



Asylum and Immigration Appeals Act 1993

1993 CHAPTER 23

Introductory

1 Interpretation

In this Act—

“the 1971 Act” means the Immigration Act 1971;

“claim for asylum” means a claim made by a person (whether before or after the coming into force of this section) that it would be contrary to the United Kingdom’s obligations under the Convention for him to be removed from, or required to leave, the United Kingdom; and

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

2 Primacy of Convention

Nothing in the immigration rules (within the meaning of the 1971 Act) shall lay down any practice which would be contrary to the Convention.

Treatment of persons who claim asylum

3 Fingerprinting

(1) Where a person (“the claimant”) has made a claim for asylum, an immigration officer, constable, prison officer or officer of the Secretary of State authorised for the purposes of this section may—

- (a) take such steps as may be reasonably necessary for taking the claimant’s fingerprints; or
- (b) by notice in writing require the claimant to attend at a place specified in the notice in order that such steps may be taken.

Status: This is the original version (as it was originally enacted).

- (2) The powers conferred by subsection (1) above may be exercised not only in relation to the claimant but also in relation to any dependant of his; but in the exercise of the power conferred by paragraph (a) of that subsection, fingerprints shall not be taken from a person under the age of sixteen (“the child”) except in the presence of a person of full age who is—
- (a) the child’s parent or guardian; or
 - (b) a person who for the time being takes responsibility for the child and is not an immigration officer, constable, prison officer or officer of the Secretary of State.
- (3) Where the claimant’s claim for asylum has been finally determined or abandoned—
- (a) the powers conferred by subsection (1) above shall not be exercisable in relation to him or any dependant of his; and
 - (b) any requirement imposed on him or any dependant of his by a notice under subsection (1)(b) above shall no longer have effect.
- (4) A notice given to any person under paragraph (b) of subsection (1) above—
- (a) shall give him a period of at least seven days within which he is to attend as mentioned in that paragraph; and
 - (b) may require him so to attend at a specified time of day or between specified times of day.
- (5) Any immigration officer or constable may arrest without warrant a person who has failed to comply with a requirement imposed on him by a notice under subsection (1)(b) above (unless the requirement no longer has effect) and, where a person is arrested under this subsection,—
- (a) he may be removed to a place where his fingerprints may conveniently be taken, and
 - (b) (whether or not he is so removed) there may be taken such steps as may be reasonably necessary for taking his fingerprints,
- before he is released.
- (6) Fingerprints of a person which are taken by virtue of this section must be destroyed not later than the earlier of—
- (a) the end of the period of one month beginning with any day on which he is given indefinite leave under the 1971 Act to enter or remain in the United Kingdom; and
 - (b) the end of the period of ten years beginning with the day on which the fingerprints are taken.
- (7) Where fingerprints taken by virtue of this section are destroyed—
- (a) any copies of the fingerprints shall also be destroyed; and
 - (b) if there are any computer data relating to the fingerprints, the Secretary of State shall, as soon as it is practicable to do so, make it impossible for access to be gained to the data.
- (8) If—
- (a) subsection (7)(b) above falls to be complied with, and
 - (b) the person to whose fingerprints the data relate asks for a certificate that it has been complied with,

such a certificate shall be issued to him by the Secretary of State not later than the end of the period of three months beginning with the day on which he asks for it.

- (9) In this section—
- (a) “immigration officer” means an immigration officer appointed for the purposes of the 1971 Act; and
 - (b) “dependant”, in relation to the claimant, means a person—
 - (i) who is his spouse or a child of his under the age of eighteen; and
 - (ii) who has neither a right of abode in the United Kingdom nor indefinite leave under the 1971 Act to enter or remain in the United Kingdom.
- (10) Nothing in this section shall be taken to limit the power conferred by paragraph 18(2) of Schedule 2 to the 1971 Act.

