. 77) (interpretation),
- “entry clearance” has the meaning given by section 33(1) of that Act, and
- “external physical characteristics” includes, in particular, features of the iris or any other part of the eye.

Commencement

Pt 6 s. 126(1)-(9) definition of "external physical characteristics": April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

127 Physical data: voluntary provision

- (1) The Secretary of State may operate a scheme under which an individual may supply, or submit to the obtaining or recording of, information about his external physical characteristics to be used (wholly or partly) in connection with entry to the United Kingdom.
- (2) In particular, the Secretary of State may—
 - (a) require an authorised person to use information supplied under a scheme;
 - (b) make provision about the collection, use and retention of information supplied under a scheme (which may include provision requiring an authorised person to have regard to a code);
 - (c) charge for participation in a scheme.
- (3) In this section the following expressions have the same meaning as in section 126—
 - (a) "authorised person",
 - (b) "code", and
 - (c) "external physical characteristics".

Commencement

Pt 6 s. 127(1)-(3)(c): December 10, 2004 (SI 2004/2998 art. 2)

128 Data collection under Immigration and Asylum Act 1999

- (1) The following shall be added at the end of section 144 of the Immigration and Asylum Act 1999 (c. 33) (collection of data about external physical characteristics) (which becomes subsection (1))—

“(2) In subsection (1)“external physical characteristics” includes, in particular, features of the iris or any other part of the eye.”
- (2) The following shall be inserted after section 145(2) of that Act (codes of practice)—

“(2A) A person exercising a power under regulations made by virtue of section 144 must have regard to such provisions of a code as may be specified.”

Commencement

Pt 6 s. 128(1)-(2): February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

Disclosure of information by public authority

129 Local authority

- (1) The Secretary of State may require a local authority to supply information for the purpose of establishing where a person is if the Secretary of State reasonably suspects that—
 - (a) the person has committed an offence under section 24(1)(a), (b), (c), (e) or (f), 24A(1) or 26(1)(c) or (d) of the Immigration Act 1971 (c. 77) (illegal entry, deception, &c.), and
 - (b) the person is or has been resident in the local authority's area.
- (2) A local authority shall comply with a requirement under this section.
- (3) In the application of this section to England and Wales “local authority” means—
 - (a) a county council,
 - (b) a county borough council,
 - (c) a district council,
 - (d) a London borough council,
 - (e) the Common Council of the City of London, and
 - (f) the Council of the Isles of Scilly.
- (4) In the application of this section to Scotland “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39).
- (5) In the application of this section to Northern Ireland—
 - (a) a reference to a local authority shall be taken as a reference to the Northern Ireland Housing Executive, and
 - (b) the reference to a local authority's area shall be taken as a reference to Northern Ireland.

Commencement

Pt 6 s. 129(1)-(5)(b): July 30, 2003 (SI 2003/1747 art. 2(a))

130 [...]¹²²

131 Police, &c.

[Information may be supplied under section 20 of the Immigration and Asylum Act 1999 (c. 33) (supply of information to Secretary of State) for use for the purpose of—

- (a) determining whether an applicant for naturalisation under the British Nationality Act 1981 is of good character;
- (b) determining whether an applicant within subsection (1) of section 58 of the Immigration, Asylum and Nationality Act 2006 for registration under a provision listed in subsection (2) of that section is of good character;
- (c) determining whether to make an order in respect of a person under section 40 of the British Nationality Act 1981.]¹²³

¹²² Repealed by UK Borders Act 2007 c. 30 Sch.1 para.1 (January 31, 2008 as SI 2008/99)

¹²³ S.131(a)-(c) substituted for words by UK Borders Act 2007 c. 30 s.43 (January 31, 2008)

Commencement

Pt 6 s. 131: February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

132 Supply of document, &c. to Secretary of State

(1) Section 20 of the Immigration and Asylum Act 1999 (supply of information to Secretary of State) shall be amended as follows.

(2) After subsection (1) insert—

- “(1A) This section also applies to a document or article which—
(a) comes into the possession of a person listed in subsection (1) or someone acting on his behalf, or
(b) is discovered by a person listed in subsection (1) or someone acting on his behalf.”

(3) In subsection (2) after “information” insert “, document or article”.

(4) After subsection (2) insert—

- “(2A) The Secretary of State may—
(a) retain for immigration purposes a document or article supplied to him under subsection (2), and
(b) dispose of a document or article supplied to him under subsection (2) in such manner as he thinks appropriate (and the reference to use in subsection (2) includes a reference to disposal).”

(5) In subsection (6) after “information” insert “, documents or articles”.

Commencement

Pt 6 s. 132(1)-(5): February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

133 Medical inspectors

(1) This section applies to a person if an immigration officer acting under Schedule 2 to the Immigration Act 1971 (c. 77) (control on entry, &c.) has brought the person to the attention of—
(a) a medical inspector appointed under paragraph 1(2) of that Schedule, or
(b) a person working under the direction of a medical inspector appointed under that paragraph.

(2) A medical inspector may disclose to a health service body—

- (a) the name of a person to whom this section applies,
(b) his place of residence in the United Kingdom,
(c) his age,
(d) the language which he speaks,
(e) the nature of any disease with which the inspector thinks the person may be infected,
(f) relevant details of the person's medical history,

- (g) the grounds for an opinion mentioned in paragraph (e) (including the result of any test or examination which has been carried out), and
- (h) the inspector's opinion about action which the health service body should take.

(3) A disclosure may be made under subsection (2) only if the medical inspector thinks it necessary for the purpose of—

- (a) preventative medicine,
- (b) medical diagnosis,
- (c) the provision of care or treatment, or
- (d) the management of health care services.

(4) For the purposes of this section “health service body” in relation to a person means a body which carries out functions in an area which includes his place of residence and which is—

(a) in relation to England—

- (i) a Primary Care Trust established under [section 18 of the National Health Service Act 2006]¹²⁴,
- (ii) a National Health Service Trust established under [section 25 of the National Health Service Act 2006 or section 18 of the National Health Service (Wales) Act 2006]¹²⁵,
- [(iia) an NHS foundation trust,]¹²⁶
- (iii) a Strategic Health Authority established under [section 13 of the National Health Service Act 2006]¹²⁷,
- (iv) a Special Health Authority established under [section 28 of that Act, or section 22 of the National Health Service (Wales) Act 2006]¹²⁸, [or]¹²⁹ [...]¹³⁰
- (v) [...]¹³⁰
- [(vi) the Health Protection Agency.]¹²⁹

(b) in relation to Wales—

- [(i) a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006,]¹³¹

¹²⁴ Words substituted by National Health Service (Consequential Provisions) Act 2006 c. 43 Sch.1 para.228(a) (March 1, 2007)

¹²⁵ Words substituted by National Health Service (Consequential Provisions) Act 2006 c. 43 Sch.1 para.228(b) (March 1, 2007)

¹²⁶ Added by Health and Social Care (Community Health and Standards) Act 2003 c. 43 Sch.4 para.128 (April 1, 2004; November 20, 2003 for the purpose of making regulations or orders as specified in 2003 c.43 s.199(4); April 1, 2004 otherwise)

¹²⁷ Words substituted by National Health Service (Consequential Provisions) Act 2006 c. 43 Sch.1 para.228(c) (March 1, 2007)

¹²⁸ Words substituted by National Health Service (Consequential Provisions) Act 2006 c. 43 Sch.1 para.228(d) (March 1, 2007)

¹²⁹ Added by Health Protection Agency Act 2004 c. 17 Sch.3 para.17(2) (April 1, 2005)

¹³⁰ Repealed by Health and Social Care (Community Health and Standards) Act 2003 c. 43 Sch.14(7) para.1 (April 1, 2005 as SI 2005/457)

¹³¹ Substituted by National Health Service (Consequential Provisions) Act 2006 c. 43 Sch.1 para.228(e) (March 1, 2007)

- (ii) a National Health Service Trust established under [section 25 of the National Health Service Act 2006 or section 18 of the National Health Service (Wales) Act 2006]¹³², [or]¹³³ [...]¹³⁰
- [(iv) the Health Protection Agency.]¹³³
- (iii) [...]¹³⁰
- (c) in relation to Scotland—
 - (i) a Health Board, Special Health Board or National Health Service Trust established under section 2 or 12A of the National Health Service (Scotland) Act 1978 (c. 29), [...]¹³⁴
 - (ii) the Common Services Agency for the Scottish Health Service established under section 10 of that Act, or
 - [(iii) the Health Protection Agency, or]¹³⁴
- (d) in relation to Northern Ireland—
 - (i) a Health and Social Services Board established under the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)),
 - (ii) a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1)), [...]¹³⁵
 - (iii) the Department of Health, Social Services and Public Safety [, or]¹³⁵
 - [(iv) the Health Protection Agency.]¹³⁵

Commencement

Pt 6 s. 133(1)-(4)(d)(iii): February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

Amendments Pending

Pt 6 s. 133(4)(a)(iii): word inserted (date to be announced) by 2003 c. 43 Sch. 13 para. 12(a)

Pt 6 s. 133(4)(a)(v): repealed (date to be announced) by 2003 c. 43 Sch. 13 para. 12(a)

Pt 6 s. 133(4)(a)(v): repealed (date to be announced - commencement order) by 2003 c. 43 Sch. 14(7) para. 1

Pt 6 s. 133(4)(b)(i): word inserted (date to be announced) by 2003 c. 43 Sch. 13 para. 12(b)

Pt 6 s. 133(4)(b)(iii): repealed (date to be announced) by 2003 c. 43 Sch. 13 para. 12(b)

Pt 6 s. 133(4)(b)(iii): repealed (date to be announced - commencement order) by 2003 c. 43 Sch. 14(7) para. 1

Disclosure of information by private person

134 Employer

- (1) The Secretary of State may require an employer to supply information about an employee whom the Secretary of State reasonably suspects of having committed an offence under—

¹³² Words substituted by National Health Service (Consequential Provisions) Act 2006 c. 43 Sch.1 para.228(f) (March 1, 2007)

¹³³ Added by Health Protection Agency Act 2004 c. 17 Sch.3 para.17(3) (April 1, 2005)

¹³⁴ Added by Health Protection Agency Act 2004 c. 17 Sch.3 para.17(4)(b) (April 1, 2005)

¹³⁵ Added by Health Protection Agency Act 2004 c. 17 Sch.3 para.17(5)(b) (April 1, 2005)

- (a) section 24(1)(a), (b), (c), (e) or (f), 24A(1) or 26(1)(c) or (d) of the Immigration Act 1971 (c. 77) (illegal entry, deception, &c.),
- (b) section 105(1)(a), (b) or (c) of the Immigration and Asylum Act 1999 (c. 33) (support for asylum-seeker: fraud), or
- (c) section 106(1)(a), (b) or (c) of that Act (support for asylum-seeker: fraud).

(2) The power under subsection (1) may be exercised to require information about an employee only if the information—

- (a) is required for the purpose of establishing where the employee is, or
- (b) relates to the employee's earnings or to the history of his employment.

(3) In this section a reference to an employer or employee—

- (a) includes a reference to a former employer or employee, and
- (b) shall be construed in accordance with section 8(8) of the Asylum and Immigration Act 1996 (c. 49) (restrictions on employment).

(4) Where—

- (a) a business (the “employment agency”) arranges for one person (the “worker”) to provide services to another (the “client”), and
 - (b) the worker is not employed by the employment agency or the client,
- this section shall apply as if the employment agency were the worker's employer while he provides services to the client.

Commencement

Pt 6 s. 134(1)-(4)(b): July 30, 2003 (SI 2003/1747 art. 2(b))

135 Financial institution

(1) The Secretary of State may require a financial institution to supply information about a person if the Secretary of State reasonably suspects that—

- (a) the person has committed an offence under section 105(1)(a), (b) or (c) or 106(1)(a), (b) or (c) of the Immigration and Asylum Act 1999 (c. 33) (support for asylum-seeker: fraud),
- (b) the information is relevant to the offence, and
- (c) the institution has the information.

(2) In this section “financial institution” means—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to accept deposits, and
- (b) a building society (within the meaning given by the Building Societies Act 1986 (c. 53)).

Commencement

Pt 6 s. 135(1)-(2)(b): July 30, 2003 (SI 2003/1747 art. 2(b))

136 Notice

- (1) A requirement to provide information under section 134 or 135 must be imposed by notice in writing specifying—
 - (a) the information,
 - (b) the manner in which it is to be provided, and
 - (c) the period of time within which it is to be provided.
- (2) A period of time specified in a notice under subsection (1)(c)—
 - (a) must begin with the date of receipt of the notice, and
 - (b) must not be less than ten working days.
- (3) A person on whom a notice is served under subsection (1) must provide the Secretary of State with the information specified in the notice.
- (4) Information provided under subsection (3) must be provided—
 - (a) in the manner specified under subsection (1)(b), and
 - (b) within the time specified under subsection (1)(c).
- (5) In this section “working day” means a day which is not—
 - (a) Saturday,
 - (b) Sunday,
 - (c) Christmas Day,
 - (d) Good Friday, or
 - (e) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in any part of the United Kingdom.

Commencement

Pt 6 s. 136(1)-(5)(e): July 30, 2003 (SI 2003/1747 art. 2(b))

137 Disclosure of information: offences

- (1) A person commits an offence if without reasonable excuse he fails to comply with section 136(3).
- (2) A person who is guilty of an offence under subsection (1) shall be liable on summary conviction to—
 - (a) imprisonment for a term not exceeding three months,
 - (b) a fine not exceeding level 5 on the standard scale, or
 - (c) both.

Commencement

Pt 6 s. 137(1)-(2)(c): July 30, 2003 (SI 2003/1747 art. 2(b))

Amendments Pending

Pt 6 s. 137(2)(a): words substituted (date to be announced) by 2003 c. 44 Sch. 26 para. 58

138 Offence by body

- (1) Subsection (2) applies where an offence under section 137 is committed by a body corporate and it is proved that the offence—
- (a) was committed with the consent or connivance of an officer of the body, or
 - (b) was attributable to neglect on the part of an officer of the body.
- (2) The officer, as well as the body, shall be guilty of the offence.
- (3) In this section a reference to an officer of a body corporate includes a reference to—
- (a) a director, manager or secretary,
 - (b) a person purporting to act as a director, manager or secretary, and
 - (c) if the affairs of the body are managed by its members, a member.
- (4) Where an offence under section 137 is committed by a partnership (other than a limited partnership), each partner shall be guilty of the offence.
- (5) Subsection (1) shall have effect in relation to a limited partnership as if—
- (a) a reference to a body corporate were a reference to a limited partnership, and
 - (b) a reference to an officer of the body were a reference to a partner.

Commencement

Pt 6 s. 138(1)-(5)(b): July 30, 2003 (SI 2003/1747 art. 2(b))

139 Privilege against self-incrimination

- (1) Information provided by a person pursuant to a requirement under section 134 or 135 shall not be admissible in evidence in criminal proceedings against that person.
- (2) This section shall not apply to proceedings for an offence under section 137.

Commencement

Pt 6 s. 139(1)-(2): July 30, 2003 (SI 2003/1747 art. 2(b))

*Immigration services***140 Immigration Services Commissioner**

- (1) The following shall be inserted after paragraph 7(1) of Schedule 5 to the Immigration and Asylum Act 1999 (c. 33) (investigation by Commissioner: power of entry)—
- “(1A) This paragraph also applies if the Commissioner is investigating a matter under paragraph 5(5) and—

- (a) the matter is of a kind described in paragraph 5(3)(a), (b) or (d) (for which purpose a reference to an allegation shall be treated as a reference to a suspicion of the Commissioner), and
 - (b) there are reasonable grounds for believing that particular premises are being used in connection with the provision of immigration advice or immigration services by a registered person.”
- (2) The following shall be inserted after paragraph 3 of Schedule 6 to the Immigration and Asylum Act 1999 (c. 33) (registration by Commissioner)—

“3A. Variation of registration

The Commissioner may vary a person's registration—

- (a) so as to make it have limited effect in any of the ways mentioned in paragraph 2(2); or
- (b) so as to make it have full effect.”

- (3) The following shall be inserted after section 87(3)(e) of the Immigration and Asylum Act 1999 (Immigration Services Tribunal: jurisdiction) (before the word “or”)—

“(ea) to vary a registration under paragraph 3A of that Schedule;”.

Commencement

Pt 6 s. 140(1)-(3): January 8, 2003 (SI 2002/2811 art. 2, Sch. 1 para. 1)

Immigration control

141 EEA ports: juxtaposed controls

- (1) The Secretary of State may by order make provision for the purpose of giving effect to an international agreement which concerns immigration control at an EEA port (whether or not it also concerns other aspects of frontier control at the port).
- (2) An order under this section may make any provision which appears to the Secretary of State—
- (a) likely to facilitate implementation of the international agreement (including those aspects of the agreement which relate to frontier control other than immigration control), or
 - (b) appropriate as a consequence of provision made for the purpose of facilitating implementation of the agreement.
- (3) In particular, an order under this section may—
- (a) provide for a law of England and Wales to have effect, with or without modification, in relation to a person in a specified area or anything done in a specified area;
 - (b) provide for a law of England and Wales not to have effect in relation to a person in a specified area or anything done in a specified area;
 - (c) provide for a law of England and Wales to be modified in its effect in relation to a person in a specified area or anything done in a specified area;
 - (d) disapply or modify an enactment in relation to a person who has undergone a process in a specified area;

- (e) disapply or modify an enactment otherwise than under paragraph (b), (c) or (d);
- (f) make provision conferring a function (which may include—
 - (i) provision conferring a discretionary function;
 - (ii) provision conferring a function on a servant or agent of the government of a State other than the United Kingdom);
- (g) create or extend the application of an offence;
- (h) impose or permit the imposition of a penalty;
- (i) require the payment of, or enable a person to require the payment of, a charge or fee;
- (j) make provision about enforcement (which may include—
 - (i) provision conferring a power of arrest, detention or removal from or to any place;
 - (ii) provision for the purpose of enforcing the law of a State other than the United Kingdom);
- (k) confer jurisdiction on a court or tribunal;
- (l) confer immunity or provide for indemnity;
- (m) make provision about compensation;
- (n) impose a requirement, or enable a requirement to be imposed, for a person to co-operate with or to provide facilities for the use of another person who is performing a function under the order or under the international agreement (which may include a requirement to provide facilities without charge);
- (o) make provision about the disclosure of information.

(4) An order under this section may—

- (a) make provision which applies generally or only in specified circumstances;
- (b) make different provision for different circumstances;
- (c) amend an enactment.

(5) An order under this section—

- (a) must be made by statutory instrument,
- (b) may not be made unless the Secretary of State has consulted with such persons as appear to him to be appropriate, and
- (c) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

(6) In this section—

- “EEA port” means a port in an EEA State from which passengers are commonly carried by sea to or from the United Kingdom,
- “EEA State” means 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),
- “frontier control” means the enforcement of law which relates to, or in so far as it relates to, the movement of persons or goods into or out of the United Kingdom or another State,
- “immigration control” means arrangements made in connection with the movement of persons into or out of the United Kingdom or another State,
- “international agreement” means an agreement made between Her Majesty's Government and the government of another State, and
- “specified area” means an area (whether of the United Kingdom or of another State) specified in an international agreement.

Commencement

Pt 6 s. 141(1)-(6) definition of "specified area": January 8, 2003 (SI 2002/2811 art. 2, Sch. 1 para. 1)

Country information

142 [...]¹³⁶

PART 7
OFFENCES

*Substance***143 Assisting unlawful immigration, &c.**

The following shall be substituted for section 25 of the Immigration Act 1971 (c. 77) (assisting illegal entry)—

“25 Assisting unlawful immigration to member State

- (1) A person commits an offence if he—
 - (a) does an act which facilitates the commission of a breach of immigration law by an individual who is not a citizen of the European Union,
 - (b) knows or has reasonable cause for believing that the act facilitates the commission of a breach of immigration law by the individual, and
 - (c) knows or has reasonable cause for believing that the individual is not a citizen of the European Union.
- (2) In subsection (1) “immigration law” means a law which has effect in a member State and which controls, in respect of some or all persons who are not nationals of the State, entitlement to—
 - (a) enter the State,
 - (b) transit across the State, or
 - (c) be in the State.
- (3) A document issued by the government of a member State certifying a matter of law in that State—
 - (a) shall be admissible in proceedings for an offence under this section, and
 - (b) shall be conclusive as to the matter certified.
- (4) Subsection (1) applies to anything done—
 - (a) in the United Kingdom,
 - (b) outside the United Kingdom by an individual to whom subsection (5) applies, or

¹³⁶ Repealed by UK Borders Act 2007 c. 30 Sch.1 para.1 (April 1, 2008 as SI 2008/309)

- (c) outside the United Kingdom by a body incorporated under the law of a part of the United Kingdom.
- (5) 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.
- (6) 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 six months, to a fine not exceeding the statutory maximum or to both.

25A Helping asylum-seeker to enter United Kingdom

- (1) A person commits an offence if—
- (a) he knowingly and for gain facilitates the arrival in the United Kingdom of an individual, and
 - (b) he knows or has reasonable cause to believe that the individual is an asylum-seeker.
- (2) In this section “asylum-seeker” means a person who intends to claim that to remove him from or require him to leave the United Kingdom would be contrary to the United Kingdom's obligations under—
- (a) the Refugee Convention (within the meaning given by section 167(1) of the Immigration and Asylum Act 1999 (c. 33) (interpretation)), or
 - (b) the Human Rights Convention (within the meaning given by that section).
- (3) Subsection (1) does not apply to anything done by a person acting on behalf of an organisation which—
- (a) aims to assist asylum-seekers, and
 - (b) does not charge for its services.
- (4) Subsections (4) to (6) of section 25 apply for the purpose of the offence in subsection (1) of this section as they apply for the purpose of the offence in subsection (1) of that section.

25B Assisting entry to United Kingdom in breach of deportation or exclusion order

- (1) A person commits an offence if he—
- (a) does an act which facilitates a breach of a deportation order in force against an individual who is a citizen of the European Union, and
 - (b) knows or has reasonable cause for believing that the act facilitates a breach of the deportation order.

(2) Subsection (3) applies where the Secretary of State personally directs that the exclusion from the United Kingdom of an individual who is a citizen of the European Union is conducive to the public good.

(3) A person commits an offence if he—

- (a) does an act which assists the individual to arrive in, enter or remain in the United Kingdom,
- (b) knows or has reasonable cause for believing that the act assists the individual to arrive in, enter or remain in the United Kingdom, and
- (c) knows or has reasonable cause for believing that the Secretary of State has personally directed that the individual's exclusion from the United Kingdom is conducive to the public good.

(4) Subsections (4) to (6) of section 25 apply for the purpose of an offence under this section as they apply for the purpose of an offence under that section.

25C Forfeiture of vehicle, ship or aircraft

(1) This section applies where a person is convicted on indictment of an offence under section 25, 25A or 25B.

(2) The court may order the forfeiture of a vehicle used or intended to be used in connection with the offence if the convicted person—

- (a) owned the vehicle at the time the offence was committed,
- (b) was at that time a director, secretary or manager of a company which owned the vehicle,
- (c) was at that time in possession of the vehicle under a hire-purchase agreement,
- (d) was at that time a director, secretary or manager of a company which was in possession of the vehicle under a hire-purchase agreement, or
- (e) was driving the vehicle in the course of the commission of the offence.

(3) The court may order the forfeiture of a ship or aircraft used or intended to be used in connection with the offence if the convicted person—

- (a) owned the ship or aircraft at the time the offence was committed,
- (b) was at that time a director, secretary or manager of a company which owned the ship or aircraft,
- (c) was at that time in possession of the ship or aircraft under a hire-purchase agreement,
- (d) was at that time a director, secretary or manager of a company which was in possession of the ship or aircraft under a hire-purchase agreement,
- (e) was at that time a charterer of the ship or aircraft, or
- (f) committed the offence while acting as captain of the ship or aircraft.

(4) But in a case to which subsection (3)(a) or (b) does not apply, forfeiture may be ordered only—

- (a) in the case of a ship, if subsection (5) or (6) applies;
- (b) in the case of an aircraft, if subsection (5) or (7) applies.

(5) This subsection applies where—

- (a) in the course of the commission of the offence, the ship or aircraft carried more than 20 illegal entrants, and

- (b) a person who, at the time the offence was committed, owned the ship or aircraft or was a director, secretary or manager of a company which owned it, knew or ought to have known of the intention to use it in the course of the commission of an offence under section 25, 25A or 25B.
- (6) This subsection applies where a ship's gross tonnage is less than 500 tons.
- (7) This subsection applies where the maximum weight at which an aircraft (which is not a hovercraft) may take off in accordance with its certificate of airworthiness is less than 5,700 kilogrammes.
- (8) Where a person who claims to have an interest in a vehicle, ship or aircraft applies to a court to make representations on the question of forfeiture, the court may not make an order under this section in respect of the ship, aircraft or vehicle unless the person has been given an opportunity to make representations.
- (9) In the case of an offence under section 25, the reference in subsection (5)(a) to an illegal entrant shall be taken to include a reference to—
 - (a) an individual who seeks to enter a member State in breach of immigration law (within the meaning of section 25), and
 - (b) an individual who is a passenger for the purpose of section 145 of the Nationality, Immigration and Asylum Act 2002 (traffic in prostitution).
- (10) In the case of an offence under section 25A, the reference in subsection (5)(a) to an illegal entrant shall be taken to include a reference to—
 - (a) an asylum-seeker (within the meaning of that section), and
 - (b) an individual who is a passenger for the purpose of section 145(1) of the Nationality, Immigration and Asylum Act 2002.
- (11) In the case of an offence under section 25B, the reference in subsection (5)(a) to an illegal entrant shall be taken to include a reference to an individual who is a passenger for the purpose of section 145(1) of the Nationality, Immigration and Asylum Act 2002.”

Commencement

Pt 7 s. 143: February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

144 Section 143: consequential amendments

- (1) The Immigration Act 1971 (c. 77) shall be amended as follows.
- (2) Section 25A (detention of ship, aircraft or vehicle) shall be renumbered as section 25D (and its title becomes “Detention of ship, aircraft or vehicle”) and—
 - (a) in subsection (1) for “section 25(1)(a) or (b)” substitute “section 25, 25A or 25B”,
 - (b) in subsections (2) and (4) for “section 25(6)” substitute “section 25C”,
 - (c) for subsection (3) substitute—
 - “(3) A person (other than the arrested person) may apply to the court for the release of a ship, aircraft or vehicle on the grounds that—
 - (a) he owns the ship, aircraft or vehicle,
 - (b) he was, immediately before the detention of the ship, aircraft or vehicle, in possession of it under a hire-purchase agreement, or

- (c) he is a charterer of the ship or aircraft.”
 - , and
 - (d) omit subsection (7).
- (3) In section 28A (arrest without warrant)—
- (a) in subsection (3)(a) for “section 25(1)” substitute “section 25, 25A or 25B”,
 - (b) omit subsection (4),
 - (c) in subsection (10) omit “, (4)(b)”, and
 - (d) in subsection (11) omit “, (4)”.
- (4) In section 28B(5) (search and arrest by warrant) for “, section 24A or section 25(2)” substitute “, 24A”.
- (5) In section 28C(1) (search and arrest without warrant) for “section 25(1)” substitute “section 25, 25A or 25B”.
- (6) In section 28D(4) (entry and search of premises) for “section 24A or section 25” substitute “24A, 25, 25A, 25B”.
- (7) In section 28F (the title to which becomes “Entry and seach of premises following arrest under section 25, 25A or 25B”) in subsection (1) for “section 25(1)” substitute “section 25, 25A, 25B”.
- (8) After section 33(1) (interpretation) insert—
- “(1A) A reference to being an owner of a vehicle, ship or aircraft includes a reference to being any of a number of persons who jointly own it.”

Commencement

Pt 7 s. 144(1)-(8): February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

145 [...]¹³⁷

146 [...]¹³⁸

147 Employment

- (1) Section 8 of the Asylum and Immigration Act 1996 (c. 49) (employment: offence) shall be amended as follows.
- (2) For subsection (2) (defence) substitute—

“(2) It is a defence for a person charged with an offence under this section to prove that before the employment began any relevant requirement of an order of the Secretary of State under subsection (2A) was complied with.

(2A) An order under this subsection may—

- (a) require the production to an employer of a document of a specified description;
- (b) require the production to an employer of one document of each of a number of specified descriptions;

¹³⁷ Repealed by Sexual Offences Act 2003 c. 42 Sch.7 para.1 (May 1, 2004)

¹³⁸ Repealed by Sexual Offences Act 2003 c. 42 Sch.7 para.1 (May 1, 2004)

- (c) require an employer to take specified steps to retain, copy or record the content of a document produced to him in accordance with the order;
- (d) make provision which applies generally or only in specified circumstances;
- (e) make different provision for different circumstances.”

(3) After subsection (6) insert—

“(6A) Where an offence under this section is committed by a partnership (other than a limited partnership) each partner shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(6B) Subsection (5) shall have effect in relation to a limited partnership as if—

- (a) a reference to a body corporate were a reference to a limited partnership, and
- (b) a reference to an officer of the body were a reference to a partner.”

(4) At the end of the section add—

“(9) Section 28(1) of the Immigration Act 1971 (c. 77) (extended time limit for prosecution) shall apply in relation to an offence under this section.

(10) An offence under this section shall be treated as—

- (a) a relevant offence for the purpose of sections 28B and 28D of that Act (search, entry and arrest), and
- (b) an offence under Part III of that Act (criminal proceedings) for the purposes of sections 28E, 28G and 28H (search after arrest).”

Commencement

Pt 7 s. 147(1), (3)-(4): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

Pt 7 s. 147(2): April 1, 2003 for the purpose of enabling subordinate legislation to be made; May 1, 2004 otherwise (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1; SI 2004/1201 art. 2)

148 Registration card

The following shall be inserted after section 26 of the Immigration Act 1971 (general offences)—

“26A Registration card

(1) In this section “registration card” means a document which—

- (a) carries information about a person (whether or not wholly or partly electronically), and
- (b) is issued by the Secretary of State to the person wholly or partly in connection with a claim for asylum (whether or not made by that person).

(2) In subsection (1) “claim for asylum” has the meaning given by section 18 of the Nationality, Immigration and Asylum Act 2002.

(3) A person commits an offence if he—

- (a) makes a false registration card,
- (b) alters a registration card with intent to deceive or to enable another to deceive,

- (c) has a false or altered registration card in his possession without reasonable excuse,
 - (d) uses or attempts to use a false registration card for a purpose for which a registration card is issued,
 - (e) uses or attempts to use an altered registration card with intent to deceive,
 - (f) makes an article designed to be used in making a false registration card,
 - (g) makes an article designed to be used in altering a registration card with intent to deceive or to enable another to deceive, or
 - (h) has an article within paragraph (f) or (g) in his possession without reasonable excuse.
- (4) In subsection (3) “false registration card” means a document which is designed to appear to be a registration card.
- (5) A person who is guilty of an offence under subsection (3)(a), (b), (d), (e), (f) or (g) shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding ten years, to a fine or to both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.
- (6) A person who is guilty of an offence under subsection (3)(c) or (h) 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 six months, to a fine not exceeding the statutory maximum or to both.
- (7) The Secretary of State may by order—
- (a) amend the definition of “registration card” in subsection (1);
 - (b) make consequential amendment of this section.
- (8) An order under subsection (7)—
- (a) must 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.”

Commencement

Pt 7 s. 148: February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

149 Immigration stamp

The following shall be inserted after section 26A of the Immigration Act 1971 (c. 77) (registration card: falsification, &c.) (inserted by section 148 above)—

“26B Possession of immigration stamp

- (1) A person commits an offence if he has an immigration stamp in his possession without reasonable excuse.

- (2) A person commits an offence if he has a replica immigration stamp in his possession without reasonable excuse.
- (3) In this section—
- (a) “immigration stamp” means a device which is designed for the purpose of stamping documents in the exercise of an immigration function,
 - (b) “replica immigration stamp” means a device which is designed for the purpose of stamping a document so that it appears to have been stamped in the exercise of an immigration function, and
 - (c) “immigration function” means a function of an immigration officer or the Secretary of State under the Immigration Acts.
- (4) A person who is 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 six months, to a fine not exceeding the statutory maximum or to both.”

Commencement

Pt 7 s. 149: February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

150 Sections 148 and 149: consequential amendments

- (1) The following shall be inserted after section 28A(9) of the Immigration Act 1971 (arrest without warrant)—
- “(9A) A constable or immigration officer may arrest without warrant a person—
- (a) who has committed an offence under section 26A or 26B; or
 - (b) whom he has reasonable grounds for suspecting has committed an offence under section 26A or 26B.”
- (2) In section 28B(5) of that Act (search and arrest by warrant) after “, 24A” there shall be inserted “, 26A or 26B.”.
- (3) In section 28D(4) of that Act (search of premises) after “, 25B” there shall be inserted “, 26A or 26B”.

Commencement

Pt 7 s. 150(1)-(3): February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

151 False information

In section 26(3) of the Immigration Act 1971 (general offences: “relevant enactment”—

- (a) the word “or” after paragraph (c) shall cease to have effect, and
 - (b) after paragraph (d) there shall be inserted—
- “; or
- (e) the Nationality, Immigration and Asylum Act 2002 (apart from Part 5).”

