

IMMIGRATION AND ASYLUM ACT 1999

EXPLANATORY NOTES

SUMMARY

4. The Act includes provisions which touch on all areas of the immigration and asylum system. There are provisions which address the conditions which will apply to persons before they come to the United Kingdom; provisions which will affect the way in which persons are dealt with at ports when arriving in the United Kingdom; and provisions which will affect how they are dealt with once they are here. The Act contains provisions which are intended to contribute to genuine travellers being dealt with more quickly and, on the other hand, provisions for combating illegal entry and strengthening powers to deal with other persons not entitled to enter or remain in the country. The Act contains new support arrangements for asylum seekers in genuine need and includes other safeguards in the form of the regulation of immigration advisers and new provisions for the grant of bail to persons detained under immigration legislation. The Act also clarifies or strengthens some existing powers and offences.

Provisions applying to persons before arrival

5. Among the provisions in the Act which apply to persons before they come to the United Kingdom is one for a streamlined right of appeal for visitors who are refused an entry clearance to visit a family member in the United Kingdom.
6. The Act also includes a provision for applicants for an entry clearance to be required to provide, or arrange for the provision of, a financial security (eg a bond) to be provided before entry clearance is given. Immigration rules will specify the circumstances in which a financial security will be required, the maximum amount and the circumstances in which the financial security must be repaid or forfeited. A pilot will be run to test the merits of such a scheme before consideration is given to its wider introduction.

Provisions applying to persons on arrival

7. The Act provides for greater flexibility in the way permission to enter the United Kingdom may be granted. Instead of leave to enter always having to be given in writing at a port of entry the Act will allow the making of an order under which additional ways of giving leave to enter are specified. Also, the Secretary of State may stipulate that a visa or other entry clearance is to be treated as leave to enter. This will mean that holders of visas, for example, will be able to pass through the port control with only a quick check on identity and on the rightful ownership of the travel document and entry clearance, unless there is a need to examine for, among other matters, change of circumstances. The power will enable other changes to be made in future, for example to exploit new technology, to speed the clearance of passengers through the immigration controls, and to facilitate the more efficient use of resources.
8. There are other provisions in the Act relating to the operation of controls at ports of entry. These include:

*These notes refer to the Immigration and Asylum Act 1999
(c.33) which received Royal Assent on 11 November 1999*

- a provision to extend the present power to require information from carriers about their passengers and a new power to require advance notification by carriers of the arrival of passengers who are not nationals of the European Economic Area;
- a provision to create “statutory gateways” to allow information to be exchanged for specified purposes between the Immigration Service, police and HM Customs and Excise. The Act will enable further purposes to be specified by order and additional gateways with other agencies to be established in future;
- strengthening existing carriers’ liability legislation to facilitate the collection of any charges incurred by carriers by bringing inadequately documented passengers to the United Kingdom.

Clandestine entrants

9. The Act contains provisions for a new power to impose a civil penalty on persons responsible for the transport of clandestine entrants to the United Kingdom. The new civil penalty is additional to and separate from carriers’ liability legislation, which the Act is strengthening and replacing. The civil penalty will apply to all vehicles, ships, or aircraft bringing clandestine entrants to the United Kingdom. The Act provides the power to detain vehicles, ships or aircraft as security until all charges for the carriage of illegal entrants have been paid. The Act requires the Secretary of State to issue a code of practice (after consultation and laying a draft before Parliament) setting out the procedures that should be followed by persons such as road hauliers to prevent their vehicles being used for the purpose of clandestine entry.

Immigration and asylum appeals

10. The White Paper set out details of the multiplicity of appeal rights under the current system and the delays that this engenders. The Act includes provisions to reform the immigration and asylum appeals system to address these issues. The current system, which provides for successive avenues of appeal, will be replaced by a comprehensive one-stop right of appeal for those who were lawfully present (or, in the case of an applicant for leave to enter, held a valid entry clearance). Persons making an asylum or human rights claim who are refused and required to leave the United Kingdom will have a right of appeal even if they made their claim when not lawfully present here; they too will be expected to raise all relevant issues at the time of application. The Act also contains provisions to replace section 2 of the Asylum and Immigration Act 1996 regarding the certification of asylum claims by the Secretary of State in third country cases, and gives a right of appeal to all those refused asylum who have been granted exceptional leave to remain. Otherwise, rights of appeal are limited to those who are to be removed from the United Kingdom: there will no longer be a right of appeal for those who are given leave to remain on ceasing to be exempt from control, or those who are given less favourable leave than that which they had requested.
11. The Act provides that for those applicants who are lawfully present when seeking leave to remain or hold a valid entry clearance or work permit when they make their claim for entry, the comprehensive one-stop appeal will address all factors in a case falling under the Immigration Rules which appellants will be expected to set out with the grounds of appeal. By the time Part IV of the Act is brought into force, many immigration matters currently dealt with as published extra-statutory concessions will have been incorporated into the Rules. In most cases, those who are in the United Kingdom unlawfully (ie overstayers and illegal entrants) will have no right of appeal and will be subject to administrative removal under section 10 rather than deportation.
12. The Act makes provision for people who have overstayed their leave to enter or remain to make applications for leave to remain within a prescribed period of at least three months before section 10 comes into force. The effect for those who apply is to preserve

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the current deportation process and ensuing appeal rights if necessary after section 10 comes into force.

