

NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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

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

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.