Commencement

Pt 7 s. 151(a)-(b): February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

*Procedure***152 Arrest by immigration officer**

The following shall be inserted after section 28A of the Immigration Act 1971 (c. 77) (arrest without warrant)—

“28AA Arrest with warrant

- (1) This section applies if on an application by an immigration officer a justice of the peace is satisfied that there are reasonable grounds for suspecting that a person has committed an offence under—
 - (a) section 24(1)(d), or
 - (b) section 8 of the Asylum and Immigration Act 1996 (c. 49) (employment: offence).
- (2) The justice of the peace may grant a warrant authorising any immigration officer to arrest the person.
- (3) In the application of this section to Scotland a reference to a justice of the peace shall be treated as a reference to the sheriff or a justice of the peace.”

Commencement

Pt 7 s. 152: January 8, 2003 (SI 2002/2811 art. 2, Sch. 1 para. 1)

153 Power of entry

- (1) The following shall be inserted after section 28C of the Immigration Act 1971 (search and arrest without warrant)—

“28CA Business premises: entry to arrest

- (1) A constable or immigration officer may enter and search any business premises for the purpose of arresting a person—
 - (a) for an offence under section 24,
 - (b) for an offence under section 24A, or
 - (c) under paragraph 17 of Schedule 2.
- (2) The power under subsection (1) may be exercised only—
 - (a) to the extent that it is reasonably required for a purpose specified in subsection (1),
 - (b) if the constable or immigration officer has reasonable grounds for believing that the person whom he is seeking is on the premises,

- (c) with the authority of the Secretary of State (in the case of an immigration officer) or a Chief Superintendent (in the case of a constable), and
 - (d) if the constable or immigration officer produces identification showing his status.
- (3) Authority for the purposes of subsection (2)(c)—
- (a) may be given on behalf of the Secretary of State only by a civil servant of the rank of at least Assistant Director, and
 - (b) shall expire at the end of the period of seven days beginning with the day on which it is given.
- (4) Subsection (2)(d) applies—
- (a) whether or not a constable or immigration officer is asked to produce identification, but
 - (b) only where premises are occupied.
- (5) Subsection (6) applies where a constable or immigration officer—
- (a) enters premises in reliance on this section, and
 - (b) detains a person on the premises.
- (6) A detainee custody officer may enter the premises for the purpose of carrying out a search.
- (7) In subsection (6)—
- “detainee custody officer” means a person in respect of whom a certificate of authorisation is in force under section 154 of the Immigration and Asylum Act 1999 (c. 33) (detained persons: escort and custody), and
 “search” means a search under paragraph 2(1)(a) of Schedule 13 to that Act (escort arrangements: power to search detained person)."
- (2) The following shall be substituted for section 146(2) of the Immigration and Asylum Act 1999 (use of force)—
- “(2) A person exercising a power under any of the following may if necessary use reasonable force—
- (a) section 28CA, 28FA or 28FB of the 1971 Act (business premises: entry to arrest or search),
 - (b) section 141 or 142 of this Act, and
 - (c) regulations under section 144 of this Act.”

Commencement

Pt 7 s. 153(1)-(2): January 8, 2003 (SI 2002/2811 art. 2, Sch. 1 para. 1)

154 Power to search for evidence

The following shall be inserted after section 28F of the Immigration Act 1971 (c. 77) (entry and search)—

“28FA Search for personnel records: warrant unnecessary

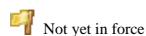
- (1) This section applies where—
 - (a) a person has been arrested for an offence under section 24(1) or 24A(1),
 - (b) a person has been arrested under paragraph 17 of Schedule 2,
 - (c) a constable or immigration officer reasonably believes that a person is liable to arrest for an offence under section 24(1) or 24A(1), or
 - (d) a constable or immigration officer reasonably believes that a person is liable to arrest under paragraph 17 of Schedule 2.
- (2) A constable or immigration officer may search business premises where the arrest was made or where the person liable to arrest is if the constable or immigration officer reasonably believes—
 - (a) that a person has committed an immigration employment offence in relation to the person arrested or liable to arrest, and
 - (b) that employee records, other than items subject to legal privilege, will be found on the premises and will be of substantial value (whether on their own or together with other material) in the investigation of the immigration employment offence.
- (3) A constable or officer searching premises under subsection (2) may seize and retain employee records, other than items subject to legal privilege, which he reasonably suspects will be of substantial value (whether on their own or together with other material) in the investigation of—
 - (a) an immigration employment offence, or
 - (b) an offence under section 105 or 106 of the Immigration and Asylum Act 1999
 - (c) 33 (support for asylum-seeker: fraud).
- (4) The power under subsection (2) may be exercised only—
 - (a) to the extent that it is reasonably required for the purpose of discovering employee records other than items subject to legal privilege,
 - (b) if the constable or immigration officer produces identification showing his status, and
 - (c) if the constable or immigration officer reasonably believes that at least one of the conditions in subsection (5) applies.
- (5) Those conditions are—
 - (a) that it is not practicable to communicate with a person entitled to grant access to the records,
 - (b) that permission to search has been refused,
 - (c) that permission to search would be refused if requested, and
 - (d) that the purpose of a search may be frustrated or seriously prejudiced if it is not carried out in reliance on subsection (2).
- (6) Subsection (4)(b) applies—
 - (a) whether or not a constable or immigration officer is asked to produce identification, but
 - (b) only where premises are occupied.
- (7) In this section “immigration employment offence” means an offence under section 8 of the Asylum and Immigration Act 1996 (c. 49) (employment).

28FB Search for personnel records: with warrant

- (1) This section applies where on an application made by an immigration officer in respect of business premises a justice of the peace is satisfied that there are reasonable grounds for believing—
- (a) that an employer has provided inaccurate or incomplete information under section 134 of the Nationality, Immigration and Asylum Act 2002 (compulsory disclosure by employer),
 - (b) that employee records, other than items subject to legal privilege, will be found on the premises and will enable deduction of some or all of the information which the employer was required to provide, and
 - (c) that at least one of the conditions in subsection (2) is satisfied.
- (2) Those conditions are—
- (a) that it is not practicable to communicate with a person entitled to grant access to the premises,
 - (b) that it is not practicable to communicate with a person entitled to grant access to the records,
 - (c) that entry to the premises or access to the records will not be granted unless a warrant is produced, and
 - (d) that the purpose of a search may be frustrated or seriously prejudiced unless an immigration officer arriving at the premises can secure immediate entry.
- (3) The justice of the peace may issue a warrant authorising an immigration officer to enter and search the premises.
- (4) Subsection (7)(a) of section 28D shall have effect for the purposes of this section as it has effect for the purposes of that section.
- (5) An immigration officer searching premises under a warrant issued under this section may seize and retain employee records, other than items subject to legal privilege, which he reasonably suspects will be of substantial value (whether on their own or together with other material) in the investigation of—
- (a) an offence under section 137 of the Nationality, Immigration and Asylum Act 2002 (disclosure of information: offences) in respect of a requirement under section 134 of that Act, or
 - (b) an offence under section 105 or 106 of the Immigration and Asylum Act 1999 (c. 33) (support for asylum-seeker: fraud)."

Commencement

Pt 7 s. 154: January 8, 2003 (SI 2002/2811 art. 2, Sch. 1 para. 1)



Not yet in force

155 Sections 153 and 154: supplemental

The following shall be added at the end of section 28L of the Immigration Act 1971 (c. 77) (interpretation) (which becomes subsection (1))—

- “(2) In this Part “business premises” means premises (or any part of premises) not used as a dwelling.

- (3) In this Part “employee records” means records which show an employee's—
 - (a) name,
 - (b) date of birth,
 - (c) address,
 - (d) length of service,
 - (e) rate of pay, or
 - (f) nationality or citizenship.
- (4) The Secretary of State may by order amend section 28CA(3)(a) to reflect a change in nomenclature.
- (5) An order under subsection (4)—
 - (a) must be made by statutory instrument, and
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

Commencement

Pt 7 s. 155: Date not available (not yet in force) (2002 c. 41 Pt 8 s. 162)

156 Time limit on prosecution

- (1) In section 28(1) of the Immigration Act 1971 (c. 77) (extended time limit for prosecution) the words “, 24A, 25” shall cease to have effect.
- (2) Section 24A(4) of that Act (deception: application of extended time limit) shall cease to have effect.

Commencement

Pt 7 s. 156(1)-(2): February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

PART 8

GENERAL

157 Consequential and incidental provision

- (1) The Secretary of State may by order make consequential or incidental provision in connection with a provision of this Act.
- (2) An order under this section may, in particular—
 - (a) amend an enactment;
 - (b) modify the effect of an enactment.
- (3) An order under this section must be made by statutory instrument.
- (4) An order under this section which amends an enactment shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

(5) Any other order under this section shall be subject to annulment pursuant to a resolution of either House of Parliament.

Commencement

Pt 8 s. 157(1)-(5): November 7, 2002

158 [...]¹³⁹**159 Applied provision**

- (1) Subsection (2) applies where this Act amends or refers to a provision which is applied by, under or for purposes of—
- (a) another provision of the Act which contains the provision, or
 - (b) another Act.
- (2) The amendment or reference shall have effect in relation to the provision as applied.
- (3) Where this Act applies a provision of another Act, a reference to that provision in any enactment includes a reference to the provision as applied by this Act.

Commencement

Pt 8 s. 159(1)-(3): February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

160 Money

- (1) Expenditure of the Secretary of State or the Lord Chancellor in connection with a provision of this Act shall be paid out of money provided by Parliament.
- (2) An increase attributable to this Act in the amount payable out of money provided by Parliament under another enactment shall be paid out of money provided by Parliament.
- (3) A sum received by the Secretary of State or the Lord Chancellor in connection with a provision of this Act shall be paid into the Consolidated Fund.

Commencement

Pt 8 s. 160(1)-(3): November 7, 2002

 Partially in force

161 Repeals

The provisions listed in Schedule 9 are hereby repealed to the extent specified.

Commencement

Pt 8 s. 161: December 8, 2002 for provisions specified in SI 2002/2811 Sch.1; February 10, 2003 for provisions specified in SI 2003/1 Sch.1; April 1, 2003 for provisions specified in SI 2003/754 Sch.1; not yet in force otherwise

¹³⁹ Repealed by Immigration, Asylum and Nationality Act 2006 c. 13 s.64(3)(c) (March 30, 2006)

(SI 2002/2811 art. 2, Sch. 1 para. 1; SI 2003/1 art. 2, Sch. 1 para. 1; SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

162 Commencement

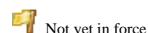
- (1) Subject to subsections (2) to (5), the preceding provisions of this Act shall come into force in accordance with provision made by the Secretary of State by order.
- (2) The following provisions shall come into force on the passing of this Act—
 - (a) section 6,
 - (b) section 7,
 - (c) section 10(1) to (4) and (6),
 - (d) section 11,
 - (e) section 15 (and Schedule 2),
 - (f) section 16,
 - (g) section 35(1)(h),
 - (h) section 38,
 - (i) section 40(1),
 - (j) section 41(1),
 - (k) section 42,
 - (l) section 43,
 - (m) section 48,
 - (n) section 49,
 - (o) section 50,
 - (p) section 56,
 - (q) section 58,
 - (r) section 59,
 - (s) section 61,
 - (t) section 67,
 - (u) section 69,
 - (v) section 70,
 - (w) section 115 and paragraph 29 of Schedule 7 (and the relevant entry in Schedule 9),
 - (x) section 157, and
 - (y) section 160.
- (3) Section 5 shall have effect in relation to—
 - (a) an application made after the passing of this Act, and
 - (b) an application made, but not determined, before the passing of this Act.
- (4) Section 8 shall have effect in relation to—
 - (a) an application made on or after a date appointed by the Secretary of State by order, and
 - (b) an application made, but not determined, before that date.
- (5) Section 9 shall have effect in relation to a child born on or after a date appointed by the Secretary of State by order.
- (6) An order under subsection (1) may—

- (a) make provision generally or for a specified purpose only (which may include the purpose of the application of a provision to or in relation to a particular place or area);
- (b) make different provision for different purposes;
- (c) include transitional provision;
- (d) include savings;
- (e) include consequential provision;
- (f) include incidental provision.

(7) An order under this section must be made by statutory instrument.

Commencement

Pt 8 s. 162(1)-(7): November 7, 2002



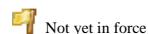
Not yet in force

163 Extent

- (1) A provision of this Act which amends or repeals a provision of another Act or inserts a provision into another Act has the same extent as the provision amended or repealed or as the Act into which the insertion is made (ignoring, in any case, extent by virtue of an Order in Council).
- (2) Sections 145 and 146 extend only to—
 - (a) England and Wales, and
 - (b) Northern Ireland.
- (3) A provision of this Act to which neither subsection (1) nor subsection (2) applies extends to—
 - (a) England and Wales,
 - (b) Scotland, and
 - (c) Northern Ireland.
- (4) 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.
- (5) Subsection (4) does not apply in relation to the extension to a place of a provision which extends there by virtue of subsection (1).

Commencement

Pt 8 s. 163(1)-(5): Date not available (not yet in force) (2002 c. 41 Pt 8 s. 162)



Not yet in force

164 Short title

This Act may be cited as the Nationality, Immigration and Asylum Act 2002.

Commencement

Pt 8 s. 164: Date not available (not yet in force) (2002 c. 41 Pt 8 s. 162)

SCHEDULE 1

CITIZENSHIP CEREMONY, OATH AND PLEDGE

Section 3

1

The following shall be substituted for section 42 of the British Nationality Act 1981 (c. 61) (registration and naturalisation: fee and oath)—

“42 Registration and naturalisation: citizenship ceremony, oath and pledge

- (1) A person of full age shall not be registered under this Act as a British citizen unless he has made the relevant citizenship oath and pledge specified in Schedule 5 at a citizenship ceremony.
- (2) A certificate of naturalisation as a British citizen shall not be granted under this Act to a person of full age unless he has made the relevant citizenship oath and pledge specified in Schedule 5 at a citizenship ceremony.
- (3) A person of full age shall not be registered under this Act as a British overseas territories citizen unless he has made the relevant citizenship oath and pledge specified in Schedule 5.
- (4) A certificate of naturalisation as a British overseas territories citizen shall not be granted under this Act to a person of full age unless he has made the relevant citizenship oath and pledge specified in Schedule 5.
- (5) A person of full age shall not be registered under this Act as a British Overseas citizen or a British subject unless he has made the relevant citizenship oath specified in Schedule 5.
- (6) Where the Secretary of State thinks it appropriate because of the special circumstances of a case he may—
 - (a) disapply any of subsections (1) to (5), or
 - (b) modify the effect of any of those subsections.
- (7) Sections 5 and 6 of the Oaths Act 1978 (c. 19) (affirmation) apply to a citizenship oath; and a reference in this Act to a citizenship oath includes a reference to a citizenship affirmation.

42A Registration and naturalisation: fee

- (1) A person shall not be registered under a provision of this Act as a citizen of any description or as a British subject unless any fee payable by virtue of this Act in connection with the registration has been paid.
- (2) A certificate of naturalisation shall not be granted to a person under a provision of this Act unless any fee payable by virtue of this Act in connection with the grant of the certificate has been paid.

42B Registration and naturalisation: timing

- (1) A person who is registered under this Act as a citizen of any description or as a British subject shall be treated as having become a citizen or subject—
 - (a) immediately on making the required citizenship oath and pledge in accordance with section 42, or
 - (b) where the requirement for an oath and pledge is dispensed with, immediately on registration.
- (2) A person granted a certificate of naturalisation under this Act as a citizen of any description shall be treated as having become a citizen—
 - (a) immediately on making the required citizenship oath and pledge in accordance with section 42, or
 - (b) where the requirement for an oath and pledge is dispensed with, immediately on the grant of the certificate.
- (3) In the application of subsection (1) to registration as a British Overseas citizen or as a British subject the reference to the citizenship oath and pledge shall be taken as a reference to the citizenship oath.”

Commencement

Sch. 1 para. 1: January 1, 2004 (SI 2003/3156 art. 2(a), art. 3)

2

The following shall be substituted for Schedule 5 to the British Nationality Act 1981 (c. 61)—

“SCHEDULE 5

CITIZENSHIP OATH AND PLEDGE

1

The form of citizenship oath and pledge is as follows for registration of or naturalisation as a British citizen—

Oath

“I, [name], swear by Almighty God that, on becoming a British citizen, I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law.”

Pledge

“I will give my loyalty to the United Kingdom and respect its rights and freedoms. I will uphold its democratic values. I will observe its laws faithfully and fulfil my duties and obligations as a British citizen.”

2

The form of citizenship oath and pledge is as follows for registration of or naturalisation as a British overseas territories citizen—

Oath

“I, [name], swear by Almighty God that, on becoming a British overseas territories citizen, I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law.”

Pledge

“I will give my loyalty to [name of territory] and respect its rights and freedoms. I will uphold its democratic values. I will observe its laws faithfully and fulfil my duties and obligations as a British overseas territories citizen.”

3

The form of citizenship oath is as follows for registration of a British Overseas citizen—

“I, [name], swear by Almighty God that, on becoming a British Overseas citizen, I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law.”

4

The form of citizenship oath is as follows for registration of a British subject—

“I, [name], swear by Almighty God that, on becoming a British subject, I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law.””

Commencement

Sch. 1 para. 2: January 1, 2004 (SI 2003/3156 art. 2(a), art. 3)

3

Section 41 of the British Nationality Act 1981 (c. 61) (regulations) shall be amended as follows.

Commencement

Sch. 1 para. 3: January 1, 2004 (SI 2003/3156 art. 2(a), art. 3)

4

For subsection (1)(d) substitute—

- “(d) for the time within which an obligation to make a citizenship oath and pledge at a citizenship ceremony must be satisfied;
- “(da) for the time within which an obligation to make a citizenship oath or pledge must be satisfied;
- “(db) for the content and conduct of a citizenship ceremony;
- “(dc) for the administration and making of a citizenship oath or pledge;
- “(dd) for the registration and certification of the making of a citizenship oath or pledge;
- “(de) for the completion and grant of a certificate of registration or naturalisation;”.

Commencement

Sch. 1 para. 4: January 1, 2004 (SI 2003/3156 art. 2(a), art. 3)

5

In subsection (2)(c)—

- (a) for “the taking there of any oath of allegiance” substitute “the making there of a citizenship oath or pledge”, and
- (b) for “granted or taken” substitute “or granted”.

Commencement

Sch. 1 para. 5(a)-(b): January 1, 2004 (SI 2003/3156 art. 2(a), art. 3)

6

In subsection (3)(a) for “taking of oaths of allegiance” substitute “making of oaths and pledges of citizenship”.

Commencement

Sch. 1 para. 6: January 1, 2004 (SI 2003/3156 art. 2(a), art. 3)

7

After subsection (3) insert—

- “(3A) Regulations under subsection (1)(d) to (de) may, in particular—
- (a) enable the Secretary of State to designate or authorise a person to exercise a function (which may include a discretion) in connection with a citizenship ceremony or a citizenship oath or pledge;
 - (b) require, or enable the Secretary of State to require, a local authority to provide specified facilities and to make specified arrangements in connection with citizenship ceremonies;
 - (c) impose, or enable the Secretary of State to impose, a function (which may include a discretion) on a local authority or on a registrar.

(3B) In subsection (3A)—

“local authority” means—

- (a) in relation to England and Wales, a county council, a county borough council, a metropolitan district council, a London Borough Council and the Common Council of the City of London, and
- (b) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39), and

“registrar” means—

- (a) in relation to England and Wales, a superintendent registrar of births, deaths and marriages (or, in accordance with section 8 of the Registration Service Act 1953 (c. 37), a deputy superintendent registrar), and
- (b) in relation to Scotland, a district registrar within the meaning of section 7(12) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c. 49). ”

Commencement

Sch. 1 para. 7: January 1, 2004 (SI 2003/3156 art. 2(a), art. 3)

8

The Secretary of State may make a payment to a local authority in respect of anything done by the authority in accordance with regulations made by virtue of section 41(3A) of the British Nationality Act 1981 (c. 61).

Commencement

Sch. 1 para. 8: January 1, 2004 (SI 2003/3156 art. 2(a), art. 3)

9

- (1) A local authority must—
 - (a) comply with a requirement imposed on it by regulations made by virtue of that section, and
 - (b) carry out a function imposed on it by regulations made by virtue of that section.
- (2) A local authority on which a requirement or function is imposed by regulations made by virtue of that section—
 - (a) may provide facilities or make arrangements in addition to those which it is required to provide or make, and
 - (b) may make a charge for the provision of facilities or the making of arrangements under paragraph (a) which does not exceed the cost of providing the facilities or making the arrangements.

Commencement

Sch. 1 para. 9(1)-(2)(b): January 1, 2004 (SI 2003/3156 art. 2(a), art. 3)

SCHEDULE 2**NATIONALITY: REPEAL OF SPENT PROVISIONS****Section 15****1**

The following provisions of the British Nationality Act 1981 (c. 61) shall cease to have effect—

- (a) section 7 (registration as British citizen by virtue of residence or employment),
- (b) section 8 (registration as British citizen by virtue of marriage),
- (c) section 9 (registration as British citizen by virtue of father's status),
- (d) section 19 (registration as British Dependent Territories citizen by virtue of residence),
- (e) section 20 (registration as British Dependent Territories citizen by virtue of marriage),
- (f) section 21 (registration as British Dependent Territories citizen by virtue of father's status),
- (g) section 27(2) (entitlement of minor to registration as British Overseas citizen),
- (h) section 28 (registration as British Overseas citizen by virtue of marriage), and
- (i) section 33 (registration as British subject of certain women by virtue of earlier entitlement).

Commencement

Sch. 2 para. 1(a)-(i): November 7, 2002

2

Nothing in this Schedule has any effect in relation to a registration made under a provision before its repeal.

Commencement

Sch. 2 para. 2: November 7, 2002

SCHEDULE 3**WITHHOLDING AND WITHDRAWAL OF SUPPORT****Section 54***Ineligibility for support***1**

- (1) A person to whom this paragraph applies shall not be eligible for support or assistance under—
- (a) section 21 or 29 of the National Assistance Act 1948 (c. 29) (local authority: accommodation and welfare),
 - (b) section 45 of the Health Services and Public Health Act 1968 (c. 46) (local authority: welfare of elderly),
 - (c) section 12 or 13A of the Social Work (Scotland) Act 1968 (c. 49) (social welfare services),
 - (d) Article 7 or 15 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)) (prevention of illness, social welfare, &c.),
 - [(e) section 254 of, and Schedule 20 to, the National Health Service Act 2006, or section 192 of, and Schedule 15 to, the National Health Service (Wales) Act 2006 (social services),]¹⁴⁰
 - (f) section 29(1)(b) of the Housing (Scotland) Act 1987 (c. 26) (interim duty to accommodate in case of apparent priority need where review of a local authority decision has been requested),
 - (g) section 17, 23C, 24A or 24B of the Children Act 1989 (c. 41) (welfare and other powers which can be exercised in relation to adults),
 - (h) Article 18, 35 or 36 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)) (welfare and other powers which can be exercised in relation to adults),
 - (i) sections 22, 29 and 30 of the Children (Scotland) Act 1995 (c. 36) (provisions analogous to those mentioned in paragraph (g)),
 - (j) section 188(3) or 204(4) of the Housing Act 1996 (c. 52) (accommodation pending review or appeal),

¹⁴⁰ Substituted by National Health Service (Consequential Provisions) Act 2006 c. 43 Sch.1 para.229 (March 1, 2007)

- (k) section 2 of the Local Government Act 2000 (c. 22) (promotion of well-being),
 - (l) a provision of the Immigration and Asylum Act 1999 (c. 33), or
 - (m) a provision of this Act.
- (2) A power or duty under a provision referred to in sub-paragraph (1) may not be exercised or performed in respect of a person to whom this paragraph applies (whether or not the person has previously been in receipt of support or assistance under the provision).
- (3) An approval or directions given under or in relation to a provision referred to in sub-paragraph (1) shall be taken to be subject to sub-paragraph (2).

Commencement

Sch. 3 para. 1(1)-(3): January 8, 2003 (SI 2002/2811 art. 2, Sch. 1 para. 1)

Amendments Pending

Sch. 3 para. 1(1)(g): word inserted (date to be announced) by 2008 c. 23 Pt 2 s. 22(6)

*Exceptions***2**

- (1) Paragraph 1 does not prevent the provision of support or assistance—
 - (a) to a British citizen, or
 - (b) to a child, or
 - (c) under or by virtue of regulations made under paragraph 8, 9 or 10 below, or
 - (d) in a case in respect of which, and to the extent to which, regulations made by the Secretary of State disapply paragraph 1, or
 - (e) in circumstances in respect of which, and to the extent to which, regulations made by the Secretary of State disapply paragraph 1.
- (2) Regulations under sub-paragraph (1)(d) may confer a discretion on the Secretary of State.
- (3) Regulations under sub-paragraph (1)(e) may, in particular, disapply paragraph 1 to the provision of support or assistance by a local authority to a person where the authority—
 - (a) has taken steps in accordance with guidance issued by the Secretary of State to determine whether paragraph 1 would (but for the regulations) apply to the person, and
 - (b) has concluded on the basis of those steps that there is no reason to believe that paragraph 1 would apply.
- (4) Regulations under sub-paragraph (1)(d) or (e) may confer a discretion on an authority.
- (5) A local authority which is considering whether to give support or assistance to a person under a provision listed in paragraph 1(1) shall act in accordance with any relevant guidance issued by the Secretary of State under sub-paragraph (3)(a).
- (6) A reference in this Schedule to a person to whom paragraph 1 applies includes a reference to a person in respect of whom that paragraph is disapplied to a limited extent by regulations under sub-paragraph (1)(d) or (e), except in a case for which the regulations provide otherwise.

Commencement

Sch. 3 para. 2(1)-(6): December 8, 2002 for the purpose of enabling the Secretary of State to exercise the power to make subordinate legislation; January 8, 2003 otherwise (SI 2002/2811 art. 2, Sch. 1 para. 1)

3

Paragraph 1 does not prevent the exercise of a power or the performance of a duty if, and to the extent that, its exercise or performance is necessary for the purpose of avoiding a breach of—

- (a) a person's Convention rights, or
- (b) a person's rights under the Community Treaties.

Commencement

Sch. 3 para. 3(a)-(b): January 8, 2003 (SI 2002/2811 art. 2, Sch. 1 para. 1)

*First class of ineligible person: refugee status abroad***4**

(1) Paragraph 1 applies to a person if he—

- (a) has refugee status abroad, or
- (b) is the dependant of a person who is in the United Kingdom and who has refugee status abroad.

(2) For the purposes of this paragraph a person has refugee status abroad if—

- (a) he does not have the nationality of an EEA State, and
- (b) the government of an EEA State other than the United Kingdom has determined that he is entitled to protection as a refugee under the Refugee Convention.

Commencement

Sch. 3 para. 4(1)-(2)(b): January 8, 2003 (SI 2002/2811 art. 2, Sch. 1 para. 1)

*Second class of ineligible person: citizen of other EEA State***5**

Paragraph 1 applies to a person if he—

- (a) has the nationality of an EEA State other than the United Kingdom, or
- (b) is the dependant of a person who has the nationality of an EEA State other than the United Kingdom.

Commencement

Sch. 3 para. 5(a)-(b): January 8, 2003 (SI 2002/2811 art. 2, Sch. 1 para. 1)

*Third class of ineligible person: failed asylum-seeker***6**

- (1) Paragraph 1 applies to a person if—
- he was (but is no longer) an asylum-seeker, and
 - he fails to cooperate with removal directions issued in respect of him.
- (2) Paragraph 1 also applies to a dependant of a person to whom that paragraph applies by virtue of sub-paragraph (1).

Commencement

Sch. 3 para. 6(1)-(2): January 8, 2003 (SI 2002/2811 art. 2, Sch. 1 para. 1)

*Fourth class of ineligible person: person unlawfully in United Kingdom***7**

Paragraph 1 applies to a person if—

- he is in the United Kingdom in breach of the immigration laws within the meaning of section 11, and
- he is not an asylum-seeker.

Commencement

Sch. 3 para. 7(a)-(b): January 8, 2003 (SI 2002/2811 art. 2, Sch. 1 para. 1)

*[Fifth class of ineligible person: failed asylum-seeker with family]¹⁴¹***[7A**

- (1) Paragraph 1 applies to a person if—
- he—
 - 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
 - is treated as an asylum-seeker for the purposes of Part 2 of this Act by virtue only of section 18(2),
 - the Secretary of State has certified that in his opinion the person has failed without reasonable excuse to take reasonable steps—
 - to leave the United Kingdom voluntarily, or
 - to place himself in a position in which he is able to leave the United Kingdom voluntarily,
 - the person has received a copy of the Secretary of State's certificate, and
 - the period of 14 days, beginning with the date on which the person receives the copy of the certificate, has elapsed.

¹⁴¹ Added by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.9(1) (December 1, 2004 subject to the transitional provision specified in SI 2004/2999 art.4)

(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).
]¹⁴²

Travel assistance

8

The Secretary of State may make regulations providing for arrangements to be made enabling a person to whom paragraph 1 applies by virtue of paragraph 4 or 5 to leave the United Kingdom.

Commencement

Sch. 3 para. 8: December 8, 2002 for the purpose of enabling the Secretary of State to exercise the power to make subordinate legislation; January 8, 2003 otherwise (SI 2002/2811 art. 2, Sch. 1 para. 1)

Temporary accommodation

9

(1) The Secretary of State may make regulations providing for arrangements to be made for the accommodation of a person to whom paragraph 1 applies pending the implementation of arrangements made by virtue of paragraph 8.

(2) Arrangements for a person by virtue of this paragraph—

- (a) may be made only if the person has with him a dependent child, and
- (b) may include arrangements for a dependent child.

Commencement

Sch. 3 para. 9(1)-(2)(b): December 8, 2002 for the purpose of enabling the Secretary of State to exercise the power to make subordinate legislation; January 8, 2003 otherwise (SI 2002/2811 art. 2, Sch. 1 para. 1)

10

(1) The Secretary of State may make regulations providing for arrangements to be made for the accommodation of a person if—

- (a) paragraph 1 applies to him by virtue of paragraph 7, and
- (b) he has not failed to cooperate with removal directions issued in respect of him.

(2) Arrangements for a person by virtue of this paragraph—

- (a) may be made only if the person has with him a dependent child, and
- (b) may include arrangements for a dependent child.

¹⁴² Added by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.9(1) (December 1, 2004 subject to the transitional provision specified in SI 2004/2999 art.4)

Commencement

Sch. 3 para. 10(1)-(2)(b): December 8, 2002 for the purpose of enabling the Secretary of State to exercise the power to make subordinate legislation; January 8, 2003 otherwise (SI 2002/2811 art. 2, Sch. 1 para. 1)

*Assistance and accommodation: general***11**

Regulations under paragraph 8, 9 or 10 may—

- (a) provide for the making of arrangements under a provision referred to in paragraph 1(1) or otherwise;
- (b) confer a function (which may include the exercise of a discretion) on the Secretary of State, a local authority or another person;
- (c) provide that arrangements must be made in a specified manner or in accordance with specified principles;
- (d) provide that arrangements may not be made in a specified manner;
- (e) require a local authority or another person to have regard to guidance issued by the Secretary of State in making arrangements;
- (f) require a local authority or another person to comply with a direction of the Secretary of State in making arrangements.

Commencement

Sch. 3 para. 11(a)-(f): December 8, 2002 for the purpose of enabling the Secretary of State to exercise the power to make subordinate legislation; January 8, 2003 otherwise (SI 2002/2811 art. 2, Sch. 1 para. 1)

12

- (1) Regulations may, in particular, provide that if a person refuses an offer of arrangements under paragraph 8 or fails to implement or cooperate with arrangements made for him under that paragraph—
 - (a) new arrangements may be made for him under paragraph 8, but
 - (b) new arrangements may not be made for him under paragraph 9.
- (2) Regulations by virtue of this paragraph may include exceptions in the case of a person who—
 - (a) has a reason of a kind specified in the regulations for failing to implement or cooperate with arrangements made under paragraph 8, and
 - (b) satisfies any requirements of the regulations for proof of the reason.

Commencement

Sch. 3 para. 12(1)-(2)(b): December 8, 2002 for the purpose of enabling the Secretary of State to exercise the power to make subordinate legislation; January 8, 2003 otherwise (SI 2002/2811 art. 2, Sch. 1 para. 1)

Offences

13

- (1) A person who leaves the United Kingdom in accordance with arrangements made under paragraph 8 commits an offence if he—
- (a) returns to the United Kingdom, and
 - (b) requests that arrangements be made for him by virtue of paragraph 8, 9 or 10.
- (2) A person commits an offence if he—
- (a) requests that arrangements be made for him by virtue of paragraph 8, 9 or 10, and
 - (b) fails to mention a previous request by him for the making of arrangements under any of those paragraphs.
- (3) A person who is guilty of an offence under this paragraph shall be liable on summary conviction to imprisonment for a term not exceeding six months.