Support for asylum seekers

13. The Act will create new support arrangements for asylum seekers. The Act will:
- remove from the main benefits system those subject to immigration control in certain respects, including those whose only status here is as an asylum seeker. Unaccompanied children seeking asylum will continue to be dealt with under current arrangements;
 - create a new safety net support scheme for asylum seekers in genuine need. The scheme will be funded and administered nationally by the Home Office, thus lifting the current burden on local authorities;
 - allow for accommodation to be provided with no choice about location. Other support will predominantly be provided in kind (eg vouchers or directly) rather than by cash payments;
 - create a system for the review of decisions to refuse or to withdraw support.

Other provisions applying to persons after arrival

14. The Act contains other provisions affecting persons after they have entered the United Kingdom. These include:
- a provision for a power to set out in regulations the fees to be paid for Home Office travel documents and for the processing of applications for extensions of stay, changes in conditions of stay, leave to remain and the entry of duplicate stamps in new passports;
 - a provision clarifying which members of diplomatic missions are exempt from immigration control; and providing for the imposition of leave to remain on certain people who cease to be exempt;
 - a provision for a code of practice on the measures that employers are to take in order to avoid unlawful discrimination when making checks under section 8 of the Asylum and Immigration Act 1996 to establish that applicants for employment are entitled to work in the United Kingdom; and
 - a provision for a statutory defence for asylum seekers based on Article 31(1) of the 1951 United Nations Convention on the Status of Refugees (the Refugee Convention) in the context of certain fraud related offences.

Immigration advisers and immigration service providers

15. The Act sets out provisions for the regulation of immigration advisers. They provide for the appointment of an Immigration Services Commissioner to administer this. Only persons who register with the Commissioner, or persons authorised by the various legal professional bodies (such as the Law Society or Bar Council), or who fall into certain other categories, will be able to give immigration advice or provide immigration services. The Act sets out the criteria for the appointment of the Commissioner, his deputy and staff and their funding. It makes provision for an Immigration Services Tribunal before which the Commissioner may lay disciplinary charges and to which aggrieved persons may appeal against certain findings of the Commissioner. It also creates an offence of giving immigration advice or providing immigration services when not permitted to do so; and gives the courts power to restrain unauthorised persons from giving immigration advice or providing immigration services.

Marriage abuse for immigration purposes

16. The Act contains procedural measures to increase the effectiveness of existing provisions in the Immigration Rules to prevent the abuse of the immigration system by those who are prepared to enter into marriage simply as a means to obtain settlement in the United Kingdom. Registrars will be given the power to request evidence of name, age, marital status and nationality from couples. This will be underpinned by a power for the registrar to refuse to give authority for the marriage where the registrar is not satisfied that a person is free, legally, to contract the marriage. The existing procedure under which a superintendent registrar may authorise a marriage by a certificate with a licence is to be abolished. At the same time, the existing notice period for a superintendent registrar to issue a certificate without a licence is to be reduced from 21 days to 15 days. In addition, notice will need to be given personally by each party before the superintendent registrar in the registration district where they reside, and the notice will have to state their nationality. A duty is also to be placed on registrars to report to the Home Office those marriages suspected of having been arranged for the purpose of evading immigration controls.

Enforcement

17. The Act contains a number of measures to strengthen powers of enforcement of the immigration law. The measures include:
- extending the powers of immigration officers to enable them to undertake more operations without the presence of police officers;
 - extending existing criminal offences under the Immigration Act 1971 (the 1971 Act) regarding deception, facilitation and the making of false statements;
 - extending existing powers to place residence conditions on temporary admission;
 - extending the powers to fingerprint to, for example: people who are to be removed or deported; some inadequately documented passengers; and persons arrested under Schedule 2 to the 1971 Act; and
 - providing a clear statutory basis for excluding, in compliance with the United Kingdom's international obligations, certain persons who appear on a European Union or United Nations travel ban.

Detention

18. The Act includes provisions for reform of the arrangements for detaining persons under immigration legislation. It introduces a system of bail hearings and a statutory presumption in favour of bail for persons detained for immigration purposes and provides for certain bail hearings to be heard by magistrates. The Act also puts on a statutory footing the arrangements for the management and operation of immigration detention centres, including provisions setting out the powers of detainee custody officers.