Immigration and Asylum Act 1999

1999 CHAPTER 33

An Act to make provision about immigration and asylum; to make provision about procedures in connection with marriage on superintendent registrar's certificate; and for connected purposes. [11th November 1999]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Modifications etc. (not altering text)

C1 Act modified (2.10.2000) by S.I. 2000/2444, arts. 3, 4, **Sch.**
Act modified (1.9.2001) by 2001 c. 17, **s. 32(7)**; S.I. 2001/2161, **art. 2**

C2 Act restricted (8.1.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 54, **Sch. 3** (with s. 159); S.I. 2002/2811, **art. 2**, Sch.

C3 Act: a reference to a detention centre within the meaning of Pt. 8 of the Immigration and Asylum Act 1999 (c. 33) to be construed as a reference to a removal centre within the meaning of that part (10.2.2003) by virtue of 2002 c. 41, ss. 66(4), 162(1)

C4 Act: specified provisions extended (Jersey) (with modifications) (5.6.2003) by The Immigration and Asylum Act 1999 (Jersey) Order 2003 (S.I. 2003/1252), arts. 1(1), 2, **Sch.** (as amended (17.10.2012) by The Immigration and Asylum (Jersey) Order 2012 (S.I. 2012/2593), **art. 4(2)**) and (coming into force in accordance with art. 1 of the amending S.I.) by The Immigration (Jersey) (Amendment) Order 2017 (S.I. 2017/981), **Sch. Pt. 2** (with art. 6)

C5 Act specified provisions extended (Guernsey) (with modifications) (11.12.2003) by The Immigration and Asylum Act 1999 (Guernsey) Order 2003 (S.I. 2003/2900), art. 2, **Sch.**

C6 Act applied (with modifications) (1.4.2006) by Serious Organised Crime and Police Act 2005 (Application and Modification of Certain Enactments to Designated Staff of SOCA) Order 2006 (S.I. 2006/987), **art. 7**

C7 Act modified by S.I. 1994/1405, **art. 7** (as amended: (26.10.2006) by Channel Tunnel (Miscellaneous Provisions) (Amendment) Order 2006 (S.I. 2006/2627), arts. 1, **2**; (2.1.2008) by The Channel Tunnel (International Arrangements and Miscellaneous Provisions) (Amendment) Order 2007 (S.I. 2007/3579), arts. 1, **3(c)**; and (16.4.2015) by The Channel Tunnel (International Arrangements) and Channel Tunnel (Miscellaneous Provisions) (Amendment) Order 2015 (S.I. 2015/856), arts. 1, **6**)

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Immigration and Asylum Act 1999 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

C8 Act extended (Isle of Man) in part (with modifications) (13.3.2008 for specified purposes, 1.5.2008 in so far as not already in force) by Immigration (Isle of Man) Order 2008 (S.I. 2008/680), art. 14, **Sch. 6** (with art. 5, Sch. 2)

PART I

IMMIGRATION: GENERAL

Leave to enter, or remain in, the United Kingdom

1 Leave to enter.

In the 1971 Act, after section 3, insert—

"3A Further provision as to leave to enter.

(1) The Secretary of State may by order make further provision with respect to the giving, refusing or varying of leave to enter the United Kingdom.

(2) An order under subsection (1) may, in particular, provide for—
- (a) leave to be given or refused before the person concerned arrives in the United Kingdom;
- (b) the form or manner in which leave may be given, refused or varied;
- (c) the imposition of conditions;
- (d) a person's leave to enter not to lapse on his leaving the common travel area.

(3) The Secretary of State may by order provide that, in such circumstances as may be prescribed—
- (a) an entry visa, or
- (b) such other form of entry clearance as may be prescribed,

is to have effect as leave to enter the United Kingdom.

(4) An order under subsection (3) may, in particular—
- (a) provide for a clearance to have effect as leave to enter—
  - (i) on a prescribed number of occasions during the period for which the clearance has effect;
  - (ii) on an unlimited number of occasions during that period;
  - (iii) subject to prescribed conditions; and
- (b) provide for a clearance which has the effect referred to in paragraph (a)(i) or (ii) to be varied by the Secretary of State or an immigration officer so that it ceases to have that effect.

(5) Only conditions of a kind that could be imposed on leave to enter given under section 3 may be prescribed.

(6) In subsections (3), (4) and (5) "prescribed" means prescribed in an order made under subsection (3).

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(7) The Secretary of State may, in such circumstances as may be prescribed in an order made by him, give or refuse leave to enter the United Kingdom.

(8) An order under subsection (7) may provide that, in such circumstances as may be prescribed by the order, paragraphs 2, 4, 6, 7, 8, 9 and 21 of Part I of Schedule 2 to this Act are to be read, in relation to the exercise by the Secretary of State of functions which he has as a result of the order, as if references to an immigration officer included references to the Secretary of State.

(9) Subsection (8) is not to be read as affecting any power conferred by subsection (10).

(10) An order under this section may—
- (a) contain such incidental, supplemental, consequential and transitional provision as the Secretary of State considers appropriate; and
- (b) make different provision for different cases.

(11) This Act and any provision made under it has effect subject to any order made under this section.

(12) An order under this section must be made by statutory instrument.

(13) But no such order is to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.”

2 Leave to remain.

In the 1971 Act, after section 3A, insert—

“**3B Further provision as to leave to remain.**

(1) The Secretary of State may by order make further provision with respect to the giving, refusing or varying of leave to remain in the United Kingdom.

(2) An order under subsection (1) may, in particular, provide for—
- (a) the form or manner in which leave may be given, refused or varied;
- (b) the imposition of conditions;
- (c) a person’s leave to remain in the United Kingdom not to lapse on his leaving the common travel area.

(3) An order under this section may—
- (a) contain such incidental, supplemental, consequential and transitional provision as the Secretary of State considers appropriate; and
- (b) make different provision for different cases.

(4) This Act and any provision made under it has effect subject to any order made under this section.

(5) An order under this section must be made by statutory instrument.

(6) But no such order is to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.”

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3 Continuation of leave pending decision.

In the 1971 Act, after section 3B, insert—

"3C Continuation of leave pending decision.

(1) This section applies if—

(a) a person who has limited leave to enter or remain in the United Kingdom applies to the Secretary of State, before his leave expires, for it to be varied; and

(b) when it expires, no decision has been taken on the application.

(2) His leave is to be treated as continuing until the end of the period allowed under rules made under paragraph 3 of Schedule 4 to the Immigration and Asylum Act 1999 for bringing an appeal against a decision on the application.

(3) An application for variation of a person's leave to enter or remain in the United Kingdom may not be made while that leave is treated as continuing as a result of this section.

(4) But subsection (3) does not prevent the variation of an application mentioned in subsection (1)."

4 [F1Accommodation]

[F2(1)**]** The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of persons—

(a) temporarily admitted to the United Kingdom under paragraph 21 of Schedule 2 to the 1971 Act;

(b) released from detention under that paragraph; or

(c) released on bail from detention under any provision of the Immigration Acts.

[F3(2) The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of a person if—

(a) he was (but is no longer) an asylum-seeker, and

(b) his claim for asylum was rejected.

(3) The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of a dependant of a person for whom facilities may be provided under subsection (2).

(4) The following expressions have the same meaning in this section as in Part VI of this Act (as defined in section 94)—

(a) asylum-seeker,

(b) claim for asylum, and

(c) dependant.**]**

[F4(5) The Secretary of State may make regulations specifying criteria to be used in determining—

(a) whether or not to provide accommodation, or arrange for the provision of accommodation, for a person under this section;

(b) whether or not to continue to provide accommodation, or arrange for the provision of accommodation, for a person under this section.

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(6) The regulations may, in particular—

(a) provide for the continuation of the provision of accommodation for a person to be conditional upon his performance of or participation in community activities in accordance with arrangements made by the Secretary of State;

(b) provide for the continuation of the provision of accommodation to be subject to other conditions;

(c) provide for the provision of accommodation (or the continuation of the provision of accommodation) to be a matter for the Secretary of State's discretion to a specified extent or in a specified class of case.

(7) For the purposes of subsection (6)(a)—

(a) "community activities" means activities that appear to the Secretary of State to be beneficial to the public or a section of the public, and

(b) the Secretary of State may, in particular—

(i) appoint one person to supervise or manage the performance of or participation in activities by another person;

(ii) enter into a contract (with a local authority or any other person) for the provision of services by way of making arrangements for community activities in accordance with this section;

(iii) pay, or arrange for the payment of, allowances to a person performing or participating in community activities in accordance with arrangements under this section.

(8) Regulations by virtue of subsection (6)(a) may, in particular, provide for a condition requiring the performance of or participation in community activities to apply to a person only if the Secretary of State has made arrangements for community activities in an area that includes the place where accommodation is provided for the person.

(9) A local authority or other person may undertake to manage or participate in arrangements for community activities in accordance with this section.**]**

[[F5](10) The Secretary of State may make regulations permitting a person who is provided with accommodation under this section to be supplied also with services or facilities of a specified kind.

(11) Regulations under subsection (10)—

(a) may, in particular, permit a person to be supplied with a voucher which may be exchanged for goods or services,

(b) may not permit a person to be supplied with money,

(c) may restrict the extent or value of services or facilities to be provided, and

(d) may confer a discretion.**]**

Textual Amendments

F1 S. 4 heading substituted (7.11.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), **s. 49(2)** (with s. 159)

F2 S. 4 renumbered (7.11.2002) as s. 4(1) by Nationality, Immigration and Asylum Act 2002 (c. 41), **s. 49(2)** (with s. 159)

F3 S. 4(2)-(4) added (7.11.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), **s. 49(1)** (with s. 159)

F4 S. 4(5)-(9) added (1.12.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 10(1)**, 48(3) (with s. 10(6)(7)); S.I. 2004/2999, art. 2, Sch.

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F5 S. 4(10)(11) added (16.6.2006) by Immigration, Asylum and Nationality Act 2006 (c. 13), **ss. 43(7)**, 62(1)(2); S.I. 2006/1497, art. 3, Sch.

Modifications etc. (not altering text)

C9 S. 4 restricted (8.1.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **s. 55** (with s. 159); S.I. 2002/2811, **art. 2**, Sch.
S. 4 restricted (prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 51**, 162(1) (with s. 159)

[F6]5 Charges.

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Textual Amendments

F6 S. 5 repealed (2.4.2007) by Immigration, Asylum and Nationality Act 2006 (c. 13), s. 62(1)(2), Sch. 2 para. 3, **Sch. 3**; S.I. 2007/1109, arts. 4, 5, Sch.

Exemption from immigration control

6 Members of missions other than diplomatic agents.

In the 1971 Act, in section 8 (exceptions for certain categories of person), for subsection (3A) (members of diplomatic missions) substitute—

"(3A) For the purposes of subsection (3), a member of a mission other than a diplomatic agent (as defined by the 1964 Act) is not to count as a member of a mission unless—

(a) he was resident outside the United Kingdom, and was not in the United Kingdom, when he was offered a post as such a member; and

(b) he has not ceased to be such a member after having taken up the post."

7 Persons ceasing to be exempt.

In the 1971 Act, after section 8, insert—

"**8A Persons ceasing to be exempt.**

(1) A person is exempt for the purposes of this section if he is exempt from provisions of this Act as a result of section 8(2) or (3).

(2) If a person who is exempt—

(a) ceases to be exempt, and

(b) requires leave to enter or remain in the United Kingdom as a result,

he is to be treated as if he had been given leave to remain in the United Kingdom for a period of 90 days beginning on the day on which he ceased to be exempt.

(3) If—

(a) a person who is exempt ceases to be exempt, and

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(b) there is in force in respect of him leave for him to enter or remain in the United Kingdom which expires before the end of the period mentioned in subsection (2),

his leave is to be treated as expiring at the end of that period."

8 Persons excluded from the United Kingdom under international obligations.

In the 1971 Act, after section 8A, insert—

"**8B Persons excluded from the United Kingdom under international obligations.**

(1) An excluded person must be refused—
(a) leave to enter the United Kingdom;
(b) leave to remain in the United Kingdom.

(2) A person's leave to enter or remain in the United Kingdom is cancelled on his becoming an excluded person.

(3) A persons's exemption from the provisions of this Act as a result of section 8(1), (2) or (3) ceases on his becoming an excluded person.

(4) "Excluded person" means a person—
(a) named by or under, or
(b) of a description specified in,

a designated instrument.

(5) The Secretary of State may by order designate an instrument if it is a resolution of the Security Council of the United Nations or an instrument made by the Council of the European Union and it—
(a) requires that a person is not to be admitted to the United Kingdom (however that requirement is expressed); or
(b) recommends that a person should not be admitted to the United Kingdom (however that recommendation is expressed).

(6) Subsections (1) to (3) are subject to such exceptions (if any) as may specified in the order designating the instrument in question.

(7) An order under this section must be made by statutory instrument.

(8) Such a statutory instrument shall be laid before Parliament without delay."

Removal from the United Kingdom

9 Treatment of certain overstayers.

(1) During the regularisation period overstayers may apply, in the prescribed manner, for leave to remain in the United Kingdom.

(2) The regularisation period begins on the day prescribed for the purposes of this subsection and is not to be less than three months.

(3) The regularisation period ends—

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(a) on the day prescribed for the purposes of this subsection; or
(b) if later, on the day before that on which section 65 comes into force.

(4) Section 10 and paragraph 12 of Schedule 15 come into force on the day after that on which the regularisation period ends

(5) The Secretary of State must publicise the effect of this section in the way appearing to him to be best calculated to bring it to the attention of those affected.

(6) "Overstayer" means a person who, having only limited leave to enter or remain in the United Kingdom, remains beyond the time limited by the leave.

10 Removal of certain persons unlawfully in the United Kingdom.

(1) A person who is not a British citizen may be removed from the United Kingdom, in accordance with directions given by an immigration officer, if—
(a) having only a limited leave to enter or remain, he does not observe a condition attached to the leave or remains beyond the time limited by the leave;
[[F7](b) he uses deception in seeking (whether successfully or not) leave to remain;**]**
[[F8](ba) his indefinite leave to enter or remain has been revoked under section 76(3) of the Nationality, Immigration and Asylum Act 2002 (person ceasing to be refugee);**]**
(c) directions [F9]... have been given for the removal, under this section, of a person ("the other person") to whose family he belongs.

(2) Directions may not be given under subsection (1)(a) if the person concerned has made an application for leave to remain in accordance with regulations made under section 9.

[[F10](3) Directions for the removal of a person may not be given under subsection (1)(c) unless the Secretary of State has given the person written notice of the intention to remove him.

(4) A notice under subsection (3) may not be given if—
(a) the person whose removal under subsection (1)(a) or (b) is the cause of the proposed directions under subsection (1)(c) has left the United Kingdom, and
(b) more than eight weeks have elapsed since that person's departure.

(5) If a notice under subsection (3) is sent by first class post to a person's last known address, that subsection shall be taken to be satisfied at the end of the second day after the day of posting.

(5A) Directions for the removal of a person under subsection (1)(c) cease to have effect if he ceases to belong to the family of the person whose removal under subsection (1)(a) or (b) is the cause of the directions under subsection (1)(c).**]**

(6) Directions under this section—
(a) may be given only to persons falling within a prescribed class;
(b) may impose any requirements of a prescribed kind.

(7) In relation to any such directions, paragraphs 10, 11, 16 to 18, 21 and 22 to 24 of Schedule 2 to the 1971 Act (administrative provisions as to control of entry), apply as they apply in relation to directions given under paragraph 8 of that Schedule.

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[[F11](8) When a person is notified that a decision has been made to remove him in accordance with this section, the notification invalidates any leave to enter or remain in the United Kingdom previously given to him.**]**

(9) The costs of complying with a direction given under this section (so far as reasonably incurred) must be met by the Secretary of State.

[[F12](10) A person shall not be liable to removal from the United Kingdom under this section at a time when section 7(1)(b) of the Immigration Act 1971 (Commonwealth and Irish citizens ordinarily resident in United Kingdom) would prevent a decision to deport him.**]**

Textual Amendments

F7 S. 10(1)(b) substituted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 74**, 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

F8 S. 10(1)(ba) inserted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 76(7)**, 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

F9 Words in s. 10(1)(c) repealed (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 73(3), 162(1), **Sch. 9** (with s. 159); S.I. 2003/1, art. 2, Sch.

F10 S. 10(3)-(5A) substituted for s. 10(3)-(5) (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 73(4)**, 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

F11 S. 10(8) substituted (16.6.2006) by Immigration, Asylum and Nationality Act 2006 (c. 13), **ss. 48**, 62(1)(2); S.I. 2006/1497, art. 3, Sch.

F12 S. 10(10) added (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 75(4)**, 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

Modifications etc. (not altering text)

C10 S. 10 extended (14.12.2001) by 2001 c. 24, **ss. 22(1)(2)(i)(3)**, 127(2)

C11 S. 10 restricted (2.10.2000) by S.I. 2000/2444, art. 3, **Sch. 2 para. 1(2)**
S. 10 applied (2.10.2000) by S.I. 2000/2326, **regs. 9**, 26(2)
S. 10 restricted (2.10.2000) by S.I. 2000/2326, **reg. 34(2)(10)** (with application as mentioned in regs. 9, 28 of the said S.I.)

C12 S. 10 excluded (14.3.2003) by Nationality, Immigration and Asylum Act 2002 (Commencement No.4) Order 2003 (S.I. 2003/754), **Sch. 2 para. 6(2)**

C13 S. 10 restricted by S.I. 2000/2326, reg. 32(2) (as substituted (1.4.2003) by The Immigration (European Economic Area) (Amendment) Regulations 2003 (S.I. 2003/549), regs. 1, **2(8)** (with reg. 3(1)))

Commencement Information

I1 S. 10 wholly in force at 2.10.2000; s. 10 not in force at Royal Assent see s. 170(4); s. 10(6) in force at 22.5.2000 by S.I. 2000/1282, art. 2, **Sch.**; s. 10 in force so far as not already in force at 2.10.2000 by virtue of S.I. 2000/265, **reg. 3** and S.I. 2000/2444, art. 2, **Sch. 1** (subject to arts. 3, 4, Sch. 2)

[F13]11 Removal of asylum claimant under standing arrangement with member States

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Textual Amendments

F13 S. 11 repealed (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 33(2), 48(3), **Sch. 4**; S.I. 2004/2523, art. 2, Sch. (with art. 3)

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[F14]12 Removal of asylum claimants in other circumstances.

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Textual Amendments

F14 S. 12 repealed (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 33(2), 48(3), **Sch. 4**; S.I. 2004/2523, art. 2, Sch. (with art. 3)

13 Proof of identity of persons to be removed or deported.

(1) This section applies if a person—

(a) is to be removed from the United Kingdom to a country of which he is a national or citizen; but

(b) does not have a valid passport or other document establishing his identity and nationality or citizenship and permitting him to travel.

(2) If the country to which the person is to be removed indicates that he will not be admitted to it unless identification data relating to him are provided by the Secretary of State, he may provide them with such data.

(3) In providing identification data, the Secretary of State must not disclose whether the person concerned has made a claim for asylum.

(4) For the purposes of paragraph 4(1) of Schedule 4 to the [M1]Data Protection Act 1998, the provision under this section of identification data is a transfer of personal data which is necessary for reasons of substantial public interest.

(5) "Identification data" means—

(a) fingerprints taken under section 141; or

(b) data collected in accordance with regulations made under section 144.

(6) "Removed" means removed as a result of directions given under section 10 or under Schedule 2 or 3 to the 1971 Act.

Marginal Citations

M1 1998 c.29.

14 Escorts for persons removed from the United Kingdom under directions.

(1) Directions for, or requiring arrangements to be made for, the removal of a person from the United Kingdom may include or be amended to include provision for the person who is to be removed to be accompanied by an escort consisting of one or more persons specified in the directions.

(2) The Secretary of State may by regulations make further provision supplementing subsection (1).

