

IMMIGRATION AND ASYLUM ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part X: Miscellaneous and Supplemental

Section 164: Institution of proceedings

436. The White Paper stated that the Government was considering whether there were changes which could be made to improve the prosecution process as it applies to immigration offences.
437. Part VII of the Bill gives effect to the Government's proposals to increase the powers of arrest of immigration officers and to provide immigration officers with powers of search, entry and seizure in respect of immigration offences equivalent to those currently possessed by the police. However, those changes do not alter the procedures for bringing prosecutions under which the documentary evidence needed to support a prosecution is currently submitted to the Crown Prosecution Service (CPS) via a police officer and that officer's Criminal Justice Unit. This is because of the terms of the Prosecution of Offenders Act 1985, which established the CPS and which specifies that the CPS are under a duty to take over the conduct of proceedings instituted on behalf of a police force but not by an immigration officer.
438. The Government has concluded that there is no operational need for the police to be involved in forwarding papers to the CPS where they have not been involved in the investigation. This section amends the Prosecution of Offences Act to require the CPS to take over the conduct of any criminal proceedings instituted by an immigration officer acting in his official capacity.

Section 165: Procedural requirements as to applications

439. Since November 1996 all applications (with the exception of those from asylum seekers, work permit holders and EEA nationals) for a variation of leave have to be made on an application form. It has also been the policy since the introduction of application forms that applications for leave to remain by people without leave must also be made on an application form (with the same exceptions as above). Applications made in any other way or on incomplete application forms are rejected as invalid.
440. *Section 165* introduces a new section 31A into the 1971 Act which brings these arrangements on to the face of the statute. It provides that applications made on a particular basis, to be defined by way of regulations, have to be made on a prescribed form. In addition, subsection (2) provides that the Secretary of State can prescribe any particular procedural or other steps that have to be followed, for example, the provision of a photograph.
441. The remainder of this Part of the Act makes provision applicable to the Act as a whole.