4 Housing of asylum-seekers and their dependants

- (1) If a person (“the applicant”) makes an application under the homelessness legislation for accommodation or assistance in obtaining accommodation and the housing authority who are dealing with his case are satisfied—
- (a) that he is an asylum-seeker or the dependant of an asylum-seeker, and
 - (b) that he has or has available for his occupation any accommodation, however temporary, which it would be reasonable for him to occupy,
- nothing in the homelessness legislation shall require the housing authority to secure that accommodation is made available for his occupation.
- (2) In determining for the purposes of subsection (1)(b) above whether it would be reasonable for the applicant to occupy accommodation, regard may be had to the general circumstances prevailing in relation to housing in the district of the housing authority who are dealing with the applicant’s case.
- (3) Where, on an application made as mentioned in subsection (1) above, the housing authority are satisfied that the applicant is an asylum-seeker or the dependant of an asylum-seeker, but are not satisfied as mentioned in paragraph (b) of that subsection, then, subject to subsection (4) below,—
- (a) any duty under the homelessness legislation to secure that accommodation is made available for the applicant’s occupation shall not continue after he ceases to be an asylum-seeker or a dependant of an asylum-seeker; and
 - (b) accordingly, so long as the applicant remains an asylum-seeker or the dependant of an asylum-seeker, any need of his for accommodation shall be regarded as temporary only.
- (4) If, immediately before he ceases to be an asylum-seeker or the dependant of an asylum-seeker, the applicant is occupying accommodation (whether temporary or not) made available in pursuance of the homelessness legislation, that legislation shall apply as if, at that time—
- (a) he were not occupying that accommodation; and
 - (b) he had made an application under that legislation for accommodation or assistance in obtaining accommodation to the housing authority who secured that accommodation was made available.
- (5) Schedule 1 to this Act (which makes supplementary provision with respect to housing of asylum-seekers and their dependants) shall have effect.

5 Housing: interpretative provisions

- (1) The provisions of this section have effect for the purposes of section 4 above and Schedule 1 to this Act; and that section and Schedule are in the following provisions of this section referred to as “the housing provisions”.
- (2) For the purposes of the housing provisions a person who makes a claim for asylum—
 - (a) becomes an asylum-seeker at the time when his claim is recorded by the Secretary of State as having been made; and
 - (b) ceases to be an asylum-seeker at the time when his claim is recorded by the Secretary of State as having been finally determined or abandoned.
- (3) For the purposes of the housing provisions, a person—
 - (a) becomes a dependant of an asylum-seeker at the time when he is recorded by the Secretary of State as being a dependant of the asylum-seeker; and
 - (b) ceases to be a dependant of an asylum-seeker at the time when the person whose dependant he is ceases to be an asylum-seeker or, if it is earlier, at the time when he is recorded by the Secretary of State as ceasing to be a dependant of the asylum-seeker.
- (4) References in subsections (2) and (3) above to a time when an event occurs include references to a time before as well as after the passing of this Act.
- (5) In relation to an asylum-seeker, “dependant” means a person—
 - (a) who is his spouse or a child of his under the age of eighteen; and
 - (b) who has neither a right of abode in the United Kingdom nor indefinite leave under the 1971 Act to enter or remain in the United Kingdom.
- (6) Except in their application to Northern Ireland, in the housing provisions—
 - (a) “the homelessness legislation” means, in relation to England and Wales, Part III of the Housing Act 1985 and, in relation to Scotland, Part II of the Housing (Scotland) Act 1987;
 - (b) “housing authority” means—
 - (i) in relation to England and Wales, any authority which is a local housing authority for the purposes of Part III of the Housing Act 1985; and
 - (ii) in relation to Scotland, any authority which is a local authority for the purposes of Part II of the Housing (Scotland) Act 1987;and references to a housing authority who are dealing with an applicant’s case shall be construed as references to the authority to whom the application is made or (as the case may be) the authority who under the homelessness legislation are the notified authority in relation to the applicant.
- (7) In the application of the housing provisions to Northern Ireland—
 - (a) “the homelessness legislation” means Part II of the Housing (Northern Ireland) Order 1988;
 - (b) “housing authority” means the Northern Ireland Housing Executive and references to a housing authority who are dealing with an applicant’s case shall be construed as references to that Executive; and
 - (c) references to the district of a housing authority shall be construed as references to Northern Ireland.

- (8) For the purposes of the housing provisions accommodation shall be regarded as available for the applicant's occupation only if it is available for occupation both by him and by any other person who might reasonably be expected to reside with him and references to securing accommodation for his occupation shall be construed accordingly.

6 Protection of claimants from deportation etc

During the period beginning when a person makes a claim for asylum and ending when the Secretary of State gives him notice of the decision on the claim, he may not be removed from, or required to leave, the United Kingdom.

7 Curtailment of leave to enter or remain

(1) Where—

- (a) a person who has limited leave under the 1971 Act to enter or remain in the United Kingdom claims that it would be contrary to the United Kingdom's obligations under the Convention for him to be required to leave the United Kingdom after the time limited by the leave, and
- (b) the Secretary of State has considered the claim and given to the person notice in writing of his rejection of it,

the Secretary of State may by notice in writing, given to the person concurrently with the notice under paragraph (b) above, curtail the duration of the leave.