(3) The regulations may, in particular, include provision—

(a) requiring the person to whom the directions are given to provide for the return of the escort to the United Kingdom;

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(b) requiring him to bear such costs in connection with the escort (including, in particular, remuneration) as may be prescribed;

(c) as to the cases in which the Secretary of State is to bear those costs;

(d) prescribing the kinds of expenditure which are to count in calculating the costs incurred in connection with escorts.

F15 15 Protection of claimants from removal or deportation.

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Textual Amendments

F15 S. 15 repealed (1.4.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 77(5), 162(1), **Sch. 9** (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1 (with arts. 3, 4, Sch. 2 paras. 1(2), 5)

PROSPECTIVE

Provision of financial security

16 Security on grant of entry clearance.

(1) In such circumstances as may be specified, the Secretary of State may require security to be given, with respect to a person applying for entry clearance, before clearance is given.

(2) In such circumstances as may be specified—

(a) the Secretary of State may accept security with respect to a person who is applying for entry clearance but for whom security is not required; and

(b) in determining whether to give clearance, account may be taken of any security so provided.

(3) "Security" means—

(a) the deposit of a sum of money by the applicant, his agent or any other person, or

(b) the provision by the applicant, his agent or any other person of a financial guarantee of a specified kind,

with a view to securing that the applicant will, if given leave to enter the United Kingdom for a limited period, leave the United Kingdom at the end of that period.

(4) Immigration rules must make provision as to the circumstances in which a security provided under this section—

(a) is to be repaid, released or otherwise cancelled; or

(b) is to be forfeited or otherwise realised by the Secretary of State.

(5) No security provided under this section may be forfeited or otherwise realised unless the person providing it has been given an opportunity, in accordance with immigration rules, to make representations to the Secretary of State.

(6) Immigration rules may, in particular—

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Changes to legislation: *Immigration and Asylum Act 1999 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) fix the maximum amount that may be required, or accepted, by way of security provided under this section;

(b) specify the form and manner in which such a security is to be given or may be accepted;

(c) make provision, where such a security has been forfeited or otherwise realised, for the person providing it to be reimbursed in such circumstances as may be specified;

(d) make different provision for different cases or descriptions of case.

(7) "Specified" means specified by immigration rules.

(8) Any security forfeited or otherwise realised by the Secretary of State under this section must be paid into the Consolidated Fund.

17 Provision of further security on extension of leave.

(1) This section applies if security has been provided under section 16(1) or (2) with respect to a person who, having entered the United Kingdom (with leave to do so), applies—

(a) to extend his leave to enter the United Kingdom; or

(b) for leave to remain in the United Kingdom for a limited period.

(2) The Secretary of State may refuse the application if security of such kind as the Secretary of State considers appropriate is not provided, or continued, with respect to the applicant.

(3) Immigration rules must make provision as to the circumstances in which a security provided under this section—

(a) is to be repaid, released or otherwise cancelled; or

(b) is to be forfeited or otherwise realised by the Secretary of State.

(4) No security provided under this section may be forfeited or otherwise realised unless the person providing it has been given an opportunity, in accordance with immigration rules, to make representations to the Secretary of State.

(5) Subsection (7) of section 16 applies in relation to this section as it applies in relation to that section.

(6) Any security forfeited or otherwise realised by the Secretary of State under this section must be paid into the Consolidated Fund.

Information

18 Passenger information.

In the 1971 Act, in Schedule 2, after paragraph 27, insert—

Passenger information

"27B (1) This paragraph applies to ships or aircraft—

(a) which have arrived, or are expected to arrive, in the United Kingdom; or

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(b) which have left, or are expected to leave, the United Kingdom.

(2) If an immigration officer asks the owner or agent ("the carrier") of a ship or aircraft for passenger information, the carrier must provide that information to the officer.

(3) The officer may ask for passenger information relating to—
(a) a particular ship or particular aircraft of the carrier;
(b) particular ships or aircraft (however described) of the carrier; or
(c) all of the carrier's ships or aircraft.

(4) The officer may ask for—
(a) all passenger information in relation to the ship or aircraft concerned; or
(b) particular passenger information in relation to that ship or aircraft.

(5) A request under sub-paragraph (2)—
(a) must be in writing;
(b) must state the date on which it ceases to have effect; and
(c) continues in force until that date, unless withdrawn earlier by written notice by an immigration officer.

(6) The date may not be later than six months after the request is made.

(7) The fact that a request under sub-paragraph (2) has ceased to have effect as a result of sub-paragraph (5) does not prevent the request from being renewed.

(8) The information must be provided—
(a) in such form and manner as the Secretary of State may direct; and
(b) at such time as may be stated in the request.

(9) "Passenger information" means such information relating to the passengers carried, or expected to be carried, by the ship or aircraft as may be specified.

(10) "Specified" means specified in an order made by statutory instrument by the Secretary of State.

(11) Such an instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament."

Commencement Information

I2 S. 18 wholly in force; s. 18 not in force at Royal Assent see s. 170(4); s. 18 in force for certain purposes at 1.3.2000 and 3.4.2000 insofar as not already in force by S.I. 2000/464, art. 2, **Sch.**

19 Notification of non-EEA arrivals.

In the 1971 Act, in Schedule 2, after paragraph 27B, insert—

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Notification of non-EEA arrivals

"27C (1) If a senior officer, or an immigration officer authorised by a senior officer, gives written notice to the owner or agent ("the carrier") of a ship or aircraft, the carrier must inform a relevant officer of the expected arrival in the United Kingdom of any ship or aircraft—

(a) of which he is the owner or agent; and

(b) which he expects to carry a person who is not an EEA national.

(2) The notice may relate to—

(a) a particular ship or particular aircraft of the carrier;

(b) particular ships or aircraft (however described) of the carrier; or

(c) all of the carrier's ships or aircraft.

(3) The notice—

(a) must state the date on which it ceases to have effect; and

(b) continues in force until that date, unless withdrawn earlier by written notice given by a senior officer.

(4) The date may not be later than six months after the notice is given.

(5) The fact that a notice under sub-paragraph (1) has ceased to have effect as a result of sub-paragraph (3) does not prevent the notice from being renewed.

(6) The information must be provided—

(a) in such form and manner as the notice may require; and

(b) before the ship or aircraft concerned departs for the United Kingdom.

(7) If a ship or aircraft travelling to the United Kingdom stops at one or more places before arriving in the United Kingdom, it is to be treated as departing for the United Kingdom when it leaves the last of those places.

(8) "Senior officer" means an immigration officer not below the rank of chief immigration officer.

(9) "Relevant officer" means—

(a) the officer who gave the notice under sub-paragraph (1); or

(b) any immigration officer at the port at which the ship or aircraft concerned is expected to arrive.

(10) "EEA national" means a national of a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as it has effect for the time being."

20 Supply of information to Secretary of State.

(1) This section applies to information held by—

(a) a chief officer of police;

[F16(b) the Serious Organised Crime Agency;]

F17(d) . . . . . .

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(e) a person with whom the Secretary of State has made a contract or other arrangements under section 95 or 98 or a sub-contractor of such a person; or

(f) any specified person, for purposes specified in relation to that person.

[[F18](1A) This section also applies to a document or article which—

(a) comes into the possession of a person listed in subsection (1) or someone acting on his behalf, or

(b) is discovered by a person listed in subsection (1) or someone acting on his behalf.**]**

(2) The information **[**[F19], document or article**]** may be supplied to the Secretary of State for use for immigration purposes.

[[F20](2A) The Secretary of State may—

(a) retain for immigration purposes a document or article supplied to him under subsection (2), and

(b) dispose of a document or article supplied to him under subsection (2) in such manner as he thinks appropriate (and the reference to use in subsection (2) includes a reference to disposal).**]**

(3) "Immigration purposes" means any of the following—

(a) the administration of immigration control under the Immigration Acts;

(b) the prevention, detection, investigation or prosecution of criminal offences under those Acts;

(c) the imposition of penalties or charges under Part II;

(d) the provision of support for asylum-seekers and their dependants under Part VI;

(e) such other purposes as may be specified.

(4) "Chief officer of police" means—

(a) the chief officer of police for a police area in England and Wales;

(b) the chief constable of a police force maintained under the [M2]Police (Scotland) Act 1967;

(c) the Chief Constable of the Royal Ulster Constabulary.

(5) "Specified" means specified in an order made by the Secretary of State.

(6) This section does not limit the circumstances in which information **[**[F21], documents or articles**]** may be supplied apart from this section.

Textual Amendments

F16 S. 20(1)(b) substituted for s. 20(1)(b)(c) (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 4 para. 123**; S.I. 2006/378, art. 4(1), Sch. para. 10

F17 S. 20(1)(d) repealed (31.1.2008) by UK Borders Act 2007 (c. 30), ss. 40(6)(a), 59(2), **Sch.**; S.I. 2008/99, art. 2(m)(n)

F18 S. 20(1A) inserted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 132(2)**, 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

F19 Words in s. 20(2) inserted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 132(3)**, 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

F20 S. 20(2A) inserted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 132(4)**, 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

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F21 Words in s. 20(6) inserted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 132(5)**, 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

Modifications etc. (not altering text)

C14 S. 20 modified (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 131**, 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

C15 S. 20 restricted (7.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 2 para. 17** (with s. 22); S.I. 2005/1126, art. 2(1)

Marginal Citations

M2 1967 c. 77.

21 Supply of information by Secretary of State.

(1) This section applies to information held by the Secretary of State in connection with the exercise of functions under any of the Immigration Acts.

(2) The information may be supplied to—

(a) a chief officer of police, for use for police purposes;

[[F22](b) the Serious Organised Crime Agency, for use for SOCA purposes;**]**

(d) the Commissioners of Customs and Excise, or a person providing services to them, for use for customs purposes; or

(e) any specified person, for use for purposes specified in relation to that person.

(3) "Police purposes" means any of the following—

(a) the prevention, detection, investigation or prosecution of criminal offences;

(b) safeguarding national security;

(c) such other purposes as may be specified.

[[F23](4) "SOCA purposes" means any of the functions of the Serious Organised Crime Agency mentioned in section 2, 3 or 5 of the Serious Organised Crime and Police Act 2005.**]**

(6) "Customs purposes" means any of the Commissioners' functions in relation to—

(a) the prevention, detection, investigation or prosecution of criminal offences;

(b) the prevention, detection or investigation of conduct in respect of which penalties which are not criminal penalties are provided for by or under any enactment;

(c) the assessment or determination of penalties which are not criminal penalties;

(d) checking the accuracy of information relating to, or provided for purposes connected with, any matter under the care and management of the Commissioners or any assigned matter (as defined by section 1(1) of the [M3]Customs and Excise Management Act 1979);

(e) amending or supplementing any such information (where appropriate);

(f) legal or other proceedings relating to anything mentioned in paragraphs (a) to (e);

(g) safeguarding national security; and

(h) such other purposes as may be specified.

(7) "Chief officer of police" and "specified" have the same meaning as in section 20.

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(8) This section does not limit the circumstances in which information may be supplied apart from this section.

Textual Amendments

F22 S. 21(2)(b) substituted for s. 21(2)(b)(c) (1.4.2006) by virtue of Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 4 para. 124(2)**; S.I. 2006/378, art. 4(1), Sch. para. 10

F23 S. 21(4) substituted for s. 21(4)(5) (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 4 para. 124(3)**; S.I. 2006/378, art. 4(1), Sch. para. 10

Marginal Citations

M3 1979 c. 2.

Employment: code of practice

22 Restrictions on employment: code of practice.

In the [M4]Asylum and Immigration Act 1996, after section 8, insert—

"8A Code of practice.

(1) The Secretary of State must issue a code of practice as to the measures which an employer is to be expected to take, or not to take, with a view to securing that, while avoiding the commission of an offence under section 8, he also avoids unlawful discrimination.

(2) "Unlawful discrimination" means—

(a) discrimination in contravention of section 4(1) of the [M5]Race Relations Act 1976 ("the 1976 Act"); or

(b) in relation to Northern Ireland, discrimination in contravention of Article 6(1) of the [M6]Race Relations (Northern Ireland) Order 1997 ("the 1997 Order").

(3) Before issuing the code, the Secretary of State must—

(a) prepare and publish a draft of the proposed code; and

(b) consider any representations about it which are made to him.

(4) In preparing the draft, the Secretary of State must consult—

(a) the Commission for Racial Equality;

(b) the Equality Commission for Northern Ireland; and

(c) such organisations and bodies (including organisations or associations of organisations representative of employers or of workers) as he considers appropriate.

(5) If the Secretary of State decides to proceed with the code, he must lay a draft of the code before both Houses of Parliament.

(6) The draft code may contain modifications to the original proposals made in the light of representations to the Secretary of State.

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(7) After laying the draft code before Parliament, the Secretary of State may bring the code into operation by an order made by statutory instrument.

(8) An order under subsection (7)—

(a) shall be subject to annulment in pursuance of a resolution of either House of Parliament;

(b) may contain such transitional provisions or savings as appear to the Secretary of State to be necessary or expedient in connection with the code.

(9) A failure on the part of any person to observe a provision of the code does not of itself make him liable to any proceedings.

(10) But the code is admissible in evidence—

(a) in proceedings under the 1976 Act before an employment tribunal;

(b) in proceedings under the 1997 Order before an industrial tribunal.

(11) If any provision of the code appears to the tribunal to be relevant to any question arising in such proceedings, that provision is to be taken into account in determining the question.

(12) The Secretary of State may from time to time revise the whole or any part of the code and issue the code as revised.

(13) The provisions of this section also apply (with appropriate modifications) to any revision, or proposed revision, of the code."

Commencement Information

I3 S. 22 wholly in force at 22.5.2001; s. 22 not in force at royal assent; S. 22 in force for certain purposes at 19.2.2001 by S.I. 2001/239, art. 2, **Sch.** and s. 22 in force so far as not already in force at 22.5.2001 by S.I. 2001/1394, art. 2, **Sch.**

Marginal Citations

M4 1996 c. 49.

M5 1976 c. 74.

M6 S.I. 1997/869 (N.I. 6).

Monitoring entry clearance

23 Monitoring refusals of entry clearance.

[[F24](1) The Secretary of State must appoint a person to monitor, in such manner as the Secretary of State may determine, refusals of entry clearance in cases where, as a result of section 88A of the Nationality, Immigration and Asylum Act 2002 (c. 41) (entry clearance: non-family visitors and students), an appeal under section 82(1) of that Act may be brought only on the grounds referred to in section 84(1)(b) and (c) of that Act (racial discrimination and human rights).**]**

(2) But the Secretary of State may not appoint a member of his staff.

(3) The monitor must make an annual report on the discharge of his functions to the Secretary of State.

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(4) The Secretary of State must lay a copy of any report made to him under subsection (3) before each House of Parliament.

(5) The Secretary of State may pay to the monitor such fees and allowances as he may determine.

Textual Amendments

F24 S. 23(1) substituted (1.4.2008) by Immigration, Asylum and Nationality Act 2006 (c. 13), **ss. 4(2)**, 62(1)(2); S.I. 2008/310, art. 3(a) (with art. 4) (as amended (9.7.2012) by S.I. 2012/1531, art. 2 (with art. 3))

Reporting suspicious marriages

24 Duty to report suspicious marriages.

(1) Subsection (3) applies if—

(a) a superintendent registrar to whom a notice of marriage has been given under section 27 of the [M7]Marriage Act 1949,

(b) any other person who, under section 28(2) of that Act, has attested a declaration accompanying such a notice,

(c) a district registrar to whom a marriage notice or an approved certificate has been submitted under section 3 of the [M8]Marriage (Scotland) Act 1977, or

(d) a registrar or deputy registrar to whom notice has been given under section 13 of the [M9]Marriages (Ireland) Act 1844 or section 4 of the [M10]Marriage Law (Ireland) Amendment Act 1863,

has reasonable grounds for suspecting that the marriage will be a sham marriage.

(2) Subsection (3) also applies if—

(a) a marriage is solemnized in the presence of a registrar of marriages or, in relation to Scotland, an authorised registrar (within the meaning of the Act of 1977); and

(b) before, during or immediately after solemnization of the marriage, the registrar has reasonable grounds for suspecting that the marriage will be, or is, a sham marriage.

(3) The person concerned must report his suspicion to the Secretary of State without delay and in such form and manner as may be prescribed by regulations.

(4) The regulations are to be made—

(a) in relation to England and Wales, by the Registrar General for England and Wales with the approval of **[**[F25]the Secretary of State**]**;

(b) in relation to Scotland, by the Secretary of State after consulting the Registrar General of Births, Deaths and Marriages for Scotland;

(c) in relation to Northern Ireland, by the Secretary of State after consulting the Registrar General in Northern Ireland.

(5) "Sham marriage" means a marriage (whether or not void)—

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(a) entered into between a person ("A") who is neither a British citizen nor a national of an EEA State other than the United Kingdom and another person (whether or not such a citizen or such a national); and

(b) entered into by A for the purpose of avoiding the effect of one or more provisions of United Kingdom immigration law or the immigration rules.

Textual Amendments

F25 Words in s. 24(4)(a) substituted (3.4.2008) by Transfer of Functions (Registration) Order 2008 (S.I. 2008/678), art. 1(2), **Sch. 2 para. 11(a)** (with art. 4)

Modifications etc. (not altering text)

C16 S. 24(4)(a): transfer of functions (3.4.2008) by Transfer of Functions (Registration) Order 2008 (S.I. 2008/678), art. 1(2), **Sch. 1 para. 11(a)** (with art. 4)

Commencement Information

I4 S. 24 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

Marginal Citations

M7 1949 c. 76.
M8 1977 c. 15.
M9 1844 c. 81.
M10 1863 c. 27.

[F26 24A Duty to report suspicious civil partnerships

(1) Subsection (3) applies if—

(a) a registration authority to whom a notice of proposed civil partnership has been given under section 8 of the Civil Partnership Act 2004,

(b) any person who, under section 8 of the 2004 Act, has attested a declaration accompanying such a notice,

(c) a district registrar to whom a notice of proposed civil partnership has been given under section 88 of the 2004 Act, or

(d) a registrar to whom a civil partnership notice has been given under section 139 of the 2004 Act,

has reasonable grounds for suspecting that the civil partnership will be a sham civil partnership.

(2) Subsection (3) also applies if—

(a) two people register as civil partners of each other under Part 2, 3 or 4 of the 2004 Act in the presence of the registrar, and

(b) before, during or immediately after they do so, the registrar has reasonable grounds for suspecting that the civil partnership will be, or is, a sham civil partnership.

(3) The person concerned must report his suspicion to the Secretary of State without delay and in such form and manner as may be prescribed by regulations.

(4) The regulations are to be made—

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(a) in relation to England and Wales, by the Registrar General for England and Wales with the approval of **[**[F27]the Secretary of State**]**;

(b) in relation to Scotland, by the Secretary of State after consulting the Registrar General of Births, Deaths and Marriages for Scotland;

(c) in relation to Northern Ireland, by the Secretary of State after consulting the Registrar General in Northern Ireland.

(5) "Sham civil partnership" means a civil partnership (whether or not void)—

(a) formed between a person ("A") who is neither a British citizen nor a national of an EEA State other than the United Kingdom and another person (whether or not such a citizen or such a national), and

(b) formed by A for the purpose of avoiding the effect of one or more provisions of United Kingdom immigration law or the immigration rules.