Commencement

Sch. 3 para. 13(1)-(3): January 8, 2003 (SI 2002/2811 art. 2, Sch. 1 para. 1)

Information

14

- (1) If it appears to a local authority that paragraph 1 applies or may apply to a person in the authority's area by virtue of [paragraph 6, 7 or 7A]¹⁴³, the authority must inform the Secretary of State.
- (2) A local authority shall act in accordance with any relevant guidance issued by the Secretary of State for the purpose of determining whether paragraph 1 applies or may apply to a person in the authority's area by virtue of [paragraph 6, 7 or 7A]¹⁴³.

Commencement

Sch. 3 para. 14(1)-(2): January 8, 2003 (SI 2002/2811 art. 2, Sch. 1 para. 1)

Power to amend Schedule

15

The Secretary of State may by order amend this Schedule so as—

- (a) to provide for paragraph 1 to apply or not to apply to a class of person;
- (b) to add or remove a provision to or from the list in paragraph 1(1);
- (c) to add, amend or remove a limitation of or exception to paragraph 1.

¹⁴³ Words substituted by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.9(2) (December 1, 2004 subject to the transitional provision specified in SI 2004/2999 art.4)

Commencement

Sch. 3 para. 15(a)-(c): December 8, 2002 for the purpose of enabling the Secretary of State to exercise the power to make subordinate legislation; January 8, 2003 otherwise (SI 2002/2811 art. 2, Sch. 1 para. 1)

*Orders and regulations***16**

- (1) An order or regulations under this Schedule must be made by statutory instrument.
- (2) An order or regulations under this Schedule may—
 - (a) make provision which applies generally or only in specified cases or circumstances or only for specified purposes;
 - (b) make different provision for different cases, circumstances or purposes;
 - (c) make transitional provision;
 - (d) make consequential provision (which may include provision amending a provision made by or under this or another Act).
- (3) An order under this Schedule, regulations under paragraph 2(1)(d) or (e) or other regulations which include consequential provision amending an enactment shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (4) Regulations under this Schedule to which sub-paragraph (3) does not apply shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Commencement

Sch. 3 para. 16(1)-(4): December 8, 2002 for the purpose of enabling the Secretary of State to exercise the power to make subordinate legislation; January 8, 2003 otherwise (SI 2002/2811 art. 2, Sch. 1 para. 1)

*Interpretation***17**

- (1) In this Schedule—
 - “asylum-seeker” means a person—
 - (a) who is at least 18 years old,
 - (b) who has made a claim for asylum (within the meaning of section 18(3)), and
 - (c) whose claim has been recorded by the Secretary of State but not determined,
 - “Convention rights” has the same meaning as in the Human Rights Act 1998 (c. 42),
 - “child” means a person under the age of eighteen,
 - “dependant” and “dependent” shall have such meanings as may be prescribed by regulations made by the Secretary of State,
 - “EEA State” means 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),
 - “local authority”—
 - (a) in relation to England and Wales, has the same meaning as in section 129(3),
 - (b) in relation to Scotland, has the same meaning as in section 129(4), and

(c) in relation to Northern Ireland, means a health service body within the meaning of section 133(4)(d) and the Northern Ireland Housing Executive (for which purpose a reference to the authority's area shall be taken as a reference to Northern Ireland), “the Refugee Convention” means the Convention relating to the status of Refugees done at Geneva on 28th July 1951 and its Protocol, and “removal directions” means directions under Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry, &c.), under Schedule 3 to that Act (deportation) or under section 10 of the Immigration and Asylum Act 1999 (c. 33) (removal of person unlawfully in United Kingdom).

(2) For the purpose of the definition of “asylum-seeker” in sub-paragraph (1) a claim is determined if—

- (a) the Secretary of State has notified the claimant of his decision,
- (b) no appeal against the decision can be brought (disregarding the possibility of an appeal out of time with permission), and
- (c) any appeal which has already been brought has been disposed of.

(3) For the purpose of sub-paragraph (2)(c) an appeal is disposed of when it is no longer pending for the purpose of—

- (a) Part 5 of this Act, or
- (b) the Special Immigration Appeals Commission Act 1997 (c. 68).

(4) The giving of directions in respect of a person under a provision of the Immigration Acts is not the provision of assistance to him for the purposes of this Schedule.

Commencement

Sch. 3 para. 17(1)-(4): January 8, 2003 (SI 2002/2811 art. 2, Sch. 1 para. 1)

[SCHEDULE 4

THE ASYLUM AND IMMIGRATION TRIBUNAL

Section 81

]¹⁴⁴

*[Membership]*¹⁴⁵

[1

The Lord Chancellor shall appoint the members of the Asylum and Immigration Tribunal.

¹⁴⁴ Existing Sch.4 is substituted for a new Sch.4 consisting of paras.1-11 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.1 para.1 (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁴⁵ Existing Sch.4 is substituted for a new Sch.4 consisting of paras.1-11 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.1 para.1 (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

]¹⁴⁶

Commencement

Sch. 4 para. 1(1)-(2): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

[2

- (1) A person is eligible for appointment as a member of the Tribunal only if he—
 - [(a) satisfies the judicial-appointment eligibility condition on a 5-year basis,]¹⁴⁷
 - (b) is an advocate or solicitor in Scotland of at least [5]¹⁴⁸ years' standing,
 - (c) is a member of the Bar of Northern Ireland, or a solicitor of the Supreme Court of Northern Ireland, of at least [5]¹⁴⁸ years' standing,
 - (d) in the Lord Chancellor's opinion, has legal experience which makes him as suitable for appointment as if he satisfied paragraph (a), (b) or (c), or
 - (e) in the Lord Chancellor's opinion, has non-legal experience which makes him suitable for appointment.

- (2) A person appointed under sub-paragraph (1)(a) to (d) shall be known as a legally qualified member of the Tribunal.

]¹⁴⁹

[3

- (1) A member—
 - (a) may resign by notice in writing to the Lord Chancellor,
 - (b) shall cease to be a member on reaching the age of 70, and
 - (c) otherwise, shall hold and vacate office in accordance with the terms of his appointment (which may include provision—
 - (i) about the training, appraisal and mentoring of members of the Tribunal by other members, and
 - (ii) for removal).
- (2) Sub-paragraph (1)(b) is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (c.8) (extension to age 75).
- [(3) Any power by which a person may be removed from membership of the Tribunal—
 - (a) may, if the person exercises functions wholly or mainly in Scotland, be exercised only with the concurrence of the Lord President of the Court of Session;

¹⁴⁶ Existing Sch.4 is substituted for a new Sch.4 consisting of paras.1-11 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.1 para.1 (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁴⁷ Substituted subject to transitional provisions specified in SI 2008/1653 art.3 by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.10(1) para.37(2) (July 21, 2008: substitution has effect subject to transitional provisions specified in SI 2008/1653 art.3)

¹⁴⁸ Word substituted subject to transitional provisions specified in SI 2008/1653 art.3 by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.10(1) para.37(3) (July 21, 2008: substitution has effect subject to transitional provisions specified in SI 2008/1653 art.3)

¹⁴⁹ Existing Sch.4 is substituted for a new Sch.4 consisting of paras.1-11 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.1 para.1 (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

- (b) may, if the person exercises functions wholly or mainly in Northern Ireland, be exercised only with the concurrence of the Lord Chief Justice of Northern Ireland;
- (c) may, if neither of paragraphs (a) and (b) applies, be exercised only with the concurrence of the Lord Chief Justice of England and Wales.

]¹⁵⁰]¹⁵¹**[4**

- [(1) The Lord Chancellor may by order make provision for the title of members of the Tribunal.
- (2) An order under sub-paragraph (1) relating to members sitting in England and Wales may only be made with the concurrence of Lord Chief Justice of England and Wales.
- (3) An order under sub-paragraph (1) relating to members sitting in Scotland may only be made with the concurrence of the Lord President of the Court of Session.
- (4) An order under sub-paragraph (1) relating to members sitting in Northern Ireland may only be made with the concurrence of the Lord Chief Justice of Northern Ireland.]¹⁵²

]¹⁵³*[Presidency]¹⁵⁴***2**

[Existing Sch.4 is not repealed but has been substituted for a new Sch.4 consisting of paras.1-11]¹⁵⁵

Commencement

Sch. 4 para. 2: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

3

[Existing Sch.4 is not repealed but has been substituted for a new Sch.4 consisting of paras.1-11]¹⁵⁶

¹⁵⁰ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.8 para.54(4) (November 3, 2008)

¹⁵¹ Existing Sch.4 is substituted for a new Sch.4 consisting of paras.1-11 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.1 para.1 (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁵² Existing text renumbered as para.4(1), and ss.(2)-(4) inserted by Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No.2) Order 2006/1016 Sch.1 para.9 (April 3, 2006)

¹⁵³ Existing Sch.4 is substituted for a new Sch.4 consisting of paras.1-11 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.1 para.1 (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁵⁴ Existing Sch.4 is substituted for a new Sch.4 consisting of paras.1-11 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.1 para.1 (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁵⁵ Existing Sch.4 is substituted for a new Sch.4 consisting of paras.1-11 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.1 para.1 (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁵⁶ Existing Sch.4 is substituted for a new Sch.4 consisting of paras.1-11 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.1 para.1 (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

Commencement

Sch. 4 para. 3(a)-(c): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

4

[Existing Sch.4 is not repealed but has been substituted for a new Sch.4 consisting of paras.1-11]¹⁵⁷

Commencement

Sch. 4 para. 4: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

[5]

(1) The Lord Chancellor shall appoint—

- (a) a member of the Tribunal, who holds or has held high judicial office within the meaning of the Appellate Jurisdiction Act 1876 (c.59), as President of the Tribunal, and
- (b) one or more members of the Tribunal as Deputy President.

(2) A Deputy President—

- (a) may act for the President if the President is unable to act or unavailable, and
- (b) shall perform such functions as the President may delegate or assign to him.

[(3) The Lord Chancellor may appoint a person under sub-paragraph (1)(a) only with the concurrence of all of the following—

- (a) the Lord Chief Justice of England and Wales;
- (b) the Lord President of the Court of Session;
- (c) the Lord Chief Justice of Northern Ireland.

]¹⁵⁸

]¹⁵⁹

[Judicial assistance]

]¹⁶⁰

[5A]

(1) The Senior President of Tribunals, with the consent of the President of the Tribunal, may assign—

- (a) a relevant tribunal judge to act as a legally qualified member of the Tribunal;

¹⁵⁷ Existing Sch.4 is substituted for a new Sch.4 consisting of paras.1-11 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.1 para.1 (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁵⁸ Added by Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No.2) Order 2006/1016 Sch.1 para.10 (April 3, 2006)

¹⁵⁹ Existing Sch.4 is substituted for a new Sch.4 consisting of paras.1-11 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.1 para.1 (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁶⁰ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.8 para.54(5) (November 3, 2008)

(b) a relevant other tribunal member to act as a member of the Tribunal who is not a legally qualified member.

(2) In this paragraph—

(a) “relevant tribunal judge” means—

- (i) a person who is a judge of the First-tier Tribunal by virtue of appointment under paragraph 1(1) of Schedule 2 to the Tribunals, Courts and Enforcement Act 2007,
- (ii) a transferred-in judge of the First-tier Tribunal,
- (iii) a person who is a judge of the Upper Tribunal by virtue of appointment under paragraph 1(1) of Schedule 3 to that Act,
- (iv) a transferred-in judge of the Upper Tribunal,
- (v) a deputy judge of the Upper Tribunal, or
- (vi) a person who is the Chamber President of a chamber of the First-tier Tribunal, or of a chamber of the Upper Tribunal, and does not fall within any of sub-paragraphs (i) to (v);

(b) “relevant other tribunal member” means—

- (i) a person who is a member of the First-tier Tribunal by virtue of appointment under paragraph 2(1) of Schedule 2 to the Tribunals, Courts and Enforcement Act 2007,
- (ii) a transferred-in other member of the First-tier Tribunal,
- (iii) a person who is a member of the Upper Tribunal by virtue of appointment under paragraph 2(1) of Schedule 3 to that Act, or
- (iv) a transferred-in other member of the Upper Tribunal.

(3) A relevant tribunal judge within sub-paragraph (2)(a)(i) or (ii) who is assigned under sub-paragraph (1) may, when acting under his assignment, exercise any function or jurisdiction which is exercisable by a legally qualified member of the Tribunal who—

- (a) has the title of Immigration Judge, and
- (b) is neither the President, nor a Deputy President, of the Tribunal.

(4) A relevant tribunal judge within sub-paragraph (2)(a)(iii), (iv) or (v) who is assigned under sub-paragraph (1) may, when acting under his assignment, exercise—

- (a) any function or jurisdiction which is exercisable by a legally qualified member of the Tribunal who—
 - (i) has the title of Immigration Judge, and
 - (ii) is neither the President, nor a Deputy President, of the Tribunal, and
- (b) any function or jurisdiction which is exercisable by a legally qualified member of the Tribunal who—
 - (i) has the title of Senior Immigration Judge, and
 - (ii) is neither the President, nor a Deputy President, of the Tribunal.

(5) A relevant other tribunal member who is assigned under sub-paragraph (1) may, when acting under his assignment, exercise any function or jurisdiction which is exercisable by a member of the Tribunal who—

- (a) is appointed under paragraph 2(1)(e), and
- (b) is neither the President, nor a Deputy President, of the Tribunal.

¹⁶¹

¹⁶¹ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.8 para.54(5) (November 3, 2008)

[5B

(1) The Senior President of Tribunals may—

- (a) with the consent of the President of the Tribunal,
- (b) with the consent required by sub-paragraph (4), and
- (c) with the consent of the relevant judge concerned,

assign a relevant judge to act as a Senior Immigration Judge.

(2) In this paragraph “relevant judge” means a person who—

- (a) is an ordinary judge of the Court of Appeal in England and Wales (including the vice-president, if any, of either division of that Court),
- (b) is a Lord Justice of Appeal in Northern Ireland,
- (c) is a judge of the Court of Session,
- (d) is a puisne judge of the High Court in England and Wales or Northern Ireland,
- (e) is a circuit judge,
- (f) is a sheriff in Scotland,
- (g) is a county court judge in Northern Ireland,
- (h) is a district judge in England and Wales or Northern Ireland, or
- (i) is a District Judge (Magistrates' Courts).

(3) References in sub-paragraph (2)(c) to (i) to office-holders do not include deputies or temporary office-holders.

(4) The consent required by this sub-paragraph is—

- (a) the consent of the Lord Chief Justice of England and Wales where the relevant judge is—
 - (i) an ordinary judge of the Court of Appeal in England and Wales,
 - (ii) a puisne judge of the High Court in England and Wales,
 - (iii) a circuit judge,
 - (iv) a district judge in England and Wales, or
 - (v) a District Judge (Magistrates' Courts);
- (b) the consent of the Lord President of the Court of Session where the relevant judge is—
 - (i) a judge of the Court of Session, or
 - (ii) a sheriff;
- (c) the consent of the Lord Chief Justice of Northern Ireland where the relevant judge is—
 - (i) a Lord Justice of Appeal in Northern Ireland,
 - (ii) a puisne judge of the High Court in Northern Ireland,
 - (iii) a county court judge in Northern Ireland, or
 - (iv) a district judge in Northern Ireland.

(5) A relevant judge who is assigned under sub-paragraph (1) may, when acting under his assignment, exercise—

- (a) any function or jurisdiction which is exercisable by a legally qualified member of the Tribunal who—
 - (i) has the title of Immigration Judge, and
 - (ii) is neither the President, nor a Deputy President, of the Tribunal, and
- (b) any function or jurisdiction which is exercisable by a legally qualified member of the Tribunal who—
 - (i) has the title of Senior Immigration Judge, and
 - (ii) is neither the President, nor a Deputy President, of the Tribunal.

]¹⁶²

*[Proceedings]*¹⁶³

5

[Existing Sch.4 is not repealed but has been substituted for a new Sch.4 consisting of paras.1-11]¹⁶⁴

Commencement

Sch. 4 para. 5: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

Amendments Pending

Sch. 4 para. 5(1)(a): words substituted (date to be announced) by 2005 c. 4 Sch. 17(2) para. 34

[6]

The Tribunal shall sit at times and places determined by the Lord Chancellor.

]¹⁶⁵

[7]

(1) The jurisdiction of the Tribunal shall be exercised by such number of its members as the President, having regard to the complexity and other circumstances of particular cases or classes of case, may direct.

(2) A direction under this paragraph—

- (a) may relate to the whole or part of specified proceedings or to the whole or part of proceedings of a specified kind,
- (b) may enable jurisdiction to be exercised by a single member,
- (c) may require or permit the transfer of the whole or part of proceedings—
 - (i) from one member to another,
 - (ii) from one group of members to another,
 - (iii) from one member to a group of members, or
 - (iv) from a group of members to one member,
- (d) may be varied or revoked by a further direction, and
- (e) is subject to rules under section 106.

¹⁶² Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.8 para.54(5) (November 3, 2008)

¹⁶³ Existing Sch.4 is substituted for a new Sch.4 consisting of paras.1-11 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.1 para.1 (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁶⁴ Existing Sch.4 is substituted for a new Sch.4 consisting of paras.1-11 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.1 para.1 (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁶⁵ Existing Sch.4 is substituted for a new Sch.4 consisting of paras.1-11 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.1 para.1 (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

]¹⁶⁶

[8

(1) The [Senior President of Tribunals]¹⁶⁷ may make arrangements for the allocation of proceedings to members of the Tribunal.

(2) Arrangements under this paragraph—

- (a) may permit allocation by the [Senior President of Tribunals or a]¹⁶⁸ member of the Tribunal,
- (b) may permit the allocation of a case to a specified member or to a specified class of member,
- (c) may include provision for transfer, and
- (d) are subject to rules under section 106.

]¹⁶⁹

*[Staff]*¹⁷⁰

6

[Existing Sch.4 is not repealed but has been substituted for a new Sch.4 consisting of paras.1-11]¹⁷¹

Commencement

Sch. 4 para. 6(a)-(c): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

7

[Existing Sch.4 is not repealed but has been substituted for a new Sch.4 consisting of paras.1-11]¹⁷²

Commencement

Sch. 4 para. 7: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

¹⁶⁶ Existing Sch.4 is substituted for a new Sch.4 consisting of paras.1-11 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.1 para.1 (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁶⁷ Words substituted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.8 para.54(6)(a) (November 3, 2008)

¹⁶⁸ Words substituted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.8 para.54(6)(b) (November 3, 2008)

¹⁶⁹ Existing Sch.4 is substituted for a new Sch.4 consisting of paras.1-11 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.1 para.1 (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁷⁰ Existing Sch.4 is substituted for a new Sch.4 consisting of paras.1-11 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.1 para.1 (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁷¹ Existing Sch.4 is substituted for a new Sch.4 consisting of paras.1-11 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.1 para.1 (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁷² Existing Sch.4 is substituted for a new Sch.4 consisting of paras.1-11 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.1 para.1 (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

9 [...]¹⁷³

[Money]¹⁷⁴

[10

The Lord Chancellor—

- (a) may pay remuneration and allowances to members of the Tribunal,
- (b)-(c) [...]¹⁷⁵

]¹⁷⁶

[11

The Lord Chancellor may pay compensation to a person who ceases to be a member of the Tribunal if the Lord Chancellor thinks it appropriate because of special circumstances.

]¹⁷⁷

[Delegation]¹⁷⁸

[12.—

(1) The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise any of his functions under this Schedule.

(2) The Lord President of the Court of Session may nominate a judge of the Court of Session who is a member of the First or Second Division of the Inner House of that Court to exercise his functions under this Schedule.

(3) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under this Schedule—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
- (b) a Lord Justice of Appeal (as defined in section 88 of that Act).

¹⁷³ Repealed by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.23(1) para.1 (November 3, 2008 as SI 2008/2696)

¹⁷⁴ Existing Sch.4 is substituted for a new Sch.4 consisting of paras.1-11 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.1 para.1 (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁷⁵ Repealed by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.23(1) para.1 (November 3, 2008 as SI 2008/2696)

¹⁷⁶ Existing Sch.4 is substituted for a new Sch.4 consisting of paras.1-11 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.1 para.1 (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁷⁷ Existing Sch.4 is substituted for a new Sch.4 consisting of paras.1-11 by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 Sch.1 para.1 (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁷⁸ Added by Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No.2) Order 2006/1016 Sch.1 para.11 (April 3, 2006)

]¹⁷⁹

[Training etc.

]¹⁸⁰

[13]

The Senior President of Tribunals is responsible, within the resources made available by the Lord Chancellor, for the maintenance of appropriate arrangements for the training, guidance and welfare of members of the Tribunal (in their capacities as such members).

]¹⁸¹

[Oaths

]¹⁸²

[14]

- (1) Sub-paragraph (2) applies to a person (“the appointee”)
 - (a) who is appointed under paragraph 1, and
 - (b) who has not previously taken the required oaths after accepting another office.
- (2) The appointee must take the required oaths before–
 - (a) the Senior President of Tribunals, or
 - (b) an eligible person who is nominated by the Senior President of Tribunals for the purpose of taking the oaths from the appointee.
- (3) A person is eligible for the purposes of sub-paragraph (2)(b) if one or more of the following paragraphs applies to him–
 - (a) he holds high judicial office (as defined in section 60(2) of the Constitutional Reform Act 2005);
 - (b) he holds judicial office (as defined in section 109(4) of that Act);
 - (c) he holds (in Scotland) the office of sheriff.
- (4) In this paragraph “the required oaths” means (subject to sub-paragraph (5))–
 - (a) the oath of allegiance, and
 - (b) the judicial oath,

as set out in the Promissory Oaths Act 1868.
- (5) Where it appears to the Lord Chancellor that the appointee will carry out functions as a member of the Tribunal wholly or mainly in Northern Ireland, he may direct that in relation to the appointee “the required oaths” means–
 - (a) the oath as set out in section 19(2) of the Justice (Northern Ireland) Act 2002, or
 - (b) the affirmation and declaration as set out in section 19(3) of that Act.

¹⁷⁹ Added by Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No.2) Order 2006/1016 Sch.1 para.11 (April 3, 2006)

¹⁸⁰ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.8 para.54(7) (November 3, 2008)

¹⁸¹ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.8 para.54(7) (November 3, 2008)

¹⁸² Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.8 para.54(7) (November 3, 2008)

(6) If the appointee is a member of the Tribunal appointed before the coming into force of this paragraph, the requirement in sub-paragraph (2) applies in relation to the appointee from the coming into force of this paragraph.

]¹⁸³

SCHEDULE 5

THE IMMIGRATION APPEAL TRIBUNAL

Section 100

Membership

1 [...]¹⁸⁴

2 [...]¹⁸⁵

Presidency

3 [...]¹⁸⁶

4 [...]¹⁸⁷

Proceedings

5 [...]¹⁸⁸

6 [...]¹⁸⁹

7 [...]¹⁹⁰

¹⁸³ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.8 para.54(7) (November 3, 2008)

¹⁸⁴ Repealed by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.26(5)(b) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁸⁵ Repealed by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.26(5)(b) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁸⁶ Repealed by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.26(5)(b) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁸⁷ Repealed by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.26(5)(b) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁸⁸ Repealed by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.26(5)(b) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁸⁹ Repealed by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.26(5)(b) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁹⁰ Repealed by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.26(5)(b) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

Staff

8 [...]¹⁹¹

Money

9 [...]¹⁹²

10 [...]¹⁹³

Interpretation: legally qualified member

11 [...]¹⁹⁴

SCHEDULE 6

IMMIGRATION AND ASYLUM APPEALS: TRANSITIONAL PROVISION

Section 114

1 “Commencement”

In this Schedule “commencement” means the coming into force of Part 5 of this Act.

Commencement

Sch. 6 para. 1: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

2 Adjudicator

Where a person is an adjudicator under section 57 of the Immigration and Asylum Act 1999 (c. 33) immediately before commencement his appointment shall have effect after commencement as if made under section 81 of this Act.

Commencement

Sch. 6 para. 2: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

¹⁹¹ Repealed by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.26(5)(b) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁹² Repealed by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.26(5)(b) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁹³ Repealed by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.26(5)(b) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

¹⁹⁴ Repealed by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c. 19 s.26(5)(b) (April 4, 2005 subject to transitional provisions specified in SI 2005/565 arts.3-9)

3 Tribunal

- (1) Where a person is a member of the Immigration Appeal Tribunal immediately before commencement his appointment shall have effect after commencement as if made under Schedule 5.
- (2) Where a person is a member of staff of the Immigration Appeal Tribunal immediately before commencement his appointment shall have effect after commencement as if made under Schedule 5.

Commencement

Sch. 6 para. 3(1)-(2): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

4 Earlier appeal

In the application of section 96—

- (a) a reference to an appeal or right of appeal under a provision of this Act includes a reference to an appeal or right of appeal under the Immigration and Asylum Act 1999,
- (b) a reference to a requirement imposed under this Act includes a reference to a requirement of a similar nature imposed under that Act,
- (c) a reference to a statement made in pursuance of a requirement imposed under a provision of this Act includes a reference to anything done in compliance with a requirement of a similar nature under that Act, and
- (d) a reference to notification by virtue of this Act includes a reference to notification by virtue of any other enactment.

Commencement

Sch. 6 para. 4(a)-(d): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

5 Saving

- (1) This Schedule is without prejudice to the power to include transitional provision in an order under section 162.
- (2) An order under that section may, in particular, provide for a reference to a provision of Part 5 of this Act to be treated as being or including a reference (with or without modification) to a provision of the Immigration and Asylum Act 1999 (c. 33).

Commencement

Sch. 6 para. 5(1)-(2): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

SCHEDULE 7**IMMIGRATION AND ASYLUM APPEALS: CONSEQUENTIAL AMENDMENTS****Section 114***Immigration Act 1971 (c. 77)***1**

In section 33(4) of the Immigration Act 1971 (c. 77) (pending appeal: interpretation) for paragraphs (a) and (b) substitute “in accordance with section 104 of the Nationality, Immigration and Asylum Act 2002 (pending appeals)”.

Commencement

Sch. 7 para. 1: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

2

In paragraph 2A(9) of Schedule 2 to that Act (control of entry: person with continuing leave) for “Part IV of the Immigration and Asylum Act 1999” substitute “Part 5 of the Nationality, Immigration and Asylum Act 2002 (immigration and asylum appeals)”.

Commencement

Sch. 7 para. 2: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

3

In paragraph 4(4) of that Schedule (examination and detention of documents) for “an appeal under this Act” substitute “an appeal under the Nationality, Immigration and Asylum Act 2002”.

Commencement

Sch. 7 para. 3: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

4

In paragraph 8(2) of that Schedule (time within which directions may be given) after “United Kingdom” insert “(ignoring any period during which an appeal by him under the Immigration Acts is pending)”.

Commencement

Sch. 7 para. 4: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

5

In paragraph 25 of that Schedule (rules) for “section 22 of this Act” substitute “section 106 of the Nationality, Immigration and Asylum Act 2002 (appeals)”.

Commencement

Sch. 7 para. 5: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

6

In paragraph 29 of that Schedule (bail pending appeal)—

- (a) in sub-paragraph (1), for the words from “section” to “1999” substitute “Part 5 of the Nationality, Immigration and Asylum Act 2002”, and
- (b) for the words “Appeal Tribunal” substitute, in each place, “Immigration Appeal Tribunal”.

Commencement

Sch. 7 para. 6(a)-(b): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

7

In paragraph 2(2) of Schedule 3 to that Act (deportation) for “section 18 of this Act” substitute “section 105 of the Nationality, Immigration and Asylum Act 2002 (notice of decision)”.

Commencement

Sch. 7 para. 7: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

8

For paragraph 3 of that Schedule (deportation: effect of appeal) substitute—

“3.

So far as they relate to an appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 against a decision of the kind referred to in section 82(2)(j) or (k) of that Act (decision to make deportation order and refusal to revoke deportation order), paragraphs 29 to 33 of Schedule 2 to this Act shall apply for the purposes of this Schedule as if the reference in paragraph 29(1) to Part I of that Schedule were a reference to this Schedule.”

Commencement

Sch. 7 para. 8: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

*House of Commons Disqualification Act 1975 (c. 24)***9**

In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (disqualifying offices) for “Adjudicator appointed for the purposes of the Immigration and Asylum Act 1999.” substitute “Adjudicator appointed for the purposes of Part 5 of the Nationality, Immigration and Asylum Act 2002.”.

Commencement

Sch. 7 para. 9: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

*Northern Ireland Assembly Disqualification Act 1975 (c. 25)***10**

In Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (disqualifying offices) for “Adjudicator appointed for the purposes of the Immigration and Asylum Act 1999.” substitute “Adjudicator appointed for the purposes of Part 5 of the Nationality, Immigration and Asylum Act 2002.”.

Commencement

Sch. 7 para. 10: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

*Race Relations Act 1976 (c. 74)***11**

In section 53(1) (restriction of proceedings) for “Part IV of the Immigration and Asylum Act 1999” substitute “Part 5 of the Nationality, Immigration and Asylum Act 2002”.

Commencement

Sch. 7 para. 11: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

12

Section 57A (immigration cases) shall be amended as follows—

- (a) in subsection (1)(a) for “Part IV of the 1999 Act” substitute “Part 5 of the 2002 Act”,
- (b) in subsection (5) for the definition of “the Immigration Acts” substitute—

““the Immigration Acts” has the meaning given by section 158 of the 2002 Act;”,
- (c) in that subsection in the definition of “immigration appellate body” for “the 1999 Act” substitute “Part 5 of the 2002 Act”,
- (d) in that subsection for the definition of “immigration authority” substitute—

““immigration authority” means the Secretary of State, an immigration officer or a person responsible for the grant or refusal of entry clearance (within the meaning of section 33(1) of the Immigration Act 1971 (c. 77));”,
- (e) in that subsection in the definition of “pending” for “Part IV of the 1999 Act” substitute “Part 5 of the 2002 Act”,
- (f) in that subsection in the definition of “relevant decision” for “Part IV of the 1999 Act” substitute “Part 5 of the 2002 Act”,
- (g) in that subsection in the definition of “relevant immigration proceedings” for “Part IV of the 1999 Act” substitute “Part 5 of the 2002 Act”, and
- (h) in that subsection for the definition of “the 1999 Act” substitute—

““the 2002 Act” means the Nationality, Immigration and Asylum Act 2002;”.

Commencement

Sch. 7 para. 12(a)-(h): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

13 [...]¹⁹⁵

14

In section 65(7)(b) (help for aggrieved person) for “Part IV of the Immigration and Asylum Act 1999” substitute “Part 5 of the Nationality, Immigration and Asylum Act 2002”.

Commencement

Sch. 7 para. 14: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

15 [...]¹⁹⁶

Courts and Legal Services Act 1990 (c. 41)

16

In Schedule 11 to the Courts and Legal Services Act 1990 (judges &c. barred from legal practice) for “Adjudicator for the purposes of the Immigration and Asylum Act 1999 (other than Asylum Support Adjudicator)” substitute “Adjudicator appointed for the purposes of Part 5 of the Nationality, Immigration and Asylum Act 2002”.

Commencement

Sch. 7 para. 16: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

Tribunals and Inquiries Act 1992 (c. 53)

17

In paragraph 22 of Schedule 1 to the Tribunals and Inquiries Act 1992 (tribunals under the supervision of the Council on Tribunals)—

- (a) in sub-paragraph (a), for “section 57 of the Immigration and Asylum Act 1999” substitute “section 81 of the Nationality, Immigration and Asylum Act 2002”, and
 - (b) in sub-paragraph (b), for “section 56 of that Act” substitute “section 100 of that Act”.
-

Commencement

Sch. 7 para. 17(a)-(b): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

¹⁹⁵ Repealed by Equality Act 2006 c. 3 Sch.4 para.1 (October 1, 2007 as SI 2007/2603)

¹⁹⁶ Repealed by Equality Act 2006 c. 3 Sch.4 para.1 (October 1, 2007 as SI 2007/2603)

*Judicial Pensions and Retirement Act 1993 (c. 8)***18**

In Part II of Schedule 1 to the Judicial Pensions and Retirement Act 1993 (offices which may be qualifying judicial offices) for “Adjudicator for the purposes of the Immigration and Asylum Act 1999 (other than Asylum Support Adjudicator)” substitute “Adjudicator appointed for the purposes of Part 5 of the Nationality, Immigration and Asylum Act 2002”.

Commencement

Sch. 7 para. 18: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

19

In Schedule 5 to that Act (retirement provisions: the relevant offices) for “Adjudicator for the purposes of the Immigration and Asylum Act 1999 (other than Asylum Support Adjudicator)” substitute “Adjudicator appointed for the purposes of Part 5 of the Nationality, Immigration and Asylum Act 2002”.