- (2) No appeal may be brought under section 14 of the 1971 Act or section 8(2) below against the curtailment of leave under subsection (1) above.

- (3) The power conferred by subsection (1) above is without prejudice to sections 3(3) and 4 of the 1971 Act and the immigration rules (within the meaning of that Act).

(4) Where—

- (a) the duration of a person's leave under the 1971 Act to enter or remain in the United Kingdom has been curtailed under subsection (1) above, and
- (b) the Secretary of State has decided to make a deportation order against him by virtue of section 3(5) of that Act,

he may be detained under the authority of the Secretary of State pending the making of the deportation order; and the references to sub-paragraph (2) of paragraph 2 of Schedule 3 to that Act in sub-paragraphs (3), (4) and (6) of that paragraph (provisions about detention under sub-paragraph (2)) shall include references to this subsection.

Rights of appeal

8 Appeals to special adjudicator

- (1) A person who is refused leave to enter the United Kingdom under the 1971 Act may appeal against the refusal to a special adjudicator on the ground that his removal in consequence of the refusal would be contrary to the United Kingdom's obligations under the Convention.

- (2) A person who has limited leave under the 1971 Act to enter or remain in the United Kingdom may appeal to a special adjudicator against any variation of, or refusal to

vary, the leave on the ground that it would be contrary to the United Kingdom's obligations under the Convention for him to be required to leave the United Kingdom after the time limited by the leave.

- (3) Where the Secretary of State—
- (a) has decided to make a deportation order against a person by virtue of section 3(5) of the 1971 Act, or
 - (b) has refused to revoke a deportation order made against a person by virtue of section 3(5) or (6) of that Act,
- the person may appeal to a special adjudicator against the decision or refusal on the ground that his removal in pursuance of the order would be contrary to the United Kingdom's obligations under the Convention; but a person may not bring an appeal under both paragraph (a) and paragraph (b) above.
- (4) Where directions are given as mentioned in section 16(1)(a) or (b) of the 1971 Act for a person's removal from the United Kingdom, the person may appeal to a special adjudicator against the directions on the ground that his removal in pursuance of the directions would be contrary to the United Kingdom's obligations under the Convention.
- (5) The Lord Chancellor shall designate such number of the adjudicators appointed for the purposes of Part II of the 1971 Act as he thinks necessary to act as special adjudicators for the purposes of this section and may from time to time vary that number and the persons who are so designated.
- (6) Schedule 2 to this Act (which makes supplementary provision about appeals under this section) shall have effect; and the preceding provisions of this section shall have effect subject to that Schedule.

9 Appeals from Immigration Appeal Tribunal

- (1) Where the Immigration Appeal Tribunal has made a final determination of an appeal brought under Part II of the 1971 Act (including that Part as it applies by virtue of Schedule 2 to this Act) any party to the appeal may bring a further appeal to the appropriate appeal court on any question of law material to that determination.
- (2) An appeal under this section may be brought only with the leave of the Immigration Appeal Tribunal or, if such leave is refused, with the leave of the appropriate appeal court.
- (3) In this section "the appropriate appeal court" means—
- (a) if the appeal is from the determination of an adjudicator or special adjudicator and that determination was made in Scotland, the Court of Session; and
 - (b) in any other case, the Court of Appeal.
- (4) Rules of procedure under section 22 of the 1971 Act may include provision regulating, and prescribing the procedure to be followed on, applications to the Immigration Appeal Tribunal for leave to appeal under this section.
- (5) In section 33(4) of the 1971 Act—
- (a) for the words "in the case of an appeal to an adjudicator, the" there shall be substituted "an"; and
 - (b) after the words "section 20" there shall be inserted "or section 9 of the Asylum and Immigration Appeals Act 1993".

10 Visitors, short-term and prospective students and their dependants

In section 13 of the 1971 Act (appeals against exclusion from United Kingdom), after subsection (3) there shall be inserted—

“(3A) A person who seeks to enter the United Kingdom—

- (a) as a visitor, or
- (b) in order to follow a course of study of not more than six months duration for which he has been accepted, or
- (c) with the intention of studying but without having been accepted for any course of study, or
- (d) as a dependant of a person within paragraph (a), (b) or (c) above,

shall not be entitled to appeal against a refusal of an entry clearance and shall not be entitled to appeal against a refusal of leave to enter unless he held a current entry clearance at the time of the refusal.

(3AA) The Secretary of State shall appoint a person, not being an officer of his, to monitor, in such manner as the Secretary of State may determine, refusals of entry clearance in cases where there is, by virtue of subsection (3A) above, no right of appeal; and the person so appointed shall make an annual report on the discharge of his functions to the Secretary of State who shall lay a copy of it before each House of Parliament.