(6) "The registrar" means—

(a) in relation to England and Wales, the civil partnership registrar acting under Part 2 of the 2004 Act;

(b) in relation to Scotland, the authorised registrar acting under Part 3 of the 2004 Act;

(c) in relation to Northern Ireland, the registrar acting under Part 4 of the 2004 Act.**]**

Textual Amendments

F26 S. 24A inserted (15.4.2005 for specified purposes, 5.12.2005 in so far as not already in force) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 162**; S.I. 2005/1112, art. 2, Sch. 1; S.I. 2005/3175, art. 2(2)

F27 Words in s. 24A(4)(a) substituted (3.4.2008) by Transfer of Functions (Registration) Order 2008 (S.I. 2008/678), art. 1(2), **Sch. 2 para. 11(b)** (with art. 4)

Modifications etc. (not altering text)

C17 S. 24A(4)(a): transfer of functions (3.4.2008) by Transfer of Functions (Registration) Order 2008 (S.I. 2008/678), art. 1(2), **Sch. 1 para. 11(b)** (with art. 4)

Immigration control: facilities and charges

25 Provision of facilities for immigration control at ports.

(1) The person responsible for the management of a control port ("the manager") must provide the Secretary of State free of charge with such facilities at the port as the Secretary of State may direct as being reasonably necessary for, or in connection with, the operation of immigration control there.

(2) Before giving such a direction, the Secretary of State must consult such persons likely to be affected by it as he considers appropriate.

(3) If the Secretary of State gives such a direction, he must send a copy of it to the person appearing to him to be the manager.

(4) If the manager persistently fails to comply with the direction (or part of it), the Secretary of State may—

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(a) in the case of a control port which is not a port of entry, revoke any approval in relation to the port given under paragraph 26(1) of Schedule 2 to the 1971 Act;

(b) in the case of a control port which is a port of entry, by order revoke its designation as a port of entry.

(5) A direction under this section is enforceable, on the application of the Secretary of State—

(a) by injunction granted by a county court; or

(b) in Scotland, by an order under section 45 of the [M11]Court of Session Act 1988.

(6) "Control port" means a port in which a control area is designated under paragraph 26(3) of Schedule 2 to the 1971 Act.

(7) "Facilities" means accommodation, facilities, equipment and services of a class or description specified in an order made by the Secretary of State.

Commencement Information

I5 S. 25 in force (17.2.2003 for specified purposes, 1.4.2003 in so far as not already in force) by S.I. 2003/2, art. 2, **Sch.**

Marginal Citations

M11 1988 c. 36.

26 Charges: immigration control.

(1) The Secretary of State may, at the request of any person and in consideration of such charges as he may determine, make arrangements—

(a) for the provision at any control port of immigration officers or facilities in addition to those (if any) needed to provide a basic service at the port;

(b) for the provision of immigration officers or facilities for dealing with passengers of a particular description or in particular circumstances.

(2) "Control port" has the same meaning as in section 25.

(3) "Facilities" includes equipment.

(4) "Basic service" has such meaning as may be prescribed.

Commencement Information

I6 S. 26 in force at 5.6.2003 for specified purposes by S.I. 2003/1469, art. 2, Sch.; and 30.6.2003 in so far as not already in force by S.I. 2003/1469, art. 2, **Sch.**

Charges: travel documents

[F28]27 Charges: travel documents.

. . . . . .

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Textual Amendments

F28 S. 27 repealed (2.4.2007) by Immigration, Asylum and Nationality Act 2006 (c. 13), s. 62(1)(2), Sch. 2 para. 3, **Sch. 3**; S.I. 2007/1109, arts. 4, 5, Sch.

Offences

28 Deception.

In the 1971 Act, after section 24, insert—

"**24A Deception.**

(1) A person who is not a British citizen is guilty of an offence if, by means which include deception by him—

(a) he obtains or seeks to obtain leave to enter or remain in the United Kingdom; or

(b) he secures or seeks to secure the avoidance, postponement or revocation of enforcement action against him.

(2) "Enforcement action", in relation to a person, means—

(a) the giving of directions for his removal from the United Kingdom ("directions") under Schedule 2 to this Act or section 10 of the Immigration and Asylum Act 1999;

(b) the making of a deportation order against him under section 5 of this Act; or

(c) his removal from the United Kingdom in consequence of directions or a deportation order.

(3) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

(4) The extended time limit for prosecutions which is provided for by section 28 applies to an offence under this section."

29 Facilitation of entry.

(1) Section 25 of the 1971 Act (assisting illegal entry) is amended as follows.

(2) In subsection (1), for "seven" substitute " ten ".

(3) For subsection (1A) substitute—

"(1A) Nothing in subsection (1)(b) applies to anything done in relation to a person who—

(a) has been detained under paragraph 16 of Schedule 2 to this Act; or

(b) has been granted temporary admission under paragraph 21 of that Schedule.

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(1B) Nothing in subsection (1)(b) applies to anything done by a person otherwise than for gain.

(1C) Nothing in subsection (1)(b) applies to anything done to assist an asylum claimant by a person in the course of his employment by a bona fide organisation, if the purposes of that organisation include assistance to persons in the position of the asylum claimant.

(1D) "Asylum claimant" means a person who intends to make a claim that it would be contrary to the United Kingdom's obligations under the Refugee Convention or the Human Rights Convention for him to be removed from, or required to leave, the United Kingdom.

(1E) "Refugee Convention" and "Human Rights Convention" have the meaning given in the Immigration and Asylum Act 1999."

(4) In subsection (5), for "Subsection (1)(a)" substitute " Paragraphs (a) and (b) of subsection (1) ".

Commencement Information

I7 S. 29 wholly in force; s. 29 not in force at Royal Assent see s. 170(4); s. 29(2)(4) wholly in force and s. 29(1) in force for certain purposes at 14.2.2000 by S.I. 2000/168, art. 2, **Sch.** (with transitional provisions in art. 3); s. 29 in force so far as not already in force 2.10.2000 by S.I. 2000/2444, art. 2, **Sch. 1** (subject to arts. 3, 4, Sch. 2)

30 False statements etc.

(1) Section 26 of the 1971 Act (general offences in connection with administration of the Act) is amended as follows.

(2) In subsection (1)(c), for "this Act" substitute " a relevant enactment ".

(3) After subsection (2), insert—

"(3) "Relevant enactment" means—

(a) this Act;

(b) the [M12]Immigration Act 1988;

(c) the [M13]Asylum and Immigration Appeals Act 1993 (apart from section 4 or 5); or

(d) the Immigration and Asylum Act 1999 (apart from Part VI)."

Marginal Citations

M12 1988 c. 14.

M13 1993 c. 23.

31 Defences based on Article 31(1) of the Refugee Convention.

(1) It is a defence for a refugee charged with an offence to which this section applies to show that, having come to the United Kingdom directly from a country where his life or freedom was threatened (within the meaning of the Refugee Convention), he—

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(a) presented himself to the authorities in the United Kingdom without delay;
(b) showed good cause for his illegal entry or presence; and
(c) made a claim for asylum as soon as was reasonably practicable after his arrival in the United Kingdom.

(2) If, in coming from the country where his life or freedom was threatened, the refugee stopped in another country outside the United Kingdom, subsection (1) applies only if he shows that he could not reasonably have expected to be given protection under the Refugee Convention in that other country.

(3) In England and Wales and Northern Ireland the offences to which this section applies are any offence, and any attempt to commit an offence, under—
(a) Part I of the [M14]Forgery and Counterfeiting Act 1981 (forgery and connected offences);
[[F29](aa) section 25(1) or (5) of the Identity Cards Act 2006;**]**
(b) section 24A of the 1971 Act (deception); or
(c) section 26(1)(d) of the 1971 Act (falsification of documents).

(4) In Scotland, the offences to which this section applies are those—
(a) of fraud,
(b) of uttering a forged document,
[[F30](ba) under section 25(1) or (5) of the Identity Cards Act 2006;**]**
(c) under section 24A of the 1971 Act (deception), or
(d) under section 26(1)(d) of the 1971 Act (falsification of documents),
and any attempt to commit any of those offences.

(5) A refugee who has made a claim for asylum is not entitled to the defence provided by subsection (1) in relation to any offence committed by him after making that claim.

(6) "Refugee" has the same meaning as it has for the purposes of the Refugee Convention.

(7) If the Secretary of State has refused to grant a claim for asylum made by a person who claims that he has a defence under subsection (1), that person is to be taken not to be a refugee unless he shows that he is.

(8) A person who—
(a) was convicted in England and Wales or Northern Ireland of an offence to which this section applies before the commencement of this section, but
(b) at no time during the proceedings for that offence argued that he had a defence based on Article 31(1),
may apply to the Criminal Cases Review Commission with a view to his case being referred to the Court of Appeal by the Commission on the ground that he would have had a defence under this section had it been in force at the material time.

(9) A person who—
(a) was convicted in Scotland of an offence to which this section applies before the commencement of this section, but
(b) at no time during the proceedings for that offence argued that he had a defence based on Article 31(1),
may apply to the Scottish Criminal Cases Review Commission with a view to his case being referred to the High Court of Justiciary by the Commission on the ground that he would have had a defence under this section had it been in force at the material time.

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(10) The Secretary of State may by order amend—
  (a) subsection (3), or
  (b) subsection (4),
by adding offences to those for the time being listed there.

(11) Before making an order under subsection (10)(b), the Secretary of State must consult the Scottish Ministers.

Textual Amendments

F29 S. 31(3)(aa) inserted (7.6.2006) by Identity Cards Act 2006 (c. 15), **ss. 30(2)(a)**, 44(3); S.I. 2006/1439, art. 2(c)

F30 S. 31(4)(ba) inserted (7.6.2006) by Identity Cards Act 2006 (c. 15), **ss. 30(2)(b)**, 44(3); S.I. 2006/1439, art. 2(c)

Marginal Citations

M14 1981 c. 45.

PART II

CARRIERS' LIABILITY

Modifications etc. (not altering text)

C18 Pt. II (ss. 32-43) modified (7.2.2001 for certain purposes and otherwise 1.3.2001) by S.I. 2001/280, **arts. 1**, 2 (with art. 5)

Clandestine entrants

32 Penalty for carrying clandestine entrants.

(1) A person is a clandestine entrant if—
  (a) he arrives in the United Kingdom concealed in a vehicle, ship or aircraft,
  [[F31](aa) he arrives in the United Kingdom concealed in a rail freight wagon,**]**
  (b) he passes, or attempts to pass, through immigration control concealed in a vehicle, or
  (c) he arrives in the United Kingdom on a ship or aircraft, having embarked—
    (i) concealed in a vehicle; and
    (ii) at a time when the ship or aircraft was outside the United Kingdom,
  and claims, or indicates that he intends to seek, asylum in the United Kingdom or evades, or attempts to evade, immigration control.

[[F32](2) The Secretary of State may require a person who is responsible for a clandestine entrant to pay—
  (a) a penalty in respect of the clandestine entrant;
  (b) a penalty in respect of any person who was concealed with the clandestine entrant in the same transporter.

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(2A) In imposing a penalty under subsection (2) the Secretary of State—

(a) must specify an amount which does not exceed the maximum prescribed for the purpose of this paragraph,

(b) may, in respect of a clandestine entrant or a concealed person, impose separate penalties on more than one of the persons responsible for the clandestine entrant, and

(c) may not impose penalties in respect of a clandestine entrant or a concealed person which amount in aggregate to more than the maximum prescribed for the purpose of this paragraph.**]**

(3) A penalty imposed under this section must be paid to the Secretary of State before the end of the prescribed period.

[[F33](4) Where a penalty is imposed under subsection (2) on the driver of a vehicle who is an employee of the vehicle's owner or hirer—

(a) the employee and the employer shall be jointly and severally liable for the penalty imposed on the driver (irrespective of whether a penalty is also imposed on the employer), and

(b) a provision of this Part about notification, objection or appeal shall have effect as if the penalty imposed on the driver were also imposed on the employer (irrespective of whether a penalty is also imposed on the employer in his capacity as the owner or hirer of the vehicle).

(4A) In the case of a detached trailer, subsection (4) shall have effect as if a reference to the driver were a reference to the operator.**]**

(5) In the case of a clandestine entrant to whom subsection (1)(a) applies, each of the following is a responsible person—

(a) if the transporter is a ship or aircraft, the owner **[**[F34]and**]** captain;

(b) if it is a vehicle (but not a detached trailer), the owner, hirer **[**[F35]and**]** driver of the vehicle;

(c) if it is a detached trailer, the owner, hirer **[**[F35]and**]** operator of the trailer.

[[F36](5A) In the case of a clandestine entrant to whom subsection (1)(aa) applies, the responsible person is—

(a) where the entrant arrived concealed in a freight train, the train operator who, at the train's last scheduled stop before arrival in the United Kingdom, was responsible for certifying it as fit to travel to the United Kingdom, or

(b) where the entrant arrived concealed in a freight shuttle wagon, the operator of the shuttle-train of which the wagon formed part.**]**

(6) In the case of a clandestine entrant to whom subsection (1)(b) or (c) applies, each of the following is a responsible person—

(a) if the transporter is a detached trailer, the owner, hirer **[**[F37]and**]** operator of the trailer;

(b) if it is not, the owner, hirer **[**[F37]and**]** driver of the vehicle.

[[F38](6A) Where a person falls within the definition of responsible person in more than one capacity, a separate penalty may be imposed on him under subsection (2) in respect of each capacity.**]**

(7) Subject to any defence provided by section 34, it is immaterial whether a responsible person knew or suspected—

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(a) that the clandestine entrant was concealed in the transporter; or

(b) that there were one or more other persons concealed with the clandestine entrant in the same transporter.

(8) Subsection (9) applies if a transporter ("the carried transporter") is itself being carried in or on another transporter.

(9) If a person is concealed in the carried transporter, the question whether any other person is concealed with that person in the same transporter is to be determined by reference to the carried transporter and not by reference to the transporter in or on which it is carried.

(10) "Immigration control" means United Kingdom immigration control and includes any United Kingdom immigration control operated in a prescribed control zone outside the United Kingdom.

Textual Amendments

F31 S. 32(1)(aa) inserted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 2(2)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4), S.I. 2012/1263, art. 2

F32 S. 32(2)(2A) substituted for s. 32(2) (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 2(3)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4), S.I. 2012/1263, art. 2

F33 S. 32(4)(4A) substituted for s. 32(4) (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 2(4)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4), S.I. 2012/1263, art. 2

F34 Word in s. 32(5)(a) substituted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 2(5)(a)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4), S.I. 2012/1263, art. 2

F35 Words in s. 32(5)(b)(c) substituted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 2(5)(b)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4), S.I. 2012/1263, art. 2

F36 S. 32(5A) inserted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 2(6)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4), S.I. 2012/1263, art. 2

F37 Words in s. 32(6)(a)(b) substituted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 2(7)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4), S.I. 2012/1263, art. 2

F38 S. 32(6A) inserted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 2(8)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4), S.I. 2012/1263, art. 2

Modifications etc. (not altering text)

C19 S. 32(2)-(5)(7)(10) applied (with modifications) (7.2.2001 for certain purposes and otherwise 1.3.2001) by S.I. 2001/280, **arts. 1-4** (with art. 5)

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Commencement Information

I8 S. 32 partly in force; s. 32 not in force at Royal Assent, see s. 170(4); s. 32(2)(a)(3)(10) in force for certain purposes at 6.12.1999 by S.I. 1999/3190, art. 2, Sch.; s. 32 in force for certain purposes at: 3.4.2000 by S.I. 2000/464, art. 2, Sch.; 18.9.2000 by S.I. 2000/2444, art. 2, Sch. 1 (subject to arts. 3, 4, Sch. 2); 8.12.2002 by S.I. 2002/2815, **art. 2**, Sch.

[[F39]32A Level of penalty: code of practice

(1) The Secretary of State shall issue a code of practice specifying matters to be considered in determining the amount of a penalty under section 32.

(2) The Secretary of State shall have regard to the code (in addition to any other matters he thinks relevant)—
  (a) when imposing a penalty under section 32, and
  (b) when considering a notice of objection under section 35(4).

(3) Before issuing the code the Secretary of State shall lay a draft before Parliament.

(4) After laying the draft code before Parliament the Secretary of State may bring the code into operation by order.

(5) The Secretary of State may from time to time revise the whole or any part of the code and issue the code as revised.

(6) Subsections (3) and (4) also apply to a revision or proposed revision of the code.**]**

Textual Amendments

F39 S. 32A inserted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes and otherwise prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 3** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)

33 [[F40]Prevention of clandestine entrants: code of practice]

(1) The Secretary of State must issue a code of practice to be followed by any person operating a system for preventing the carriage of clandestine entrants.

(2) Before issuing the code, the Secretary of State must—
  (a) consult such persons as he considers appropriate; and
  (b) lay a draft before [F41]. . . Parliament.

(3) The requirement of subsection (2)(a) may be satisfied by consultation before the passing of this Act.

(4) After laying the draft code before Parliament, the Secretary of State may bring the code into operation by an order.

(5) The Secretary of State may from time to time revise the whole or any part of the code and issue the code as revised.

(6) Subsections (2) and (4) also apply to any revision, or proposed revision, of the code.

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Textual Amendments

F40 S. 33 heading substituted (8.12.2002 for certain purposes, otherwise prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 4** (with s. 159, Sch. 8 para. 17); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)

F41 Words in s. 33(2)(b) repealed (8.12.2002 for certain purposes, 11.5.2012 in so far as not already in force) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 161, 162(1), **Sch. 8 para. 5**, **Sch. 9** (with s. 159, Sch. 8 para. 17); S.I. 2002/2811, **art. 2**, Sch. (with art. 4), S.I. 2012/1263, art. 2

Modifications etc. (not altering text)

C20 S. 33 applied (with modifications) (7.2.2001 for certain purposes and otherwise 1.3.2001) by S.I. 2001/208, **arts. 1(2)**, 3, 4 (with art. 5)

34 Defences to claim that penalty is due under section 32.

[[F42](1) A person ("the carrier") shall not be liable to the imposition of a penalty under section 32(2) if he has a defence under this section.**]**

(2) It is a defence for the carrier to show that he, or an employee of his who was directly responsible for allowing the clandestine entrant to be concealed, was acting under duress.

(3) It is also a defence for the carrier to show that—

(a) he did not know, and had no reasonable grounds for suspecting, that a clandestine entrant was, or might be, concealed in the transporter;

(b) an effective system for preventing the carriage of clandestine entrants was in operation in relation to the transporter; and

(c) [F43]. . . on the occasion in question the person or persons responsible for operating that system did so properly.

[[F44](3A) It is also a defence for the carrier to show that—

(a) he knew or suspected that a clandestine entrant was or might be concealed in a rail freight wagon, having boarded after the wagon began its journey to the United Kingdom;

(b) he could not stop the train or shuttle-train of which the wagon formed part without endangering safety;

(c) an effective system for preventing the carriage of clandestine entrants was in operation in relation to the train or shuttle-train; and

(d) on the occasion in question the person or persons responsible for operating the system did so properly.**]**

(4) In determining, for the purposes of this section, whether a particular system is effective, regard is to be had to the code of practice issued by the Secretary of State under section 33.

(5) [F45]. . . . . .

[[F46](6) Where a person has a defence under subsection (2) in respect of a clandestine entrant, every other responsible person in respect of the clandestine entrant is also entitled to the benefit of the defence.**]**

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Textual Amendments

F42 S. 34(1) substituted (8.12.2002 for certain purposes, otherwise prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 6(2)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)

F43 Word in s. 34(3)(c) repealed (8.12.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 161, 162(1), **Sch. 8 para. 6(3)**, **Sch. 9** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)

F44 S. 34(3A) inserted (8.12.2002 for certain purposes, otherwise prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 6(4)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)

F45 S. 34(5) repealed (8.12.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 161, 162(1), **Sch. 8 para. 6(5)**, **Sch. 9** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)

F46 S. 34(6) substituted (8.12.2002 for certain purposes, otherwise prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 6(6)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)

Modifications etc. (not altering text)

C21 S. 34 applied (with modifications) (7.2.2001 for certain purposes and otherwise 1.3.2001) by S.I. 2001/280, **arts. 1-4** (with art. 5)

Commencement Information

I9 S. 34 partly in force; s. 34 not in force at Royal Assent, see s. 170(4); s. 34 in force for certain purposes at: 3.4.2000 by S.I. 2000/464, art. 2, Sch.; 18.9.2000 by S.I. 2000/2444, art. 2, Sch. 1 (subject to arts. 3, 4, Sch. 2); 8.12.2002 by S.I. 2002/2815, **art. 2**, Sch.