Commencement

Sch. 7 para. 19: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

*Special Immigration Appeals Commission Act 1997 (c. 68)***20**

The following shall be substituted for section 2 of the Special Immigration Appeals Commission Act 1997 (jurisdiction: appeals)—

“2 Jurisdiction: appeals

- (1) A person may appeal to the Special Immigration Appeals Commission against a decision if—
 - (a) he would be able to appeal against the decision under section 82(1) or 83(2) of the Nationality, Immigration and Asylum Act 2002 but for a certificate of the Secretary of State under section 97 of that Act (national security, &c.), or
 - (b) an appeal against the decision under section 82(1) or 83(2) of that Act lapsed under section 99 of that Act by virtue of a certificate of the Secretary of State under section 97 of that Act.
- (2) The following provisions shall apply, with any necessary modifications, in relation to an appeal against an immigration decision under this section as they apply in relation to an appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002—
 - (a) section 3C of the Immigration Act 1971 (c. 77) (continuation of leave pending variation decision),
 - (b) section 78 of the Nationality, Immigration and Asylum Act 2002 (no removal while appeal pending),
 - (c) section 79 of that Act (deportation order: appeal),

- (d) section 82(3) of that Act (variation or revocation of leave to enter or remain: appeal),
 - (e) section 84 of that Act (grounds of appeal),
 - (f) section 85 of that Act (matters to be considered),
 - (g) section 86 of that Act (determination of appeal),
 - (h) section 87 of that Act (successful appeal: direction),
 - (i) section 96 of that Act (earlier right of appeal),
 - (j) section 104 of that Act (pending appeal),
 - (k) section 105 of that Act (notice of immigration decision), and
 - (l) section 110 of that Act (grants).
- (3) The following provisions shall apply, with any necessary modifications, in relation to an appeal against the rejection of a claim for asylum under this section as they apply in relation to an appeal under section 83(2) of the Nationality, Immigration and Asylum Act 2002—
- (a) section 85(4) of that Act (matters to be considered),
 - (b) section 86 of that Act (determination of appeal),
 - (c) section 87 of that Act (successful appeal: direction), and
 - (d) section 110 of that Act (grants).
- (4) An appeal against the rejection of a claim for asylum under this section shall be treated as abandoned if the appellant leaves the United Kingdom.
- (5) A person may bring or continue an appeal against an immigration decision under this section while he is in the United Kingdom only if he would be able to bring or continue the appeal while he was in the United Kingdom if it were an appeal under section 82(1) of that Act.
- (6) In this section “immigration decision” has the meaning given by section 82(2) of the Nationality, Immigration and Asylum Act 2002.”

Commencement

Sch. 7 para. 20: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

21

Section 2A of that Act (human rights) shall cease to have effect.

Commencement

Sch. 7 para. 21: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

22

Section 4 of that Act (determination of appeals) shall cease to have effect.

Commencement

Sch. 7 para. 22: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

23

In section 5 of that Act (procedure)—

- (a) in subsections (1)(a) and (b) and (2) omit “or 2A”, and
- (b) after subsection (2) insert—

“(2A) Rules under this section may, in particular, do anything which may be done by rules under section 106 of the Nationality, Immigration and Asylum Act 2002 (appeals: rules).”

Commencement

Sch. 7 para. 23(a)-(b): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

24

Section 7A of that Act (pending appeals) shall cease to have effect.

Commencement

Sch. 7 para. 24: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

25

In paragraph 5 of Schedule 1 to that Act—

- (a) in sub-paragraph (b)(i), for “section 57(2) of the Immigration and Asylum Act 1999” substitute “section 81(3)(a) of the Nationality, Immigration and Asylum Act 2002”, and
- (b) in sub-paragraph (b)(ii), for “paragraph 1(3) of Schedule 2” substitute “paragraph 11 of Schedule 5”.

Commencement

Sch. 7 para. 25(a)-(b): April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

26

Schedule 2 to that Act shall cease to have effect.

Commencement

Sch. 7 para. 26: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

Immigration and Asylum Act 1999 (c. 33)

27

In section 23(1) of the Immigration and Asylum Act 1999 (monitoring refusal of entry clearance) for “section 60(5)” there shall be substituted “section 90 or 91 of the Nationality, Immigration and Asylum Act 2002”.

Commencement

Sch. 7 para. 27: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

28

In section 53(4) of that Act (bail) for “this Act” there shall be substituted “the Nationality, Immigration and Asylum Act 2002”.

Commencement

Sch. 7 para. 28: April 1, 2003 (SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

29

(1) Paragraph 9 of Schedule 4 to that Act (appeals: procedure: Convention cases) shall be amended as follows—

- (a) in sub-paragraph (1)(a), omit “(4), (5)”, and
- (b) omit sub-paragraphs (4) and (5).

(2) This paragraph is without prejudice to—

- (a) the effect after commencement of this paragraph of a certificate issued before commencement, or
- (b) the power of the Secretary of State after the commencement of this paragraph to issue a certificate in respect of a claim made before commencement.

Commencement

Sch. 7 para. 29(1)-(2)(b): November 7, 2002

Anti-terrorism, Crime and Security Act 2001 (c. 24)

30 [...]¹⁹⁷

Proceeds of Crime Act 2002 (c. 29)

31

The following shall be substituted for paragraph 4 of Schedule 2 to the Proceeds of Crime Act 2002 (lifestyle offences: England and Wales: people trafficking)—

“4

- (1) An offence under section 25, 25A or 25B of the Immigration Act 1971 (c. 77) (assisting unlawful immigration etc.).
- (2) An offence under section 145 of the Nationality, Immigration and Asylum Act 2002 (traffic in prostitution)."

Commencement

Sch. 7 para. 31: February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

¹⁹⁷ Repealed by Prevention of Terrorism Act 2005 c. 2 s.16(2)(c) (March 14, 2005)

32

In paragraph 4 of Schedule 4 to that Act (lifestyle offences: Scotland: people trafficking) for “section 25(1) of the Immigration Act 1971 (assisting illegal entry etc.)” there shall be substituted “section 25, 25A or 25B of the Immigration Act 1971 (assisting unlawful immigration etc.)”.

Commencement

Sch. 7 para. 32: February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

33

The following shall be substituted for paragraph 4 of Schedule 5 to that Act (lifestyle offences: Northern Ireland: people trafficking)—

“4

- (1) An offence under section 25, 25A or 25B of the Immigration Act 1971 (assisting unlawful immigration etc.).
- (2) An offence under section 145 of the Nationality, Immigration and Asylum Act 2002 (traffic in prostitution)."

Commencement

Sch. 7 para. 33: February 10, 2003 (SI 2003/1 art. 2, Sch. 1 para. 1)

SCHEDULE 8**CARRIERS' LIABILITY****Section 125**

 Partially in force

1

The Immigration and Asylum Act 1999 (c. 33) shall be amended as follows.

Commencement

Sch. 8 para. 1: November 14, 2002 for the purpose of enabling the Secretary of State to exercise the power to make subordinate legislation as specified in SI 2002/2811 Sch.1; December 8, 2002 for the purposes of clandestine entrants as specified in SI 2002/2811 Sch.1; not yet in force otherwise (SI 2002/2811 art. 2, Sch. 1 para. 1)

 Partially in force

2

(1) Section 32 (penalty for carrying clandestine entrant) shall be amended as follows.

(2) After subsection (1)(a) insert—

“(aa) he arrives in the United Kingdom concealed in a rail freight wagon.”.

(3) For subsection (2) substitute—

“(2) The Secretary of State may require a person who is responsible for a clandestine entrant to pay—

- (a) a penalty in respect of the clandestine entrant;
- (b) a penalty in respect of any person who was concealed with the clandestine entrant in the same transporter.

(2A) In imposing a penalty under subsection (2) the Secretary of State—

- (a) must specify an amount which does not exceed the maximum prescribed for the purpose of this paragraph,
- (b) may, in respect of a clandestine entrant or a concealed person, impose separate penalties on more than one of the persons responsible for the clandestine entrant, and
- (c) may not impose penalties in respect of a clandestine entrant or a concealed person which amount in aggregate to more than the maximum prescribed for the purpose of this paragraph.”

(4) For subsection (4) substitute—

“(4) Where a penalty is imposed under subsection (2) on the driver of a vehicle who is an employee of the vehicle's owner or hirer—

- (a) the employee and the employer shall be jointly and severally liable for the penalty imposed on the driver (irrespective of whether a penalty is also imposed on the employer), and
- (b) a provision of this Part about notification, objection or appeal shall have effect as if the penalty imposed on the driver were also imposed on the employer (irrespective of whether a penalty is also imposed on the employer in his capacity as the owner or hirer of the vehicle).

(4A) In the case of a detached trailer, subsection (4) shall have effect as if a reference to the driver were a reference to the operator.”

(5) In subsection (5)—

- (a) in paragraph (a) for the second “or” substitute “and”, and
- (b) in paragraphs (b) and (c) for “or” substitute “and”.

(6) After subsection (5) insert—

“(5A) In the case of a clandestine entrant to whom subsection (1)(aa) applies, the responsible person is—

- (a) where the entrant arrived concealed in a freight train, the train operator who, at the train's last scheduled stop before arrival in the United Kingdom, was responsible for certifying it as fit to travel to the United Kingdom, or
- (b) where the entrant arrived concealed in a freight shuttle wagon, the operator of the shuttle-train of which the wagon formed part.”

(7) In subsection (6)(a) and (b) for “or” substitute “and”.

(8) After subsection (6) insert—

“(6A) Where a person falls within the definition of responsible person in more than one capacity, a separate penalty may be imposed on him under subsection (2) in respect of each capacity.”

Commencement

Sch. 8 para. 2(1)-(8): November 14, 2002 for the purpose of enabling the Secretary of State to exercise the power to make subordinate legislation as specified in SI 2002/2811 Sch.1; December 8, 2002 for the purposes of clandestine entrants as specified in SI 2002/2811 Sch.1; not yet in force otherwise (SI 2002/2811 art. 2, Sch. 1 para. 1)

 Partially in force

3

After section 32 insert—

“32A Level of penalty: code of practice

- (1) The Secretary of State shall issue a code of practice specifying matters to be considered in determining the amount of a penalty under section 32.
- (2) The Secretary of State shall have regard to the code (in addition to any other matters he thinks relevant)—
 - (a) when imposing a penalty under section 32, and
 - (b) when considering a notice of objection under section 35(4).
- (3) Before issuing the code the Secretary of State shall lay a draft before Parliament.
- (4) After laying the draft code before Parliament the Secretary of State may bring the code into operation by order.
- (5) The Secretary of State may from time to time revise the whole or any part of the code and issue the code as revised.
- (6) Subsections (3) and (4) also apply to a revision or proposed revision of the code.”

Commencement

Sch. 8 para. 3: November 14, 2002 for the purpose of enabling the Secretary of State to exercise powers specified in SI 2002/2811 Sch.1; December 8, 2002 for the purposes of clandestine entrants as specified in SI 2002/2811; Sch.1 not yet in force otherwise (SI 2002/2811 art. 2, Sch. 1 para. 1)

 Partially in force

4

The heading of section 33 (code of practice) becomes “Prevention of clandestine entrants: code of practice”.

Commencement

Sch. 8 para. 4: December 8, 2002 for the purposes of clandestine entrants as specified in SI 2002/2811; not yet in force otherwise (SI 2002/2811 art. 2, Sch. 1 para. 1)

 Partially in force

5

In section 33(2)(b) omit “both Houses of”.

Commencement

Sch. 8 para. 5: December 8, 2002 for the purposes of clandestine entrants as specified in SI 2002/2811; not yet in force otherwise (SI 2002/2811 art. 2, Sch. 1 para. 1)

 Partially in force

6

(1) Section 34 (defence) shall be amended as follows.

(2) For subsection (1) substitute—

“(1) A person (“the carrier”) shall not be liable to the imposition of a penalty under section 32(2) if he has a defence under this section.”

(3) In subsection (3)(c) omit the first “that”.

(4) After subsection (3) insert—

“(3A) It is also a defence for the carrier to show that—

- (a) he knew or suspected that a clandestine entrant was or might be concealed in a rail freight wagon, having boarded after the wagon began its journey to the United Kingdom;
- (b) he could not stop the train or shuttle-train of which the wagon formed part without endangering safety;
- (c) an effective system for preventing the carriage of clandestine entrants was in operation in relation to the train or shuttle-train; and
- (d) on the occasion in question the person or persons responsible for operating the system did so properly.”

(5) Omit subsection (5).

(6) For subsection (6) substitute—

“(6) Where a person has a defence under subsection (2) in respect of a clandestine entrant, every other responsible person in respect of the clandestine entrant is also entitled to the benefit of the defence.”

Commencement

Sch. 8 para. 6(1)-(6): December 8, 2002 for the purposes of clandestine entrants as specified in SI 2002/2811; not yet in force otherwise (SI 2002/2811 art. 2, Sch. 1 para. 1)

 Partially in force

7

(1) Section 35 (notification and objection) shall be amended as follows.

(2) In subsection (2)(d)(i) for “must” substitute “may”.

(3) For subsections (3) to (8) substitute—

“(3) Subsection (4) applies where a person to whom a penalty notice is issued objects on the ground that—

- (a) he is not liable to the imposition of a penalty, or
- (b) the amount of the penalty is too high.

(4) The person may give a notice of objection to the Secretary of State.

(5) A notice of objection must—

- (a) be in writing,
- (b) give the objector's reasons, and
- (c) be given before the end of such period as may be prescribed.

(6) Where the Secretary of State receives a notice of objection to a penalty in accordance with this section he shall consider it and—

- (a) cancel the penalty,
- (b) reduce the penalty,
- (c) increase the penalty, or
- (d) determine to take no action under paragraphs (a) to (c).

(7) Where the Secretary of State considers a notice of objection under subsection (6) he shall—

- (a) inform the objector of his decision before the end of such period as may be prescribed or such longer period as he may agree with the objector,
- (b) if he increases the penalty, issue a new penalty notice under subsection (1), and
- (c) if he reduces the penalty, notify the objector of the reduced amount.”

(4) In subsection (9)—

- (a) for the first “served” substitute “issued”, and
- (b) for “served on” substitute “issued to”.

(5) At the end add—

“(11) In proceedings for enforcement of a penalty under subsection (10) no question may be raised as to—

- (a) liability to the imposition of the penalty, or
- (b) its amount.

(12) A document which is to be issued to or served on a person outside the United Kingdom for the purpose of subsection (1) or (7) or in the course of proceedings under subsection (10) may be issued or served—

- (a) in person,
- (b) by post,
- (c) by facsimile transmission, or
- (d) in another prescribed manner.

(13) The Secretary of State may by regulations provide that a document issued or served in a manner listed in subsection (12) in accordance with the regulations is to be taken to have been received at a time specified by or determined in accordance with the regulations.”

Commencement

Sch. 8 para. 7(1)-(5): November 14, 2002 for the purpose of enabling the Secretary of State to exercise the power to make subordinate legislation as specified in SI 2002/2811 Sch.1; December 8, 2002 for the purposes of clandestine entrants as specified in SI 2002/2811; not yet in force otherwise (SI 2002/2811 art. 2, Sch. 1 para. 1)

 Partially in force

8

After section 35 insert—

“35A Appeal

- (1) A person may appeal to the court against a penalty imposed on him under section 32 on the ground that—
 - (a) he is not liable to the imposition of a penalty, or
 - (b) the amount of the penalty is too high.
- (2) On an appeal under this section the court may—
 - (a) allow the appeal and cancel the penalty,
 - (b) allow the appeal and reduce the penalty, or
 - (c) dismiss the appeal.
- (3) An appeal under this section shall be a re-hearing of the Secretary of State's decision to impose a penalty and shall be determined having regard to—
 - (a) any code of practice under section 32A which has effect at the time of the appeal,
 - (b) the code of practice under section 33 which had effect at the time of the events to which the penalty relates, and
 - (c) any other matters which the court thinks relevant (which may include matters of which the Secretary of State was unaware).
- (4) Subsection (3) has effect despite any provision of Civil Procedure Rules.
- (5) An appeal may be brought by a person under this section against a penalty whether or not—
 - (a) he has given notice of objection under section 35(4);
 - (b) the penalty has been increased or reduced under section 35(6)."

Commencement

Sch. 8 para. 8: December 8, 2002 for the purposes of clandestine entrants as specified in SI 2002/2811; not yet in force otherwise (SI 2002/2811 art. 2, Sch. 1 para. 1)

 Partially in force

9

- (1) Section 36 (detention of vehicle) shall be amended as follows.
- (2) In subsection (1)—
 - (a) for “given” substitute “issued”,
 - (b) after paragraph (b) omit “or”, and

(c) after paragraph (c) insert

“or

(d) rail freight wagon.”.

(3) After subsection (2) insert—

“(2A) A vehicle may be detained under subsection (1) only if—

- (a) the driver of the vehicle is an employee of its owner or hirer,
- (b) the driver of the vehicle is its owner or hirer, or
- (c) a penalty notice is issued to the owner or hirer of the vehicle.

(2B) A senior officer may detain a relevant vehicle, small ship, small aircraft or rail freight wagon pending—

- (a) a decision whether to issue a penalty notice,
- (b) the issue of a penalty notice, or
- (c) a decision whether to detain under subsection (1).

(2C) That power may not be exercised in any case—

- (a) for longer than is necessary in the circumstances of the case, or
- (b) after the expiry of the period of 24 hours beginning with the conclusion of the first search of the vehicle, ship, aircraft or wagon by an immigration officer after it arrived in the United Kingdom.”

Commencement

Sch. 8 para. 9(1)-(3): December 8, 2002 for the purposes of clandestine entrants as specified in SI 2002/2811; not yet in force otherwise (SI 2002/2811 art. 2, Sch. 1 para. 1)

 Partially in force

10

After section 36 insert—

“36A Detention in default of payment

(1) This section applies where a person to whom a penalty notice has been issued under section 35 fails to pay the penalty before the date specified in accordance with section 35(2)(c).

(2) The Secretary of State may make arrangements for the detention of any vehicle, small ship, small aircraft or rail freight wagon which the person to whom the penalty notice was issued uses in the course of a business.

(3) A vehicle, ship, aircraft or wagon may be detained under subsection (2) whether or not the person to whom the penalty notice was issued owns it.

(4) But a vehicle may be detained under subsection (2) only if the person to whom the penalty notice was issued—

- (a) is the owner or hirer of the vehicle, or
- (b) was an employee of the owner or hirer of the vehicle when the penalty notice was issued.

- (5) The power under subsection (2) may not be exercised while an appeal against the penalty under section 35A is pending or could be brought (ignoring the possibility of an appeal out of time with permission).
- (6) The Secretary of State shall arrange for the release of a vehicle, ship, aircraft or wagon detained under this section if the person to whom the penalty notice was issued pays—
- (a) the penalty, and
 - (b) expenses reasonably incurred in connection with the detention.”

Commencement

Sch. 8 para. 10: December 8, 2002 for the purposes of clandestine entrants as specified in SI 2002/2811; not yet in force otherwise (SI 2002/2811 art. 2, Sch. 1 para. 1)

 Partially in force

11

- (1) Section 37 (effect of detention of transporter) shall be amended as follows.
- (2) In subsection (1) for “section 36” substitute “section 36(1)”.
- (3) In subsection (2) for “claiming an interest in the transporter,” substitute “whose interests may be affected by detention of the transporter.”.
- (4) In subsection (3)(c) omit “and the applicant has a compelling need to have the transporter released”.
- (5) After subsection (3) insert—
- “(3A) The court may also release the transporter on the application of the owner of the transporter under subsection (2) if—
- (a) a penalty notice was not issued to the owner or an employee of his, and
 - (b) the court considers it right to release the transporter.
- (3B) In determining whether to release a transporter under subsection (3A) the court shall consider—
- (a) the extent of any hardship caused by detention,
 - (b) the extent (if any) to which the owner is responsible for the matters in respect of which the penalty notice was issued, and
 - (c) any other matter which appears to the court to be relevant (whether specific to the circumstances of the case or of a general nature).”
- (6) After subsection (5) insert—
- “(5A) The power of sale under subsection (4) may be exercised only when no appeal against the imposition of the penalty is pending or can be brought (ignoring the possibility of an appeal out of time with permission).
- (5B) The power of sale under subsection (4) shall lapse if not exercised within a prescribed period.”
- (7) After subsection (6) add—

“(7) This section applies to a transporter detained under section 36A as it applies to a transporter detained under section 36(1); but for that purpose—

- (a) the court may release the transporter only if the court considers that the detention was unlawful or under subsection (3A) (and subsection (3) shall not apply), and
- (b) the reference in subsection (4) to the period of 84 days shall be taken as a reference to a period prescribed for the purpose of this paragraph.”

Commencement

Sch. 8 para. 11(1)-(7): November 14, 2002 for the purpose of enabling the Secretary of State to exercise the power to make subordinate legislation as specified in SI 2002/2811 Sch.1; December 8, 2002 for the purposes of clandestine entrants as specified in SI 2002/2811; not yet in force otherwise (SI 2002/2811 art. 2, Sch. 1 para. 1)

 Partially in force

12

Section 39 (rail freight) shall cease to have effect.

Commencement

Sch. 8 para. 12: December 8, 2002 for the purposes of clandestine entrants as specified in SI 2002/2811; not yet in force otherwise (SI 2002/2811 art. 2, Sch. 1 para. 1)

13

For section 40 (charge in respect of passenger without proper documents) substitute—

“40 Charge in respect of passenger without proper documents

(1) This section applies if an individual requiring leave to enter the United Kingdom arrives in the United Kingdom by ship or aircraft and, on being required to do so by an immigration officer, fails to produce—

- (a) an immigration document which is in force and which satisfactorily establishes his identity and his nationality or citizenship, and
- (b) if the individual requires a visa, a visa of the required kind.

(2) The Secretary of State may charge the owner of the ship or aircraft, in respect of the individual, the sum of £2,000.

(3) The charge shall be payable to the Secretary of State on demand.

(4) No charge shall be payable in respect of any individual who is shown by the owner to have produced the required document or documents to the owner or his employee or agent when embarking on the ship or aircraft for the voyage or flight to the United Kingdom.

(5) For the purpose of subsection (4) an owner shall be entitled to regard a document as—

- (a) being what it purports to be unless its falsity is reasonably apparent, and
- (b) relating to the individual producing it unless it is reasonably apparent that it does not relate to him.

(6) For the purposes of this section an individual requires a visa if—

- (a) under the immigration rules he requires a visa for entry into the United Kingdom, or

- (b) as a result of section 41 he requires a visa for passing through the United Kingdom.
- (7) The Secretary of State may by order amend this section for the purpose of applying it in relation to an individual who—
- (a) requires leave to enter the United Kingdom, and
 - (b) arrives in the United Kingdom by train.
- (8) An order under subsection (7) may provide for the application of this section—
- (a) except in cases of a specified kind;
 - (b) subject to a specified defence.
- (9) In this section “immigration document” means—
- (a) a passport, and
 - (b) 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.
- (10) The Secretary of State may by order substitute a sum for the sum in subsection (2).

40A Notification and objection

- (1) If the Secretary of State decides to charge a person under section 40, the Secretary of State must notify the person of his decision.
- (2) A notice under subsection (1) (a “charge notice”) must—
- (a) state the Secretary of State's reasons for deciding to charge the person,
 - (b) state the amount of the charge,
 - (c) specify the date before which, and the manner in which, the charge must be paid,
 - (d) include an explanation of the steps that the person may take if he objects to the charge, and
 - (e) include an explanation of the steps that the Secretary of State may take under this Part to recover any unpaid charge.
- (3) Where a person on whom a charge notice is served objects to the imposition of the charge on him, he may give a notice of objection to the Secretary of State.
- (4) A notice of objection must—
- (a) be in writing,
 - (b) give the objector's reasons, and
 - (c) be given before the end of such period as may be prescribed.
- (5) Where the Secretary of State receives a notice of objection to a charge in accordance with this section, he shall—
- (a) consider it, and
 - (b) determine whether or not to cancel the charge.
- (6) Where the Secretary of State considers a notice of objection, he shall inform the objector of his decision before the end of—
- (a) such period as may be prescribed, or
 - (b) such longer period as he may agree with the objector.

(7) Any sum payable to the Secretary of State as a charge under section 40 may be recovered by the Secretary of State as a debt due to him.

(8) In proceedings for enforcement of a charge under subsection (7) no question may be raised as to the validity of the charge.

(9) Subsections (12) and (13) of section 35 shall have effect for the purpose of this section as they have effect for the purpose of section 35(1), (7) and (10).

40B Appeal

(1) A person may appeal to the court against a decision to charge him under section 40.

(2) On an appeal under this section the court may—

- (a) allow the appeal and cancel the charge, or
- (b) dismiss the appeal.

(3) An appeal under this section—

- (a) shall be a re-hearing of the Secretary of State's decision to impose a charge, and
- (b) may be determined having regard to matters of which the Secretary of State was unaware.

(4) Subsection (3)(a) has effect despite any provision of Civil Procedure Rules.

(5) An appeal may be brought by a person under this section against a decision to charge him whether or not he has given notice of objection under section 40A(3)."

Commencement

Sch. 8 para. 13: November 14, 2002 for the purpose of enabling the Secretary of State to exercise the power to make subordinate legislation as specified in SI 2002/2811 Sch.1; December 8, 2002 otherwise (SI 2002/2811 art. 2, Sch. 1 para. 1)

14

Section 42 (power to detain vehicle, &c. carrying person without proper travel documents) shall cease to have effect.

Commencement

Sch. 8 para. 14: December 8, 2002 (SI 2002/2811 art. 2, Sch. 1 para. 1)

15

In section 43 (interpretation) (which becomes subsection (1))—

- (a) in the definition of “concealed” for “or aircraft” substitute “, aircraft or rail freight wagon”,
- (b) omit the definition of “court”,
- (c) after the definition of “equipment” insert—

““freight shuttle wagon” means a wagon which—

- (a) forms part of a shuttle-train, and
- (b) is designed to carry commercial goods vehicles;

- “freight train” means any train other than—
- (a) a train engaged on a service for the carriage of passengers, or
 - (b) a shuttle-train;”,
- (d) in the definition of “owner” omit paragraph (b) and the word “and” immediately preceding it,
- (e) for the definition of “rail freight wagon” substitute—
- ““rail freight wagon” means—
- (a) any rolling stock, other than a locomotive, which forms part of a freight train, or
 - (b) a freight shuttle wagon,
- and for the purpose of this definition, “rolling stock” and “locomotive” have the meanings given by section 83 of the Railways Act 1993 (c.43);”,
- (f) after the definition of “ship” insert—
- ““shuttle-train” has the meaning given by section 1(9) of the Channel Tunnel Act 1987 (c. 53);”,
- (g) in the definition of “transporter” for “or aircraft” substitute “, aircraft or rail freight wagon”, and
- (h) at the end insert—
- “(2) A reference in this Part to “the court” is a reference—
- (a) in England and Wales, to a county court,
 - (b) in Scotland, to the sheriff, and
 - (c) in Northern Ireland, to a county court.
- (3) But—
- (a) a county court may transfer proceedings under this Part to the High Court, and
 - (b) the sheriff may transfer proceedings under this Part to the Court of Session.”

Commencement

Sch. 8 para. 15(a)-(h): December 8, 2002 (SI 2002/2811 art. 2, Sch. 1 para. 1)

 Partially in force

16

- (1) Schedule 1 (sale of transporter) shall be amended as follows.
- (2) In paragraph 1(2)(a) omit “or charge”.
- (3) After paragraph 2 insert—

“2A

Where the owner of a transporter is a party to an application for leave to sell it, in determining whether to give leave the court shall consider—

- (a) the extent of any hardship likely to be caused by sale,

- (b) the extent (if any) to which the owner is responsible for the matters in respect of which the penalty notice was issued, and
 - (c) any other matter which appears to the court to be relevant (whether specific to the circumstances of the case or of a general nature)."
- (4) In paragraph 5(1) omit "or 42".
- (5) In paragraph 5(2)(d) omit "or charge".

Commencement

Sch. 8 para. 16(1)-(5): December 8, 2002 for the purposes of clandestine entrants as specified in SI 2002/2811; not yet in force otherwise (SI 2002/2811 art. 2, Sch. 1 para. 1)

 Partially in force

17

- (1) This paragraph applies to a code of practice which—
 - (a) has effect, before the coming into force of paragraph 12 of this Schedule, by virtue of sections 33 and 39 of the Immigration and Asylum Act 1999 (c. 33) (power to apply provisions about carriers' liability to rail freight), and
 - (b) could be issued under section 33 of that Act after the coming into force of paragraph 2 of this Schedule.
- (2) A code of practice to which this paragraph applies—
 - (a) shall continue to have effect after the coming into force of paragraph 12 of this Schedule, and
 - (b) shall be treated after that time as if made and brought into operation under section 33 alone.

Commencement

Sch. 8 para. 17(1)-(2)(b): December 8, 2002 for the purposes of clandestine entrants as specified in SI 2002/2811; not yet in force otherwise (SI 2002/2811 art. 2, Sch. 1 para. 1)

SCHEDULE 9

REPEALS

Section 161

 Partially in force

| Short title and chapter | Extent of repeal |
|--------------------------------|--|
| Immigration Act 1971 (c. 77) | In section 3(9)(b), the words "issued by or on behalf of the Government of the United Kingdom certifying that he has such a right of abode". Section 7(1)(a). Section 24A(4). Section 25A(7). |

| <i>Short title and chapter</i> | <i>Extent of repeal</i> |
|---|---|
| Race Relations Act 1976 (c. 74) | In section 26(3) the word “or” after paragraph (c). In section 28(1) the words “, 24A, 25”. In section 28A— subsection (4), in subsection (10), “, (4)(b)”, and in subsection (11), “, (4)”. Section 29. Section 31(d). Section 19E(7). In section 71A(1), the words “(within the meaning of section 19D(1))”. In section 3(6), paragraph (c) and the word “and” immediately preceding it. Sections 7 to 9. In section 10— in subsection (1), the words “, if a woman,”, and in subsection (2), the words “if a woman,”. In section 17(6), paragraph (c) and the word “and” immediately preceding it. Sections 19 to 21. In section 22— in subsection (1), the words “, if a woman,”, and in subsection (2), the words “if a woman,”. Section 27(2). Section 28. Section 33. Section 44(2) and (3). Section 47. In Schedule 1— in paragraph 4(c), the words “and (e)”, and in paragraph 8(c), the words “and (e)”. In Schedule 2— in paragraphs 1(1)(b) and 2(1)(b), the words “he is born legitimate and”, and in paragraph 3(1)(b), the words “had attained the age of ten but”. In Schedule 4— in paragraph 2, in the second column of the Table, the entry relating to section 29(1) of the Immigration Act 1971, and paragraph 6. |
| British Nationality (Falkland Islands) Act 1983 (c. 6) | Section 4(3)(b). |
| British Nationality (Hong Kong) Act 1990 (c. 34) | Section 1(5). |
| Asylum and Immigration Act 1996 (c. 49) | Section 5. |
| Special Immigration Appeals Commission Act 1997 (c. 68) | Section 2A. Section 4. In section 5(1)(a) and (b) and (2), the words “or 2A”. |

| <i>Short title and chapter</i> | <i>Extent of repeal</i> |
|---|---|
| Immigration and Asylum Act 1999 (c. 33) | <p>Section 7A.</p> <p>Schedule 2.</p> <p>In section 10(1)(c), the words “(“the first directions”)” and “(“the other person””).</p> <p>Section 15.</p> <p>Section 29.</p> <p>In section 33(2)(b), the words “both Houses of”.</p> <p>In section 34— in subsection (3)(c), the first “that”, and subsection (5).</p> <p>In section 36(1), the word “or” immediately preceding paragraph (c).</p> <p>In section 37(3)(c), the words “and the applicant has a compelling need to have the transporter released”.</p> <p>Section 38(1) and (3).</p> <p>Section 39.</p> <p>Section 42.</p> <p>In section 43, in the definition of “owner”paragraph (b) and the word “and” immediately preceding it.</p> <p>Sections 44 to 52.</p> <p>Section 53(5).</p> <p>Section 55.</p> <p>Sections 56 to 81.</p> <p>Section 94(5) and (6).</p> <p>Section 96(4) to (6).</p> <p>In section 147, the definition of “detention centre”.</p> <p>Section 166(4)(e).</p> <p>In Schedule 1— in paragraph 1(2)(a), the words “or charge”, in paragraph 5(1), the words “or 42”, and in paragraph 5(2)(d), the words “or charge”.</p> <p>In paragraph 9 of Schedule 4, the words “(4), (5)” in sub-paragraph (1)(a), and sub-paragraphs (4) and (5).</p> <p>Schedules 2 to 4.</p> <p>In Schedule 8, paragraphs 2 and 6.</p> <p>In Schedule 14, paragraphs 46(a), 51, 53, 66, 96, 98(2) and (3), 120 to 121 and 126 to 129.</p> |
| Race Relations (Amendment) Act 2000 (c. 34) | In Schedule 2, paragraphs 23 to 29 and 32 to 40. |

Commencement

Sch. 9 para. 1: November 7, 2002 for repeals specified in 2002 c.41 s.162(2); December 8, 2002 for repeals specified in SI 2002/2811 Sch.1; February 10, 2003 for repeals specified in SI 2003/1 Sch.1; April 1, 2003 for repeals specified in SI 2003/754 Sch.1; not yet in force otherwise (2002 c. 41 Pt 8 s. 162(2); SI 2002/2811 art. 2, Sch. 1 para. 1; SI 2003/1 art. 2, Sch. 1 para. 1; SI 2003/754 art. 2(1), art. 3; SI 2003/754 Sch. 1 para. 1)

EXPLANATORY NOTES

(This note is not part of the Order)

INTRODUCTION

1. These explanatory notes relate to the Nationality, Immigration and Asylum Act, which received Royal Assent on 7 November 2002. They have been prepared by the Home Office in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

OVERVIEW

3. The Act is in eight parts:

- Part 1 contains provisions which amend British nationality legislation, primarily the British Nationality Act 1981 (“BNA 1981”). It includes provision for citizenship ceremonies and a pledge, and imposes a requirement for naturalisation as a British citizen that the applicant has sufficient knowledge about life in the United Kingdom;
- Part 2 contains provisions for the support of asylum-seekers in accommodation centres, built or adapted to accommodate and provide services for a number of asylum-seekers and their dependants on one site;
- Part 3 concerns support arrangements for asylum-seekers and other assistance;
- Part 4 contains provisions relating to detention, temporary release and removal;
- Part 5 contains provisions on immigration and asylum appeals;
- Part 6 contains provisions relating to immigration procedures, including charges for work permits, establishment of an Authority-to-carry scheme, and the provision of information and disclosure;
- Part 7 introduces new offences and powers of entry to business premises; and
- Part 8 contains general provisions.