(3AB) The Secretary of State may pay to a person appointed under subsection (3AA) above such fees and allowances as he may with the approval of the Treasury determine.”

11 Refusals which are mandatory under immigration rules

(1) In section 13 of the 1971 Act, after subsection (3AB) (which is inserted by section 10 above) there shall be inserted—

“(3B) A person shall not be entitled to appeal against a refusal of an entry clearance if the refusal is on the ground that—

- (a) he or any person whose dependant he is does not hold a relevant document which is required by the immigration rules; or
- (b) he or any person whose dependant he is does not satisfy a requirement of the immigration rules as to age or nationality or citizenship; or
- (c) he or any person whose dependant he is seeks entry for a period exceeding that permitted by the immigration rules;

and a person shall not be entitled to appeal against a refusal of leave to enter if the refusal is on any of those grounds.

(3C) For the purposes of subsection (3B)(a) above, the following are “relevant documents”—

- (a) entry clearances;
- (b) passports or other identity documents; and
- (c) work permits.”

(2) In section 14 of the 1971 Act (appeals against refusals to vary leave to enter or remain), after subsection (2) there shall be inserted—

Status: This is the original version (as it was originally enacted).

- “(2A) A person shall not be entitled to appeal under subsection (1) above against any refusal to vary his leave if the refusal is on the ground that—
- (a) a relevant document which is required by the immigration rules has not been issued; or
 - (b) the person or a person whose dependant he is does not satisfy a requirement of the immigration rules as to age or nationality or citizenship; or
 - (c) the variation would result in the duration of the person’s leave exceeding what is permitted by the immigration rules; or
 - (d) any fee required by or under any enactment has not been paid.
- (2B) For the purposes of subsection (2A)(a) above, the following are relevant documents—
- (a) entry clearances;
 - (b) passports or other identity documents; and
 - (c) work permits.”

Visas for transit passengers

12 Carriers' liability for transit passengers

- (1) The Immigration (Carriers' Liability) Act 1987 shall be amended as follows.
- (2) In subsection (1)(b) of section 1 (liability of carrier of person who requires a visa for entry but fails to produce one) for the words “, a visa valid for that purpose,” there shall be substituted the words “or by virtue of section 1A below requires a visa for passing through the United Kingdom, a visa valid for the purpose of entering or (as the case may be) passing through the United Kingdom,”.
- (3) After that section there shall be inserted—

“1A Visas for transit passengers

- (1) The Secretary of State may by order require persons of any description specified in the order who on arrival in the United Kingdom pass through to another country or territory without entering the United Kingdom to hold a visa for that purpose.
- (2) An order under this section—
 - (a) may specify a description of persons by reference to nationality, citizenship, origin or other connection with any particular country or territory, but not by reference to race, colour or religion;
 - (b) shall not provide for the requirement imposed by the order to apply to any person who under the Immigration Act 1971 has the right of abode in the United Kingdom and may provide for any category of persons of a description specified in the order to be exempted from the requirement imposed by the order; and
 - (c) may make provision about the method of application for visas required by the order.

- (3) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

Supplementary

13 Financial provision

- (1) There shall be paid out of money provided by Parliament—
- (a) any expenditure incurred by the Secretary of State under this Act; and
 - (b) any increase attributable to this Act in the sums payable out of such money under any other enactment.
- (2) Any sums received by the Secretary of State by virtue of this Act shall be paid into the Consolidated Fund.

14 Commencement

- (1) Sections 4 to 11 above (and section 1 above so far as it relates to those sections) shall not come into force until such day as the Secretary of State may by order appoint, and different days may be appointed for different provisions or for different purposes.
- (2) An order under subsection (1) above—
- (a) shall be made by statutory instrument; and
 - (b) may contain such transitional and supplemental provisions as the Secretary of State thinks necessary or expedient.
- (3) Without prejudice to the generality of subsections (1) and (2) above, with respect to any provision of section 4 above an order under subsection (1) above may appoint different days in relation to different descriptions of asylum-seekers and dependants of asylum-seekers; and any such descriptions may be framed by reference to nationality, citizenship, origin or other connection with any particular country or territory, but not by reference to race, colour or religion.

15 Extent

- (1) Her Majesty may by Order in Council direct that any of the provisions of this Act shall extend, with such modifications as appear to Her Majesty to be appropriate, to any of the Channel Islands or the Isle of Man.
- (2) This Act extends to Northern Ireland.

16 Short title

This Act may be cited as the Asylum and Immigration Appeals Act 1993.