35 Procedure.

(1) If the Secretary of State decides that a person ("P") is liable to one or more penalties under section 32, he must notify P of his decision.

(2) A notice under subsection (1) (a "penalty notice") must—

(a) state the Secretary of State's reasons for deciding that P is liable to the penalty (or penalties);

(b) state the amount of the penalty (or penalties) to which P is liable;

(c) specify the date before which, and the manner in which, the penalty (or penalties) must be paid; and

(d) include an explanation of the steps—

(i) that P **[**[F47]may**]** take if he objects to the penalty;

(ii) that the Secretary of State may take under this Part to recover any unpaid penalty.

[[F48](3) Subsection (4) applies where a person to whom a penalty notice is issued objects on the ground that—

(a) he is not liable to the imposition of a penalty, or

(b) the amount of the penalty is too high.

(4) The person may give a notice of objection to the Secretary of State.

(5) A notice of objection must—

(a) be in writing,

(b) give the objector's reasons, and

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(c) be given before the end of such period as may be prescribed.

(6) Where the Secretary of State receives a notice of objection to a penalty in accordance with this section he shall consider it and—

(a) cancel the penalty,
(b) reduce the penalty,
(c) increase the penalty, or
(d) determine to take no action under paragraphs (a) to (c).

(7) Where the Secretary of State considers a notice of objection under subsection (6) he shall—

(a) inform the objector of his decision before the end of such period as may be prescribed or such longer period as he may agree with the objector,
(b) if he increases the penalty, issue a new penalty notice under subsection (1), and
(c) if he reduces the penalty, notify the objector of the reduced amount.**]**

(9) The Secretary of State may by regulations provide, in relation to detached trailers, for a penalty notice which is **[**[F49]issued**]** in such manner as may be prescribed to have effect as a penalty notice properly **[**[F50]issued to**]** the responsible person or persons concerned under this section.

(10) Any sum payable to the Secretary of State as a penalty under section 32 may be recovered by the Secretary of State as a debt due to him.

[[F51](11) In proceedings for enforcement of a penalty under subsection (10) no question may be raised as to—

(a) liability to the imposition of the penalty, or
(b) its amount.

(12) A document which is to be issued to or served on a person outside the United Kingdom for the purpose of subsection (1) or (7) or in the course of proceedings under subsection (10) may be issued or served—

(a) in person,
(b) by post,
(c) by facsimile transmission, or
(d) in another prescribed manner.

(13) The Secretary of State may by regulations provide that a document issued or served in a manner listed in subsection (12) in accordance with the regulations is to be taken to have been received at a time specified by or determined in accordance with the regulations.**]**

Textual Amendments

F47 Word in s. 35(2)(d)(i) substituted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 7(2)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4), S.I. 2012/1263, art. 2

F48 S. 35(3)-(7) substituted for s. 35(3)-(8) (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 7(3)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4), S.I. 2012/1263, art. 2

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F49 Word in s. 35(9) substituted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 7(4)(a)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4), S.I. 2012/1263, art. 2

F50 Words in s. 35(9) substituted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 7(4)(b)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4), S.I. 2012/1263, art. 2

F51 S. 35(11)-(13) added (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 7(5)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4), S.I. 2012/1263, art. 2

Modifications etc. (not altering text)

C22 S. 35(1)(2)(6)-(8)(10) applied (with modifications) (7.2.2001 for certain purposes and otherwise 1.3.2001) by S.I. 2001/280, **arts. 1-4** (with art. 5)

Commencement Information

I10 S. 35 partly in force; s. 35 not in force at Royal Assent, see s. 170(4); s. 35(7)-(9) in force for certain purposes at 6.12.1999 by S.I. 1999/3190, art. 2, Sch.; s. 35 in force for certain purposes at: 3.4.2000 by S.I. 2000/464, art. 2, Sch.; 18.9.2000 by S.I. 2000/2444, art. 2, Sch. 1 (subject to arts. 3, 4, Sch. 2); 8.12.2002 by S.I. 2002/2815, **art. 2**, Sch.

VALID FROM 11/05/2012

[F52 35A Appeal

(1) A person may appeal to the court against a penalty imposed on him under section 32 on the ground that—
  (a) he is not liable to the imposition of a penalty, or
  (b) the amount of the penalty is too high.

(2) On an appeal under this section the court may—
  (a) allow the appeal and cancel the penalty,
  (b) allow the appeal and reduce the penalty, or
  (c) dismiss the appeal.

(3) An appeal under this section shall be a re-hearing of the Secretary of State's decision to impose a penalty and shall be determined having regard to—
  (a) any code of practice under section 32A which has effect at the time of the appeal,
  (b) the code of practice under section 33 which had effect at the time of the events to which the penalty relates, and
  (c) any other matters which the court thinks relevant (which may include matters of which the Secretary of State was unaware).

(4) Subsection (3) has effect despite any provision of Civil Procedure Rules.

(5) An appeal may be brought by a person under this section against a penalty whether or not—
  (a) he has given notice of objection under section 35(4);

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(b) the penalty has been increased or reduced under section 35(6).**]**

Textual Amendments

F52 S. 35A inserted (8.12.2002 for certain purposes, otherwise prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 8** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)

36 Power to detain vehicles etc. in connection with penalties under section 32.

(1) If a penalty notice has been **[**[F53]issued**]** under section 35, a senior officer may detain any relevant—

(a) vehicle,

(b) small ship, [F54]. . .

(c) small aircraft,**[**[F55] or

(d) rail freight wagon,**]**

until all penalties to which the notice relates, and any expenses reasonably incurred by the Secretary of State in connection with the detention, have been paid.

(2) That power—

(a) may be exercised only if, in the opinion of the senior officer concerned, there is a significant risk that the penalty (or one or more of the penalties) will not be paid before the end of the prescribed period if the transporter is not detained; and

(b) may not be exercised if alternative security which the Secretary of State considers is satisfactory, has been given.

[[F56](2A) A vehicle may be detained under subsection (1) only if—

(a) the driver of the vehicle is an employee of its owner or hirer,

(b) the driver of the vehicle is its owner or hirer, or

(c) a penalty notice is issued to the owner or hirer of the vehicle.

(2B) A senior officer may detain a relevant vehicle, small ship, small aircraft or rail freight wagon pending—

(a) a decision whether to issue a penalty notice,

(b) the issue of a penalty notice, or

(c) a decision whether to detain under subsection (1).

(2C) That power may not be exercised in any case—

(a) for longer than is necessary in the circumstances of the case, or

(b) after the expiry of the period of 24 hours beginning with the conclusion of the first search of the vehicle, ship, aircraft or wagon by an immigration officer after it arrived in the United Kingdom.**]**

(3) If a transporter is detained under this section, the owner, consignor or any other person who has an interest in any freight or other thing carried in or on the transporter may remove it, or arrange for it to be removed, at such time and in such way as is reasonable.

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(4) The detention of a transporter under this section is lawful even though it is subsequently established that the penalty notice on which the detention was based was ill-founded in respect of all or any of the penalties to which it related.

(5) But subsection (4) does not apply if the Secretary of State was acting unreasonably in issuing the penalty notice.

Textual Amendments

F53 Word in s. 36(1) substituted (8.12.2002 for certain purposes, otherwise prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 9(2)(a)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)

F54 Word after s. 36(1)(b) repealed (8.12.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 161, 162(1), **Sch. 8 para. 9(2)(b)**, **Sch. 9** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)

F55 S. 36(1)(d) and preceding word inserted (8.12.2002 for certain purposes, otherwise prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 9(2)(c)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)

F56 S. 36(2A)-(2C) inserted (8.12.2002 for certain purposes, otherwise prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 9(3)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)

Modifications etc. (not altering text)

C23 S. 36 applied (with modifications) (7.2.2001 for certain purposes and otherwise 1.3.2001) by S.I. 2001/280, **arts. 1-4** (with art. 5))

Commencement Information

I11 S. 36 partly in force; s. 36 not in force at Royal Assent, see s. 170(4); s. 36(2)(a) in force for certain purposes at 6.12.1999 by S.I. 1999/3190, art. 2, Sch.; s. 36 in force for certain purposes at: 3.4.2000 by S.I. 2000/464, art. 2, Sch.; 18.9.2000 by S.I. 2000/2444, art. 2, Sch. 1 (subject to arts. 3, 4, Sch. 2); 8.12.2002 by S.I. 2002/2815, **art. 2**, Sch.

[F57 36A Detention in default of payment

(1) This section applies where a person to whom a penalty notice has been issued under section 35 fails to pay the penalty before the date specified in accordance with section 35(2)(c).

(2) The Secretary of State may make arrangements for the detention of any vehicle, small ship, small aircraft or rail freight wagon which the person to whom the penalty notice was issued uses in the course of a business.

(3) A vehicle, ship, aircraft or wagon may be detained under subsection (2) whether or not the person to whom the penalty notice was issued owns it.

(4) But a vehicle may be detained under subsection (2) only if the person to whom the penalty notice was issued—

(a) is the owner or hirer of the vehicle, or

(b) was an employee of the owner or hirer of the vehicle when the penalty notice was issued.

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(5) The power under subsection (2) may not be exercised while an appeal against the penalty under section 35A is pending or could be brought (ignoring the possibility of an appeal out of time with permission).

(6) The Secretary of State shall arrange for the release of a vehicle, ship, aircraft or wagon detained under this section if the person to whom the penalty notice was issued pays—
  (a) the penalty, and
  (b) expenses reasonably incurred in connection with the detention.**]**

Textual Amendments

F57 S. 36A inserted (8.12.2002 for certain purposes, otherwise prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 10** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)

37 Effect of detention.

(1) This section applies if a transporter is detained under **[**[F58]section 36(1)**]**.

(2) The person to whom the penalty notice was addressed, or the owner or any other person **[**[F59]whose interests may be affected by detention of the transporter,**]** may apply to the court for the transporter to be released.

(3) The court may release the transporter if it considers that—
  (a) satisfactory security has been tendered in place of the transporter for the payment of the penalty alleged to be due and connected expenses;
  (b) there is no significant risk that the penalty (or one or more of the penalties) and any connected expenses will not be paid; or
  (c) there is a significant doubt as to whether the penalty is payable [F60]. . .

[[F61](3A) The court may also release the transporter on the application of the owner of the transporter under subsection (2) if—
  (a) a penalty notice was not issued to the owner or an employee of his, and
  (b) the court considers it right to release the transporter.

(3B) In determining whether to release a transporter under subsection (3A) the court shall consider—
  (a) the extent of any hardship caused by detention,
  (b) the extent (if any) to which the owner is responsible for the matters in respect of which the penalty notice was issued, and
  (c) any other matter which appears to the court to be relevant (whether specific to the circumstances of the case or of a general nature).**]**

(4) If the court has not ordered the release of the transporter, the Secretary of State may sell it if the penalty in question and connected expenses are not paid before the end of the period of 84 days beginning with the date on which the detention began.

(5) "Connected expenses" means expenses reasonably incurred by the Secretary of State in connection with the detention.

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[[F62](5A) The power of sale under subsection (4) may be exercised only when no appeal against the imposition of the penalty is pending or can be brought (ignoring the possibility of an appeal out of time with permission).

(5B) The power of sale under subsection (4) shall lapse if not exercised within a prescribed period.**]**

(6) Schedule 1 applies to the sale of transporters under this section.

[[F63](7) This section applies to a transporter detained under section 36A as it applies to a transporter detained under section 36(1); but for that purpose—

(a) the court may release the transporter only if the court considers that the detention was unlawful or under subsection (3A)(and subsection (3) shall not apply), and

(b) the reference in subsection (4) to the period of 84 days shall be taken as a reference to a period prescribed for the purpose of this paragraph.**]**

Textual Amendments

F58 Words in s. 37(1) substituted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes and otherwise prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 11(2)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)

F59 Words in s. 37(2) substituted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes and otherwise prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 11(3)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)

F60 Words in s. 37(3)(c) repealed (14.11.2002 for certain purposes and otherwise 8.12.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 161, 162(2), **Sch. 8 para. 11(4)**, **Sch. 9** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)

F61 S. 37(3A)(3B) inserted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes and otherwise prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 11(5)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)

F62 S. 37(5A)(5B) inserted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes and otherwise prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 11(6)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)

F63 S. 37(7) added (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes and otherwise prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 11(7)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)

Modifications etc. (not altering text)

C24 S. 37 (and Sch. 1) applied (with modifications) (7.2.2001 for certain purposes and otherwise 1.3.2001) by S.I. 2001/280, **arts. 1-4** (with art. 5)

Commencement Information

I12 S. 37 partly in force; s. 37 not in force at Royal Assent, see s. 170(4); s. 37(6) in force for certain purposes at 6.12.1999 by S.I. 1999/3190, art. 2, Sch.; s. 37 in force for certain purposes at: 3.4.2000 by S.I. 2000/464, art. 2, Sch.; 18.9.2000 by S.I. 2000/2444, art. 2, Sch. 1 (subject to arts. 3, 4, Sch. 2); 8.12.2002 by S.I. 2002/2815, **art. 2**, Sch.

38 Assisting illegal entry and harbouring.

(1) In section 25 of the 1971 Act (assisting illegal entry and harbouring), at the end of paragraph (c) of subsection (6), insert—

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"or

(d) the driver of any such vehicle;".

(2) After section 25, insert—

"**25A Detention of ships, aircraft and vehicles in connection with offences under section 25(1).**

(1) If a person has been arrested for an offence under section 25(1)(a) or (b), a senior officer or a constable may detain a relevant ship, aircraft or vehicle—

(a) until a decision is taken as to whether or not to charge the arrested person with that offence; or

(b) if the arrested person has been charged—

(i) until he is acquitted, the charge against him is dismissed or the proceedings are discontinued; or

(ii) if he has been convicted, until the court decides whether or not to order forfeiture of the ship, aircraft or vehicle.

(2) A ship, aircraft or vehicle is a relevant ship, aircraft or vehicle, in relation to an arrested person, if it is one which the officer or constable concerned has reasonable grounds for believing could, on conviction of the arrested person for the offence for which he was arrested, be the subject of an order for forfeiture made under section 25(6).

(3) A person (other than the arrested person) who claims to be the owner of a ship, aircraft or vehicle which has been detained under this section may apply to the court for its release.

(4) The court to which an application is made under subsection (3) may, on such security or surety being tendered as it considers satisfactory, release the ship, aircraft or vehicle on condition that it is made available to the court if—

(a) the arrested person is convicted; and

(b) an order for its forfeiture is made under section 25(6).

(5) In the application to Scotland of subsection (1), for paragraphs (a) and (b) substitute—

(") until a decision is taken as to whether or not to institute criminal proceedings against the arrested person for that offence; or

(b) if criminal proceedings have been instituted against the arrested person—

(i) until he is acquitted or, under section 65 or 147 of the [M15]Criminal Procedure (Scotland) Act 1995, discharged or liberated or the trial diet is deserted*simpliciter*;

(ii) if he has been convicted, until the court decides whether or not to order forfeiture of the ship, aircraft or vehicle,

and for the purposes of this subsection, criminal proceedings are instituted against a person at whichever is the earliest of his first appearance before the sheriff on petition, or the service on him of an indictment or complaint. "

(6) "Court" means—

(a) in England and Wales—

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(i) if the arrested person has not been charged, the magistrates' court for the petty sessions area in which he was arrested;

(ii) if he has been charged but proceedings for the offence have not begun to be heard, the magistrates' court for the petty sessions area in which he was charged;

(iii) if he has been charged and proceedings for the offence are being heard, the court hearing the proceedings;

(b) in Scotland, the sheriff; and

(c) in Northern Ireland—

(i) if the arrested person has not been charged, the magistrates' court for the county court division in which he was arrested;

(ii) if he has been charged but proceedings for the offence have not begun to be heard, the magistrates' court for the county court division in which he was charged;

(iii) if he has been charged and proceedings for the offence are being heard, the court hearing the proceedings.

(7) "Owner" has the same meaning as it has in section 25(6).

(8) "Senior officer" means an immigration officer not below the rank of chief immigration officer."

(3) Subsection (1) has effect in relation to offences committed after the coming into force of that subsection.

(4) Subsection (2) has effect in relation to persons arrested for offences alleged to have been committed after the coming into force of that subsection.

Marginal Citations

M15 1995 c. 46.

39 Rail freight.

F64 . . . . . .

Textual Amendments

F64 S. 39 repealed (8.12.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 161, 162(1), Sch. 8 para. 12, **Sch. 9** (with s. 159); S.I. 2002/2811, art. 2, **Sch.** (with art. 4)

Passengers without proper documents

[F65 40 Charge in respect of passenger without proper documents

(1) This section applies if an individual requiring leave to enter the United Kingdom arrives in the United Kingdom by ship or aircraft and, on being required to do so by an immigration officer, fails to produce—

(a) an immigration document which is in force and which satisfactorily establishes his identity and his nationality or citizenship, and

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(b) if the individual requires a visa, a visa of the required kind.

(2) The Secretary of State may charge the owner of the ship or aircraft, in respect of the individual, the sum of £2,000.

(3) The charge shall be payable to the Secretary of State on demand.

(4) No charge shall be payable in respect of any individual who is shown by the owner to have produced the required document or documents to the owner or his employee or agent when embarking on the ship or aircraft for the voyage or flight to the United Kingdom.

(5) For the purpose of subsection (4) an owner shall be entitled to regard a document as—
(a) being what it purports to be unless its falsity is reasonably apparent, and
(b) relating to the individual producing it unless it is reasonably apparent that it does not relate to him.

(6) For the purposes of this section an individual requires a visa if—
(a) under the immigration rules he requires a visa for entry into the United Kingdom, or
(b) as a result of section 41 he requires a visa for passing through the United Kingdom.

(7) The Secretary of State may by order amend this section for the purpose of applying it in relation to an individual who—
(a) requires leave to enter the United Kingdom, and
(b) arrives in the United Kingdom by train.

(8) An order under subsection (7) may provide for the application of this section—
(a) except in cases of a specified kind;
(b) subject to a specified defence.

(9) In this section "immigration document" means—
(a) a passport, and
(b) a document which relates to a national of a country other than the United Kingdom and which is designed to serve the same purpose as a passport.

(10) The Secretary of State may by order substitute a sum for the sum in subsection (2).**]**

Textual Amendments

F65 Ss. 40-40B substituted (14.11.2002 for certain purposes and otherwise 8.12.2002) for s. 40 by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 125, **Sch. 8 para. 13** (with s. 159); S.I. 2002/2811, **art. 2**, Sch.

Modifications etc. (not altering text)

C25 Ss. 40-43: power to apply (with modifications) or amend conferred (prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 124(6)(7)**, 162(1) (with s. 159)

[F66 40A Notification and objection

(1) If the Secretary of State decides to charge a person under section 40, the Secretary of State must notify the person of his decision.

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(2) A notice under subsection (1)(a "charge notice") must—
- (a) state the Secretary of State's reasons for deciding to charge the person,
- (b) state the amount of the charge,
- (c) specify the date before which, and the manner in which, the charge must be paid,
- (d) include an explanation of the steps that the person may take if he objects to the charge, and
- (e) include an explanation of the steps that the Secretary of State may take under this Part to recover any unpaid charge.

(3) Where a person on whom a charge notice is served objects to the imposition of the charge on him, he may give a notice of objection to the Secretary of State.

(4) A notice of objection must—
- (a) be in writing,
- (b) give the objector's reasons, and
- (c) be given before the end of such period as may be prescribed.

(5) Where the Secretary of State receives a notice of objection to a charge in accordance with this section, he shall—
- (a) consider it, and
- (b) determine whether or not to cancel the charge.