SUMMARY

Part 1— Nationality

4. The provisions:
 - Introduce citizenship ceremonies and a citizenship pledge;
 - Require those who apply for naturalisation as a British citizen to have sufficient knowledge about life in the United Kingdom; allow for regulations to be made which would specify how this requirement — and the existing requirement in relation to knowledge of English, Welsh or Scottish Gaelic — is to be met; extend the language requirement to those applying for naturalisation as the spouse of a British citizen or a British overseas territories citizen;
 - Amend the grounds for deprivation of citizenship, and replace the existing procedure for reviewing the deprivation decision with a new right of appeal against deprivation;
 - Remove existing provisions which allow discrimination on the grounds of nationality or ethnic or national origin in the exercise of nationality functions;

- Remove the present distinctions in nationality law between legitimate and illegitimate children;
- Repeal both the present statutory exemptions from the duty to give reasons for nationality decisions and the provisions which restrict the court's ability to review certain decisions. Other nationality provisions which are now spent are also repealed;
- Remove the minimum age requirement for applications for registration as a British citizen or a British overseas territories citizen by stateless children born in the United Kingdom and the British overseas territories;
- Clarify the meaning of the expression “in the United Kingdom in breach of the immigration laws”, where it occurs in the BNA 1981;
- Enable men as well as women who renounced British nationality before 1983, and who now wish to re-gain it, to rely on a marital connection with the United Kingdom or a British overseas territory;
- Enable regulation of the procedure for applying for a certificate of entitlement to the right of abode in the United Kingdom;
- Confer an entitlement to registration as a British citizen on certain British Overseas citizens, British subjects and British protected persons; and
- Confer a similar entitlement on certain persons who, but for gender discrimination in the law in force before 1 January 1983, would have acquired British citizenship automatically on that date.

Part 2—Accommodation Centres

5. Part 2 of the Act makes provision for the introduction of accommodation centres, built or adapted to accommodate and provide services for a number of asylum-seekers and their dependants on one site. The centres will be introduced on a trial basis. A proportion of new asylum-seekers who request, and are eligible for, support will be offered places in accommodation centres. Those who refuse the offer of a place, voluntarily cease to reside in a centre or breach their conditions of residence will not qualify for other forms of support. The centres may provide for a number of facilities and services, including:

- Food and other essential items;
- Money;
- Assistance with transport and assistance with expenses to pursue purposeful activities;
- Facilities for religious observance;
- Healthcare; and
- Education and training.

Part 3—Other Support and Assistance

6. The new asylum system will be based on a network of induction, accommodation and reporting centres as well as existing National Asylum Support Service (“NASS”) accommodation. Part 3 of the Act enables reporting and residence requirements to be imposed on all asylum-seekers and allows for the discontinuation of support to asylum-seekers who fail without reasonable cause to report as required. The Act also includes a number of provisions about the way in which those in the asylum system are supported. It also includes a provision for the Secretary of State to make payments to local authorities and voluntary organisations to reimburse them for the support they have provided for Unaccompanied Asylum Seeking Children (“UASCs”). This does not affect the amount paid to local authorities.

7. Part 3 of the Act also contains provisions making certain categories of person ineligible for support unless provision is made in regulations to the contrary. Examples include those who have refugee status in another EU Member State and persons unlawfully in the UK. Part 3 additionally prohibits, subject to certain exceptions, the provision of support to asylum seekers who fail to make their asylum claim as soon as reasonably practicable after their arrival in the UK.

8. This Part of the Act also contains provision enabling funding of a voluntary assisted return programme (“VARP”) and international projects. The VARP is a means by which assistance is provided to asylum-seekers who wish to return home. The current VARP scheme is administered for the Home Office by the International Organisation for Migration in partnership with Refugee Action. Examples of international projects that may be funded under the power include resettlement and the “interception assisted return programmes”. The power would allow funding of a United Kingdom resettlement programme which would allow a scheme to be established whereby those who cannot be protected in their region of origin may be entitled to have their claim for protection considered before they reach the United Kingdom, and enable the cost of their travel and settlement here to be met. Any resettlement programme would operate in addition to the current asylum determination procedures. This provision also enables the Secretary of State to participate in research projects relating to migration, and fund organisations and bodies that are involved in such projects.

Part 4— Detention and Removal

9. Part 4 of the Act contains a number of measures designed to simplify the process of removing those who have no right to stay in the United Kingdom. These include:

- Giving detainee custody officers acting as escorts a limited power to enter private premises to search persons being taken into detention;
- Giving the Secretary of State power to detain where he has power to give or refuse leave to enter, or where he has power to set removal directions, and giving the Secretary of State a power to grant bail equivalent to the power of immigration officers;
- The power to remove children born in the United Kingdom, where their parents entered the United Kingdom unlawfully; and
- The power to remove those who attempt to obtain permission to stay by using deception.

10. This Part also contains a provision allowing a residence restriction to be imposed on an asylum-seeker requiring him to reside for up to 14 days at a specified location at or near a place where an induction programme is to be made available to him. In addition a provision has been included which creates a rebuttable presumption that someone who has been convicted of a crime and given a custodial sentence of two years or more or an offence specified by order has been convicted of a particularly serious crime and is a danger to the community for the purposes of Article 33(2) of the Refugee Convention and accordingly cannot rely on that Convention to prevent their removal.

Part 5— Appeals

11. The Immigration and Asylum Act 1999 (“the 1999 Act”) introduced a one-stop appeal requiring an adjudicator considering an immigration appeal to deal with any other appealable matters raised by the applicant at the same time. The provisions in Part 5 of the Act aim to re-structure the appeals system and will:

- Define the specific immigration decisions which attract a right of appeal;
- Provide for asylum or human rights claims to be certified where the claim is clearly unfounded or where the person is to be removed to a country of which they are not a national and the Secretary of State has no reason to believe that their rights under the ECHR will be

breached in that country. The effect of such certification is that the person cannot, other than in limited cases, appeal against the immigration decision while in the United Kingdom;

- Enable the certification of applications, preventing a further right of appeal where a person could have made the application earlier or raised it at an earlier appeal but did not do so;
- Introduce a statutory review process as an alternative remedy to judicial review for challenges to the Immigration Appeal Tribunal decision to refuse permission to appeal;
- Enable rules to provide a statutory closure date to prevent multiple adjournments of cases at the adjudicator stage; and
- Enable rules to provide wasted cost powers and a ‘no merit’ certificate which can be issued by the Immigration Appellate Authority.

Part 6— Immigration Procedure

12. Part 6 of the Act contains provisions that allow a fee to be set for work permit applications, and bring work permit advice within the remit of the Office of the Immigration Services Commissioner.

13. The Act also contains provisions to introduce a scheme to require physical data, such as iris or facial images, to accompany applications to enter or remain in the United Kingdom. The Secretary of State may also operate a scheme to allow people voluntarily to provide such data to assist their entry into the United Kingdom. There is also provision which allows the introduction of an Authority-to-carry (“ATC”) scheme. This provides for regulations to require carriers to check the details of passengers against a Home Office database to confirm that they pose no known immigration or security risk.

14. The Secretary of State will also be able to require an employer, financial institution, or local authority to supply him with specified information. The Inland Revenue will be able to supply specified information to the Secretary of State for certain purposes, and port medical inspectors and staff working under their direction will be able to disclose information to specified health service bodies where necessary for certain medical purposes. The disclosure gateway at section 20 of the 1999 Act is also extended.

15. This Part also introduces Schedule 8, which amends the existing carriers' liability provisions in Part II of the 1999 Act. This establishes a more flexible penalty regime, introduces a statutory right of appeal and modifies the provisions for the detention of transporters. The provisions also apply to the rail freight regime (section 39 of the 1999 Act) and the carriers' liability regime (sections 40 to 42 of the 1999 Act).

16. Part 6 also includes provision for a power that would allow the UK to operate immigration and other frontier controls at an European Economic Area sea port such as Calais, subject to an international agreement. In addition, it would allow the Secretary of State to make any necessary legislative arrangements to accommodate French immigration control in UK Channel ports such as Dover.

Part 7— Offences

17. Part 7 of the Act includes new criminal offences of: assisting unlawful immigration; trafficking of people into, out of or within the UK for the purpose of prostitution; forgery and similar activities relating to the Application Registration Card; failure to comply with a notice requesting information in respect of suspected immigration offending; and an offence relating to the possession of an immigration stamp, whether genuine or a replica, without a reasonable excuse. This part also amends and modifies the law on offences relating to the employment of persons who are subject to immigration control; This Part also contains provisions which give police and immigration officers

the power to enter business premises to search for and arrest immigration offenders, and to inspect and seize personnel records following the arrest of an immigration offender on those premises.

COMMENTARY ON SECTIONS

PART 1: NATIONALITY

Section 1: Naturalisation: knowledge of language and society

18. Section 1 amends the provisions in the BNA 1981 which set out the requirements that an applicant for naturalisation as a British citizen must satisfy. (There is already a requirement, in paragraph 1(1)(c) of Schedule 1 to the BNA 1981, for certain applicants to have a sufficient knowledge of English, Welsh or Scottish Gaelic.)

19. Subsection (1) adds to Schedule 1 of the BNA 1981 a requirement for the applicant to demonstrate sufficient knowledge about life in the United Kingdom.

20. Subsection (2) enables the Secretary of State to waive the requirement that an applicant must have sufficient knowledge about life in the United Kingdom where he considers that, because of the applicant's age or physical or mental condition, it would be unreasonable to expect him or her to fulfil it.

21. Subsection (3) enables provision to be made by regulations for determining whether a person has a sufficient knowledge of a language and whether a person has sufficient knowledge about life in the United Kingdom for the purpose of an application for naturalisation.

22. By subsection (4) the regulations may make provision about how those requirements of sufficient knowledge of language and about life in the United Kingdom are met (for example, by reference to a specified qualification or attendance on a specified course).

Section 2: Naturalisation: spouse of citizen

23. Section 2 extends the requirement to have sufficient knowledge of a relevant language to those applying for naturalisation on the basis of marriage to a British citizen or a British overseas territories citizen. This section also requires those applying for naturalisation on the basis of marriage to a British citizen to have sufficient knowledge about life in the United Kingdom.

Section 3: Citizenship ceremony, oath and pledge

24. Section 3 introduces Schedule 1, which amends the current provisions in the BNA 1981 about naturalisation and registration procedure.

25. Paragraph 1 of Schedule 1 replaces section 42 of the BNA 1981 with provision requiring persons, except minors, who are naturalised or registered as British citizens, to attend citizenship ceremonies and make a citizenship pledge as well as the existing oath. It also extends to applicants for British overseas territories citizenship the requirement to make a pledge. The Secretary of State is given a discretion to disapply these requirements in particular cases.

26. Paragraph 2 of Schedule 1 replaces Schedule 5 to the BNA 1981. It introduces a new “citizenship oath and pledge” which is to be taken by applicants for registration or naturalisation as British citizens and British overseas territories citizens. The citizenship oath and pledge consists of the existing oath of allegiance with the addition of a pledge. The pledge for those becoming British citizens states that the person will respect the rights and freedoms of the United Kingdom, and will uphold its democratic values, observe its laws and fulfil the duties and obligations of citizenship.

Applicants becoming British overseas territories citizens will instead pledge loyalty to the relevant British overseas territory.

27. Paragraph 4 of Schedule 1 amends the existing regulation-making power in subsection 41(1)(d) of the BNA 1981 to enable regulation of the timing of attendance at a citizenship ceremony and the taking of the citizenship oath and pledge, the content and conduct of the citizenship ceremony, the completion and grant of a certificate of registration or naturalisation, and certain other related matters.

28. Paragraph 7 of Schedule 1 enables the Secretary of State to make regulations about the persons who shall be authorised to conduct citizenship ceremonies and to require local authorities in England, Wales and Scotland to provide facilities for the conduct of such ceremonies.

29. Paragraph 8 allows the Secretary of State to reimburse local authorities for the cost of carrying out citizenship ceremonies.

Section 4: Deprivation of citizenship

30. Section 4 makes new provision about the deprivation of British nationality or status.

31. Subsection (1) replaces existing section 40 of the BNA 1981 and inserts a new section 40A.

32. New section 40(1) of the BNA 1981 lists the categories of persons who are liable to deprivation under the Act. These are British citizens, British overseas territories citizens, British Overseas citizens, British Nationals (Overseas), British subjects and British protected persons.

33. New section 40(2) provides that a person may be deprived of his citizenship status if he has done anything seriously prejudicial to the vital interests of the United Kingdom or a British overseas territory.

34. New section 40(3) provides that a person may be deprived of his citizenship status if the registration or naturalisation by virtue of which the status was acquired was obtained by means of fraud, false representation or by concealment of a material fact.

35. New section 40(4) provides that a person may not be deprived of their citizenship status on the ground mentioned in subsection (2) if this would make him stateless.

36. New section 40(5) provides that before making a deprivation order the Secretary of State must give the person written notice specifying that a decision has been made to make the order and the reasons for it. The notice must also advise the person of his right to appeal.

37. New section 40(6) repeats the provision made by subsection (3) in respect of fraudulently obtained registrations and naturalisations effected or granted before 1983.

38. New section 40A confers a right of appeal to an adjudicator (in the first instance) on a person in respect of whom a decision to deprive him of his citizenship status has been made. There is also provision for both parties to appeal to the Tribunal from the adjudicator on a point of law. From the Tribunal there is a further appeal, again on a point of law, to the Court of Appeal, or the Court of Session (if the adjudicator's decision was in Scotland). Where, however, the Secretary of State has certified that the decision to deprive was based wholly or partly in reliance on information which he believes should not be made public for one of the reasons specified in new section 40A(2), the appeal at first instance will instead be heard by the Special Immigration Appeals Commission. New section 40A(6) prevents the making of an order under section 40 at any time when an appeal against this is pending, or could be brought, under section 40A or under section 2B of the Special Immigration Appeals Commission Act 1997 ("SIAC 1997").

39. Subsections (2) and (3) make consequential amendments to SIAC 1997.

40. Subsection (4) makes it clear that, in deciding whether there were grounds for deprivation under new section 40 of the 1981 Act, the Secretary of State would be entitled to have regard to events occurring before the commencement of that section if those events would have justified deprivation under section 40 of the Act as then in force.

Section 5: Resumption of citizenship

41. Section 5 removes the words “if a woman” from sections 10 and 22 of the BNA 1981, thus allowing either a woman or a man who renounced their United Kingdom and Colonies citizenship before 1983 to qualify for registration on the basis of a connection with the United Kingdom (or a British overseas territory) through marriage.

Section 6: Nationality decision: discrimination

42. Section 6 repeals the exemption from the general prohibition on discrimination in section 19B of the Race Relations Act 1976 (“the 1976 Act”) (as amended by the Race Relations (Amendment) Act 2000), in so far as it applies to discrimination on the grounds of nationality, ethnic or national origins in the exercise of nationality functions. The “nationality functions” are functions exercisable by virtue of the BNA 1981, the British Nationality (Falkland Islands) Act 1983, the British Nationality (Hong Kong) Act 1990, the Hong Kong (War Wives and Widows) Act 1996 and the British Nationality (Hong Kong) Act 1997.

43. Subsection (2) removes “nationality functions” from the scope of the exemption in subsection 19D(1) of the 1976 Act.

44. Subsection (3) inserts into section 19D of the 1976 Act new definitions of “immigration functions” and “Immigration Acts”, consequent upon the removal from that section of references to nationality functions and statutes relating to nationality.

45. Subsection (4) removes references to nationality functions from provisions in section 19E of the 1976 Act relating to the review by the Race Monitor of the use of the exemptions from discrimination, since this is made redundant by the other provisions in this section.

46. Subsection (5) adds a new subsection (1A) to section 71A of the 1976 Act, defining “immigration and nationality functions” for the purpose of that section. The effect is to maintain the present exemption from the duty, under section 71(1)(b) of the Act, to promote equality of opportunity in relation to the carrying out of such functions.

Section 7: Nationality decision: reasons and review

47. Section 7 repeals the provisions in section 44(2) of the BNA 1981 and corresponding provision in section 1 of the British Nationality (Hong Kong) Act 1990 which exempt the Secretary of State from having to give reasons for granting or refusing applications under the BNA 1981, where these decisions are at his discretion, and which restrict the ability of the courts to review such decisions.

48. This section also repeals section 44(3) of the BNA 1981 since this is made redundant by the other provisions in this section.

Section 8: Citizenship: registration

49. Section 8 removes the minimum age restriction for applicants seeking to acquire British citizenship or British overseas territories citizenship by registration on the grounds that they were born stateless in either the United Kingdom or a British overseas territory.

Section 9: Legitimacy of child

50. Section 9 removes from the nationality legislation the present distinctions between legitimate and illegitimate children and inserts a new definition of “father” into section 50 of the BNA 1981.

51. Subsection (1) provides that, for the purposes of the BNA 1981, a child's mother is the woman who gives birth to the child. A child's “father” is (a) the husband at the time of the child's birth of the woman who gives birth to the child, (b) a person who fails to be treated as the child's father by virtue of section 28 of the Human Fertilisation and Embryology Act 1990 or (c) any person who satisfies prescribed requirements as to proof of paternity. The Secretary of State may set out in regulations how, in circumstances where proof is required, paternity must be proven.

52. Subsection (2) amends section 3(6) of the BNA 1981 to allow registration as a British citizen of an illegitimate minor born outside the United Kingdom on the basis of a connection through his father as well as through his mother.

53. Subsection (3) makes similar provision as subsection (2) but in respect of registration as a British overseas territories citizen under section 17 of the BNA 1981.

54. Subsection (4) repeals section 47 of the BNA 1981. This enables an illegitimate child of a British citizen father to be legitimated by the subsequent marriage between his mother and father. In view of the prospective abolition of distinctions between the legitimate and the illegitimate in this context, section 47 will be redundant so far as children born after the appointed commencement date are concerned.

55. Subsection (5) amends paragraph 1(1)(b) of Schedule 2 to the BNA 1981, which provides that an illegitimate child born in the United Kingdom after 1st January 1983 whose parents hold different British nationality statuses under the BNA 1981, can only acquire the status of the mother. By this subsection, the position of illegitimate children is brought into line with that of legitimate children, who can acquire citizenship or status through either parent.

Section 10: Right of abode: certificate of entitlement

56. Section 10 enables regulations to be made in relation to the issue of a certificate of entitlement to the right of abode in the United Kingdom. The procedure is currently unregulated, except in regard to the level of fee and procedure for appealing against a refusal to issue such a certificate. A certificate of entitlement is currently defined as a certificate stating that a person has the right of abode in the United Kingdom. Section 2 of the Immigration 1971 Act (“the 1971 Act”) sets out who has the right of abode.

57. Regulations are to be made by statutory instrument. The regulations may specify such matters as the person to whom the application must be made, the form of the application and the documents which are to accompany it. They may also make provision for certificates to be revoked in certain circumstances, for example, where obtained by the provision of false information, and for the certificate to cease to have effect after a specified time.

58. Subsection (5) defines “certificate of entitlement”, for the purposes of the 1971 Act by reference to the new provision.

59. Subsection (6) enables regulations made under this section to preserve the effect of any certificate issued in accordance with the existing procedures.

Section 11: Unlawful presence in United Kingdom

60. Section 11 makes provision for construing the expression “in the United Kingdom in breach of the immigration laws” where it occurs in section 4 of, and Schedule 1 to, the BNA 1981 (registration and naturalisation) and in subsection 50(5) of that Act (meaning of “ordinary residence”).

61. Subsection (2) provides that a person is “in the United Kingdom in breach of the immigration laws” at any time when he was here without leave or other entitlement, for example under Community law.

62. Subsection (3) ensures that a person is *not* treated as being in the United Kingdom at any time when he had not “entered the United Kingdom” within the meaning of section 11 of the 1971 Act. (Section 11 provides that a person is deemed not to have entered the United Kingdom before disembarkation, while in a controlled area at a port or while under immigration control. This includes periods of detention and “temporary admission” under the 1971 Act.)

63. Subsection (4) states that the provisions in this section should be treated as having always had effect, except in relation to certain European Economic Area nationals and their family members.

64. Subsection (5) states that the rule of construction in subsection (2) is without prejudice to the meaning of “in breach of the immigration laws” where it occurs in other contexts.

Section 12: British citizenship: registration of certain persons without other citizenship

65. Section 12 inserts a new provision into the BNA 1981, conferring an entitlement to registration as a British citizen on those British Overseas citizens, British subjects and British protected persons who have no other nationality and who have not, since 4 July 2002, given up any other nationality.

66. Subsection (2) provides that any person registered under the new provision will be a British citizen “by descent” for the purposes of the 1981 Act.

Section 13: British citizenship: registration of certain persons born between 1961 and 1983

67. Section 13 inserts a new provision into the BNA 1981, conferring an entitlement to registration as a British citizen on persons born between 7 February 1961 and 1 January 1983 who, but for the inability (at that time) of women to pass on their citizenship, would have acquired British citizenship automatically when the BNA 1981 came into force on the latter of those two dates.

68. Subsection (2) provides that any person registered under the new provision will be a British citizen “by descent” for the purposes of the 1981 Act.

Section 14: Hong Kong

69. Section 14 re-enacts the substance of section 42(6) of the BNA 1981, by preventing registration as a British overseas territories citizen on the basis of a connection with Hong Kong.

Section 15: Repeal of spent provisions

70. Section 15 introduces Schedule 2, which repeals certain sections of the BNA 1981 which are now spent. Paragraph 2 of Schedule 2 provides that the status of people who were registered under any of these sections is unaffected by the repeals.

PART 2: ACCOMMODATION CENTRES

Establishment

Section 16: Establishment of centres

71. This section enables the Secretary of State to arrange for the provision of premises to be used as accommodation centres. Subsection (3) enables the Secretary of State to arrange for the provision of facilities for the hearing of appeals at or near an accommodation centre and for facilities to be provided at an accommodation centre in connection with casework to determine asylum claims.

Use of centres

Section 17: Support for destitute asylum-seeker

72. Subsection (1) of section 17 gives the Secretary of State power to provide accommodation in an accommodation centre, or to arrange for the provision of such accommodation through another party (for example a local authority or private sector contractor). Accommodation in an accommodation centre may be provided to asylum-seekers and their dependants who are destitute or likely to become destitute within a period to be prescribed by regulations — this will allow the Secretary of State to start making arrangements in anticipation of actual destitution. “Asylum-seeker” is defined in section 18, “dependant” in section 20 and “destitution” in section 19. Subsection (2) enables the Secretary of State to make regulations about the procedure to be followed in providing accommodation in an accommodation centre and subsection (3) gives examples of the particular provisions which may be included in the regulations.

Section 18: Asylum-seeker: definition

73. Section 18 defines the term “asylum-seeker” as someone who is at least 18 years old, is in the UK and who has made a claim under the Refugee Convention or under article 3 ECHR, at a place designated by the Secretary of State, which has been recorded by the Secretary of State but which has not yet been determined. Once a person is no longer an asylum-seeker he will no longer be eligible for accommodation in an accommodation centre and will be expected to leave the accommodation centre, the period of time to be prescribed under section 21(3) allowing him to make arrangements to do so. However, a person whose household includes a dependant child under the age of 18 will continue to be treated as an asylum-seeker whilst he and the child remain in the United Kingdom and will continue to be eligible for accommodation in an accommodation centre.

Section 19: Destitution: definition

74. Section 19 defines “destitution”. This means a person, and his dependants if he has any, who is unable to obtain both adequate accommodation and food and other essential items. In deciding whether accommodation is adequate, the Secretary of State must have regard to any prescribed matter but may not have regard to whether a person has an enforceable right to occupy accommodation, whether a person shares all or part of the accommodation, the location of the accommodation, whether it is temporary or permanent or any other prescribed matter.

75. Subsection (5) enables the Secretary of State to make regulations specifying items which are or are not to be considered as essential items.

76. Subsection (6) allows the Secretary of State to make regulations specifying when a person is not to be treated as destitute, enabling the Secretary of State to have regard to any income which a person or his dependant might reasonably be expected to have, or support or particular assets which are or might be available and to make provision for the valuation of these assets.

Section 20: Dependant: definition

77. Section 20 defines a dependant of an asylum-seeker as someone who is in the United Kingdom and falls within a prescribed class.

Section 21:Sections 17 to 20: supplementary

78. This section makes supplementary provision including provision that a claim for asylum is treated as determined after a prescribed period of time beginning with when the Secretary of State notifies the person of his decision on the claim or, if the person appeals against the decision, when the appeal is disposed of. This section also gives the Secretary of State power to inquire into and decide a person's age for the purposes of assessing whether they are eligible for support.

Section 22:Immigration and Asylum Act 1999, s. 95

79. Part VI of the 1999 Act sets out provisions for the support of asylum-seekers. Section 95 of that Act gives the Secretary of State the power to support destitute asylum-seekers and their dependants (if any) and section 96 sets out the ways in which support may be provided. Section 22 provides that the Secretary of State may provide support under section 95 of the 1999 Act by arranging for accommodation to be provided in an accommodation centre.

Section 23: Person subject to United Kingdom entrance control

80. Paragraph 21(2) of Schedule 2 to the Immigration Act 1971 ("1971 Act") gives immigration officers the power to impose residence restrictions on people who are liable to detention under Schedule 2 to that Act. Paragraph 2(5) of Schedule 3 to the 1971 Act gives the Secretary of State the power to impose residence restrictions on people released from detention pending deportation. Subsections (1) and (2) of section 23 provide that these powers may be used to set a condition that a person must reside at an accommodation centre.

81. Subsection (4) provides that a person who is required to leave an accommodation centre by virtue of section 26 (withdrawal of support) or for breach of residence conditions under section 30, will also have breached the condition imposed under paragraph 21(2) of Schedule 2 to the 1971 Act or paragraph 2(5) of Schedule 2 to that Act.

82. Section 4 of the 1999 Act gives the Secretary of State a power to provide facilities for the accommodation of certain people, including those granted temporary admission to the United Kingdom or released from detention on bail. Subsection (5) of section 23 provides that the Secretary of State may provide support under section 4 of the 1999 Act by arranging for accommodation in an accommodation centre.

Section 24: Provisional assistance

83. Section 24 allows a person to be supported in an accommodation centre or provided with other support or assistance of any kind if the Secretary of State thinks that person might be eligible to be provided with accommodation in an accommodation centre pending a decision as to whether the person is in fact eligible for accommodation in an accommodation centre. Subsection (2) enables local authorities to provide support under this section in accordance with arrangements made by the Secretary of State.

Section 25: Length of stay

84. Subsection (1) is subject to the provisions of subsection (2). Subsection (1) prevents the Secretary of State from requiring a person to reside in an accommodation centre if he has been a resident of an accommodation centre for a continuous period of six months. Subsection (2) enables the Secretary of State to require a person to remain in an accommodation centre for a maximum of 9 months if he thinks it appropriate in the particular circumstances of the case. Subsection (2) also makes clear that a person may choose to remain in an accommodation centre beyond the maximum periods

contained in this section in agreement with the Secretary of State. Subsection (4) enables the Secretary of State to make an order to shorten the maximum periods.

Section 26: Withdrawal of support

85. Section 26(1) sets out particular circumstances in which the Secretary of State may stop providing support to a person in an accommodation centre under section 17 or for whom provisional assistance under section 24 is being provided, namely: where the Secretary of State suspects a person or a defendant of his has committed an offence under the relevant provisions listed in section 35; and where the person or a defendant of his has failed to comply with the Secretary of State's directions as to the time and manner of travel to the accommodation centre or to other accommodation being provided under sections 17 or 24.

86. Subsection (2) enables regulations to be made specifying other circumstances in which support under sections 17 and 24 may be stopped. Subsection (3) allows the Secretary of State to take into account the fact he has withdrawn support under this section or section 30 (breach of conditions of residence), or that circumstances exist in which he would have withdrawn support, in deciding whether to provide support under sections 17 (support for destitute asylum seekers) or 24 (provisional assistance) of the Act or under sections 4 (accommodation for those temporarily released from detention), 95 (persons for whom support may be provided) or 98 (temporary support) of the 1999 Act. Subsection (4) makes clear that section 26 does not affect the right of appeal against refusal or withdrawal of support that is provided for in section 103 of the 1999 Act (as amended by Section 53).

Operation of centres

Section 27: Resident of centre

87. Section 27 defines a resident of an accommodation centre for the purposes of Part 2.

Section 28: Manager of centre

88. Section 28 defines a manager of an accommodation centre for the purposes of Part 2.

Section 29: Facilities

89. Section 29 gives the Secretary of State the power to provide residents of accommodation centres with a number of facilities and services, described in subsection (1).

90. Subsection (2) enables the Secretary of State by regulations to set the maximum amount of money that can be provided to the resident of an accommodation centre.

91. Subsection (3) enables the Secretary of State to arrange for the provision of facilities in an accommodation centre for the use of legal advisers and subsection (4) requires the Secretary of State to take reasonable steps to ensure that a resident has an opportunity to obtain legal advice before the appointment made for his substantive asylum interview.

92. Subsection (5) allows the Secretary of State to add by order to the list of items and facilities which may be provided to a resident of an accommodation centre set out in subsection (1). Orders and regulations under this section are subject to the negative resolution procedure under section 39.

Section 30: Conditions of residence

93. Section 30 enables the Secretary of State to make regulations setting out conditions of residence that may be imposed on residents of accommodation centres. The powers to impose residence

restrictions set out in paragraph 21 of Schedule 2 to the 1971 Act and paragraph 2(5) of Schedule 3 to that Act are unaffected by this section.

94. Subsection (3) sets out two particular conditions that may be imposed; subsection (4) makes clear that a resident who breaches a condition may be required to leave the centre, with his dependants (if any); subsection (5) provides that a resident and his dependants may be required to leave the centre if a dependant breaches a condition; and subsection (6) provides that the regulations setting the conditions under this section must include a provision for making sure that residents are informed in writing of any condition imposed on them. Regulations under section 30 are subject to the affirmative resolution procedure under section 39.

Section 31: Financial contribution by resident

95. Section 31 provides that conditions imposed under section 30 may require a resident of an accommodation centre to make payments to the Secretary of State or the manager of the centre where the resident applied to be supported and had assets (including assets outside the United Kingdom) at the time of the application which at that time were not capable of being realised but have since become realisable.

96. Subsection (4) provides the methods by which any amounts may be recovered.

Section 32: Tenure

97. Section 32 provides that a resident of an accommodation centre is not to be treated as acquiring a tenancy of or other interest in any part of the centre. It allows the Secretary of State, or the manager of the centre if authorised to do so by the Secretary of State, to recover possession of the premises occupied by the resident where the resident is required to leave the centre or where the Secretary of State decides to stop providing accommodation in the centre for that resident.

98. Subsection (4) makes clear that any licence to occupy premises which a resident of an accommodation centre has will be an excluded licence for the purposes of the Protection from Eviction Act 1977. There is therefore no need to obtain a court order before recovering possession of the premises. The procedure to be followed in order to recover the premises is to be prescribed in regulations. Subsection (7) means that accommodation provided under Section 24(1)(b) (i.e. provisional accommodation not in an accommodation centre) is to be treated as an accommodation centre for the purposes of Section 32.

Section 33: Advisory Groups

99. Section 33 requires the Secretary of State to appoint an Advisory Group for each accommodation centre. Subsection (2) enables the Secretary of State to make regulations conferring functions on Advisory Groups and making provision about the constitution and proceedings of the Advisory Groups. Subsection (3) requires the regulations to provide for members of Advisory Groups to visit the accommodation centre, to hear complaints made by residents of the centre and to report to the Secretary of State. Subsection (4) requires the manager of an accommodation centre to permit a member of the Advisory Group to visit the centre at any time and to visit any resident of the centre at any time, provided the resident consents. Subsection (5) makes provision about the terms of appointments for members of the Advisory Groups and subsection (6) enables the Secretary of State to pay expenses of members and to make facilities available to them.

