

These notes refer to the Nationality, Immigration and Asylum Act 2002 (c.41) which received Royal Assent on 7 November 2002

NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

EXPLANATORY NOTES

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 Other nationality provisions which are now spent are also repealed;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

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- 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

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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.