(6) Where the Secretary of State considers a notice of objection, he shall inform the objector of his decision before the end of—
- (a) such period as may be prescribed, or
- (b) such longer period as he may agree with the objector.

(7) Any sum payable to the Secretary of State as a charge under section 40 may be recovered by the Secretary of State as a debt due to him.

(8) In proceedings for enforcement of a charge under subsection (7) no question may be raised as to the validity of the charge.

(9) Subsections (12) and (13) of section 35 shall have effect for the purpose of this section as they have effect for the purpose of section 35(1), (7) and (10).**]**

Textual Amendments

F66 Ss. 40-40B substituted (14.11.2002 for certain purposes and otherwise 8.12.2002) for s. 40 by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 125, **Sch. 8 para. 13** (with s. 159); S.I. 2002/2811, **art. 2**, Sch.

Modifications etc. (not altering text)

C26 Ss. 40-43: power to apply (with modifications) or amend conferred (prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 124(6)(7)**, 162(1) (with s. 159)

[[F67]40B Appeal

(1) A person may appeal to the court against a decision to charge him under section 40.

(2) On an appeal under this section the court may—

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(a) allow the appeal and cancel the charge, or
(b) dismiss the appeal.

(3) An appeal under this section—
(a) shall be a re-hearing of the Secretary of State's decision to impose a charge, and
(b) may be determined having regard to matters of which the Secretary of State was unaware.

(4) Subsection (3)(a) has effect despite any provision of Civil Procedure Rules.

(5) An appeal may be brought by a person under this section against a decision to charge him whether or not he has given notice of objection under section 40A(3).**]**

Textual Amendments

F67 Ss. 40-40B substituted (14.11.2002 for certain purposes and otherwise 8.12.2002) for s. 40 by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 125, **Sch. 8 para. 13** (with s. 159); S.I. 2002/2811, **art. 2**, Sch.

Modifications etc. (not altering text)

C27 Ss. 40-43: power to apply (with modifications) or amend conferred (prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 124(6)(7)**, 162(1) (with s. 159)

41 Visas for transit passengers.

(1) The Secretary of State may by order require transit passengers to hold a transit visa.

(2) "Transit passengers" means persons of any description specified in the order who on arrival in the United Kingdom pass through to another country without entering the United Kingdom; and "transit visa" means a visa for that purpose.

(3) The order—
(a) may specify a description of persons by reference to nationality, citizenship, origin or other connection with any particular country but not by reference to race, colour or religion;
(b) may not provide for the requirement imposed by the order to apply to any person who under the 1971 Act has the right of abode in the United Kingdom;
(c) may provide for any category of persons of a description specified in the order to be exempt from the requirement imposed by the order;
(d) may make provision about the method of application for visas required by the order.

Modifications etc. (not altering text)

C28 Ss. 40-43: power to apply (with modifications) or amend conferred (prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 124(6)(7)**, 162(1) (with s. 159)

42 Power to detain vehicles etc. in connection with charges under section 40.

F68 . . . . . .

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F68 S. 42 repealed (8.12.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 161, **Sch. 8 para. 13**, **Sch. 9** (with s. 159); S.I. 2002/2811, **art. 2**, Sch.

Interpretation

43 Interpretation of Part II.

[[F69](1)**]** In this Part—

"aircraft" includes hovercraft;

"captain" means the master of a ship or commander of an aircraft;

"concealed" includes being concealed in any freight, stores or other thing carried in or on the vehicle, ship **[**[F70], aircraft or rail freight wagon**]** concerned;

[F71] . . . . . .

"detached trailer" means a trailer, semi-trailer, caravan or any other thing which is designed or adapted for towing by a vehicle but which has been detached for transport—

(a) in or on the vehicle concerned; or

(b) in the ship or aircraft concerned (whether separately or in or on a vehicle);

"equipment", in relation to an aircraft, includes—

(a) any certificate of registration, maintenance or airworthiness of the aircraft;

(b) any log book relating to the use of the aircraft; and

(c) any similar document;

[[F72]"freight shuttle wagon" means a wagon which—

(a) forms part of a shuttle-train, and

(b) is designed to carry commercial goods vehicles;

"freight train" means any train other than—

(a) a train engaged on a service for the carriage of passengers, or

(b) a shuttle-train;**]**

"hirer", in relation to a vehicle, means any person who has hired the vehicle from another person;

"operating weight", in relation to an aircraft, means the maximum total weight of the aircraft and its contents at which the aircraft may take off anywhere in the world, in the most favourable circumstances, in accordance with the certificate of airworthiness in force in respect of the aircraft;

"owner" includes—

(a) in relation to a ship or aircraft, the agent or operator of the ship or aircraft;

(b) [F73] . . . . . .

in relation to a transporter which is the subject of a hire-purchase agreement, includes the person in possession of it under that agreement;

"penalty notice" has the meaning given in section 35(2);

[[F74]"rail freight wagon" means—

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(a) any rolling stock, other than a locomotive, which forms part of a freight train, or

(b) a freight shuttle wagon,

and for the purpose of this definition, "rolling stock" and "locomotive" have the meanings given by section 83 of the Railways Act 1993 (c.43);**]**

"senior officer" means an immigration officer not below the rank of chief immigration officer;

"ship" includes every description of vessel used in navigation;

[[F75]"shuttle-train" has the meaning given by section 1(9) of the Channel Tunnel Act 1987 (c. 53);**]**

"small aircraft" means an aircraft which has an operating weight of less than 5,700 kilogrammes;

"small ship" means a ship which has a gross tonnage of less than 500 tonnes;

"train" means a train which—

(a) is engaged on an international service as defined by section 13(6) of the [M16]Channel Tunnel Act 1987; but

(b) is not a shuttle train as defined by section 1(9) of that Act;

"train operator", in relation to a person arriving in the United Kingdom on a train, means the operator of trains who embarked that person on that train for the journey to the United Kingdom;

"transporter" means a vehicle, ship **[**[F76], aircraft or rail freight wagon**]** together with—

(a) its equipment; and

(b) any stores for use in connection with its operation;

"vehicle" includes a trailer, semi-trailer, caravan or other thing which is designed or adapted to be towed by another vehicle.

[[F77](2) A reference in this Part to "the court" is a reference—

(a) in England and Wales, to a county court,

(b) in Scotland, to the sheriff, and

(c) in Northern Ireland, to a county court.

(3) But—

(a) a county court may transfer proceedings under this Part to the High Court, and

(b) the sheriff may transfer proceedings under this Part to the Court of Session.**]**

Textual Amendments

F69 S. 43 renumbered (8.12.2002) as s. 43(1) by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 125, **Sch. 8 para. 15** (with s. 159); S.I. 2002/2811, **art. 2**, Sch.

F70 S. 43(1): words in definition of "concealed" substituted (8.12.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 125, **Sch. 8 para. 15(a)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch.

F71 S. 43(1): definition of "court" omitted (8.12.2002) by virtue of Nationality, Immigration and Asylum Act 2002 (c. 41), s. 125, **Sch. 8 para. 15(b)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch.

F72 S. 43(1): definitions of "freight shuttle wagon" and "freight train" inserted (8.12.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 125, **Sch. 8 para. 15(c)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch.

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F73 S. 43(1): in definition of "owner" paragraph (b) and preceding word repealed (8.12.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 161, **Sch. 8 para. 15(d)**, **Sch. 9** (with s. 159); S.I. 2002/2811, **art. 2**, Sch.

F74 S. 43(1): definition of "rail freight wagon" substituted (8.12.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 125, **Sch. 8 para. 15(e)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch.

F75 S. 43(1): definition of "shuttle-train" inserted (8.12.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 125, **Sch. 8 para. 15(f)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch.

F76 S. 43(1): words in definition of "transporter" substituted (8.12.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 125, **Sch. 8 para. 15(g)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch.

F77 S. 43(2)(3) inserted (8.12.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 125, **Sch. 8 para. 15(h)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch.

Modifications etc. (not altering text)

C29 S. 43 applied (with modifications) (7.2.2001 for certain purposes and otherwise 1.3.2001) by S.I. 2001/280, **arts. 1-4** (with art. 5)

C30 Ss. 40-43: power to apply (with modifications) or amend conferred (prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 124(6)(7)**, 162(1) (with s. 159)

Marginal Citations

M16 1987 c. 53.

PART III

BAIL

PROSPECTIVE

Routine bail hearings

[F78]44 Bail hearings for detained persons.

. . . . . .

Textual Amendments

F78 Ss. 44-52 repealed (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 68(6)(a), 162(1), **Sch. 9** (with s. 159); S.I. 2003/1, art. 2, Sch.

[F78]45 Location of bail hearings.

. . . . . .

Textual Amendments

F78 Ss. 44-52 repealed (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 68(6)(a), 162(1), **Sch. 9** (with s. 159); S.I. 2003/1, art. 2, Sch.

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[F78]46 General right to be released on bail.

. . . . . .

Textual Amendments

F78 Ss. 44-52 repealed (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 68(6)(a), 162(1), **Sch. 9** (with s. 159); S.I. 2003/1, art. 2, Sch.

[F78]47 Powers exercisable on granting bail.

. . . . . .

Textual Amendments

F78 Ss. 44-52 repealed (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 68(6)(a), 162(1), **Sch. 9** (with s. 159); S.I. 2003/1, art. 2, Sch.

[F78]48 Forfeiture.

. . . . . .

Textual Amendments

F78 Ss. 44-52 repealed (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 68(6)(a), 162(1), **Sch. 9** (with s. 159); S.I. 2003/1, art. 2, Sch.

[F78]49 Forfeiture of securities.

. . . . . .

Textual Amendments

F78 Ss. 44-52 repealed (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 68(6)(a), 162(1), **Sch. 9** (with s. 159); S.I. 2003/1, art. 2, Sch.

[F78]50 Power of arrest.

. . . . . .

Textual Amendments

F78 Ss. 44-52 repealed (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 68(6)(a), 162(1), **Sch. 9** (with s. 159); S.I. 2003/1, art. 2, Sch.

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PROSPECTIVE

Procedure

[F78]51 Procedure.

. . . . . .

Textual Amendments

F78 Ss. 44-52 repealed (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 68(6)(a), 162(1), **Sch. 9** (with s. 159); S.I. 2003/1, art. 2, Sch.

[F78]52 Use of live television links at bail hearings.

. . . . . .

Textual Amendments

F78 Ss. 44-52 repealed (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 68(6)(a), 162(1), **Sch. 9** (with s. 159); S.I. 2003/1, art. 2, Sch.

Bail hearings under other enactments

53 Applications for bail in immigration cases.

(1) The Secretary of State may by regulations make new provision in relation to applications for bail by persons detained under the 1971 Act **[**[F79]or under section 62 of the Nationality, Immigration and Asylum Act 2002**]**.

(2) The regulations may confer a right to be released on bail in prescribed circumstances.

(3) The regulations may, in particular, make provision—

(a) creating or transferring jurisdiction to hear an application for bail by a person detained under the 1971 Act **[**[F80]or under section 62 of the Nationality, Immigration and Asylum Act 2002**]**;

(b) as to the places in which such an application may be held;

(c) as to the procedure to be followed on, or in connection with, such an application;

(d) as to circumstances in which, and conditions (including financial conditions) on which, an applicant may be released on bail;

(e) amending or repealing any enactment so far as it relates to such an application.

(4) The regulations must include provision for securing that an application for bail made by a person who has brought an appeal under any provision of **[**[F81]the Nationality, Immigration and Asylum Act 2002**]** or the [M17]Special Immigration Appeals Commission Act 1997 is heard by the appellate authority hearing that appeal.

[F82](5) . . . . . .

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(6) Regulations under this section require the approval of the Lord Chancellor.

[[F83](6A) In so far as regulations under this section relate to England and Wales, the Lord Chancellor must consult the Lord Chief Justice of England and Wales before giving his approval.

(6B) In so far as regulations under this section relate to Northern Ireland, the Lord Chancellor must consult the Lord Chief Justice of Northern Ireland before giving his approval.**]**

(7) In so far as regulations under this section relate to the sheriff or the Court of Session, the Lord Chancellor must obtain the consent of the Scottish Ministers before giving his approval.

[[F84](8) The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.

(9) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under this section—

(a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;

(b) a Lord Justice of Appeal (as defined in section 88 of that Act).**]**

Textual Amendments

F79 Words in s. 53(1) added (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 62(13)(a)**, 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

F80 Words in s. 53(3)(a) added (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 62(13)(b)**, 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

F81 Words in s. 53(4) substituted (1.4.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 162(1), **Sch. 7 para. 28** (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1 (with arts. 3, 4, Sch. 2 para. 5)

F82 S. 53(5) repealed (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 68(6)(b), 162(1), **Sch. 9** (with s. 159); S.I. 2003/1, art. 2, Sch.

F83 S. 53(6A)(6B) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 4 para. 284(2)**; S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(x)

F84 S. 53(8)(9) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 4 para. 284(3)**; S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(x)

Commencement Information

I13 S. 53(1)-(4)(6)(7) in force at 10.2.2003 by S.I. 2003/2, art. 2, **Sch.**

Marginal Citations

M17 1997 c. 68.

54 Extension of right to apply for bail in deportation cases.

(1) Paragraph 2 of Schedule 3 to the 1971 Act (detention or control pending deportation) is amended as follows.

(2) In sub-paragraph (1), at the end insert " or he is released on bail ".

(3) In sub-paragraph (3), after "unless" insert " he is released on bail or ".

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(4) After sub-paragraph (4) insert—

"(4A) Paragraphs 22 to 25 of Schedule 2 to this Act apply in relation to a person detained under sub-paragraph (1), (2) or (3) as they apply in relation to a person detained under paragraph 16 of that Schedule."

Commencement Information

I14 S. 54 in force at 10.2.2003 by S.I. 2003/2, art. 2, **Sch.**

PROSPECTIVE

Grants

[F85]55 Grants to voluntary organisations.

. . . . . .

Textual Amendments

F85 S. 55 repealed (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 68(6)(c), 162(1), **Sch. 9** (with s. 159); S.I. 2003/1, art. 2, Sch.

[F86]PART IV

APPEALS

Textual Amendments

F86 Pt. IV repealed (1.4.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 114(1), 162(1), **Sch. 9** (with s. 159, Sch. 6 and (7.3.2005) S.I. 2005/565, arts. 1(2), 9 (with arts. 3-9)); S.I. 2003/754, art. 2(1), Sch. 1 (with arts. 3, 4, Sch. 2 para. 6)

The appellate authorities

56 The Immigration Appeal Tribunal.

. . . . . .

57 Adjudicators.

. . . . . .

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Appeals

58 General.

. . . . . .

Leave to enter

59 Leave to enter the United Kingdom.

. . . . . .

60 Limitations on rights of appeal under section 59.

. . . . . .

Variation of limited leave to enter or remain

61 Variation of limited leave to enter or remain.

. . . . . .

62 Limitations on rights of appeal under section 61.

. . . . . .

Deportation

63 Deportation orders.

. . . . . .

64 Limitations on rights of appeal under section 63.

. . . . . .

Human rights

65 Racial discrimination and breach of human rights.

. . . . . .

Directions for removal

66 Validity of directions for removal.

. . . . . .

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Objection to destination

67 Removal on objection to destination.

. . . . . .

68 Limitations on rights of appeal under section 67.

. . . . . .

Asylum

69 Claims for asylum.

. . . . . .

70 Limitations on rights of appeal under section 69.

. . . . . .

Removal to safe countries

71 Removal of asylum claimants to safe third countries.

. . . . . .

Miscellaneous

72 Miscellaneous limitations on rights of appeal.

. . . . . .

73 Limitation on further appeals.

. . . . . .

"One-stop procedure"

74 Duty to disclose grounds for appeal etc.

. . . . . .

75 Duty to disclose grounds for entering etc. the United Kingdom.

. . . . . .

76 Result of failure to comply with section 74.

. . . . . .

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77 "One-stop" appeals.

. . . . . .

78 Transfer of appellate proceedings.

. . . . . .

PROSPECTIVE

[F86] Appeals without merit

[F86]79 Penalty on continuing an appeal without merit.

. . . . . .

European Economic AreaEEA nationals

80 EEA nationals.

. . . . . .

Grants

81 Grants to voluntary organisations.

. . . . . .

PART V

IMMIGRATION ADVISERS AND IMMIGRATION SERVICE PROVIDERS

Interpretation

82 Interpretation of Part V.

(1) In this Part—

"claim for asylum" means a claim that it would be contrary to the United Kingdom's obligations under—

(a) the Refugee Convention, or

(b) Article 3 of the Human Rights Convention,

for the claimant to be removed from, or required to leave, the United Kingdom;

"the Commissioner" means the Immigration Services Commissioner;

"the complaints scheme" means the scheme established under paragraph 5(1) of Schedule 5;

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"designated judge" has the same meaning as in section 119(1) of the [M18]Courts and Legal Services Act 1990;

"designated professional body" has the meaning given by section 86;

"immigration advice" means advice which—

(a) relates to a particular individual;

(b) is given in connection with one or more relevant matters;

(c) is given by a person who knows that he is giving it in relation to a particular individual and in connection with one or more relevant matters; and

(d) is not given in connection with representing an individual before a court in criminal proceedings or matters ancillary to criminal proceedings;

"immigration services" means the making of representations on behalf of a particular individual—

(a) in civil proceedings before a court, tribunal or adjudicator in the United Kingdom, or

(b) in correspondence with a Minister of the Crown or government department,

in connection with one or more relevant matters;

"Minister of the Crown" has the same meaning as in the Ministers of the [M19]Crown Act 1975;

"qualified person" means a person who is qualified for the purposes of section 84;

"registered person" means a person who is registered with the Commissioner under section 85;

"relevant matters" means any of the following—

(a) a claim for asylum;

(b) an application for, or for the variation of, entry clearance or leave to enter or remain in the United Kingdom;

(ba) **[**[F87] an application for an immigration employment document;**]**

(c) unlawful entry into the United Kingdom;

(d) nationality and citizenship under the law of the United Kingdom;

(e) citizenship of the European Union;

(f) admission to Member States under Community law;

(g) residence in a Member State in accordance with rights conferred by or under Community law;

(h) removal or deportation from the United Kingdom;

(i) an application for bail under the Immigration Acts or under the [M20]Special Immigration Appeals Commission Act 1997;

(j) an appeal against, or an application for judicial review in relation to, any decision taken in connection with a matter referred to in paragraphs (a) to (i); and

"the Tribunal" means the Immigration Services Tribunal.

(2) In this Part, references to the provision of immigration advice or immigration services are to the provision of such advice or services by a person—

(a) in the United Kingdom (regardless of whether the persons to whom they are provided are in the United Kingdom or elsewhere); and

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(b) in the course of a business carried on (whether or not for profit) by him or by another person.

[[F88](3) In the definition of "relevant matters" in subsection (1) "immigration employment document" means—

(a) a work permit (within the meaning of section 33(1) of the Immigration Act 1971 (interpretation)), and

(b) any other document which relates to employment and is issued for a purpose of immigration rules or in connection with leave to enter or remain in the United Kingdom.**]**

Textual Amendments

F87 Words in s. 82(1) inserted (1.4.2004) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 123(2)**, 162(1) (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1 (with arts. 3, 4, Sch. 2 para. 5) (as amended (21.5.2003) by S.I. 2003/1339, art. 3 and (19.11.2003) by S.I. 2003/2993, art. 3)

F88 S. 82(3) added (1.4.2004) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 123(3)**, 162(1) (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1 (with arts. 3, 4, Sch. 2 para. 5) (as amended (21.5.2003) by S.I. 2003/1339, art. 3 and (19.11.2003) by S.I. 2003/2993, art. 3)

Marginal Citations

M18 1990 c. 41.

M19 1975 c. 26.

M20 1997 c. 68.

The Immigration Services Commissioner

83 The Commissioner.

(1) There is to be an Immigration Services Commissioner (referred to in this Part as "the Commissioner").