General

Section 34: The Monitor of Accommodation Centres

100. Section 34 requires the Secretary of State to appoint a Monitor of Accommodation Centres. The Monitor may not be a person who is employed within a government department. Subsection (2) requires the Monitor to monitor the operation of Part 2 of the Act and, in particular, to consider the quality and effectiveness of accommodation and other facilities provided, the nature and enforcement of conditions of residence, the treatment of residents, and whether the location of an accommodation centre prevents a need of its residents from being met. Subsection (3) requires the Monitor to consult the Secretary of State and such other persons as he considers appropriate. Subsections (4) and (5) require the Monitor to make an annual report to the Secretary of State, which will be laid before Parliament, and to report on such other occasions as the Secretary of State may request. Subsections (6), (7) and (8) make provision relating to the terms of appointment, the payment of fees and expenses and a power for the Secretary of State to appoint more than one person to act jointly as Monitor.

Section 35: Ancillary provisions

101. This Section provides that specified provisions of the 1999 Act shall apply for the purposes of Part 2 of the Act as they do for Part VI of that Act. In particular, subsections (1)(a) to (d) of this section provide that certain criminal offences that apply to the provision of support for asylum-seekers under Part VI of the 1999 Act, shall also apply for the purposes of this Part.

102. Subsections (1)(f) and (1)(g) apply provisions in Part VI of the 1999 Act relating to recovery by the Secretary of State of monies provided to support asylum-seekers as a result of fraud or material non-disclosure of facts or where a sponsor has failed to maintain a person he undertook to maintain.

103. Section 124 of the 1999 Act, applied to Part 2 of the Act by subsection (1)(h), makes provision for the Secretary of State to be a corporation sole for the purpose of holding property. This will assist in conveyancing if the Secretary of State acquires property for the purposes of Part 2. Section 127 of the 1999 Act, applied to Part 2 of the Act by subsection (1)(i) relates to powers for the Secretary of State to require certain information from property owners about premises in which accommodation has been provided for the purposes of support.

Section 36: Education: general

104. Section 36(1) provides that residents of an accommodation centre shall not be treated as part of the population of a local education authority (“LEA”) for the purposes of section 13 of the Education Act 1996 (“the EA 1996”). Section 13 of the EA 1996 describes, in general terms, the duties of a LEA towards the population of its area. The LEA has a duty to contribute towards the spiritual, moral, mental and physical development of the community by securing that efficient primary and secondary education is available to meet the needs of the population of their area.

105. Section 36(2) prohibits a child who is a resident of an accommodation centre from attending a maintained school or nursery.

106. The prohibition on a child who is a resident of an accommodation centre attending a maintained school or nursery under subsection (2) is qualified by section 36(3) which enables such a child to attend a community special school or a foundation special school if it is named in a statement of special educational needs in respect of the child made under section 324 of the Education Act 1996.

107. For residents of accommodation centres, section 36(5)(a) removes the duties in section 86 of the School Standards and Framework Act 1998 Act requiring LEAs to enable the parents of children

in their area to express a preference as to the school at which they want their children to be educated and to comply with any preference expressed.

108. For residents of accommodation centres, section 36(5)(e) removes the duties in paragraph 3 of Schedule 27 to the EA 1996 requiring LEAs to enable the parents of children with special educational needs to express a preference as to the school at which they want their children to be educated, and the duty to specify the name of such a school in a child's statement of special educational needs.

109. Section 36(6) provides that the power of the Special Educational Needs Tribunal under section 326(3) of the EA 1996 to order an LEA to amend a child's statement of special educational needs is subject to qualified prohibition on a child who is a resident of an accommodation centre attending a maintained school or nursery under section 36(2).

110. Section 36(7) provides that a child who is resident in an accommodation centre and who has special educational needs shall be educated in the accommodation centre unless it is incompatible with (a) his receiving the special educational provision which his learning difficulty calls for, (b) the provision of efficient education for other children who are residents of the centre, or (c) the efficient use of resources.

111. Section 36(8) provides that a person exercising functions under the Act cannot rely on section 36(7)(b) and claim that it is not compatible with the provision of efficient education for other children who are residents of the accommodation centre for a child with special educational needs to be educated in the centre, unless there is no action that could reasonably be taken by that person or by any other person who exercises functions in respect of the centre to make section 36(7)(b) not apply.

112. Section 36(10) provides that subsections (1), (2) and (5) above shall not apply in relation to an accommodation centre if education is not provided for children who are residents of the centre under section 29(1)(f).

Section 37: Education: special cases

113. This Section makes provision for a LEA to provide education for a child resident in an accommodation centre in certain circumstances.

114. Section 37(1) provides that this section applies if a person who provides education to residents of accommodation centres recommends in writing to the local education authority for the area in which the centre is located that this section should apply to a particular child.

115. Section 37(2) provides that a LEA may arrange for the provision of education for a child to whom this section applies and disapply a provision of section 36 in respect of that child.

116. Section 37(4) requires the governing body of a maintained school to comply with a requirement of the LEA to admit a child to whom this section applies to the school. The duty imposed on the governing body of a maintained school is qualified by section 37(5) which provides that subsection (4) shall not apply where compliance with such a requirement would prejudice measures taken for the purpose of complying with a duty to comply with the limit on infant class sizes.

117. Section 37(6) requires the LEA to consult in accordance with regulations before imposing a requirement under subsection (4) for a school's governing body to admit a pupil.

Section 38: Local authority

118. Section 38 enables local authorities in accordance with arrangements made by the Secretary of State, to arrange for the provision of an accommodation centre, to make premises available for an accommodation centre and to provide services in connection with an accommodation centre. Subsection (2) sets out a number of functions that a local authority may do under this section, including the provision of services outside its area and tendering for or entering into a contract.

Section 39: “Prescribed”: orders and regulations

119. Section 39 sets out the procedure to be used when making an order or regulations under this Part of the Act.

Section 40: Scotland

120. This section provides that the Secretary of State may not make arrangements for establishing an accommodation centre in Scotland unless he has consulted the Scottish Ministers. It also provides for the Secretary of State to make provision by order, subject to the negative resolution procedure, for the education of residents of accommodation centres in Scotland.

Section 41: Northern Ireland

121. Section 41 makes equivalent provision to section 40 for Northern Ireland.

Section 42: Wales

122. Section 42 requires the Secretary of State to consult the National Assembly for Wales before making arrangements for an accommodation centre in Wales.

PART 3: OTHER SUPPORT AND ASSISTANCE

Section 43: Asylum-seeker: form of support

123. Section 43 creates an order-making power under which support provided for asylum-seekers under section 96(1)(b) of the 1999 Act can be restricted to those asylum-seekers who have accommodation provided for them under section 96(1)(a) of the 1999 Act. An Order made under this power can apply generally or in specific circumstances. Any Order made under this provision must be approved in draft by both Houses of Parliament before it can be made.

Section 44: Destitute asylum-seeker

124. Section 44 amends various provisions of Part VI of the 1999 Act (support for asylum seekers), to bring them into line with the provisions of Part 2 of the Act. Subsections (1) to (5) amend parts of section 94 of the 1999 Act to bring the definitions in relation to the meaning of “asylum seeker” and “dependant” in that section into line with those used in sections 18 and 20 of this Act. Subsection (6) substitutes a new provision for section 95(2) to (8) of the 1999 Act, which defines destitution for the purposes of support under that section. It mirrors section 19 (in relation to accommodation centres) by defining a person as destitute when that person does not have, and cannot obtain, both adequate accommodation and food and other essential items. This replaces the original provision in section 95(2) but the effect is the same. Subsection (6) also mirrors section 19 by providing the factors to which the Secretary of State cannot have regard in determining when accommodation is adequate and what items are essential items. Like section 19, the Secretary of State also has the power to provide for when a person is not to be treated as destitute.

Section 45:Section 44: supplemental

125. Subsections (1) to (3) of section 45 make consequential amendments to the 1999 Act to reflect the changes made to section 95 of that Act by section 44. Subsections (5) to (7) make consequential

amendments to certain social welfare provisions, that were amended by the 1999 Act, to take account of the changes which section 44 makes to section 95(2) to 95(8) of that Act.

Section 46:Section 44: supplemental: Scotland and Northern Ireland

126. This section makes further consequential amendments to social welfare provisions in relation to Scotland and Northern Ireland. These social welfare provisions were amended by the 1999 Act and now need to be amended to reflect the changes made to section 95(2) to (8) of the 1999 Act by section 44 of this Act.

Section 47: Asylum-seeker: family with children

127. Section 47 extends section 122 of the 1999 Act to accommodation centres by inserting a new section 122 into the 1999 Act. The new section 122 places a duty on the Secretary of State, where support under section 95 of the 1999 Act or section 17 of this Act is applied for by a person whom the Secretary of State thinks is eligible for support, to offer support under one of those provisions where the asylum seeker's household includes a dependant child under the age of 18. It also prevents local authorities from assisting a child under various provisions of the Children Act 1989 (or equivalent Scottish or Northern Irish legislation) if the Secretary of State has offered support in respect of the child and that offer remains open, or if the Secretary of State is providing the child with support under section 95 of the 1999 Act or section 17 of this Act, or has indicated that he would offer to support the child if an application for support were made, subject to any order disapproving subsection (3) made under subsection (5). Where support has been offered or provided pursuant to this section but later withdrawn, subsection (6) provides that only the local authority within whose area the withdrawn support was provided may provide assistance under the various child welfare provisions set out in subsection (4).

Section 48: Young asylum-seeker

128. Section 48(a) provides a power for the Secretary of State to make payments to local authorities under section 110 of the 1999 Act to reimburse them for the support they have provided for Unaccompanied Asylum-Seeking Children (UASCs). The Secretary of State already makes these payments but requires a special grant report under the Local Government Finance Act 1988. The definition of asylum-seeker in section 94(1) of the 1999 Act excludes those who are under the age of 18 and, therefore, payments under section 110 of the 1999 Act cannot currently be made in respect of those who are under the age of 18. Section 48 will enable payments under section 110 to be made in respect of asylum-seekers that are under the age of 18. The new power does not affect the amounts to be paid to local authorities or the requirements for auditing claims and ensuring payments only relate to those entitled. Section 48(b) provides a similar power for the Secretary of State to make payments to voluntary organisations under section 111 of the 1999 Act in respect of UASCs.

Section 49: Failed asylum-seeker

129. Section 49 gives the Secretary of State additional powers to support failed asylum-seekers. Section 4 of the 1999 Act currently provides that the Secretary of State may provide, or arrange for the provision of, accommodation of persons temporarily admitted to the United Kingdom or released from detention as specified in paragraphs (a), (b) and (c) of that section. However, the existing power does not allow the provision of accommodation to all categories of asylum-seekers whose claims for asylum have been rejected, should the Secretary of State decide to provide such accommodation in particular cases. Section 49 remedies this.

Section 50: Conditions of support

130. Section 95(9) of the 1999 Act provides that support for asylum-seekers (accommodation and subsistence) may be provided subject to conditions. Section 50 provides a power for the Secretary of State to link the provision of support (accommodation and subsistence) with compliance with the conditions on which temporary admission or release from detention has been granted.

Section 51: Choice of form of support

131. Section 51 provides that the Secretary of State may refuse support under sections 17 or 24 of this Act, or under section 4, section 95 or section 98 of the 1999 Act to a person if that person has already been offered support under one of those provisions. The Secretary of State is given a discretion as to the provision under which he may choose to offer support.

Section 52: Back-dating of benefit for refugee

132. Section 123(7) of the 1999 Act provides that where a person who has been recognised as a refugee within the meaning of the Refugee Convention, or a dependant of such a person, makes a claim for any benefit to which he would have been entitled had he been regarded as a refugee when he made his claim for asylum and has received support under Part VI of the 1999 Act, regulations may make provision for the value of that support to be offset against the backdated payment of any benefit. Section 52 extends the provisions of section 123(7) of the 1999 Act to persons provided with support under Part 2 of the Act.

Section 53: Asylum-seeker: appeal against refusal to support

133. Section 53 makes provision for appeals against refusal of asylum support or the ending of support. This section substitutes sections 103, 103A and 103B for the existing section 103 of the 1999 Act.

134. The provisions substituted for the existing section 103 of the 1999 Act extend the existing rights of appeal against refusal or ending of support under section 95 of the 1999 Act to refusal or ending of support under section 17 of the Act which provides for support in accommodation centres (new section 103(1)–(3)). This section also re-enacts provisions of the 1999 Act relating to appeals to the asylum support adjudicators and extends them to support under section 17 (new section 103(4)–(5)). It also re-enacts the provision of the 1999 Act providing for the payment of reasonable travelling expenses incurred by an appellant in connection with attending an appeal hearing under section 103 or 103A and extends this to section 17 (new section 103B).

Section 54 and Schedule 3: Withholding and withdrawal of support

135. This section introduces Schedule 3, which restricts the type of support and accommodation that is provided to those who are European Union (EU)/European Economic Area (EEA) citizens; those with refugee status in other EU/EEA states; failed asylum seekers and persons unlawfully present in the UK.

136. Paragraph 1(1)(a)–(m) of Schedule 3 lists the various pieces of legislation in England and Wales, Scotland and Northern Ireland under which support and/or accommodation to individuals in these categories will be restricted.

137. Sub-paragraph (2) provides that any powers or duties imposed by the legislation in Paragraph 1 may not be exercised in respect of any person to whom this applies, regardless of whether that person has received support or not in the past.

138. Paragraph 2 provides a safety net to children under 18. Children will remain eligible for support or assistance, as will adults provided for in regulations as eligible to receive it. Further, this paragraph allows the Secretary of State, by regulation, to extend the categories of those persons eligible for support.

139. Paragraph 3 addresses our international obligations. Nothing prevents local authorities or the National Asylum Support Service (NASS) exercising powers or performing duties to the extent that it is necessary to avoid breaching any European Convention on Human Rights (ECHR) right or a person's rights under the European Community treaties.

140. Paragraph 4 details the first class of people ineligible for support. If an individual has refugee status in another EEA Member State, or is the defendant of a person who is in the UK and has refugee status in another EEA Member State, they are ineligible for support.

141. Paragraph 5 makes citizens of other EEA member states ineligible for support if they are not present in the UK exercising Community Treaty rights or they are residing in the UK but Community Treaties forbid the person being supported from public funds.

142. Paragraph 6 makes failed asylum seekers ineligible for further support if they have failed to co-operate with removal directions issued in respect of them.

143. Paragraph 7 provides that persons who are unlawfully present in the UK, and who are not asylum-seekers, are ineligible for support.

144. Paragraph 8 allows the Secretary of State to make arrangements, by regulation, for citizens of other EU/EEA states and those with refugee status in other EU/EEA states to be provided with a journey home.

145. Paragraph 9 allows the Secretary of State to make arrangements, by regulation, for persons to be provided with accommodation until the time of their journey home. Only persons with dependent children will have accommodation arranged. Paragraph 10 makes the same arrangement for persons unlawfully in the UK. Again, only persons with dependent children will be provided with accommodation **as long as they have not failed to** co-operate with removal directions issued in respect of them.

146. Paragraph 11 provides further powers in relation to the regulation-making power.

147. Paragraph 12 enables provision to be made in regulation in respect of persons who refuse the offer of a journey home or fail to travel or co-operate with efforts being made to enable them to leave the UK. It allows regulations to be made that ensure only new arrangements enabling a person to leave can be made, but no additional accommodation can be provided. Sub-paragraph (2) allows for regulations to make exception for people who are unable to travel for a defined acceptable reason, and who can provide the required proof of the reason.

148. Sub-paragraph (1) of paragraph 13 creates a new criminal offence. It will be an offence for a person to accept temporary accommodation and/or travel assistance to another country then return to the UK and make another request for an arrangement to be made under paragraph 8, 9, or 10, i.e. travel assistance or temporary accommodation. Sub paragraph (2) creates an additional criminal offence. It will be an offence for a person who has previously requested arrangements be made for him to fail to mention this in any future application. Both offences are punishable on conviction by imprisonment for a term not exceeding six months.

149. Paragraph 14 places an obligation upon local authorities to inform the Secretary of State of any person they suspect or know to be unlawfully present in the UK or a failed asylum seeker.

150. Paragraph 15 allows the Secretary of State to amend the Schedule by order so as to remove or add categories of persons ineligible for support, to add or remove other statutes to the list of those which might provide support or assistance, and to add, amend or remove any limitations or exceptions to the list.

Section 55: Late claim for asylum: refusal of support

151. Section 55 makes provision to restrict access to support provided to asylum seekers under certain provisions of the 1999 Act and this Act and under certain provisions of housing and local government legislation in cases where the Secretary of State is not satisfied that a person has made his asylum application as soon as reasonably practicable after his arrival in the United Kingdom. Section 55 is intended to put the burden of proof on the asylum seeker claiming support to satisfy the Secretary of State that he made his asylum claim as soon as reasonably practicable after he arrived in the UK. If he cannot so satisfy the Secretary of State then the provision of support is prohibited.

152. Subsection (1) provides that the Secretary of State may not provide or arrange for the provision of support to a person under a provision mentioned in subsection (2) of the section to a person who has claimed asylum if the Secretary of State is not satisfied that the person has made his claim for asylum as soon as reasonably practicable after his arrival in the United Kingdom.

153. Subsection (2) specifies the provisions of the 1999 Act and of this Act under which support may not be provided in the circumstances specified in subsection (1) of the section.

154. Subsection (3) provides that a local authority may not provide or arrange for the provision of support to a person under a provision mentioned in subsection (4) of the section to a person who has claimed asylum whom Secretary of State is not satisfied has made his asylum application as soon as reasonably practicable after his arrival in the United Kingdom.

155. Subsection (4) specifies the provisions of certain housing and local government legislation under which support may not be provided in the circumstances specified in subsection (3) of the section.

156. Subsection (5) provides that section 55 shall not prevent the Secretary of State exercising his power to provide support to the extent necessary to avoid the breach of a person's rights under ECHR or to children and their families under section 95 of the 1999 Act, section 17 of this Act, section 98 of the 1999 Act or section 24 of this Act.

157. Subsection (6)(a) and (b) stipulate that a local authority that proposes to provide or arrange for the provision of support under a provision mentioned in subsection (4) of this section must inform the Secretary of State if the authority believes the person has made a claim for asylum and must act in accordance with any guidance issued by the Secretary of State to determine whether subsection (3) of this section (the provision preventing support in certain circumstances) applies.

158. Subsection (6)(c) provides that a local authority shall not be prevented from providing support where it has complied with the requirements of the previous two paragraphs of this subsection and has concluded that the prohibition on providing support does not apply.

159. Subsection (7) enables the Secretary of State by order to amend the list of provisions specified in subsection (4) of this section.

160. Subsection (8) specifies the procedure for making an order under subsection (7) and makes provision for it to include transitional, consequential or incidental provision.

161. Subsection (9) provides that “claim for asylum” has the same meaning as in section 18 of this Act, thereby removing any uncertainty as to how it is to be interpreted.

162. Subsection (10) provides that a decision by the Secretary of State that the section prevents him from providing or arranging for the provision of support under this section does not attract a right of appeal to the Asylum Support Adjudicators under section 103 of the 1999 Act.

163. Subsection (11) provides that the section does not prevent a person residing in a place in accordance with a residence restriction imposed in reliance on section 70 of this Act.

Section 56: Provision of support by local authority

164. Section 56 makes provision to enable local authorities to provide support under section 98 of the 1999 Act to asylum seekers pending the determination by the Secretary of State of a claim for support under section 95 of the 1999 Act. This support may be provided in any of the ways mentioned in sections 96(1) and 96(2) of the 1999 Act.

Section 57: Application for support: false or incomplete information

165. Section 57 makes additional provision in respect of regulations about asylum support made under paragraph 12 of Schedule 8 to the 1999 Act. The section provides that such regulations may provide for an application for asylum support not to be entertained where the Secretary of State is not satisfied that information provided by an applicant is complete or accurate or that the applicant is co-operating with enquiries under paragraph 12(d) of Schedule 8 to the 1999 Act.

Section 58: Voluntary departure from United Kingdom

166. Section 58 allows the Secretary of State to make arrangements to assist “voluntary leavers”. A person qualifies for assistance as a “voluntary leaver” if he is leaving the United Kingdom for a place where he hopes to take up permanent residence and if the Secretary of State thinks it is in his interests to leave the United Kingdom and that he wishes to do so. British citizens and EEA nationals are excluded.

167. Section 58 replaces section 29 of the 1971 Act. The class of person who qualifies for assistance has been largely unchanged (the only difference is that section 58 now excludes EEA nationals as well as British citizens), but the sort of assistance which can be given has been expanded. In addition to meeting travel expenses of voluntary leavers and their families, the Secretary of State is now able to meet costs associated with their immediate arrival and reception and longer-term support to facilitate successful re-integration. It is also able to fund “explore and prepare” visits by persons who wish to assess the possibility of becoming voluntary leavers.

168. The Home Office is currently responsible for a number of schemes to assist “voluntary return”. The existing schemes are being run for the Home Office by the International Organisation for Migration in partnership with Refugee Action. Section 58 enables the Secretary of State to make payments directly to these organisations.

Section 59: International projects

169. Section 59 provides a power for the Secretary of State to participate in certain projects, either with other Governments, the EU or other non-governmental organisations of a domestic or international nature. The types of projects in respect of which this power to participate may be exercised are set out in subsection (1). Such projects may have as their aim, amongst others, the return of migrants both inside and outside of the United Kingdom to their country of origin by voluntary or compulsory means. For example participation in projects for the resettlement of

refugees run by the UN would fall within this provision. Subsection (2) clarifies that the power to participate may be exercised by the Secretary of State in a way that involves the provision of funding to both governmental and non-governmental organisations, both in the United Kingdom and abroad.

170. Pilot projects of the type authorised by this provision have already been undertaken, funded by the Secretary of State under the terms of the Appropriation Act. The terms of this Act are not sufficient to enable the funding of projects on a long-term basis.

171. Subsection (4) makes clear that no new power of removal is created by this section, nor are the rights to enter or remain of individuals affected in any way by it.

Section 60: Northern Ireland Authorities

172. Section 60 amends the definition of a Northern Ireland authority in the 1999 Act to ensure it is wide enough for the purposes of emergency accommodation, induction and accommodation centres.

Section 61: Repeal of spent provisions

173. This section repeals sections 96(4) to (6) and section 166(4)(e) of the Immigration and Asylum Act 1999.

PART 4: DETENTION AND REMOVAL

Detention

Section 62: Detention by Secretary of State

174. Under paragraph 16 of Schedule 2 to the 1971 Act, an immigration officer has the power to detain an arriving passenger, an illegal entrant or a passenger liable to removal under the powers contained in section 10 of the 1999 Act. As an alternative to detaining them, the immigration officer also has the power (under paragraph 21 of Schedule 2 to the 1971 Act) to temporarily admit them to the United Kingdom. The Secretary of State has the power (under Schedule 3 to the 1971 Act) to detain or release someone against whom deportation action is being taken. The Secretary of State also has the power to grant temporary admission to someone who has made a claim for asylum immediately on arrival at a port, but unlike an immigration officer, has no power to detain such a person.

175. This section will give the Secretary of State the same power to detain as immigration officers, in the following circumstances — (1) pending a decision by the Secretary of State whether to set removal directions under paragraph 10, 10A or 14 of Schedule 2 to the 1971 Act and pending removal; and (2) where the Secretary of State has power to examine a person or grant or refuse them leave to enter under section 3A of the 1971 Act, pending the examination, his decision to give or refuse leave to enter, his decision to set removal directions or removal of such a person.

176. Subsections (3)(a) and (3)(c) are intended to ensure that a person detained under this section has the same rights as persons detained under Schedule 2 to the 1971 Act to apply for bail. Subsection (3)(b) allows the Secretary of State, where he has power to detain under this section, as an alternative, to grant temporary admission or release from detention under paragraph 21 of Schedule 2 to the 1971 Act in the same way that an immigration officer currently can.

177. This will mean that the decision whether or not to detain can be taken by the person who determines a person's asylum claim or immigration status and that this can be done at the same time.

178. Subsection (4) allows restrictions under paragraph 21 of Schedule 2 to the 1971 Act set by the Secretary of State to be varied by an immigration officer and vice versa. The present offence of failing to comply with a condition of temporary admission or release without reasonable excuse is extended by subsection (9) to include failing to comply with a condition set by the Secretary of State.

179. Subsections (10) to (16) are consequential amendments to ensure that relevant provisions in other legislation to persons detained under the 1971 Act include references to persons detained under this section.

Section 63: Control of entry to United Kingdom, &c: use of force

180. This section ensures consistency of language between the powers of escorts and immigration officers to use force. It makes no substantive change to the powers of the latter.

Section 64: Escorts

181. Section 54 amends paragraph 17 of Schedule 2 to the 1971 Act so as to confer a power on detainee custody officers, acting in accordance with escort arrangements, to enter premises in order to search a person who has been detained prior to escorting him to a place of detention. The power is confined to those circumstances where an immigration or police officer has executed a warrant issued under paragraph 17(2) of Schedule 2 to the 1971 Act and has detained a person on the premises.

182. The existing powers of detainee custody officers acting in accordance with escort arrangements are contained in paragraph 2 of Schedule 13 to the 1999 Act. In particular, a detainee custody officer has the power to search a detained person for whose delivery or custody he is responsible. The new power would permit such a search to take place on private premises where entry is not by consent.

Section 65: Detention centres: custodial functions

183. Section 65 amends section 154(5) of the 1999 Act so as to clarify the basis on which prison officers or prisoner custody officers may perform the functions of detainee custody officers in detention centres. The amendment will mean that the functions of detainee custody officers may be conferred on prison officers or prisoner custody officers without the Secretary of State having, as at present, to consider it necessary to do so. The section also makes consequential amendments to Schedules 11 and 12 to the 1999 Act, which relate to the powers and duties of detainee custody officers and to discipline within detention centres, so as to apply the provisions of these Schedules to prison officers or prisoner custody officers performing the functions of detainee custody officers in detention centres.

Section 66: Detention centres: change of name

184. Section 66 amends section 147 of the 1999 Act so that detention centres will be known formally as removal centres. This reflects the part played by detention in the removal of failed asylum-seekers and others. There are a number of minor and consequential amendments to other provisions in the 1999 Act and provisions in other legislation that refer to “detention centres”. There are no substantive changes to the existing provisions relating to the purpose and operation of detention centres.

Section 67: Construction of reference to a person liable to detention

185. A person who is liable to be detained, or who is actually detained, under the powers contained in the Immigration Acts, may instead be granted temporary admission or temporary release. This

status may be subject to restrictions such as requiring the person concerned to live at a particular address and/or to report to the police or an immigration officer.

186. The powers to detain in immigration legislation do not specify a maximum period beyond which a person cannot be detained. However, for the detention to be lawful, it has to be for the purpose stated, and the person may only be detained for a period that is reasonable in all the circumstances of the particular case. Thus, for example, where a person is detained under paragraph 16(2) of Schedule 2 to the 1971 Act pending a decision whether or not to give directions for their removal or, where such directions have been given, pending their removal, they can only be detained for as long as the event can reasonably be described as “pending”. Once that point has been passed, the detention is no longer lawful.

187. Where this occurs, the practice has been to grant temporary release, generally subject to the conditions described above.

188. A judgment by the High Court in July 2002 (in the case of *Hwez and Khadir*) held that this practice was unlawful. The judge in that case held that the phrase “liable to detention” in paragraph 21 of Schedule 2 to the 1971 Act did not relate to the categories of person subject to immigration control who could, at some point, be detained, but rather was limited to those cases where the individual concerned could lawfully be detained at that precise moment. Thus, once the point was reached where the power to detain no longer existed, the alternative of temporary release subject to conditions was no longer available either. Similar considerations would apply to deportation cases, where the power to detain or release subject to restrictions is contained in Schedule 3 to the 1971 Act, rather than Schedule 2.

189. The purpose of this section is to avoid a situation where people subject to immigration control, who do not have leave to be here, but who cannot lawfully be detained, are left at large without there being any way of keeping track of them. The power to impose reporting and residence conditions on asylum seekers and others while their claims to remain in the United Kingdom are being considered is for contact management purposes, and this power is dependant on there being a power to grant temporary admission or release.

190. As subsection (1)(a) makes clear, this section does not affect the scope of the current powers to detain. It only applies to provisions which do not actually confer a power to detain. What it does is define what a reference in immigration legislation to being “liable to detention” means, making it clear that the term includes cases where the only reason the person cannot be detained at that precise moment is one of those specified in subsection (2).

191. The effect of this is that the people concerned can be given temporary admission or release (under Schedule 2 to the 1971 Act) or released on conditions (under Schedule 3) even where they may not lawfully be detained under the detention powers in, respectively, Schedule 2 and Schedule 3 to the 1971 Act.

192. Subsection (3) gives the section retrospective effect, thus avoiding the need to reassess the cases of persons on temporary admission on an individual basis. Because the provision will always have applied, it has the effect of validating the authorisation of temporary admission and restrictions imposed.

Temporary release

Section 68: Bail

193. Section 68 provides a power for the Secretary of State, or an official acting on his behalf, to grant bail to a person detained under paragraph 16 of Schedule 2 to the 1971 Act in the same circumstances as a chief immigration officer may currently. The power takes effect after the expiry of the eighth day after detention begins, prior to which the power to grant bail will continue to be exercised by an immigration officer not below the rank of chief immigration officer.

194. Section 68 also repeals Part III of the 1999 Act, with the exceptions of sections 53 (except subsection (5)) and 54. Part III of the 1999 Act contained provisions for a system of routine bail hearings for those in detention and has not been implemented. The rights to apply for bail under existing legislation will remain in place.

Section 69: Reporting restriction: travel expenses

195. Section 50 provides a power for the Secretary of State to link the provision of support with a requirement to report to the police or an immigration officer. Section 69 enables the Secretary of State to meet the reasonable travel costs of supported asylum-seekers who are required to travel to enable them to report as directed.

Section 70: Induction

196. Section 70 provides that an asylum-seeker and any dependants may be required to reside at a location for a period of up to 14 days which is at or near a place where a programme of induction will take place. The intention is that all asylum-seekers will be given an induction at the outset of their claim. The purpose of this induction is to inform the asylum-seeker about how the asylum process will work, up to and beyond the initial decision on their claim; to explain what responsibilities they have to comply with requirements placed upon them as part of that process; and to consider any requests for support. The residence restriction can be imposed regardless of circumstances, for example, whether or not the asylum-seeker has alternative accommodation available to them.

Section 71: Asylum-seeker: residence, &c. restriction

197. Section 71 is concerned with asylum-seekers who have existing leave to enter or remain at the time they make a claim for asylum (at present, only a small percentage of asylum-seekers fall into this category). The section provides that such asylum-seekers and their dependants may have restrictions imposed on them which can be imposed on other asylum-seekers (that is, those without existing leave to enter or remain) under paragraph 21 of Schedule 2 to the 1971 Act. The powers under that paragraph include the power to impose reporting and residence requirements. The purpose of this provision is to ensure that all asylum-seekers, whatever their circumstances prior to making a claim, can be subject to the same basic process including, for example, the requirement to keep in touch through regular reporting. The section further provides that where an asylum-seeker with existing leave fails to comply with a restriction placed upon him they will then become liable to detention under paragraph 16 of Schedule 2 to the 1971 Act. Restrictions imposed under this section cease to have effect once a person ceases to be an asylum-seeker.

Removal

Section 72: Serious criminal

198. Article 33(1) of the Refugee Convention prevents a refugee being returned to a place where their life or freedom is threatened. Article 33(1) does not apply where the refugee has been convicted of a particularly serious crime and is a danger to the community, by virtue of Article 33(2). The section provides that where a person is convicted in the United Kingdom of an offence and sentenced

to a period of imprisonment of at least two years, or of an offence specified by order made by the Secretary of State, he will be presumed to have been convicted of a particularly serious crime and to be a danger to the community. Provision is made for convictions for offences outside the United Kingdom. A person may rebut the presumption that they have committed a particularly serious crime and are a danger to the community.

199. Subsection (8) provides that the dangers a person may face if removed are not relevant to a consideration of whether the Article 33(2) presumption established by this section applies. Subsection (10) provides that where the Secretary of State has issued a certificate that the presumption applies an adjudicator, the Tribunal or the Special Immigration Appeals Commission must begin its substantive consideration of an appeal by looking at the certificate. If the appellate body agrees that the presumptions apply, having given opportunity for rebuttal, it must dismiss that part of the appeal which relates to removal being contrary to the Refugee Convention.

Section 73: Family

200. Under paragraphs 8 to 10 of Schedule 2 to the 1971 Act, directions may be given for the removal of persons refused leave to enter the United Kingdom and illegal entrants. Subsection (1) allows removal directions to be given for the children of such people where those children were born in the United Kingdom.

201. An equivalent power already exists under section 10(1)(c) of the 1999 Act in respect of children born in the United Kingdom whose parents have remained beyond their leave, breached the conditions of their leave or obtained leave to remain by deception.

202. Subsections (2) to (4) make minor amendments in relation to the existing provisions of section 10 of the 1999 Act.

Section 74: Deception

203. Under section 10(1)(b) of the 1999 Act, there is a power to remove immigration offenders who have obtained leave to remain by deception. Section 74 creates a power to remove people whose deception is discovered before leave is granted. (People who seek to obtain leave to remain by deception and people who succeed in doing so both commit an offence under section 24A(1)(a) of the 1971 Act.)

Section 75: Exemption from deportation

204. Under section 7(1)(a) of the 1971 Act Commonwealth citizens or citizens of the Republic of Ireland cannot be deported on grounds of the public good if they: (a) were Commonwealth or Republic of Ireland citizens on 1st January 1973 (the date of the coming into force of the 1971 Act); (b) were ordinarily resident in the United Kingdom at that time; and (c) have been ordinarily resident in the United Kingdom ever since.

205. Under section 7(1)(b) of 1971 Act Commonwealth citizens and citizens of the Republic of Ireland cannot be deported if they were ordinarily resident here on 1 January 1973 and have been ordinarily resident here for the 5 years prior to a decision to make a deportation order. Clearly, someone who has been ordinarily resident here at all times since 1 January 1973 has also been resident here for 5 years before the decision to deport. Subsection (2) therefore repeals section 7(1)(a) of the 1971 Act which is redundant.

206. Subsection (3) replaces section 7(1)(b) of the 1971 Act.

Section 76: Revocation of leave to enter or remain

207. Section 76 gives the Secretary of State power to revoke a person's indefinite leave to enter or remain in certain specified circumstances.

208. Subsection (1) allows the Secretary of State to revoke indefinite leave where the person is liable to deportation but the person cannot be deported for legal reasons. An example of how this power might be used would be where a person has committed a serious criminal offence such that their deportation would be conducive to the public good but where they cannot be deported to their country of origin because removal would be contrary to Article 3 of the European Convention on Human Rights.

209. Subsection (2) allows the Secretary of State to revoke the indefinite leave of persons who are liable to removal on the grounds that they obtained the leave by deception, but who cannot be removed for legal or practical reasons. Practical obstacles such as difficulty in establishing nationality or the lack of a safe route of return can prevent removal.

210. Subsection (3) allows the Secretary of State to revoke the indefinite leave of a person and that person's dependants in certain cases where a person is no longer a refugee — for example, by accepting the protection of the country of their nationality or establishing themselves in that country. As those concerned will no longer require the protection of the United Kingdom, subsection (7) allows for administrative removal by amending section 10(1) of the 1999 Act.

211. Subsections (5) and (6) provide that leave granted before the power comes into force may be revoked. In relation to subsections (1) and (2) but not (3) leave may also be revoked where the action which triggers revocation occurs before the power comes into force.

Section 77: No removal while claim for asylum pending

212. Section 77 replaces section 15 of the 1999 Act which provides that an asylum claimant may not be removed from or required to leave the United Kingdom before notice of the Secretary of State's decision on the claim is given. The new section only prohibits removals in accordance with a provision in the Immigration Acts, and subsection (4) allows removal directions or a deportation order to be given and other interim or preparatory action to be taken before notice of a decision on the claim has been given.

Section 78: No removal while appeal pending

213. Section 78 makes provision equivalent to that in Schedule 4 of the 1999 Act, which states that a person may not be removed from or required to leave the United Kingdom while he is in the country and his appeal is pending, as defined in section 104. Again, this only applies to removal or a requirement to leave under the Immigration Acts, and removal directions may be given or, subject to section 79, a deportation order may be made while the appeal is pending. Subsection (3) also allows other interim or preparatory action to be taken.

Section 79: Deportation order: appeal

214. Section 79 makes provision equivalent to section 63(2) of the 1999 Act and paragraph 18 of Schedule 4 to that Act which prevent a deportation order being made during the period allowed for appealing against the decision to make it or while such an appeal is pending. "Pending" is defined in section 104.

Section 80: Removal of asylum-seeker to third country

215. This provision replaces section 11 of the 1999 Act. The definition of standing arrangements is amended to ensure that any bilateral agreements on asylum returns with Member States outside of the Dublin Convention to which section 11 already applied, also will fall within this provision.

PART 5: IMMIGRATION AND ASYLUM APPEALS

Appeal to adjudicator

Section 81 and Schedule 4: Adjudicators

216. Section 81 sets out the criteria for the appointment of adjudicators by the Lord Chancellor and for functions to be assigned to the Chief Adjudicator, Deputy Chief Adjudicator, Regional Adjudicators and Deputy Regional Adjudicators. Subsection (1) requires the Lord Chancellor to appoint adjudicators to hear appeals under Part 5 of the Act. Subsection (2) states the qualifications or experience necessary for appointment. Subsection (3) requires the Lord Chancellor to appoint a Chief Adjudicator, and enables him to appoint a Deputy Chief Adjudicator, one or more Regional Adjudicators and one or more Deputy Regional Adjudicators. Subsection (4) requires the Chief Adjudicator to carry out such functions as the Lord Chancellor may assign. Subsection (5) sets out the duties of the Deputy Chief Adjudicator. Subsection (6) sets out that Regional Adjudicators shall perform such functions as are assigned to them by the Chief Adjudicator. Subsection (7) sets out the duties of a Deputy Regional Adjudicator. Subsection (8) provides for Schedule 4 to have effect.

217. Schedule 4 makes provision on the terms of office of, proceedings before, and payment arrangements for, adjudicators and their support staff. Paragraph 1 deals with the terms of office for adjudicators. Paragraph 2 requires the Chief Adjudicator to arrange for adjudicators to hear appeals and specifies that these must take place when and where the Lord Chancellor determines. Paragraph 3 enables the Chief Adjudicator to determine that a panel consisting of more than one adjudicator may deal with a particular appeal or category of appeal or appeal-related proceedings. Paragraph 4 requires adjudicators to carry out duties allocated by the Chief Adjudicator.

218. Paragraph 5 of Schedule 4 enables the Lord Chancellor to appoint staff to support adjudicators. Paragraph 6 relates to the remuneration, allowances and expenses of adjudicators and their staff. Paragraph 7 concerns payment of compensation on ceasing to be an adjudicator in special circumstances.

Section 82: Right of appeal: general

219. Section 82 and related sections differ considerably in structure from the earlier legislation on immigration appeals, in order to produce a clearer package of appeal rights. The scheme is based on the principle that there is one right of appeal against any of the listed “immigration decisions”. Where multiple decisions would result in multiple rights of appeal these are subsumed into one appeal. All appealable grounds of appeal can be raised in that appeal (section 86). The requirement for a person to state all grounds for their application, see section 120, helps to ensure that all relevant issues are dealt with in one appeal. Exceptions and limitations restrict rights of appeal in certain circumstances and define which appeals can be exercised in the United Kingdom (sections 88 to 95).

220. Subsection (2) lists the “immigration decisions” which attract rights of appeal. These are basically the same decisions that trigger a right of appeal under Part IV of the 1999 Act, but there is a new decision (revocation of indefinite leave under section 76 of the Act). The position relating to removal directions has been clarified. It is the initial immigration decision which may result in

removal which attracts the right of appeal, not any consequential giving of directions to the carrier or re-giving of directions following an appeal or temporary suspension.

221. Subsection(3) states that where a decision curtails a person's leave to enter or remain so that none remains, or revokes indefinite leave, the variation does not have effect during the period when an appeal may be brought or while an appeal is pending.

Section 83: Appeal: asylum claim

222. Section 83 gives a right of appeal to an adjudicator on asylum grounds only (see section 84(3)) when an asylum claimant is refused asylum but granted leave to enter or remain for more than a year. If periods of less than 12 months are given, the right of appeal arises when an aggregate of 12 months leave has been given since the decision to refuse asylum was taken. There is no right of appeal under section 82 for a person in this position and the purpose of this provision is to provide a specific single-issue asylum appeal.

Section 84: Grounds of appeal

223. Section 84 lists in subsection (1) the grounds on which an appeal under section 82(1) can be brought. Listing the grounds in this way both illustrates what grounds are possible or acceptable and follows the categories of appeal set out in the earlier legislation, for example, immigration appeals, asylum appeals, human rights appeals and race relations appeals. What was a separate category of appeal is now simply a possible ground for the one appeal.

Section 85: Matters to be considered

224. Section 85(1) provides that an appeal under section 82(1) shall be treated by an adjudicator as including an appeal against any decision where the person has a right of appeal under section 82(1). Thus it is not necessary for a person to lodge separate appeals if subject to different immigration decisions: all appealable decisions are to be subsumed in the one appeal.

225. If a person makes a statement under section 120 in response to a requirement to state any additional grounds (the “one-stop warning”), the adjudicator must consider any of the matters raised in the statement, if these matters amount to a ground of appeal, as listed in section 84. It does not matter whether the statement is made before or after the appeal is commenced (subsections (2) and (3)).

226. Subsection (4) allows the adjudicator to consider any evidence that he thinks is relevant to the substance of the decision, including any evidence which arises after the date of decision. The subsection also applies to appeals under section 83 where asylum has been refused but leave to remain granted. But subsection (4) does not apply to an appeal against the refusal of an entry clearance or a certificate of entitlement: in these cases the adjudicator can only consider the circumstances as they were at the time of the decision to refuse.

Section 86: Determination of Appeal

227. This section describes what adjudicators are required to do in consideration of appeals under sections 82(1) or 83. Adjudicators will be required to determine any ground of appeal which is raised in response to any decision against which an appeal has been lodged or against which an appeal is to be treated as included by virtue of section 85(1). They must also determine any other matters which are raised which must be considered under section 85.

228. Subsection (3) states that an adjudicator must allow an appeal if he thinks a relevant decision was not in accordance with the law or that a discretion should have been exercised differently.

Otherwise, the appeal must be dismissed (subsection (5)). A refusal to depart from the Immigration Rules does not count as the exercise of a discretion for this purpose (subsection (6)).

229. Subsection (4) indicates that a decision that a person should be removed from the United Kingdom will not be regarded as unlawful if the decision to remove could have been lawfully made under another provision. Thus if the adjudicator comes to a different conclusion from the Secretary of State about the person's nationality or immigration status, but nevertheless considers that the decision to remove is correct on its merits, the appeal does not have to be allowed on a technicality and the process re-started.

Section 87: Successful appeal: direction

230. Section 87 deals with directions which can be given by an adjudicator when allowing an appeal. There is a power under subsection (1) for an adjudicator to give a direction for the purposes of giving an effect to his decision. Subsection (2) requires a decision-maker to act in accordance with any relevant direction. Subsection (3) provides that a direction shall not have effect while an appeal to the Tribunal or a further appeal could be brought, or has been brought and not been finally determined. Under subsection (4) the direction is treated as part of the adjudicator's determination.

Sections 88 to 99: Exceptions and limitations

231. Sections 88 to 99 set out detailed provisions relating to exceptions and limitations on the general right of appeal as well as stating when appeals may be pursued in the United Kingdom (i.e. when they are "suspensive"). It should be noted that the exceptions do not generally prevent an appeal being brought on asylum, human rights or race discrimination grounds.

Section 88: Ineligibility

232. Section 88 deals with cases where the application has been refused because the person (or a person on whom his application depends) does not meet a basic non-discretionary requirement of the Immigration Rules: thus any appeal based on the Rules could not succeed. An additional category (to those established in the 1999 Act) is subsection (2)(d), which prevents an appeal where the applicant wished to stay for a purpose not covered by the Immigration Rules. Some categories of application currently regarded as "concessions" outside the Rules will be incorporated into the Rules. An appeal may nevertheless be brought on asylum, human rights or race discrimination grounds.

Section 89: Visitor or student without entry clearance

233. Section 89 retains the 1999 Act exceptions relating to a person without entry clearance who applies for leave to enter the United Kingdom at a port of entry as a visitor, a student (who has not enrolled on a course or has enrolled on a course that lasts less than six months) or a dependant of such a person. No appeal can be brought against a decision to refuse entry in these cases (subsection (2)), except on asylum, human rights or race discrimination grounds.

Section 90: Non-family visitor

234. Section 90 restricts appeals against the refusal of entry clearance for a visit to those cases involving a visit to a family member in the United Kingdom. But it does not prevent any other visit applicant who is refused entry clearance from appealing on asylum, race or human rights grounds. Subsections (2) and (3) provide for regulations to be made to define who are to be regarded as family members.

Section 91: Student

235. Section 91 retains the exceptions for appeals by students and their dependants who are refused entry clearance. There is no appeal if the person has not been accepted for a course, or has been accepted and the course lasts for less than six months. This section does not prevent appeals on race or human rights grounds.

Section 92: Appeal from within United Kingdom: general

236. Section 92 sets out the circumstances in which a person may appeal while he is in the United Kingdom, suspending any removal which might follow from the decision. While the appeal is pending a person who has made an asylum or human rights claim or European claim while in the United Kingdom may appeal while in the United Kingdom (subsection (4)). See sections 93 and 94 for cases where the appeal must be brought after the claimant has left the United Kingdom.

237. Other appeals will only be suspensive when made against certain types of decision (subsections (2) and (3)). These **include**: a decision to make a deportation order; a refusal of leave to enter at the port if the applicant holds an entry clearance or work permit; a decision relating to a person who applied for an extension of stay before his existing leave expired; and a decision to curtail a person's leave to enter or remain. Appeals against the refusal of a certificate of entitlement under section 10 and revocation of indefinite leave are also suspensive.

Section 93: Appeal from within United Kingdom: “third country” removal

238. Clause 93 is broadly similar to a provision in earlier legislation relating to cases where a certificate has been issued under section 11 or 12 of the 1999 Act (removal of asylum claimants to a “third country”). Under subsection (1) a person may not appeal under section 82(1) while in the United Kingdom if a certificate has been issued. If, however, the appellant has made a human rights claim which the Secretary of State has not certified as clearly unfounded, the person can appeal while in the United Kingdom (subsection (2)).

Section 94: Appeal from within the United Kingdom: unfounded human rights or asylum claim

239. This section applies to a right of appeal against an immigration decision (see section 82(1)). Where the person has made either an asylum claim or a human rights claim, or both, an appeal may not be brought while the person is in the United Kingdom by virtue of section 92(4) i.e. on the grounds that they have made an asylum or human rights claim, if the Secretary of State certifies that the claim or claims are clearly unfounded.

240. Subsection (3) provides that if the asylum or human rights claimant is entitled to reside in any of the States listed in subsection (4) then the claim shall be certified unless the Secretary of State is satisfied that it is not clearly unfounded. The States listed are all “EU accession states”: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia.

241. Subsection (5) enables the Secretary of State, by order, to add a State, or part of a State to the list in subsection (4) if he is satisfied that there is in general no serious risk of persecution in the State or part State of persons entitled to reside there and that removal to that State will not in general contravene the United Kingdom's obligations under ECHR. Subsection (6) allows for a State or part State that has been added in accordance with subsection (5) to be removed, by order.

242. Subsection (7) provides that an appeal may not be brought while the person is in the United Kingdom in reliance on section 92(4), if the Secretary of State certifies that it is intended to remove the applicant to a third country of which he is not a national and that there is no reason to suppose

that his human rights will be breached in that country. Subsection (8) provides that a country which is named in the certificate to which it is intended to remove an applicant under subsection (7), is to be regarded as one where the applicant's rights under the Refugee Convention will be observed and from where he will not be sent to another country other than in accordance with the Convention.

243. Subsection (9) provides that where a certificate is issued under this section an appeal that is made outside of the United Kingdom shall be considered as if the applicant had not been removed from this country.

Section 95: Appeal from outside United Kingdom: removal

244. This provision prevents an appeal being lodged on asylum grounds by a person who is outside the United Kingdom. It does not apply when a person has been removed on the basis that their asylum claim has been certified under section 94: in that case the asylum appeal must necessarily be made from abroad.

Section 96: Earlier right of appeal

245. Sections 96 and 120 set out the “one-stop” arrangements which prevent a person from seeking to appeal when they have already had an opportunity to put their case to an adjudicator. In all cases, the person will have been required to state any grounds for their application. The earlier legislation (section 73 of the 1999 Act) has been extended in a number of respects. This section covers situations where a person chooses not to appeal a decision but nevertheless makes a further claim or application; where a person withdraws or abandons an appeal but makes a further claim or application; and where a person chooses not to make a claim in response to a requirement under section 120 which would give rise to a right of appeal but has no right of appeal in respect of the matters he has actually put forward. The section also makes it clearer that certification powers are, where the relevant conditions are met, also applicable where a further claim or application is made after leaving and returning to the United Kingdom.

246. Under subsection (1) no appeal can be brought on any ground against an otherwise appealable decision if the Secretary of State or immigration officer certifies that the person was notified of a right of appeal against another decision — whether or not any appeal was lodged or completed — and that in his opinion the person made their claim or application in order to delay removal, or the removal of a family member, and that in his opinion the person had no other legitimate purpose for making the claim or application. If an appeal has already been brought, the appeal may not be continued if a certificate is issued.

247. Subsection (2) prevents an appeal being brought if the Secretary of State or immigration officer certifies that a new decision relates to a ground which was raised on an earlier appeal, or should have been declared in response to an earlier requirement under section 120, or could have been raised at an appeal had the applicant chosen to exercise a right of appeal. If an appeal has already been brought, the appeal may not be continued if a certificate is issued.

248. Under subsection (3), where a further appeal right does arise, the Secretary of State or immigration officer may certify that certain grounds of appeal were already considered in an earlier appeal. The appellant is not then allowed to rely on those grounds.

249. Subsection (4) indicates that the word “notified” in subsection (1) means notified in accordance with regulations made under section 105. These “Notices” Regulations will set out the circumstances when rights of appeal are to be notified and require that information be given as to how to appeal and the assistance available.

250. Subsection (5) indicates that a claim or application or grounds of appeal can be certified if the person has left the United Kingdom and subsequently returned.

251. Subsection (6) ensures that appeals, or potential appeals, to the Special Immigration Appeals Commission are counted as appeals or potential appeals for the purposes of this section.

Section 97 National Security, &c.

252.Section 97 provides that where the Secretary of State certifies that a decision was taken on certain grounds (subsection (2)) or in reliance on certain information (subsection (3)), the person may not appeal under this Act. However, under the Special Immigration Appeals Commission Act 1997 they may appeal to the Special Immigration Appeals Commission (SIAC), the body set up specifically to deal with appeals where national security and other sensitive matters are a consideration.

Section 98: Other grounds of public good

253. Section 98 prevents a person from appealing a refusal of leave to enter or refusal of entry clearance, or prevents such an appeal from continuing, where the Secretary of State has personally certified that the person's exclusion from the United Kingdom is conducive to the public good, or directed that the person be refused on that ground. Subsections (4) and (5) provide that this does not prevent the person appealing on human rights or race discrimination grounds, or from appealing refusal of leave to enter on asylum grounds.

Section 99: sections 96 to 98: appeal in progress

254. This section provides for a pending appeal to lapse if it is certified under section 96(1) or (2), 97 or 98.

Appeal from adjudicator

Section 100 and Schedule 5: Immigration Appeal Tribunal

255. Section 100 provides for the Tribunal to continue in being and gives effect to Schedule 5.

256. Schedule 5 makes further provision about the Immigration Appeal Tribunal. Paragraph 1 requires the Lord Chancellor to appoint its members and paragraph 2 deals with certain terms of office. Paragraph 3 requires the Lord Chancellor to appoint as President a member who holds or has held high judicial office, and paragraph 4 requires him to appoint a legally-qualified member of the Tribunal as Deputy President and sets out his functions. Paragraph 5 requires the Tribunal to sit when and where the Lord Chancellor determines. Paragraphs 6 and 7 enable the Tribunal to sit in more than one division and enable the President to direct that certain cases or classes of case be decided by a single member or a set number of members, or legally qualified members.

257. Paragraph 8 enables the Lord Chancellor to appoint staff for the Tribunal while paragraphs 9 and 10 concern remuneration and allowances for the Tribunal and its staff, Tribunal expenses, and compensation should a member leave in special circumstances. Paragraph 11 sets out the requirements for designation as a legally qualified member of the Tribunal.

Section 101: Appeal to Tribunal

258. Subsection (1) provides an appeal with permission to the Tribunal against the adjudicator's decision on a point of law. Subsection (2) provides that a party to an application to the Tribunal for permission to appeal may apply to the High Court or, in Scotland, to the Court of Session, for a review of the Tribunal's decision on the ground that the Tribunal made an error of law. Subsection

(3) provides that an application shall be determined by a single judge by reference only to written submissions. The judge may affirm or reverse the Tribunal's decision, and the judge's decision is final. Subsection (3) also provides that if, in an application to the High Court, the judge thinks the application had no merit he is required to issue a certificate to this effect. Subsection (4) allows the Lord Chancellor to make an order to repeal the statutory review process set out in subsections (2) and (3). The order is subject to affirmative resolution.

Section 102: Decision

259. Subsection (1) sets out the options open to the Tribunal when determining an appeal: it may affirm the adjudicator's decision (subsection (1)(a)), make any decision which the adjudicator could have made (subsection (1)(b)), remit it to an adjudicator (subsection (1)(c)), affirm any directions made by the adjudicator under section 87, or vary or give any direction which the adjudicator could have given.

260. Subsections (2) and (3) govern the evidence the Tribunal may consider. This is on the same basis as evidence which may be considered by an adjudicator under section 85(4) and (5). Subsection (4) enables the Tribunal, in remitting an appeal to an adjudicator, to require the adjudicator to determine the appeal in accordance with its directions, or to take additional evidence so that the case may come back to the Tribunal for determination.

Section 103: Appeal from Tribunal

261. Subsection (1) provides that where the Tribunal determines an appeal, under section 101, a party to the appeal may bring a further appeal to the Court of Appeal on a point of law. Where the original decision of the adjudicator was made in Scotland, a party to the appeal may bring a further appeal to the Court of Session on a point of law. Subsection (2) provides that such a further appeal may be brought only with the permission of the Tribunal. If the Tribunal refuses permission, permission may be sought from the Court of Appeal or, in Scotland, the Court of Session.

Procedure

Section 104: Pending appeal

262. Section 104 makes provision equivalent to section 58 of the 1999 Act. It defines when an appeal under section 82(1) is pending, during which time the appellant is generally protected from enforcement of the consequences of a decision. An appeal is pending from the time it is instituted (in accordance with Procedure Rules under section 106). It remains pending until the time limit for taking it further expires or until it has been finally determined, withdrawn or abandoned. An appeal while the appellant is in the United Kingdom ceases to be pending if the person leaves the United Kingdom or is granted leave to enter or remain here (subsection (4)). In some circumstances (those specified in subsection (5)) the making of a deportation order brings appeals to an end. It is assumed that the relevant issues will have been addressed during the course of any appeal against the decision to deport the person concerned.

263. Subsection (3) now makes it clear that if the Tribunal remits an appeal to an adjudicator, its determination is not a final determination for this purpose, so the appeal remains pending.

264. The section does not apply to appeals under section 83 where leave to remain of more than 12 months has been granted to a person refused asylum.

Section 105: Notice of immigration decision

265. Section 105 makes provision similar to paragraph 1(1) of Schedule 4 to the 1999 Act, concerning regulations governing the service of appealable decisions. Regulations may be made requiring written notice to be given of an immigration decision within the terms of section 82. When the decision is appealable the notice must declare the right of appeal and give details of how it may be exercised. Subsection (3) enables the Notices Regulations to make provision for service of the notice, including presumptions — this might include, for example, provision for service where a person has absconded and no address is known.

Section 106: Rules

266. Section 106 makes provision similar to and expands upon paragraphs 3, 4 and 8 of Schedule 4 to the 1999 Act. Subsection (1) of section 106 allows the Lord Chancellor to make appeals procedure rules that regulate the exercise of the right of appeal in Part 5 of this Act and prescribe the procedure to be followed in connection with proceedings. Subsection (2) sets out particular matters that must or may be included in the rules. It clarifies the content and effect of paragraph 4 of Schedule 4 to the 1999 Act and provides that rules may make provision about the grant of bail (contained in the Immigration Act 1971). Subsection (3) introduces new measures which enable the rules to include provisions about costs powers for the adjudicator and the Tribunal. Subsections (4) and (5) re-enact paragraph 8 of Schedule 4 to the 1999 Act, which makes it an offence to fail to give evidence or produce a document without reasonable excuse when required to do so by the rules.

Section 107: Practice Directions

267.Section 107 enables practice directions to be given by the President of the Tribunal and the Chief Adjudicator.

Section 108: Forged document: proceedings in private

268. Section 108 makes provision equivalent to paragraph 6 of Schedule 4 to the 1999 Act which enables an adjudicator, following an allegation that relevant documents are forged, to hold further proceedings in private where to do otherwise would not be in the public interest. The class of document which may be relevant has been extended since many types of document may be submitted in evidence and these may rely on sophisticated technologies. The security features, ways of forging or defeating them and forgery detection methods should not normally be divulged to the public.

General

Section 109: European Union and European Economic Area

269. This section allows the Secretary of State to make regulations that may provide for an appeal against an immigration decision taken in respect of a person who has, or who claims to have, a right under any of the Community Treaties. Subsection (2) states that these Regulations may apply this Act or the Special Immigration Appeals Commission Act 1997, with or without modification. Subsection (3) defines that an immigration decision for this section is one about a person's entitlement to enter, remain or one about a person's removal from the United Kingdom.

Section 110: Grants

270. Section 110 enables the Secretary of State to make grants to voluntary organisations which assist, advise or give other services with regard to the welfare of those who have a right of appeal under this Part of the Act. Grants may be conditional, including conditions as to repayment in certain circumstances.

Section 111: Monitor of certification of claims as unfounded

271. Section 111 requires the Secretary of State to appoint a person to monitor the use of the powers under sections 94(2) and 115(1) (which relate to certifying asylum and human rights claims as clearly unfounded). The person appointed must produce a report once a year to the Secretary of State who must in turn lay a copy of that report before Parliament. The Secretary of State may also request the appointed person to make additional reports. The person may not be employed within a government department.

Section 112: Regulations, &c.

272. Section 112 is a general provision regarding regulations and rules for this Part of the Act. They will be negative resolution statutory instruments, except orders made under sections 94(5), 101(4) and 115(8), which are affirmative orders.

Section 113: Interpretation

273. Subsection (1) defines certain common terms which are used throughout Part 5. The definitions of “asylum claim” and “human rights claim” reflect the intention that a claim can only be made in person at a designated place.

274. Subsection (2) ensures that references to varying leave to enter or remain do not cover decisions taken in relation to conditions of leave. For example, appeal rights do not accrue from a decision to refuse to allow a person to take employment if they are still permitted to remain here.

Section 114: Repeal

275. Subsection(1) repeals Part IV of the 1999 Act, which this Part replaces. Subsection (2) gives effect to Schedule 6 (transitional provisions). Subsection (3) gives effect to Schedule 7 (consequential amendments).

Section 115: Appeal from within the United Kingdom: unfounded human rights or asylum claim: transitional provision

276. Section 115 applies similar provisions to those in Section 94 to appeals against refusals of asylum and human rights claims which are clearly unfounded and which are made in the transitional period between the granting of Royal Assent to this Act and the coming into force of the rest of Part 5. It therefore applies to appeals under Part IV of the Immigration and Asylum Act 1999.

277. Subsection (1) provides that an appeal cannot be brought while in the United Kingdom under sections 65 or 69 of the 1999 Act if the Secretary of State certifies that the appeal relates to an asylum or human rights claim which is clearly unfounded and where the individual does not have another right of appeal while in the United Kingdom under Part IV of the 1999 Act.

278. Subsection (2) provides that a person may not bring an asylum appeal while in the United Kingdom under section 69 or raise a question at an appeal under section 77 of the 1999 Act, if the Secretary of State certifies that it is proposed to remove him to a third country of which he is not a national and where there is no reason to believe that his human rights will be breached. Subsection (3) provides that a person may not bring a human rights appeal under section 65 of the 1999 Act if the same criteria as in subsection (2) are met.

279. Subsection (4) states that, in deciding whether a person who has been issued with a certificate under subsections (2) or (3) may be removed from the United Kingdom, the country specified in the certificate is to be regarded as one where the individual's rights against persecution under the

Refugee Convention will be met and one from where he will not be sent to another country other than in accordance with the Convention.

280. Subsection (5) provides that where a certificate is issued under this section, and an appeal or question under sections 65, 69 or 77 of the 1999 Act is made outside of the United Kingdom, the appeal will be considered as if the appellant had not been removed from this country.

281. Subsection (6) provides that when a person who is entitled to reside in any of the countries listed in subsection (7) makes an asylum or human rights claim, then the claim is to be certified unless the Secretary of State is satisfied that it is not clearly unfounded. The states listed are all “EU accession states”: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia.

282. Subsection (8) empowers the Secretary of State, by order, to add a State, or part of a State to the list in subsection (7) if he is satisfied that there is in general no serious risk of persecution in the State or part State of persons entitled to reside there and that removal to that State will not in general contravene our obligations under ECHR. Subsection (9) allows for a State or part State that has been added in accordance with subsection (8) to be removed, by order.

Section 116: Special Immigration Appeals Commission: Community Legal Service

283. Section 116 brings proceedings before the Special Immigration Appeals Commission within the scope of the Community Legal Service, created under the Access to Justice Act 1999.

Section 117: Northern Ireland appeals: legal aid

284. This section amends Part 1 of Schedule 1 to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (S.I. 1981/228 (N.I. 8)) (proceedings for which legal aid may be given under Part II of that Order) to bring proceedings before the Immigration Adjudicators, the Immigration Appeal Tribunal (the Immigration Appellate Authority) and the Special Immigration Appeals Commission (SIAC) within the scope of legal aid in Northern Ireland.

PART 6— IMMIGRATION PROCEDURE

Applications

Section 118: Leave pending decision on variation application

285. Section 118 replaces section 3C of the 1971 Act, which ensures that persons who make an application for leave “in time”, that is before their current leave expires, are protected from becoming overstayers while their application is outstanding and while an appeal against a full refusal can be made in time or is pending. The earlier provision made no allowance for leave extended by this section to expire when an application was withdrawn or the applicant left the United Kingdom without formally withdrawing the application. These situations are now covered in subsection (2)(a) and (3) of the substituted section 3C.

Section 119: Deemed leave on cancellation of notice

286. Section 119 amends paragraph 6(3) of Schedule 2 to the Immigration Act 1971. When a notice refusing leave to enter is cancelled the Immigration Officer may, instead of granting the person either indefinite or limited leave to enter, require him to submit to further examination. Therefore, when notifying cancellation of a notice of refusal of leave to enter the Immigration Officer is not obliged to make a further decision immediately, in order to avoid deemed leave being granted, but can instead notify the person that, for example, they will be interviewed or be given the opportunity to provide further written evidence before a decision is made to grant or refuse leave to enter.

Section 120: Requirement to state additional grounds for application

287. Section 120 replaces and extends the application of the one-stop notice in section 75 of the 1999 Act. There is now no limitation on the category of applicant on whom the requirement to state grounds for application and the “one-stop warning” can be served and IND has the operational freedom to serve it at any appropriate point in the process.

288. Subsection (1) applies the section to people who have made an application to enter or remain in the United Kingdom and to people in respect of whom a relevant decision has been or may be taken without an application being made: for example where it is proposed to remove someone as an illegal entrant.

289. Subsection (2) states that when served with a “notice in writing” the person is required to state all his reasons for wishing to enter or remain in the UK, and any grounds on which IND should be obliged to let him enter or remain here, and any grounds on which he should not be removed. If he does not do so, any attempt to raise such grounds later on may lead to certification under section 96 with the effect that there can be no appeal against the decision, or that those grounds cannot be raised in connection with a further appeal.

290. Subsection (3) indicates that a statement made in response to a requirement and one-stop warning does not have to repeat what the applicant has already said in his application.

Section 121: Compliance with procedure

291. Section 121 amends section 31A of the 1971 Act (as inserted by the 1999 Act). This clarifies the consequences if an application to enter or remain in the UK is not made on a prescribed form or in a prescribed manner. Regulations may provide for the consequences of failure to comply with specified requirements, including that it invalidates an application, does not invalidate an application or invalidates an application in certain circumstances.

Work permits

Section 122: Fee for work permit, &c

292. Section 122 gives the Secretary of State the power to charge for the consideration of applications for immigration employment documents, including work permits and letters of permission issued in-country, which give authority to work and which underpin employment-related leave to enter or remain.

293. Subsection (3) establishes that the details of charging are to be set out in regulations. These regulations may make different provision in relation to different types or classes of applications. Such variation would allow, for example, different charges (including exemptions) to be introduced according to the type of application or the nature of the employer. Subsection (4) allows such regulations to specify that particular payment arrangements may apply in relation to certain applications.

Section 123: Advice about work permit, &c

294. Section 123 inserts a new paragraph into subsection (1) and a new subsection (3) in section 82 of the 1999 Act. The effect is that applications for an immigration employment document will become a “relevant matter” for the purposes of the regulatory scheme established by Part V of the 1999 Act. This means that anyone who provides advice and/or services regarding work permit applications or any other document relating to the employment of a foreign national in the course

of a business will be subject to the regulatory scheme established by Part V of the 1999 Act and administered by the Immigration Services Commissioner.