(2) The Commissioner is to be appointed by the Secretary of State after consulting the Lord Chancellor and the Scottish Ministers.

(3) It is to be the general duty of the Commissioner to promote good practice by those who provide immigration advice or immigration services.

(4) In addition to any other functions conferred on him by this Part, the Commissioner is to have the regulatory functions set out in Part I of Schedule 5.

(5) The Commissioner must exercise his functions so as to secure, so far as is reasonably practicable, that those who provide immigration advice or immigration services—

(a) are fit and competent to do so;

(b) act in the best interests of their clients;

(c) do not knowingly mislead any court, tribunal or adjudicator in the United Kingdom;

(d) do not seek to abuse any procedure operating in the United Kingdom in connection with immigration or asylum (including any appellate or other judicial procedure);

(e) do not advise any person to do something which would amount to such an abuse.

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(6) The Commissioner—

(a) must arrange for the publication, in such form and manner and to such extent as he considers appropriate, of information about his functions and about matters falling within the scope of his functions; and

(b) may give advice about his functions and about such matters.

(7) Part II of Schedule 5 makes further provision with respect to the Commissioner.

Commencement Information

I15 S. 83 wholly in force at 30.10.2000; s. 83 not in force at Royal Assent see s. 170(4); s. 83(1)-(3)(6)(7) wholly in force and s. 83(4)(5) in force for certain purposes at 22.5.2000 by S.I. 2000/1282, art. 2, **Sch.**; s. 83(4)(5) in force at 30.10.2000 insofar as not already in force by S.I. 2000/1985, art. 2, **Sch.** (with transitional provisions in art. 3)

The general prohibition

84 Provision of immigration services.

(1) No person may provide immigration advice or immigration services unless he is a qualified person.

[[F89](2) A person is a qualified person if he is—

(a) a registered person,

(b) authorised by a designated professional body to practise as a member of the profession whose members the body regulates,

(c) the equivalent in an EEA State of—

(i) a registered person, or

(ii) a person within paragraph (b),

(d) a person permitted, by virtue of exemption from a prohibition, to provide in an EEA State advice or services equivalent to immigration advice or services, or

(e) acting on behalf of, and under the supervision of, a person within any of paragraphs (a) to (d) (whether or not under a contract of employment).**]**

[[F89](3) Subsection (2)(a) and (e) are subject to any limitation on the effect of a person's registration imposed under paragraph 2(2) of Schedule 6.**]**

(4) Subsection (1) does not apply to a person who—

(a) is certified by the Commissioner as exempt ("an exempt person");

(b) is employed by an exempt person;

(c) works under the supervision of an exempt person or an employee of an exempt person; or

(d) who falls within a category of person specified in an order made by the Secretary of State for the purposes of this subsection.

(5) A certificate under subsection (4)(a) may relate only to a specified description of immigration advice or immigration services.

(6) Subsection (1) does not apply to a person—

(a) holding an office under the Crown, when acting in that capacity;

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(b) employed by, or for the purposes of, a government department, when acting in that capacity;

(c) acting under the control of a government department; or

(d) otherwise exercising functions on behalf of the Crown.

(7) An exemption given under subsection (4) may be withdrawn by the Commissioner.

Textual Amendments

F89 S. 84(2)(3) substituted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 37(1)**, 48(3); S.I. 2004/2523, art. 2, Sch.

Modifications etc. (not altering text)

C31 S. 84(1) excluded (temp. from 30.4.2001 to the end of January 2002) by S.I. 2001/1393, **arts. 1**, 3, 4
S. 84(1) excluded (30.4.2001) by S.I. 2001/1403, arts. 2-4, **Schs. 1-3**
S. 84(1) excluded (temp. from 1.2.2002 to 31.12.2002) by The Immigration and Asylum Act 1999 (Part V Exemption: Relevant Employers) Order 2002 (S.I. 2002/9), arts. 1, **3**
S. 84(1) excluded (temp. from 1.1.2003 to 31.12.2003) by The Immigration and Asylum Act 1999 (Part V Exemption: Relevant Employers) Order 2002 (S.I. 2002/3025), arts. 1, **3**

C32 S. 84(4)(d) extended (1.1.2004) by Immigration and Asylum Act 1999 (Part V Exemption; Relevant Employers) Order 2003 (S.I. 2003/3214), arts. 1, **3**

Commencement Information

I16 S. 84 wholly in force at 30.4.2001; s. 84 not in force at Royal Assent see s. 170(4); s. 84(5)(7) wholly in force and s. 84(2)(a)(b)(4)(a)(d) in force for certain purposes at 30.10.2000 by S.I. 2000/1985, art. 2, **Sch.** (with transitional provisions in art. 3); s. 84 in force so far as not already in force at 30.4.2001 by S.I. 2001/1394, art. 2, **Sch.**

85 Registration and exemption by the Commissioner.

(1) The Commissioner must prepare and maintain a register for the purposes of section 84(2)(a) [F90]....

(2) The Commissioner must keep a record of the persons to whom he has issued a certificate of exemption under section 84(4)(a).

(3) Schedule 6 makes further provision with respect to registration.

Textual Amendments

F90 Words in s. 85(1) repealed (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 37(2), 48(3), **Sch. 4**; S.I. 2004/2523, art. 2, Sch.

Commencement Information

I17 S. 85 wholly in force at 30.10.2000; s. 85 not in force at Royal Assent see s. 170(4); s. 85(3) in force for certain purposes at 1.8.2000 and s. 85 in force at 30.10.2000 insofar as not already in force by S.I. 2000/1985, art. 2, **Sch.** (with transitional provisions in art. 3)

86 Designated professional bodies.

(1) "Designated professional body" means—

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(a) The Law Society;
(b) The Law Society of Scotland;
(c) The Law Society of Northern Ireland;
(d) The Institute of Legal Executives;
(e) The General Council of the Bar;
(f) The Faculty of Advocates; or
(g) The General Council of the Bar of Northern Ireland.

[[F91](2) The Secretary of State may by order remove a body from the list in subsection (1) if he considers that the body—
(a) has failed to provide effective regulation of its members in their provision of immigration advice or immigration services, or
(b) has failed to comply with a request of the Commissioner for the provision of information (whether general or in relation to a particular case or matter).**]**

(3) If a designated professional body asks the Secretary of State to amend subsection (1) so as to remove its name, the Secretary of State may by order do so.

(4) If the Secretary of State is proposing to act under subsection (2) he must, before doing so—
(a) consult the Commissioner;
(b) consult the Legal Services Ombudsman, if the proposed order would affect a designated professional body in England and Wales;
(c) consult the **[**[F92]Scottish Legal Complaints Commission**]**, if the proposed order would affect a designated professional body in Scotland;
(d) consult the lay observers appointed under Article 42 of the [M21]Solicitors (Northern Ireland) Order 1976, if the proposed order would affect a designated professional body in Northern Ireland;
(e) notify the body concerned of his proposal and give it a reasonable period within which to make representations; and
(f) consider any representations so made.

(5) An order under subsection (2) requires the approval of—
(a) the Lord Chancellor, if it affects a designated professional body in England and Wales or Northern Ireland;
(b) the Scottish Ministers, if it affects a designated professional body in Scotland.

(6) Before deciding whether or not to give his approval under subsection (5)(a), the Lord Chancellor must consult—
(a) the designated judges, if the order affects a designated professional body in England and Wales;
(b) the Lord Chief Justice of Northern Ireland, if it affects a designated professional body in Northern Ireland.

(7) Before deciding whether or not to give their approval under subsection (5)(b), the Scottish Ministers must consult the Lord President of the Court of Session.

(8) If the Secretary of State considers that a body which—
(a) is concerned (whether wholly or in part) with regulating the legal profession, or a branch of it, in an EEA State,
(b) is not a designated professional body, and

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(c) is capable of providing effective regulation of its members in their provision of immigration advice or immigration services,

ought to be designated, he may by order amend subsection (1) to include the name of that body.

(9) The Commissioner must—

(a) keep under review the list of designated professional bodies set out in subsection (1); and

[[F93](b) report to the Secretary of State if the Commissioner considers that a designated professional body—

(i) is failing to provide effective regulation of its members in their provision of immigration advice or immigration services, or

(ii) has failed to comply with a request of the Commissioner for the provision of information (whether general or in relation to a particular case or matter).**]**

[[F94](9A) A designated professional body shall comply with a request of the Commissioner for the provision of information (whether general or in relation to a specified case or matter).**]**

(10) For the purpose of meeting the costs incurred by the Commissioner in discharging his functions under this Part, each designated professional body must pay to the Commissioner, in each year and on such date as may be specified, such fee as may be specified.

(11) Any unpaid fee for which a designated professional body is liable under subsection (10) may be recovered from that body as a debt due to the Commissioner.

(12) "Specified" means specified by an order made by the Secretary of State.

Textual Amendments

F91 S. 86(2) substituted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 41(2)**, 48(3); S.I. 2004/2523, art. 2, Sch.

F92 Words in s. 86(4)(c) substituted (1.10.2008) by Legal Services Act 2007 (c. 29), **ss. 196(2)(a)**, 211(2) (with ss. 29, 192, 193); S.I. 2008/1436, art. 3(a)

F93 S. 86(9)(b) substituted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 41(3)**, 48(3); S.I. 2004/2523, art. 2, Sch.

F94 S. 86(9A) inserted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 41(4)**, 48(3); S.I. 2004/2523, art. 2, Sch.

Commencement Information

I18 S. 86 wholly in force at 30.4.2001; s. 86 not in force at Royal Assent see s. 170(4); s. 86(1)-(9) in force at 22.5.2000 by S.I. 2000/1282, art. 2, **Sch.**; s. 86(10)-(12) in force for certain purposes at 30.10.2000 by S.I. 2000/1985, art. 2, **Sch.** (with transitional provisions in art. 3); S. 86 in force so far as not already in force at 30.4.2001 by S.I. 2001/1394, art. 2, **Sch.**

Marginal Citations

M21 S.I. 1976/582 (N.I. 12).

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The Immigration Services Tribunal

87 The Tribunal.

(1) There is to be a tribunal known as the Immigration Services Tribunal (referred to in this Part as "the Tribunal").

(2) Any person aggrieved by a relevant decision of the Commissioner may appeal to the Tribunal against the decision.

(3) "Relevant decision" means a decision—

(a) to refuse an application for registration made under paragraph 1 of Schedule 6;

(b) to withdraw an exemption given under section 84(4)(a);

(c) under paragraph 2(2) of that Schedule to register with limited effect;

(d) to refuse an application for continued registration made under paragraph 3 of that Schedule;

(e) to vary a registration on an application under paragraph 3 of that Schedule;

[[F95](ea) to vary a registration under paragraph 3A of that Schedule;**]** or

[F96](f) . . . . . .

(4) The Tribunal is also to have the function of hearing disciplinary charges laid by the Commissioner under paragraph 9(1)(e) of Schedule 5.

(5) Schedule 7 makes further provision with respect to the Tribunal and its constitution and functions.

Textual Amendments

F95 S. 87(3)(ea) inserted (8.1.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **s. 140(3)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 5)

F96 S. 87(3)(f) repealed (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 40, 48(3), **Sch. 4**; S.I. 2004/2523, art. 2, Sch.

Commencement Information

I19 S. 87 wholly in force at 30.10.2000; s. 87 not in force at Royal Assent see s. 170(4); s. 87(5) in force for certain purposes at 1.8.2000 and s. 87 in force at 30.10.2000 insofar as not already in force by S.I. 2000/1985, art. 2, **Sch.** (with transitional provisions in art. 3)

88 Appeal upheld by the Tribunal.

(1) This section applies if the Tribunal allows an appeal under section 87.

(2) If the Tribunal considers it appropriate, it may direct the Commissioner—

(a) to register the applicant or to continue the applicant's registration;

(b) to make or vary the applicant's registration so as to have limited effect in any of the ways mentioned in paragraph 2(2) of Schedule 6;

(c) to restore an exemption granted under section 84(4)(a); or

(d) to quash a decision recorded under paragraph 9(1)(a) of Schedule 5 and the record of that decision.

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89 Disciplinary charge upheld by the Tribunal.

(1) This section applies if the Tribunal upholds a disciplinary charge laid by the Commissioner under paragraph 9(1)(e) of Schedule 5 against a person ("the person charged").

[[F97](2) If the person charged is a registered person or acts on behalf of a registered person, the Tribunal may—

(a) direct the Commissioner to record the charge and the Tribunal's decision for consideration in connection with the registered person's next application for continued registration;

(b) direct the registered person to apply for continued registration as soon as is reasonably practicable.**]**

(4) If the person charged is certified by the Commissioner as exempt under section 84(4)(a), the Tribunal may direct the Commissioner to consider whether to withdraw his exemption.

(5) If the person charged is found to have charged unreasonable fees for immigration advice or immigration services, the Tribunal may direct him to repay to the clients concerned such portion of those fees as it may determine.

(6) The Tribunal may direct the person charged to pay a penalty to the Commissioner of such sum as it considers appropriate.

(7) A direction given by the Tribunal under subsection (5) (or under subsection (6)) may be enforced by the clients concerned (or by the Commissioner)—

(a) as if it were an order of a county court; or

(b) in Scotland, as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

(8) The Tribunal may direct that the person charged or any person **[**[F98]acting on his behalf or**]** under his supervision is to be—

(a) subject to such restrictions on the provision of immigration advice or immigration services as the Tribunal considers appropriate;

(b) suspended from providing immigration advice or immigration services for such period as the Tribunal may determine; or

(c) prohibited from providing immigration advice or immigration services indefinitely.

(9) The Commissioner must keep a record of the persons against whom there is in force a direction given by the Tribunal under subsection (8).

Textual Amendments

F97 S. 89(2) substituted for s. 89(2)(3) (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 37(3)(a)**, 48(3); S.I. 2004/2523, art. 2, Sch.

F98 Words in s. 89(8) substituted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 37(3)(b)**, 48(3); S.I. 2004/2523, art. 2, Sch.

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90 Orders by disciplinary bodies.

(1) A disciplinary body may make an order directing that a person subject to its jurisdiction is to be—

(a) subject to such restrictions on the provision of immigration advice or immigration services as the body considers appropriate;

(b) suspended from providing immigration advice or immigration services for such period as the body may determine; or

(c) prohibited from providing immigration advice or immigration services indefinitely.

(2) "Disciplinary body" means any body—

(a) appearing to the Secretary of State to be established for the purpose of hearing disciplinary charges against members of a designated professional body; and

(b) specified in an order made by the Secretary of State.

(3) The Secretary of State must consult the designated professional body concerned before making an order under subsection (2)(b).

(4) For the purposes of this section, a person is subject to the jurisdiction of a disciplinary body if he is an authorised person or **[**[F99]is acting on behalf of**]** an authorised person.

(5) "Authorised person" means a person who is authorised by the designated professional body concerned to practise as a member of the profession whose members are regulated by that body.

Textual Amendments

F99 Words in s. 90(4) substituted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 37(4)**, 48(3); S.I. 2004/2523, art. 2, Sch.

Commencement Information

I20 S. 90 wholly in force at 30.4.2001; s. 90 not in force at Royal Assent see s. 170(4); s. 90 in force for certain purposes at 1.8.2000 by S.I. 2000/1985, art. 2, **Sch.** (with transitional provisions in art. 3); S. 90 in force so far as not already in force at 30.4.2001 by S.I. 2001/1394, art. 2, **Sch.**

Enforcement

91 Offences.

(1) A person who provides immigration advice or immigration services in contravention of section 84 or of a restraining order is guilty of an offence and liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

(2) "Restraining order" means—

(a) a direction given by the Tribunal under section 89(8) or paragraph 9(3) of Schedule 5; or

(b) an order made by a disciplinary body under section 90(1).

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(3) If an offence under this section committed by a body corporate is proved—
  (a) to have been committed with the consent or connivance of an officer, or
  (b) to be attributable to neglect on his part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) "Officer", in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in such a capacity.

(5) If the affairs of a body corporate are managed by its members, subsection (3) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(6) If an offence under this section committed by a partnership in Scotland is proved—
  (a) to have been committed with the consent or connivance of a partner, or
  (b) to be attributable to neglect on his part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(7) "Partner" includes a person purporting to act as a partner.

92 Enforcement.

(1) If it appears to the Commissioner that a person—
  (a) is providing immigration advice or immigration services in contravention of section 84 or of a restraining order, and
  (b) is likely to continue to do so unless restrained,

the Commissioner may apply to a county court for an injunction, or to the sheriff for an interdict, restraining him from doing so.

(2) If the court is satisfied that the application is well-founded, it may grant the injunction or interdict in the terms applied for or in more limited terms.

(3) "Restraining order" has the meaning given by section 91.

[F100 92A Investigation of offence: power of entry

(1) On an application made by the Commissioner a justice of the peace may issue a warrant authorising the Commissioner to enter and search premises.

(2) A justice of the peace may issue a warrant in respect of premises only if satisfied that there are reasonable grounds for believing that—
  (a) an offence under section 91 has been committed,
  (b) there is material on the premises which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence, and
  (c) any of the conditions specified in subsection (3) is satisfied.

(3) Those conditions are—
  (a) that it is not practicable to communicate with a person entitled to grant entry to the premises,

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(b) that it is not practicable to communicate with a person entitled to grant access to the evidence,

(c) that entry to the premises will be prevented unless a warrant is produced, and

(d) that the purpose of a search may be frustrated or seriously prejudiced unless the Commissioner can secure immediate entry on arrival at the premises.

(4) The Commissioner may seize and retain anything for which a search is authorised under this section.

(5) A person commits an offence if without reasonable excuse he obstructs the Commissioner in the exercise of a power by virtue of this section.

(6) A person guilty of an offence under subsection (5) shall be liable on summary conviction to—

(a) imprisonment for a term not exceeding six months,

(b) a fine not exceeding level 5 on the standard scale, or

(c) both.

(7) In this section—

(a) a reference to the Commissioner includes a reference to a member of his staff authorised in writing by him,

(b) a reference to premises includes a reference to premises used wholly or partly as a dwelling, and

(c) a reference to material—

(i) includes material subject to legal privilege within the meaning of the Police and Criminal Evidence Act 1984 (c. 60),

(ii) does not include excluded material or special procedure material within the meaning of that Act, and

(iii) includes material whether or not it would be admissible in evidence at a trial.

(8) In the application of this section to Scotland—

(a) a reference to a justice of the peace shall be taken as a reference to the sheriff,

(b) for sub-paragraph (i) of subsection (7)(c) there is substituted—

"(i) includes material comprising items subject to legal privilege (as defined by section 412 of the Proceeds of Crime Act 2002 (c. 29))," and

(c) sub-paragraph (ii) of subsection (7)(c) shall be ignored.

(9) In the application of this section to Northern Ireland the reference to the Police and Criminal Evidence Act 1984 shall be taken as a reference to the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).**]**

Textual Amendments

F100 S. 92A inserted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 38(1)**, 48(3); S.I. 2004/2523, art. 2, Sch.

[[F101]92B Advertising

(1) A person commits an offence if—

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(a) he offers to provide immigration advice or immigration services, and
(b) provision by him of the advice or services would constitute an offence under section 91.

(2) For the purpose of subsection (1) a person offers to provide advice or services if he—
(a) makes an offer to a particular person or class of person,
(b) makes arrangements for an advertisement in which he offers to provide advice or services, or
(c) makes arrangements for an advertisement in which he is described or presented as competent to provide advice or services.

(3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(4) Subsections (3) to (7) of section 91 shall have effect for the purposes of this section as they have effect for the purposes of that section.

(5) An information relating to an offence under this section may in England and Wales be tried by a magistrates' court if—
(a) it is laid within the period of six months beginning with the date (or first date) on which the offence is alleged to have been committed, or
(b) it is laid—
(i) within the period of two years beginning with that date, and
(ii) within the period of six months beginning with a date certified by the Immigration Services Commissioner as the date on which the commission of the offence came to his notice.