Authority-to-carry scheme

Section 124: Authority to carry

295. Section 124 makes provision for the Authority — to-carry (ATC) scheme. This will enable the Secretary of State to operate a scheme, which requires carriers to seek authority for bringing passengers to the United Kingdom. It is envisaged that a scheme or schemes will require them to do so by checking the details of passengers travelling to the United Kingdom against information held on a Home Office database to confirm that they pose no known immigration or security risk and to confirm that their documents are in order. This will take place before the passenger embarks for the United Kingdom.

296. Subsection (1) allows the Secretary of State to make regulations requiring a carrier who brings a person to the United Kingdom to pay a penalty if they do not seek authority to carry a person, or if they carry a person even though authority has been refused, when required to do so.

297. Subsection (3) provides that ATC may be applied to any class of carrier or passenger and subsection (4) allows the Secretary of State to operate different ATC schemes for different purposes.

298. Subsections (6) and (7) provide that the regulations made under this section may mirror or amend carrier's liability legislation, which concerns people arriving in the United Kingdom without valid travel documents or visas.

299. Subsection (8) provides that a decision as to whether to grant authority under the scheme does not indicate whether the person is entitled or permitted to enter the United Kingdom.

Evasion of Procedure

Section 125 and Schedule 8: Carriers' liability

300. The section provides that Schedule 8 shall have effect. Paragraph 2 of Schedule 8 amends section 32 of the 1999 Act, which relates to the penalty payable for carriage of a clandestine entrant into the United Kingdom.

301. Sub-paragraph (2) introduces provisions into the 1999 Act which are currently contained in the Regulations that extend the penalty regime to rail freight wagons (S.I. 2001/280 as amended). Thus a clandestine entrant, as defined by section 32(1) of the 1999 Act, includes someone who arrives in the United Kingdom concealed in a vehicle, ship, aircraft or rail freight wagon and who claims, or indicates that he intends to seek, asylum in the United Kingdom, or who evades, or attempts to evade immigration control.

302. Sub-paragraph (3) amends section 32 so that it provides that a person responsible for a clandestine entrant may be held individually liable to pay a penalty in respect of the clandestine entrant and any person concealed with that clandestine entrant. The Secretary of State may impose, in respect of each clandestine entrant, an individual penalty of no more than a prescribed maximum on each responsible person whilst limiting the total combined amount to a prescribed maximum in respect of each clandestine entrant. Rather than being held jointly and severally liable, as currently provided for in the 1999 Act, each responsible person will be liable for his own penalty.

303. However, further to the amendments made by sub-paragraph (4), where a penalty is imposed on a driver who is the employee of the vehicle's owner or hirer, the driver's employer, as well as the driver, will be liable for payment of that penalty.

304. The amendments made by sub-paragraph (6) mean that where the clandestine entrant is concealed in a freight train, the responsible person is the train operator who was responsible for certifying the relevant train as fit to travel to the United Kingdom or (in the case of a freight shuttle wagon) the operator of the shuttle train of which the wagon forms part.

305. Pursuant to amendments made by sub-paragraph (8), where a person is responsible in more than one capacity, for example, as both the owner and driver of a vehicle, a separate penalty may be imposed on him in respect of each capacity.

306. Paragraph 3 creates a new section 32A of the 1999 Act introducing a new code in relation to setting the level of the penalty.

307. Subsection (1) of the new section requires the Secretary of State to issue a code of practice specifying the matters to be considered in determining the amount of a penalty. Under subsection (2) the Secretary of State must have regard to the code and any other relevant matters when imposing a penalty and when considering a notice of objection against a penalty.

308. By subsections (3) to (6), the Secretary of State is required to lay a draft of the code before Parliament before issuing it and then may bring the code into operation by order. The Secretary of State may subsequently revise and reissue the code.

309. Paragraph 6 amends section 34 of the 1999 Act in relation to the defences to the imposition of a penalty under section 32 of that Act.

310. Sub-paragraph (4) inserts a new subsection (3A) which creates a defence for rail freight operators in circumstances where the operator knew, or suspected that a clandestine entrant was, or might be, concealed in the rail freight wagon, having boarded the train or shuttle train after it had begun its journey to the United Kingdom, and the operator could not stop the train or shuttle train without endangering safety.

311. Paragraph 7 amends section 35 of the 1999 Act by clarifying the procedure for the issuing of the penalty notice and objecting to the issue of a penalty notice.

312. Amendments made by sub-paragraph (3) mean that a responsible person may give notice of objection to the Secretary of State in the required form and within the prescribed period if he objects on the grounds that he is not liable to the imposition of a penalty or that the amount of the penalty is too high. The Secretary of State may then affirm, vary or cancel the penalty and inform the objector of his decision within a prescribed or agreed period. If the penalty is increased, a new penalty notice must be issued.

313. Paragraph 8 of the Schedule introduces a new statutory right of appeal against the imposition of a penalty in a new section 35A of the 1999 Act. A person may contest both liability to a penalty and the level of the penalty in the county court (or equivalent court in Scotland). The court may cancel or reduce the penalty, or dismiss the appeal. The appeal will be a re-hearing of the Secretary of State's decision to impose a penalty and the court hearing the appeal must have regard to any code of practice relating to the level of penalty in effect at the time of the appeal, the code of practice relating to prevention of clandestine entrants in effect when the penalty was issued and any other relevant matters (which may include matters of which the Secretary of State was unaware). An appeal may be brought whether or not a notice of objection has been given or the penalty has been increased or reduced under the objection procedure.

314. Paragraph 9 amends section 36 of the 1999 Act which relates to the detention of vehicles.

315. Sub-paragraph (3) provides the power to detain a transporter for up to 24 hours pending a decision on whether to issue a penalty notice, pending the issuing of a penalty notice, or pending a decision whether to detain a transporter under section 36(1). This is to take account of the time it may take in some instances to complete the necessary enquiries to establish the identity of those who are potentially liable to pay a penalty, to determine the level of any penalty to be imposed, and to consider whether there is a significant risk that the penalty will not be paid if the transporter is not detained under section 36(1).

316. Paragraph 10 inserts a new section 36A into the 1999 Act which provides the power to detain a transporter where a person to whom a penalty notice has been issued fails to pay the penalty before the specified date. Under this power any transporter used, in connection with his business, by the person to whom the penalty notice has been issued (provided that this is the owner or hirer of the transporter, or their employee at the time the penalty notice was issued) may be detained. Detention cannot take place if an appeal against the penalty is pending or can be brought. A detained transporter will be released if the penalty and any connected expenses are paid.

317. Paragraph 11 amends section 37 of the 1999 Act which enables a person to apply to a court to have their transporter released.

318. The amendment made by sub-paragraph (4) removes the requirement for a person, when applying to the court for the release of a transporter that has been detained in accordance with section 36(1), to show a compelling need for its release. A transporter may be released if the court considers that a satisfactory security has been tendered, that there is no significant risk that the penalty and any connected expenses will not be paid, or that there is a significant doubt as to whether the penalty is payable.

319. Sub-paragraph (5) inserts new subsections (3A) and (3B) which provide that a court may also release a transporter detained under new sections 36A and 36(1) if a penalty notice was not issued to the owner or an employee of his or if the court considers it right to release the transporter. A transporter may also be released under new section 36A if the court considers that the detention was unlawful.

320. The amendment made by sub-paragraph (6) means that the power of sale under section 37(4) may only be exercised when no appeal against the penalty is pending or can be brought or with the consent of the owner.

321. Paragraph 13 substitutes a new section 40 of the 1999 Act. This provides for the charge imposed on carriers in respect of passengers arriving in the United Kingdom without proper documents. The owners of ships and aircraft will continue to be liable to a charge of £2,000 in respect of an individual who arrives in the United Kingdom and fails to produce the required documents. The owners and operators of road passenger vehicles will no longer be liable to a charge but there is a power for the Secretary of State to apply the section by order to passengers arriving by train.

322. A new section 40A sets out the procedures for notification of and objection to the penalty. The charge notice and notice of objections must contain certain information and follow a prescribed form. The Secretary of State will determine whether or not to cancel the charge within a prescribed or agreed period.

323. A new section 40B also provides a statutory right of appeal by which a carrier may contest his liability to a charge in the county court (or equivalent court in Scotland). The appeal will be a rehearing of the Secretary of State's decision to impose a charge and may be determined having regard to matters of which the Secretary of State was unaware. The court may cancel the charge

or dismiss the appeal. An appeal may be brought whether or not a notice of objection has been given under the objection procedure.

324. Paragraph 14 removes the power to detain vehicles under section 40.

325. Amendments to Schedule 1 (sale of transporter) made by paragraph 16 mean that where the owner of a transporter is a party to an application for leave to sell it, in determining whether to give leave the court will consider the extent of any hardship likely to be caused by sale, the extent to which the owner is responsible under the penalty notice and any other relevant matters.

Provision of information by traveller

Section 126: Physical data: compulsory provision

326. This section supplements the current power to fingerprint and gather data from persons subject to immigration control, which is contained in sections 141 to 146 of the 1999 Act. Subsections (1) and (2) enable the Secretary of State to provide by regulations that a person who makes an application for a visa or entry clearance, or for leave to enter or remain (including variation of such leave) will be required to provide data specified in the regulations when making such an application, or to provide on demand such information to an “authorised person”, who is enabled by the regulations to collect such data (for example, an entry clearance officer or immigration officer). The data that may be required extends to external physical characteristics, including features of the iris and any other part of the eye. By virtue of subsection (3), the power does not extend to those persons to whom section 141 of the 1999 Act contemporaneously applies. These persons continue to be covered by sections 141 to 146 of that Act.

327. Subsections (4) to (8) make further provision about the content of the regulations. In particular, regulations may specify the form in which “data” should be provided and the means by which data may be obtained. They may also require persons authorised by the regulations to require the provision of data to have regard to any specified code of practice, or provisions thereof, that is in force under specified Police and Criminal Evidence legislation. The regulations may make provision for the use and retention of information provided, which may permit the use of information for specified non-immigration purposes. The regulations may also specify the consequences of an applicant failing to provide the requisite data, which may include the application in question being treated as invalid or refused. Additionally the requirements of the regulations can be specified to apply to certain cases or circumstances or to apply to all applications generally. There is no power to arrest persons who refuse to provide the data or to use reasonable force as remains the case for those covered by sections 141 to 146 of the 1999 Act. Regulations must provide for the destruction of data some 10 years from the date of recording of that data (unless another date is specified in the regulations for this purpose) and ensure that proper safeguards are in place when collecting data from those under the age of 16.

Section 127: Physical data: voluntary provision

328. Under this section the Secretary of State may operate a scheme that enables people voluntarily to provide data of the type covered by section 126 with a view to assisting and accelerating their entry into the United Kingdom. By virtue of subsection (2), regulations made under this clause may impose or permit imposition of a charge on participants and may provide for safeguards regarding the use and retention of data.

Section 128: Data collection under Immigration and Asylum Act 1999

329. This section amends section 144 of the 1999 Act to clarify that features of the iris or any other part of the eye come within the scope of external physical characteristics. This confirms that iris scans may be prescribed under section 144 of the 1999 Act and ensures that section 144 of that Act is interpreted in line with section 126. This section also ensures that those exercising powers taken under section 144 of the 1999 Act may be obliged to have regard to any specified code of practice, or (possibly modified) provisions thereof, that is in force under specified Police and Criminal Evidence legislation. Those collecting data under section 126 may also be required to have regard to such codes or provisions thereof.

Disclosure of information by public authority

Section 129: Local authority

330. This section provides that where the Secretary of State reasonably suspects that a person has committed a specified offence under the 1971 Act and is, or has been resident in a local authority area, the Secretary of State may require that local authority to provide information for the purpose of locating that person. It further provides that local authorities must comply with such a requirement.

Section 130: Inland Revenue

331. This section provides that the Commissioners of Inland Revenue may supply the Secretary of State with information for the purpose of establishing a person's whereabouts if the Secretary of State reasonably suspects that person does not have leave to be in the United Kingdom; does not have permission to work; that he has worked in breach of conditions of leave or temporary admission. The Inland Revenue may also provide information to the Secretary of State for the purpose of determining whether an applicant for naturalisation under the British Nationality Act 1981 is of good character and for verifying whether a sponsored entry clearance applicant meets the maintenance and accommodation requirements of the Immigration Rules.

Section 131: Police, &c

332. Section 20 of the 1999 Act provides for information to be supplied to the Secretary of State by a number of bodies for immigration or other specified purposes. This section enables those bodies (including chief officers of police, the National Criminal Intelligence Service and HM Customs & Excise) to supply information to assist the Secretary of State in determining whether a person who has applied for naturalisation as a British citizen satisfies the "good character" requirements of the BNA 1981. Such information may include evidence of convictions.

Section 132: Supply of document, &c. to Secretary of State

333. Section 132 extends the scope of section 20 of the Immigration and Asylum Act 1999 to allow a person to whom the section applies who comes across physical objects, such as documents or replica immigration stamps, to pass them to the Secretary of State for immigration purposes.

334. Subsection (4) allows the Secretary of State to retain or dispose of documents or articles which are passed to him under this section.

Section 133: Medical inspectors

335. This section authorises port medical inspectors and staff working under their direction to disclose information to health service bodies for specific medical purposes. The information that can be disclosed is set out at subsection (2). The permitted purposes of such disclosure are specified at subsection (3). "Health service body" is defined at subsection (4).

Disclosure of information by private person

Section 134: Employer

336. This section provides for the Secretary of State, where he has reasonable suspicion that a person has committed a specified immigration offence, including an offence in relation to earnings under the national asylum support arrangements, to require that person's employer to disclose information about that person's whereabouts, earnings or employment history. The provision applies to employers and to employment agencies hiring out the services of staff, whether those staff are self-employed, employed by the employment agency, or employed by a third party employer.

Section 135: Financial institution

337. This section provides for the Secretary of State to require a financial institution, such as a bank or building society, to supply information about a person whom the Secretary of State reasonably suspects of making a dishonest representation so as to commit a specified offence in relation to the national asylum support arrangements. To require information the Secretary of State must also reasonably suspect that the institution has the information and that it is relevant to the offence.

Section 136: Notice

338. This section sets out the form in which a requirement under sections 134 or 135 must be made, and what is required of an employer or financial institution in response to such a request. The request must be made in writing and must specify the information required, the manner in which it is to be provided and the time limit for replying, which must be at least 10 working days from receipt of the request. Within that time limit, the person on whom the notice is served must provide the information.

Section 137: Disclosure of information: offences

339. A person who without reasonable excuse does not comply with a request made under section 136(3) (which would include a person who falsely denies having the information requested) commits an offence punishable with a maximum penalty of a fine or three months imprisonment or both.

Section 138: Offence by body

340. The offence at section 137 may be committed by a natural or legal person, including a body corporate, such as a company. This section provides that where an offence under section 137 is committed by a body corporate, an officer of that body (which may include a manager, director, secretary or member) will have committed an offence if it is proved that the offence was committed with his consent or connivance, or was due to his neglect. The section also provides for liability of partners in a firm, making special provision for limited partnerships.

Section 139: Privilege against self-incrimination

341. This section provides that information provided by a person under sections 134 and 135 cannot be used in evidence in criminal proceedings against that person, except in proceedings for an offence under section 137.

Immigration Services**Section 140: Immigration Services Commissioner**

342. Subsection (1) inserts a sub-paragraph in paragraph 7 of Schedule 5 to the 1999 Act to clarify that the Immigration Services Commissioner ("the Commissioner") may exercise his existing powers of entry when investigating a matter on his own initiative. These powers may be exercised

to the same extent and in relation to the same matters as would be the case if the Commissioner was investigating a complaint made to him by a third party.

343. Subsection (2) inserts a new paragraph in Schedule 6 to the 1999 Act which enables the Commissioner to vary an adviser's registration during the period of an extant registration at any time without charge. Subsection (3) enables any decision made by the Immigration Services Commissioner in this way to be appealed to the Immigration Services Tribunal.

Section 141: EEA ports: juxtaposed controls

344. This section provides for a power that would allow the UK to operate immigration and other frontier controls at an EEA ferry port (such as Calais), for the purposes of giving effect to an international agreement. In addition, it would allow the Secretary of State to make any necessary legislative arrangements to accommodate French immigration control in UK ports (such as Dover).

345. Subsections (1) and (2) contain a power for the Secretary of State to make an order for the purpose of giving effect to an international agreement which concerns immigration control at an EEA port (which may also cover other frontier controls such as police and customs). The order may include any provision likely to facilitate implementation of that agreement.

346. Subsection (3) lists particular matters which may be included in a future order. For example an order may specify that particular laws of England and Wales have effect (with or without modification) in that part of the EEA where immigration and other frontier controls are being carried out by UK officials. An order may also modify or even disapply UK legislation in order to allow officers from other countries to perform their functions on UK territory

347. Subsection (3)(f) provides that an order may make provision conferring a function, which may be discretionary and may be on a government officer of a State other than the UK.

348. Subsection (3)(g) states that an order may create or extend the application of an offence and subsections (3)(h) and (i) provide that an order may impose penalties or require payments of a fee, (for example a fee for processing a particular type of immigration application).

349. Subsection (3)(j) states that an order may contain provision about enforcement, including conferring powers of arrest, detention or removal from or to a place.

350. Subsection (3)(k) allows an order to confer jurisdiction on a court.

351. Subsections (3)(l) and (m) provide for an order to confer immunity or provide for indemnity or compensation.

352. Subsection (3)(n) allows an order to make provision requiring, inter alia, UK port authorities to co-operate with or provide facilities for French officers to carry out their functions. It includes the power to require such facilities at no charge.

353. Finally, subsection 3(o) allows an order to make provision about the disclosure of information.

354. Subsection (5) states that the Secretary of State must consult with such persons as he considers appropriate before making an order under this section. Further, an order must be made by statutory instrument, which must be laid before and approved by both Houses of Parliament.

Section 142: Advisory panel on country information

355. The Act makes provision for the establishment of an advisory panel on country information.

356. Country information means information about the countries of origin of asylum seekers. The Immigration and Nationality Directorate compiles information regarding the political situation as well as human rights issues on the 35 countries that produce the highest numbers of asylum seekers to the UK. Their purpose is to document what is known about the countries in a way that might be relevant to making a decision on an asylum application.

357. The advisory panel will provide scrutiny and oversight of the quality and content of the country reports and review the methodology used in their compilation.

PART 7: OFFENCES

Substance

Section 143: Assisting unlawful immigration, &c.

358. Under section 25(1) of the 1971 Act it is an offence for someone to be knowingly concerned in making or carrying out arrangements for securing or facilitating the entry into the UK of an illegal entrant or (if done for gain) an asylum-seeker. It is also an offence knowingly to assist a person to obtain leave to remain in the United Kingdom by deception. The maximum penalty for these offences is 10 years imprisonment and/or an unlimited fine. Where someone is convicted on indictment of an offence of assisting entry, the court can order the forfeiture of any ship, aircraft or vehicle used to commit the offence. (In the case of ships and aircraft this power is limited to vessels below a certain tonnage and aircraft below a certain operating weight (see section 25(7) of the 1971 Act).) The offence of assisting entry includes acts done outside the United Kingdom by a British citizen, a British Dependant Territories citizen, a British Overseas citizen, a British subject or a British protected person.

359. Under section 25(2) of the 1971 Act it is an offence to “harbour” an illegal entrant, a person who stays longer than allowed by their leave or a person who fails to observe another condition of their leave. The maximum penalty for this offence is 6 months imprisonment and/or a fine of £5,000.

360. Section 143 repeals section 25 of the 1971 Act and replaces it with four new sections (sections 25, 25A and 25B and 25C). Section 25 makes it an offence knowingly to facilitate someone to breach the laws of *any* Member State, not just the United Kingdom. This is a measure required to enable the United Kingdom to comply with Article 27 of the Schengen Convention, and will also assist compliance with a European Directive defining the facilitation of unauthorised entry, transit and residence and its associated Framework Decision, which will replace that Article. The maximum penalty for the offence has been increased to 14 years' imprisonment or an unlimited fine or both. There is no longer a separate offence of “ harbouring”. This conduct is now included as part of the general offence.

361. United Kingdom courts continue to have jurisdiction over acts of “assistance” given by certain classes of person outside the United Kingdom. The list has been expanded to include British Nationals (Overseas). “British National (Overseas)” is a form of British Nationality created by the Hong Kong Act 1985. Until 1997, British Nationals (Overseas) were also British Dependent Territories citizens and could be prosecuted for “assistance” given outside the United Kingdom on this basis. When they ceased to be British Dependent Territories citizens, they could no longer be prosecuted for such assistance. Their inclusion restores the pre-July 1997 position.

362. New Section 25A reproduces the offence which is presently section 25(1)(b) of the 1971 Act (namely, helping an asylum-seeker to enter the United Kingdom where this is done for gain). New section 25B makes it an offence to assist entry to the United Kingdom by a European citizen in

breach of a deportation or exclusion order. New section 25C confers the same powers on courts to order the forfeiture of ships, aircraft and vehicles as exist presently, but extends the definition of an illegal entrant to include passengers trafficked contrary to the new offence in section 145 of this Act.

Section 144:Section 143: consequential amendments

363. This amends and renumbers the current section 25A of the 1971 Act which allows a vehicle, ship or aircraft which may be liable to forfeiture to be detained following a person's arrest, and makes consequential amendments to immigration officers' powers of arrest, search and entry. Amendments in Schedule 7 replace the references in Schedules 2, 4 and 5 to the Proceeds of Crime Act 2002 to an offence under the present section 25(1) with references to offences under the new sections 25, 25A and 25B.

Section 145: Traffic in prostitution

364. Section 145 creates a criminal offence of trafficking people into, or out of, the United Kingdom for the purpose of controlling them in prostitution. A person commits the offence if he arranges for a person to enter or leave the United Kingdom and he intends to control them in prostitution there or elsewhere, or he believes another person is likely to control them in prostitution anywhere in the world. The offence is also committed if a person arranges travel within the United Kingdom if he believes that the passenger has been brought into the United Kingdom in order to be controlled in prostitution there or elsewhere and he intends to control them in prostitution, or believes another person is likely to do so, anywhere in the world. Controlling someone in prostitution means exercising control, direction or influence over a prostitute's movements in a way that shows he is aiding, abetting or compelling prostitution.

365. The offence is triable either summarily or on indictment. The maximum penalty on indictment is 14 years imprisonment, or an unlimited fine, or both.

366. Traffic in prostitution is designated a lifestyle offence under the Proceeds of Crime Act 2002 by paragraph 31 of Schedule 7 to this Act. The effect of this is that, where the court is considering making a confiscation order, it must assume that all the defendant's assets derive from his criminal conduct, unless he can prove otherwise. Because of the territorial restriction of the offence, it is not included in the list of Scheduled offences in Scotland.

Section 146:Section 145: supplementary

368. This section provides that the offence under section 145 applies to any act done in or out of any part of the United Kingdom. It creates extra-territorial effect as the provision applies to trafficking outside the United Kingdom when it is committed by specified categories of British national, and applies the forfeiture and detention provisions in respect of vehicles used to commit the offence which apply to the facilitation offences under the **new**section 25 inserted by section 143. It also applies to a company incorporated anywhere in the United Kingdom. Section 163(2) provides that sections 145 and 146 extend only to England, Wales and Northern Ireland.

369. Subsection (4) provides that the trafficking offence shall be included in the schedule of offences against a child listed in Schedule 4 of the Criminal Justice and Court Services Act 2000. This means that those convicted of this offence against a person aged under 18 and who are sentenced to imprisonment or detention of twelve months or more will be disqualified from work with children in the future, whether in a paid or unpaid capacity. Breach of such a disqualification order is a criminal offence.

370. Schedule 7 adds an offence under section 145 to the list of Scheduled offences for the purposes of the Proceeds of Crime Act 2002. Because of the territorial restriction of the offence, it is not included in the list of Scheduled offences in Scotland.

Section 147: Employment

371. Section 147 amends section 8 of the Asylum and Immigration Act 1996 (“the 1996 Act”) and modifies the existing law on illegal working. Under section 8 of the 1996 Act it is an offence to employ a person aged 16 or over who is subject to immigration control unless:

That person has current and valid permission to be in the United Kingdom and that permission does not prevent him or her from taking the job in question;

The person comes into a category where such employment is otherwise allowed (e.g. asylum-seekers who have been given permission to work, student nurses admitted under the terms of the Immigration Rules who may enter into contracts of employment without any additional permission being required).

372. A statutory defence is provided in section 8(2) of the 1971 Act. The employer needs to prove that they have taken two steps in order to establish this defence. First, the employer must have had produced to him a document which appeared to him to relate to the worker in question and to be of a description specified in an order by the Secretary of State. The current order is the Immigration (Restrictions on Employment) Order 1996 SI 1996/3225. Second, the employer must have retained the document or a copy of it.

373. Subsection (2) inserts two new subsections in the 1996 Act in place of section 8(2) of the 1996 Act. Under subsection (2) it will be a defence for a person charged with an offence under section 8 to prove that he complied with any relevant requirement of an order made by the Secretary of State under subsection (2A). Subsection (2A) expands the type of document that an employer could be required to see under such an order. In practice this could mean that, to establish a defence, an employer must demonstrate that he has seen two documents of particular types, and to produce copies of these when required.

374. Subsection (4) provides new ancillary powers of entry, search and arrest in relation to the section 8 offence. Immigration officers will have powers of entry to arrest by warrant, entry and search of premises by warrant in order to obtain relevant evidence, entry and search of premises after arrest, search of arrested persons and search of persons in police custody.

Section 148: Registration Card

375. Section 148 inserts section 26A into the 1971 Act which creates a number of new offences relating to the creation, possession and use of false or altered registration cards.

376. Subsections (1) and (2) define a registration card as a card containing information about a person issued by the Secretary of State in connection with a claim for asylum. A “claim for asylum” is a claim made for asylum or for protection under Article 3 of the European Convention on Human Rights. A card may be issued to the asylum claimant themselves or to a spouse or dependant of that claimant.

377. The offences are contained in subsection (3). These include making a false card, altering a genuine card with intent to deceive (or to enable someone else to deceive), possessing a false or altered card without reasonable excuse, using a false card, and using an altered genuine card with intent to deceive. There are also offences relating to equipment designed to be used in making or altering cards.

378. The maximum custodial sentence for the offences involving “possession” of a false or altered card or an article designed to make one is two years following conviction on indictment. The maximum custodial sentence for the other offences (including making, altering and using the card) is ten years imprisonment.

379. Subsections (7) and (8) provide that the Secretary of State may amend the definition of a card by order.

Section 149: Immigration Stamp

380. Section 149 creates an offence of possession of an immigration stamp, whether genuine or a replica, without a reasonable excuse. The offence relates to stamps used by immigration officers or officers acting on behalf of the Secretary of State to endorse documents, when exercising their powers under the Immigration Acts. It is punishable by a maximum custodial sentence of two years, a fine or both.

Section 150: Sections 148 and 149: consequential amendments

381. This section contains ancillary powers in relation to the immigration stamp and registration card offences. Immigration officers or police constables can arrest someone suspected of having committed these offences without a warrant. They can also enter premises by warrant in order to search for and arrest a person suspected of committing one of these offences. Finally they can enter premises by warrant in order to search for evidence relevant to these offences.

Section 151: False information

382. It is an offence (under section 26(1)(c) of the 1971 Act) to make a false return statement or representation to an immigration officer or other person lawfully acting in the execution of a relevant enactment. Section 151 amends the definition of relevant enactment to include the provisions contained in this Act (apart from Part 5).

Procedure

Section 152: Arrest by immigration officer

383. At present, the employment offence in section 8 of the Asylum and Immigration Act 1996 does not carry the power of arrest. To date the only way that it has been possible to make arrests by relying on police powers in the Police and Criminal Evidence Act 1984 (“PACE”).

384. However, these powers only apply to constables and do not allow immigration officers to make arrests. Section 152 adds a separate power of arrest by warrant in relation to the section 8 offence. In addition, it remedies an anomaly in relation to offences under section 24(1)(d) of the Immigration Act 1971 — failure to comply with a requirement to report to, attend or submit to a medical examination. There is currently a power under section 28B of the 1971 Act to enter premises under a warrant in order to search for and arrest someone who is liable to be arrested for the section 24(1)(d) offence, but there is currently no free-standing power of arrest. Section 152 provides one.

Sections 153 and 154: Power of entry and to search for evidence

385. Section 153 gives immigration officers and police officers the power to enter business premises to search for, and, where appropriate, arrest immigration offenders where they have reasonable grounds for believing that such an offender is on the premises. Authorisation to use this power must be given by a senior officer (either an Assistant Director of Immigration or a Chief Superintendent of police) and is valid for a period of seven days beginning on the day it was given.

386. Section 154 gives immigration officers and police constables powers to search business premises without having to obtain a warrant if a person liable to arrest for an offence under section 24 or section 24(A) of the 1971 Act or paragraph 17 of Schedule 2 to that Act has been found on those premises, **and** the officer reasonably believes that an offence under section 8 of the 1996 Act has been committed and that there are employee records on the premises which are likely to be of substantial value in the investigation of the offence. These powers also allow the constable or immigration officer to seize records of value to the investigation of an immigration employment offence or an offence under section 105 or 106 of the 1999 Act. However, they do not allow items subject to legal privilege to be seized.

387. Separately, section 154 also gives immigration officers a power to obtain a warrant in order to search business premises by warrant where the officer reasonably believes that the employer has provided inaccurate or incomplete information under the compulsory disclosure provisions of section 134 of this Act. Officers will be able to seize and retain employee records (other than items subject to legal privilege) where they suspect that they will be of substantial value to the investigation of an offence under section 137 of this act or under section 105 or 106 of the Immigration and Asylum Act 1999.

Section 156: Time limit on prosecution

388. Where an offence is triable only summarily, proceedings have to be brought within 6 months of the offence being committed unless the legislation provides for a longer period. Offences under section 24A and 25 of the 1971 Act will no longer be summary offences. Section 156 amends the sections of the 1971 Act which provide that an extended time limit shall apply in respect of those offences accordingly.

PART 8: GENERAL

Section 157: Consequential and incidental provision

389. This section provides a power for the Secretary of State to make amendments to other legislation, in limited circumstances, namely that the amendments are consequential or incidental to a provision in this Act.

390. Subsection (4) makes it clear that an order, by which another enactment is amended, can only be made if it is approved by both Houses of Parliament.

391. Subsection (5) provides that where an order does anything else, it can be made provided that no contrary view is expressed by either House

Section 161: Repeals

392. Section 161 introduces Schedule 9 which sets out the extent to which current immigration, nationality and race relations legislation is repealed by the provisions of this Act.

COMMENCEMENT

393. Section 162 contains provisions relating to the coming into force of the Act. Subsection (2) provides for the specified provisions to come into force on the passing of this Act. The remaining provisions come into force on such dates as the Secretary of State by order appoints.

HANSARD REFERENCES

394. The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

| Stage | Date | Hansard Reference |
|--|---|---|
| HOUSE OF COMMONS | | |
| Introduction and First Reading | 12 April 2002 | Vol 383 Col 263 |
| Second Reading | 24 April 2002 | Vol 384 Cols 341–436 |
| Standing Committee | 10 sittings between 30 April and 21 May 2002 30 April 2002 7 May 2002 9 May 2002 9 May 2002 14 May 2002 14 May 2002 16 May 2002 16 May 2002 21 May 2002 21 May 2002 | 1st sitting Cols 1–64 2nd sitting Cols 65–104 3rd sitting Cols 105–138 4th sitting Cols 139–192 5th sitting Cols 193–232 6th sitting Cols 233–278 7th sitting Cols 279–310 8th sitting Cols 311–362 9th sitting Cols 363–396 10th sitting Cols 397–460 |
| Report Stage | 11 June 2002 | Vol 386 Cols 727–838 |
| Report and Third Reading | 12 June 2002 | Vol 386 Cols 870–967 |
| HOUSE OF LORDS | | |
| Introduction | 13 June 2002 | Vol 636 Col 390 |
| 2nd Reading | 24 June 2002 | Vol 636 Cols 1087–1181 |
| Committee Stage | 8 July 2002, 9 July 2002, 10 July 2002, 15 July 2002 and 17 July 2002. 23 July 2002 and 29 July 2002 | Vol 637, Cols 440–554, 565–678, 689–814, 963–1084 and 1233–1388. Vol 638 Cols 261–360 and 676–738 |
| Report Stage | 9 October 2002 10 October 2002 | Vol 639 Cols 263–400 Vol 639 Cols 411–550 |
| Re-commitment | 17 October 2002 | Vol 639 Cols 974–1057 |
| Report Stage | 24 October 2002 | Vol 639 Cols 1436–1558 |
| Third Reading | 31 October 2002 | Vol 640 Cols 292–421 |
| Commons Consideration of Lords Amendments | 5 November 2002 | Vol 392 Cols 145–244 |
| Lords Consideration of Commons Amendments. | 6 November 2002 | Vol 640 Cols 758–856 |
| Commons Consideration of Lords Amendments | 7 November 2002 | Vol 392 Cols 452–471 |
| Lords Consideration of Commons Amendments. | 7 November 2002 | Vol 640 Cols 942–948 |
| ROYAL ASSENT | 7 November 2002 | Vol 392 Col 480 |