(6) In Scotland, proceedings for an offence under this section may be commenced—
(a) at any time within the period of six months beginning with the date (or first date) on which the offence is alleged to have been committed, or
(b) at any time within both—
(i) the period of two years beginning with that date, and
(ii) the period of six months beginning with a date specified, in a certificate signed by or on behalf of the procurator fiscal, as the date on which evidence sufficient in his opinion to warrant such proceedings came to his knowledge,

and any such certificate purporting to be so signed shall be deemed so signed unless the contrary is proved and be conclusive as to the facts stated in it.

(7) Subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995 (c. 46) (date on which proceedings are deemed commenced) has effect to the purposes of subsection (6) as it has effect for the purposes of that section.

(8) A complaint charging the commission of an offence under this section may in Northern Ireland be heard and determined by a magistrates' court if—
(a) it is made within the period of six months beginning with the date (or first date) on which the offence is alleged to have been committed, or
(b) it is made—
(i) within the period of two years beginning with that date, and
(ii) within the period of six months beginning with a date certified by the Immigration Services Commissioner as the date on which the commission of the offence came to his notice.]

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Textual Amendments

F101 S. 92B inserted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 39**, 48(3); S.I. 2004/2523, art. 2, Sch.

Miscellaneous

93 Information.

(1) No enactment or rule of law prohibiting or restricting the disclosure of information prevents a person from—

(a) giving the Commissioner information which is necessary for the discharge of his functions; or

(b) giving the Tribunal information which is necessary for the discharge of its functions.

(2) No relevant person may at any time disclose information which—

(a) has been obtained by, or given to, the Commissioner under or for purposes of this Act,

(b) relates to an identified or identifiable individual or business, and

(c) is not at that time, and has not previously been, available to the public from other sources,

unless the disclosure is made with lawful authority.

(3) For the purposes of subsection (2), a disclosure is made with lawful authority only if, and to the extent that—

(a) it is made with the consent of the individual or of the person for the time being carrying on the business;

(b) it is made for the purposes of, and is necessary for, the discharge of any of the Commissioner's functions under this Act or any Community obligation of the Commissioner;

(c) it is made for the purposes of any civil or criminal proceedings arising under or by virtue of this Part, or otherwise; or

(d) having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest.

(4) A person who knowingly or recklessly discloses information in contravention of subsection (2) is guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment, to a fine.

(5) "Relevant person" means a person who is or has been—

(a) the Commissioner;

(b) a member of the Commissioner's staff; or

(c) an agent of the Commissioner.

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PART VI

SUPPORT FOR ASYLUM-SEEKERS

Interpretation

94 Interpretation of Part VI.

(1) In this Part—

"adjudicator" has the meaning given in section 102(2);

"asylum-seeker" means a person who is not under 18 and has made a claim for asylum which has been recorded by the Secretary of State but which has not been determined;

"claim for asylum" means a claim that it would be contrary to the United Kingdom's obligations under the Refugee Convention, or under Article 3 of the Human Rights Convention, for the claimant to be removed from, or required to leave, the United Kingdom;

"the Department" means the Department of Health and Social Services for Northern Ireland;

"dependant", in relation to an asylum-seeker or a supported person, means a person in the United Kingdom who—

(a) is his spouse;

(b) is a child of his, or of his spouse, who is under 18 and dependent on him; or

(c) falls within such additional category, if any, as may be prescribed;

"the Executive" means the Northern Ireland Housing Executive;

"housing accommodation" includes flats, lodging houses and hostels;

"local authority" means—

(a) in England and Wales, a county council, a county borough council, a district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;

(b) in Scotland, a council constituted under section 2 of the [M22]Local Government etc. (Scotland) Act 1994;

[[F102]"Northern Ireland authority" has the meaning given by section 110(9).**]**

"supported person" means—

(a) an asylum-seeker, or

(b) a dependant of an asylum-seeker,

who has applied for support and for whom support is provided under section 95.

(2) References in this Part to support provided under section 95 include references to support which is provided under arrangements made by the Secretary of State under that section.

(3) For the purposes of this Part, a claim for asylum is determined at the end of such period beginning—

(a) on the day on which the Secretary of State notifies the claimant of his decision on the claim, or

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(b) if the claimant has appealed against the Secretary of State's decision, on the day on which the appeal is disposed of,

as may be prescribed.

(4) An appeal is disposed of when it is no longer pending for the purposes of the Immigration Acts or the [M23]Special Immigration Appeals Commission Act 1997.

(5) If an asylum-seeker's household includes a child who is under 18 and a dependant of his, he is to be treated (for the purposes of this Part) as continuing to be an asylum-seeker while—

(a) the child is under 18; and

(b) he and the child remain in the United Kingdom.

(6) Subsection (5) does not apply if, on or after the determination of his claim for asylum, the asylum-seeker is granted leave to enter or remain in the United Kingdom (whether or not as a result of that claim).

(7) For the purposes of this Part, the Secretary of State may inquire into, and decide, the age of any person.

(8) A notice under subsection (3) must be given in writing.

(9) If such a notice is sent by the Secretary of State by first class post, addressed—

(a) to the asylum-seeker's representative, or

(b) to the asylum-seeker's last known address,

it is to be taken to have been received by the asylum-seeker on the second day after the day on which it was posted.

Textual Amendments

F102 Definition in s. 94(1) inserted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 60(2)**, 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

Marginal Citations

M22 1994 c. 39.

M23 1997 c. 68.

Provision of support

95 Persons for whom support may be provided.

(1) The Secretary of State may provide, or arrange for the provision of, support for—

(a) asylum-seekers, or

(b) dependants of asylum-seekers,

who appear to the Secretary of State to be destitute or to be likely to become destitute within such period as may be prescribed.

(2) In prescribed circumstances, a person who would otherwise fall within subsection (1) is excluded.

(3) For the purposes of this section, a person is destitute if—

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(a) he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or

(b) he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs.

(4) If a person has dependants, subsection (3) is to be read as if the references to him were references to him and his dependants taken together.

(5) In determining, for the purposes of this section, whether a person's accommodation is adequate, the Secretary of State—

(a) must have regard to such matters as may be prescribed for the purposes of this paragraph; but

(b) may not have regard to such matters as may be prescribed for the purposes of this paragraph or to any of the matters mentioned in subsection (6).

(6) Those matters are—

(a) the fact that the person concerned has no enforceable right to occupy the accommodation;

(b) the fact that he shares the accommodation, or any part of the accommodation, with one or more other persons;

(c) the fact that the accommodation is temporary;

(d) the location of the accommodation.

(7) In determining, for the purposes of this section, whether a person's other essential living needs are met, the Secretary of State—

(a) must have regard to such matters as may be prescribed for the purposes of this paragraph; but

(b) may not have regard to such matters as may be prescribed for the purposes of this paragraph.

(8) The Secretary of State may by regulations provide that items or expenses of such a description as may be prescribed are, or are not, to be treated as being an essential living need of a person for the purposes of this Part.

(9) Support may be provided subject to conditions.

[[F103](9A) A condition imposed under subsection (9) may, in particular, relate to—

(a) any matter relating to the use of the support provided, or

(b) compliance with a restriction imposed under paragraph 21 of Schedule 2 to the 1971 Act (temporary admission or release from detention) or paragraph 2 or 5 of Schedule 3 to that Act (restriction pending deportation).**]**

(10) The conditions must be set out in writing.

(11) A copy of the conditions must be given to the supported person.

(12) Schedule 8 gives the Secretary of State power to make regulations supplementing this section.

(13) Schedule 9 makes temporary provision for support in the period before the coming into force of this section.

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Textual Amendments

F103 S. 95(9A) inserted (7.11.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), **s. 50(1)** (with s. 159)

Modifications etc. (not altering text)

C33 S. 95 restricted (8.1.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **s. 55** (with s. 159); S.I. 2002/2811, **art. 2**, Sch.
S. 95 restricted (prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 51**, 162(1) (with s. 159)

C34 S. 95 modified (prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 22**, 162(1) (with s. 159)

C35 S. 95(2)-(7) applied (with modifications) (S.) (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), arts. 1(1), **14(2)** (as substituted by 2002 c. 41, s. 46(4)), Sch. 1 para. 6

C36 S. 95(2)-(7) applied (with modifications) (E.W.) (1.3.2007) by National Health Service (Wales) Act 2006 (c. 42), s. 208(1), **Sch. 15 para. 2(7)** (with s. 19(3))

C37 S. 95(2)-(7) applied (with modifications) (E.W.) (1.3.2007) by National Health Service Act 2006 (c. 41), **Sch. 20 para. 2(7)**

C38 S. 95(3)(5)-(8) applied (with modifications) (6.12.1999) by 1948 c. 29, **s. 21(1B)** (as inserted by 1999 c. 33, ss. 116, 169(2), **Sch. 15 para. 5**; S.I. 1999/3190, art. 2, **Sch.**)
S. 95(3)(5)-(8) applied (with modifications) (6.12.1999) by 1968 c. 46, **s. 45(4B)** (as inserted by 1999 c. 33, ss. 117(1), 169(2), **Sch. 15 para. 6**; S.I. 1999/3190, art. 2, **Sch.**)
S. 95(3)(5)-(8) applied (with modifications) (6.12.1999) by 1977 c. 49, **Sch. 8 para 2** (2B) (as inserted by 1999 c. 33, ss. 117(2), 169(2), **Sch. 15 para. 9**; S.I. 1999/3190, art. 2, **Sch.**)
S. 95(3)(5)-(8) applied (with modifications) (1.3.2000 for specified purposes and otherwise 3.4.2000) by 1968 c. 49, **ss. 12(2B)**, 13A(5), 13B(4) (as inserted by 1999 c. 33, ss. 120(1)-(3), 169(2), 170(4), **Sch. 15 para. 7**)
S. 95(3)(5)-(8) applied (with modifications) (1.3.2000 for specified purposes and otherwise 3.4.2000) by 1984 c. 36, **ss. 7(4)**, 8(5) (as inserted by 1999 c. 33, ss. 120(4)(5), 169(2), 170(4), **Sch. 15 para. 10**)

Commencement Information

I21 S. 95 wholly in force at 3.4.2000; s. 95(13) in force at Royal Assent see s. 170(3)(g); s. 95(3)-(8) in force for certain purposes at 6.12.1999 and s. 95 in force for certain purposes at 1.1.2000 insofar as not already in force by S.I. 1999/3190, art. 2, **Sch.**; s. 95 in force at 3.4.2000 insofar as not already in force by S.I. 2000/464, art. 2, **Sch.**

96 Ways in which support may be provided.

(1) Support may be provided under section 95—

(a) by providing accommodation appearing to the Secretary of State to be adequate for the needs of the supported person and his dependants (if any);

(b) by providing what appear to the Secretary of State to be essential living needs of the supported person and his dependants (if any);

(c) to enable the supported person (if he is the asylum-seeker) to meet what appear to the Secretary of State to be expenses (other than legal expenses or other expenses of a prescribed description) incurred in connection with his claim for asylum;

(d) to enable the asylum-seeker and his dependants to attend bail proceedings in connection with his detention under any provision of the Immigration Acts; or

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(e) to enable the asylum-seeker and his dependants to attend bail proceedings in connection with the detention of a dependant of his under any such provision.

(2) If the Secretary of State considers that the circumstances of a particular case are exceptional, he may provide support under section 95 in such other ways as he considers necessary to enable the supported person and his dependants (if any) to be supported.

(3) [F104] . . . . . .

(4) **[**[F105]But the Secretary of State may by order provide for subsection (3) not to apply—

(a) in all cases, for such period as may be specified;

(b) in such circumstances as may be specified;

(c) in relation to specified categories of person; or

(d) in relation to persons whose accommodation is in a specified locality.**]**

(5) **[**[F105]The Secretary of State may by order repeal subsection (3).**]**

(6) **[**[F105]"Specified" means specified in an order made under subsection (4).**]**

Textual Amendments

F104 S. 96(3) repealed (8.4.2002) by The Asylum Support (Repeal) Order 2002 (S.I. 2002/782), **art. 2**

F105 S. 96(4)-(6) cease to have effect (7.11.2002) and repealed (prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 61(a)**, 161, **Sch. 9** (with s. 159)

Modifications etc. (not altering text)

C39 S. 96(1)(b): power to restrict conferred (7.11.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), **s. 43** (with s. 159)

97 Supplemental.

(1) When exercising his power under section 95 to provide accommodation, the Secretary of State must have regard to—

(a) the fact that the accommodation is to be temporary pending determination of the asylum-seeker's claim;

(b) the desirability, in general, of providing accommodation in areas in which there is a ready supply of accommodation; and

(c) such other matters (if any) as may be prescribed.

(2) But he may not have regard to—

(a) any preference that the supported person or his dependants (if any) may have as to the locality in which the accommodation is to be provided; or

(b) such other matters (if any) as may be prescribed.

(3) The Secretary of State may by order repeal all or any of the following—

(a) subsection (1)(a);

(b) subsection (1)(b);

(c) subsection (2)(a).

(4) When exercising his power under section 95 to provide essential living needs, the Secretary of State—

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(a) must have regard to such matters as may be prescribed for the purposes of this paragraph; but

(b) may not have regard to such other matters as may be prescribed for the purposes of this paragraph.

(5) In addition, when exercising his power under section 95 to provide essential living needs, the Secretary of State may limit the overall amount of the expenditure which he incurs in connection with a particular supported person—

(a) to such portion of the income support applicable amount provided under section 124 of the [M24]Social Security Contributions and Benefits Act 1992, or

(b) to such portion of any components of that amount,

as he considers appropriate having regard to the temporary nature of the support that he is providing.

(6) For the purposes of subsection (5), any support of a kind falling within section 96(1)(c) is to be treated as if it were the provision of essential living needs.

(7) In determining how to provide, or arrange for the provision of, support under section 95, the Secretary of State may disregard any preference which the supported person or his dependants (if any) may have as to the way in which the support is to be given.

Commencement Information

I22 S. 97 wholly in force at 3.4.2000; s. 97 not in force at Royal Assent see s. 170(4); s. 97 in force for certain purposes at 1.1.2000 by S.I. 1999/3190, art. 2, **Sch.**; s. 97 in force at 3.4.2000 insofar as not already in force by S.I. 2000/464, art. 2, **Sch.**

Marginal Citations

M24 1992 c. 4.

98 Temporary support.

(1) The Secretary of State may provide, or arrange for the provision of, support for—

(a) asylum-seekers, or

(b) dependants of asylum-seekers,

who it appears to the Secretary of State may be destitute.

(2) Support may be provided under this section only until the Secretary of State is able to determine whether support may be provided under section 95.

(3) Subsections (2) to (11) of section 95 apply for the purposes of this section as they apply for the purposes of that section.

Modifications etc. (not altering text)

C40 S. 98 restricted (8.1.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **s. 55** (with s. 159); S.I. 2002/2811, **art. 2**, Sch.
S. 98 restricted (prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 51**, 162(1) (with s. 159)

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Commencement Information

I23 S. 98 partly in force; s. 98 not in force at Royal Assent see s. 170(4); s. 98(3) in force for certain purposes at 1.3.2000 by S.I. 2000/464, art. 2, **Sch.**

Support and assistance by local authorities etc.

99 Provision of support by local authorities.

(1) A local authority **[**[F106]or Northern Ireland authority**]** may provide support for **[**[F107]persons**]** in accordance with arrangements made by the Secretary of State under section **[**[F108]4,**]** 95 **[**[F109]or 98**]**.

[[F110](2) Support may be provided by an authority in accordance with arrangements made with the authority or with another person.

(3) Support may be provided by an authority in accordance with arrangements made under section 95 only in one or more of the ways mentioned in section 96(1) and (2).**]**

(4) **[**[F111]An authority**]** may incur reasonable expenditure in connection with the preparation of proposals for entering into arrangements under section **[**[F112]4,**]** 95 **[**[F113]or 98**]**.

(5) The powers conferred on **[**[F114]an authority**]** by this section include power to—
- (a) provide services outside their area;
- (b) provide services jointly with one or more **[**[F115]other bodies**]**;
- (c) form a company for the purpose of providing services;
- (d) tender for contracts (whether alone or with any other person).

Textual Amendments

F106 Words in s. 99(1) inserted (7.11.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 56(2)(a)**, 162(2) (with s. 159)

F107 Word in s. 99(1) substituted (16.6.2006) by Immigration, Asylum and Nationality Act 2006 (c. 13), **ss. 43(1)(a)**, 62(1)(2); S.I. 2006/1497, art. 3, Sch.

F108 Word in s. 99(1) inserted (16.6.2006) by Immigration, Asylum and Nationality Act 2006 (c. 13), **ss. 43(1)(b)**, 62(1)(2); S.I. 2006/1497, art. 3, Sch.

F109 Words in s. 99(1) added (7.11.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 56(2)(b)**, 162(2) (with s. 159)

F110 S. 99(2)(3) substituted (7.11.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 56(3)**, 162(2) (with s. 159)

F111 Words in s. 99(4) substituted (7.11.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 56(4)(a)**, 162(2) (with s. 159)

F112 Word in s. 99(4) inserted (16.6.2006) by Immigration, Asylum and Nationality Act 2006 (c. 13), **ss. 43(2)**, 62(1)(2); S.I. 2006/1497, art. 3, Sch.

F113 Words in s. 99(4) added (7.11.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 56(4)(b)**, 162(2) (with s. 159)

F114 Words in s. 99(5) substituted (7.11.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 56(5)(a)**, 162(2) (with s. 159)

F115 Words in s. 99(5)(b) substituted (7.11.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 56(5)(b)**, 162(2) (with s. 159)

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Commencement Information

I24 S. 99 wholly in force at 3.4.2000; s. 99(4)(5) in force at Royal Assent see s. 170(3)(h); S. 99 in force at 3.4.2000 insofar as not already in force by S.I. 2000/464, art. 2, **Sch.**

100 Local authority and other assistance for Secretary of State.

(1) This section applies if the Secretary of State asks—

(a) a local authority,

(b) a registered social landlord,

(c) a registered housing association in Scotland or Northern Ireland, or

(d) the Executive,

to assist him to exercise his power under section 95 to provide accommodation.

(2) The person to whom the request is made must co-operate in giving the Secretary of State such assistance in the exercise of that power as is reasonable in the circumstances.

(3) Subsection (2) does not require a registered social landlord to act beyond its powers.

(4) A local authority must supply to the Secretary of State such information about their housing accommodation (whether or not occupied) as he may from time to time request.

(5) The information must be provided in such form and manner as the Secretary of State may direct.

(6) "Registered social landlord" has the same meaning as in Part I of the [M25]Housing Act 1996.

(7) "Registered housing association" has the same meaning—

(a) in relation to Scotland, as in the [M26]Housing Associations Act 1985; and

(b) in relation to Northern Ireland, as in Part II of the [M27]Housing (Northern Ireland) Order 1992.

Marginal Citations

M25 1996 c. 52.

M26 1985 c. 69.

M27 S.I. 1992/1725 (N.I. 15).

101 Reception zones.

(1) The Secretary of State may by order designate as reception zones—

(a) areas in England and Wales consisting of the areas of one or more local authorities;

(b) areas in Scotland consisting of the areas of one or more local authorities;

(c) Northern Ireland.

(2) Subsection (3) applies if the Secretary of State considers that—

(a) a local authority whose area is within a reception zone has suitable housing accommodation within that zone; or

(b) the Executive has suitable housing accommodation.

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(3) The Secretary of State may direct the local authority or the Executive to make available such of the accommodation as may be specified in the direction for a period so specified—
  (a) to him for the purpose of providing support under section 95; or
  (b) to a person with whom the Secretary of State has made arrangements under section 95.

(4) A period specified in a direction under subsection (3)—
  (a) begins on a date so specified; and
  (b) must not exceed five years.

(5) A direction under subsection (3) is enforceable, on an application made on behalf of the Secretary of State, by injunction or in Scotland an order under section 45(b) of the [M28]Court of Session Act 1988.

(6) The Secretary of State's power to give a direction under subsection (3) in respect of a particular reception zone must be exercised by reference to criteria specified for the purposes of this subsection in the order designating that zone.

(7) The Secretary of State may not give a direction under subsection (3) in respect of a local authority in Scotland unless the Scottish Ministers have confirmed to him that the criteria specified in the designation order concerned are in their opinion met in relation to that authority.

(8) Housing accommodation is suitable for the purposes of subsection (2) if it—
  (a) is unoccupied;
  (b) would be likely to remain unoccupied for the foreseeable future if not made available; and
  (c) is appropriate for the accommodation of persons supported under this Part or capable of being made so with minor work.

(9) If housing accommodation for which a direction under this section is, for the time being, in force—
  (a) is not appropriate for the accommodation of persons supported under this Part, but
  (b) is capable of being made so with minor work,

  the direction may require the body to whom it is given to secure that that work is done without delay.

(10) The Secretary of State must make regulations with respect to the general management of any housing accommodation for which a direction under subsection (3) is, for the time being, in force.

(11) Regulations under subsection (10) must include provision—
  (a) as to the method to be used in determining the amount of rent or other charges to be payable in relation to the accommodation;
  (b) as to the times at which payments of rent or other charges are to be made;
  (c) as to the responsibility for maintenance of, and repairs to, the accommodation;
  (d) enabling the accommodation to be inspected, in such circumstances as may be prescribed, by the body to which the direction was given;
  (e) with respect to the condition in which the accommodation is to be returned when the direction ceases to have effect.

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(12) Regulations under subsection (10) may, in particular, include provision—
- (a) for the cost, or part of the cost, of minor work required by a direction under this section to be met by the Secretary of State in prescribed circumstances;
- (b) as to the maximum amount of expenditure which a body may be required to incur as a result of a direction under this section.

(13) The Secretary of State must by regulations make provision ("the dispute resolution procedure") for resolving disputes arising in connection with the operation of any regulations made under subsection (10).

(14) Regulations under subsection (13) must include provision—
- (a) requiring a dispute to be resolved in accordance with the dispute resolution procedure;
- (b) requiring the parties to a dispute to comply with obligations imposed on them by the procedure; and
- (c) for the decision of the person resolving a dispute in accordance with the procedure to be final and binding on the parties.

(15) Before—
- (a) designating a reception zone in Great Britain,
- (b) determining the criteria to be included in the order designating the zone, or
- (c) making regulations under subsection (13),

the Secretary of State must consult such local authorities, local authority associations and other persons as he thinks appropriate.

(16) Before—
- (a) designating Northern Ireland as a reception zone, or
- (b) determining the criteria to be included in the order designating Northern Ireland,

the Secretary of State must consult the Executive and such other persons as he thinks appropriate.

(17) Before making regulations under subsection (10) which extend only to Northern Ireland, the Secretary of State must consult the Executive and such other persons as he thinks appropriate.

(18) Before making any other regulations under subsection (10), the Secretary of State must consult—
- (a) such local authorities, local authority associations and other persons as he thinks appropriate; and
- (b) if the regulations extend to Northern Ireland, the Executive.

Marginal Citations

M28 1988 c. 36.

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
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Appeals

102 Asylum Support Adjudicators.

(1) There are to be adjudicators to hear appeals under this Part.

(2) A person appointed as an adjudicator under this Part is to be known as an Asylum Support Adjudicator (but is referred to in this Part as "an adjudicator").

(3) Schedule 10 makes further provision with respect to adjudicators.

103 Appeals.

(1) If, on an application for support under section 95, the Secretary of State decides that the applicant does not qualify for support under that section, the applicant may appeal to an adjudicator.

(2) If the Secretary of State decides to stop providing support for a person under section 95 before that support would otherwise have come to an end, that person may appeal to an adjudicator.

[[F116](2A) If the Secretary of State decides not to provide accommodation for a person under section 4, or not to continue to provide accommodation for a person under section 4, the person may appeal to an adjudicator.**]**

(3) On an appeal under this section, the adjudicator may—
- (a) require the Secretary of State to reconsider the matter;
- (b) substitute his decision for the decision appealed against; or
- (c) dismiss the appeal.

(4) The adjudicator must give his reasons in writing.

(5) The decision of the adjudicator is final.

(6) If an appeal is dismissed, no further application by the appellant for support under **[**[F117]section 4 or 95**]** is to be entertained unless the Secretary of State is satisfied that there has been a material change in the circumstances.

(7) The Secretary of State may by regulations provide for decisions as to where support provided under **[**[F118]section 4 or 95**]** is to be provided to be appealable to an adjudicator under this Part.

(8) Regulations under subsection (7) may provide for any provision of this section to have effect, in relation to an appeal brought by virtue of the regulations, subject to such modifications as may be prescribed.

(9) The Secretary of State may pay any reasonable travelling expenses incurred by an appellant in connection with attendance at any place for the purposes of an appeal under this section.

Textual Amendments

F116 S. 103(2A) inserted (31.3.2005) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 10(3)(a)**, 48(3) (with s. 10(6)); S.I. 2005/372, art. 2

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F117 Words in s. 103(6) substituted (31.3.2005) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 10(3)(b)**, 48(3) (with s. 10(6)); S.I. 2005/372, art. 2

F118 Words in s. 103(7) substituted (31.3.2005) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 10(3)(b)**, 48(3) (with s. 10(6)); S.I. 2005/372, art. 2

Modifications etc. (not altering text)

C41 S. 103 excluded (8.1.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **s. 55(10)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch.

104 [F119Lord Chancellor]'s rules.

(1) The **[**F119Lord Chancellor**]** may make rules regulating—

(a) the bringing of appeals under this Part; and

(b) the practice and procedure of the adjudicators.

(2) The rules may, in particular, make provision—

(a) for the period within which an appeal must be brought;

(b) as to the burden of proof on an appeal;

(c) as to the giving and admissibility of evidence;

(d) for summoning witnesses;

(e) for an appeal to be heard in the absence of the appellant;

(f) for determining an appeal without a hearing;

(g) requiring reports of decisions of adjudicators to be published;

(h) conferring such ancillary powers on adjudicators as the **[**F119Lord Chancellor**]** considers necessary for the proper discharge of their functions.

(3) In making the rules, the **[**F119Lord Chancellor**]** must have regard to the desirability of securing, so far as is reasonably practicable, that appeals are brought and disposed of with the minimum of delay.

Textual Amendments

F119 Words in s. 104 substituted (2.4.2007) by Transfer of Functions (Asylum Support Adjudicators) Order 2007 (S.I. 2007/275), arts. 1(2), **6(1)** (with art. 4)

Modifications etc. (not altering text)

C42 S. 104: transfer of functions (2.4.2007) by Transfer of Functions (Asylum Support Adjudicators) Order 2007 (S.I. 2007/275), arts. 1(2), **3(a)** (with art. 4)

Offences

105 False representations.

(1) A person is guilty of an offence if, with a view to obtaining support for himself or any other person under any provision made by or under this Part, he—

(a) makes a statement or representation which he knows is false in a material particular;

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(b) produces or gives to a person exercising functions under this Part, or knowingly causes or allows to be produced or given to such a person, any document or information which he knows is false in a material particular;

(c) fails, without reasonable excuse, to notify a change of circumstances when required to do so in accordance with any provision made by or under this Part; or

(d) without reasonable excuse, knowingly causes another person to fail to notify a change of circumstances which that other person was required to notify in accordance with any provision made by or under this Part.

(2) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale, or to both.

Modifications etc. (not altering text)

C43 S. 105 applied (prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 35(1)(a)**, 162(1) (with s. 159)

106 Dishonest representations.

(1) A person is guilty of an offence if, with a view to obtaining any benefit or other payment or advantage under this Part for himself or any other person, he dishonestly—

(a) makes a statement or representation which is false in a material particular;

(b) produces or gives to a person exercising functions under this Part, or causes or allows to be produced or given to such a person, any document or information which is false in a material particular;

(c) fails to notify a change of circumstances when required to do so in accordance with any provision made by or under this Part; or

(d) causes another person to fail to notify a change of circumstances which that other person was required to notify in accordance with any provision made by or under this Part.

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine, or to both.

(3) In the application of this section to Scotland, in subsection (1) for "dishonestly" substitute " knowingly ".

Modifications etc. (not altering text)

C44 S. 106 applied (prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 35(1)(b)**, 162(1) (with s. 159)

107 Delay or obstruction.

(1) A person is guilty of an offence if, without reasonable excuse, he—

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(a) intentionally delays or obstructs a person exercising functions conferred by or under this Part; or

(b) refuses or neglects to answer a question, give any information or produce a document when required to do so in accordance with any provision made by or under this Part.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Modifications etc. (not altering text)

C45 S. 107 applied (prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 35(1)(c)**, 162(1) (with s. 159)

108 Failure of sponsor to maintain.

(1) A person is guilty of an offence if, during any period in respect of which he has given a written undertaking in pursuance of the immigration rules to be responsible for the maintenance and accommodation of another person—

(a) he persistently refuses or neglects, without reasonable excuse, to maintain that person in accordance with the undertaking; and

(b) in consequence of his refusal or neglect, support under any provision made by or under this Part is provided for or in respect of that person.

(2) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 4 on the standard scale, or to both.

(3) For the purposes of this section, a person is not to be taken to have refused or neglected to maintain another person by reason only of anything done or omitted in furtherance of a trade dispute.

Modifications etc. (not altering text)

C46 S. 108 applied (prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 35(1)(d)**, 162(1) (with s. 159)

109 Supplemental.

(1) If an offence under section 105, 106, 107 or 108 committed by a body corporate is proved—

(a) to have been committed with the consent or connivance of an officer, or

(b) to be attributable to neglect on his part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) "Officer", in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in such a capacity.

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(3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) If an offence under section 105, 106, 107 or 108 committed by a partnership in Scotland is proved—

(a) to have been committed with the consent or connivance of a partner, or

(b) to be attributable to neglect on his part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) "Partner" includes a person purporting to act as a partner.

Modifications etc. (not altering text)

C47 S. 109 applied (prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 35(1)(e)**, 162(1) (with s. 159)

[F120 109A Arrest

An immigration officer may arrest without warrant a person whom the immigration officer reasonably suspects has committed an offence under section 105 or 106.

Textual Amendments

F120 Ss. 109A, 109B inserted (31.1.2008) by UK Borders Act 2007 (c. 30), **ss. 18**, 59(2); S.I. 2008/99, art. 2(h)

109B >Entry, search and seizure

(1) An offence under section 105 or 106 shall be treated as—

(a) a relevant offence for the purposes of sections 28B and 28D of the Immigration Act 1971, and

(b) an offence under Part 3 of that Act (criminal proceedings) for the purposes of sections 28(4), 28E, 28G and 28H (search after arrest, &c.) of that Act.

(2) The following provisions of the Immigration Act 1971 (c. 77) shall have effect in connection with an offence under section 105 or 106 of this Act as they have effect in connection with an offence under that Act—

(a) section 28I (seized material: access and copying),

(b) section 28J (search warrants: safeguards),

(c) section 28K (execution of warrants), and

(d) section 28L(1) (interpretation).]

Textual Amendments

F120 Ss. 109A, 109B inserted (31.1.2008) by UK Borders Act 2007 (c. 30), **ss. 18**, 59(2); S.I. 2008/99, art. 2(h)

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Expenditure

110 Payments to local authorities.

(1) The Secretary of State may from time to time pay to any local authority or Northern Ireland authority such sums as he considers appropriate in respect of expenditure incurred, or to be incurred, by the authority in connection with—

(a) persons who are, or have been, asylum-seekers; and

(b) their dependants.

(2) The Secretary of State may from time to time pay to any—

(a) local authority,

(b) local authority association, or

(c) Northern Ireland authority,

such sums as he considers appropriate in respect of services provided by the authority or association in connection with the discharge of functions under this Part.

(3) The Secretary of State may make payments to any local authority towards the discharge of any liability of supported persons or their dependants in respect of council tax payable to that authority.

(4) The Secretary of State must pay to a body to which a direction under section 101(3) is given such sums as he considers represent the reasonable costs to that body of complying with the direction.

(5) The Secretary of State must pay to a directed body sums determined to be payable in relation to accommodation made available by that body under section 101(3)(a).

(6) The Secretary of State may pay to a directed body sums determined to be payable in relation to accommodation made available by that body under section 101(3)(b).

(7) In subsections (5) and (6)—

"determined" means determined in accordance with regulations made by virtue of subsection (11)(a) of section 101, and

"directed body" means a body to which a direction under subsection (3) of section 101 is given.

(8) Payments under subsection (1), (2) or (3) may be made on such terms, and subject to such conditions, as the Secretary of State may determine.

(9) "Northern Ireland authority" means—

(a) the Executive; or

(b) a Health and Social Services Board established under Article 16 of the [M29]Health and Personal Social Services (Northern Ireland) Order 1972 **[**[F121]; or

(c) a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1)**]**.

Textual Amendments

F121 S. 110(9)(c) and word added (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 60(1)**, 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

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Modifications etc. (not altering text)

C48 S. 110 modified (7.11.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), **s. 48** (with s. 159)

Commencement Information

I25 S. 110 wholly in force at 3.4.2000; s. 110(1)(2) (and (8) so far as relating thereto) in force at Royal Assent, see s. 170(3)(j); s. 110(9) in force at 6.12.1999 by S.I. 1999/3190, art, 2, Sch.; s. 110 in force at 3.4.2000 insofar as not already in force by S.I. 2000/464, art. 2, **Sch.**

Marginal Citations

M29 S.I. 1972/1265 (N.I. 14).

111 Grants to voluntary organisations.

(1) The Secretary of State may make grants of such amounts as he thinks appropriate to voluntary organisations in connection with—

(a) the provision by them of support (of whatever nature) to persons who are, or have been, asylum-seekers and to their dependants; and

(b) connected matters.

(2) Grants may be made on such terms, and subject to such conditions, as the Secretary of State may determine.

Modifications etc. (not altering text)

C49 S. 111 modified (7.11.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), **s. 48** (with s. 159)

112 Recovery of expenditure on support: misrepresentation etc.

(1) This section applies if, on an application made by the Secretary of State, the court determines that—

(a) a person ("A") has misrepresented or failed to disclose a material fact (whether fraudulently or otherwise); and

(b) as a consequence of the misrepresentation or failure, support has been provided under section 95 or 98 (whether or not to A).

(2) If the support was provided by the Secretary of State, the court may order A to pay to the Secretary of State an amount representing the monetary value of the support which would not have been provided but for A's misrepresentation or failure.

(3) If the support was provided by another person ("B") in accordance with arrangements made with the Secretary of State under section 95 or 98, the court may order A to pay to the Secretary of State an amount representing the payment to B which would not have been made but for A's misrepresentation or failure.

(4) "Court" means a county court or, in Scotland, the sheriff.

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Modifications etc. (not altering text)

C50 S. 112 applied (with modifications) (prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 35(1)(f)(2)**, 162(1) (with s. 159)

113 Recovery of expenditure on support from sponsor.

(1) This section applies if—

(a) a person ("the sponsor") has given a written undertaking in pursuance of the immigration rules to be responsible for the maintenance and accommodation of another person; and

(b) during any period in relation to which the undertaking applies, support under section 95 is provided to or in respect of that other person.

(2) The Secretary of State may make a complaint against the sponsor to a magistrates' court for an order under this section.

(3) The court—

(a) must have regard to all the circumstances (and in particular to the sponsor's income); and

(b) may order him to pay to the Secretary of State such sum (weekly or otherwise) as it considers appropriate.

(4) But such a sum is not to include any amount attributable otherwise than to support provided under section 95.

(5) In determining—

(a) whether to order any payments to be made in respect of support provided under section 95 for any period before the complaint was made, or

(b) the amount of any such payments,

the court must disregard any amount by which the sponsor's current income exceeds his income during that period.

(6) An order under this section is enforceable as a magistrates' court maintenance order within the meaning of section 150(1) of the [M30]Magistrates' Courts Act 1980.

(7) In the application of this section to Scotland—

(a) omit subsection (6);

(b) for references to a complaint substitute references to an application; and

(c) for references to a magistrates' court substitute references to the sheriff.

(8) In the application of this section to Northern Ireland, for references to a magistrates' court substitute references to a court of summary jurisdiction and for subsection (6) substitute—

"(6) An order under this section is an order to which Article 98(11) of the [M31]Magistrates' Courts (Northern Ireland) Order 1981 applies."

Modifications etc. (not altering text)

C51 S. 113 applied (with modifications) (prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 35(1)(g)(2)**, 162(1) (with s. 159)

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Marginal Citations

M30 1980 c. 43.

M31 S.I. 1981/1675 (N.I. 26).

114 Overpayments.

(1) Subsection (2) applies if, as a result of an error on the part of the Secretary of State, support has been provided to a person under section 95 or 98.

(2) The Secretary of State may recover from a person who is, or has been, a supported person an amount representing the monetary value of support provided to him as a result of the error.

(3) An amount recoverable under subsection (2) may be recovered as if it were a debt due to the Secretary of State.

(4) The Secretary of State may by regulations make provision for other methods of recovery, including deductions from support provided under section 95.

Commencement Information

I26 S. 114 wholly in force at 3.4.2000; s. 114 not in force at Royal Assent see s. 170(4); s. 114 in force for certain purposes at 1.1.2000 by S.I. 1999/3190, art. 2, **Sch.**; s. 114 in force at 3.4.2000 insofar as not already in force by S.I. 2000/464, art. 2, **Sch.**

Exclusions

115 Exclusion from benefits.

(1) No person is entitled to income-based jobseeker's allowance under the [M32]Jobseekers Act 1995 **[**[F122]or to state pension credit under the State Pension Credit Act 2002**]** or to—

(a) attendance allowance,
(b) severe disablement allowance,
(c) **[**[F123]carer's allowance**]**,
(d) disability living allowance,
(e) income support,
[F124](f) . . . . . .
[F124](g) . . . . . .
(h) a social fund payment,
(i) child benefit,
(j) housing benefit, or
(k) council tax benefit,

under the [M33]Social Security Contributions and Benefits Act 1992 while he is a person to whom this section applies.

(2) No person in Northern Ireland is entitled to **[**[F125]state pension credit under the State Pension Credit Act (Northern Ireland) 2002, or to**]**—

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(a) income-based jobseeker's allowance under the [M34]Jobseekers (Northern Ireland) Order 1995, or

(b) any of the benefits mentioned in paragraphs (a) to (j) of subsection (1),

under the [M35]Social Security Contributions and Benefits (Northern Ireland) Act 1992 while he is a person to whom this section applies.

(3) This section applies to a person subject to immigration control unless he falls within such category or description, or satisfies such conditions, as may be prescribed.

(4) Regulations under subsection (3) may provide for a person to be treated for prescribed purposes only as not being a person to whom this section applies.

(5) In relation to **[**[F126]child benefit**]**, "prescribed" means prescribed by regulations made by the Treasury.

(6) In relation to the matters mentioned in subsection (2) (except so far as it relates to **[**[F126]child benefit**]**), "prescribed" means prescribed by regulations made by the Department.

(7) Section 175(3) to (5) of the Social Security Contributions and Benefits Act 1992 (supplemental powers in relation to regulations) applies to regulations made by the Secretary of State or the Treasury under subsection (3) as it applies to regulations made under that Act.

(8) Sections 133(2), 171(2) and 172(4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 apply to regulations made by the Department under subsection (3) as they apply to regulations made by the Department under that Act.

(9) "A person subject to immigration control" means a person who is not a national of an EEA State and who—

(a) requires leave to enter or remain in the United Kingdom but does not have it;

(b) has leave to enter or remain in the United Kingdom which is subject to a condition that he does not have recourse to public funds;

(c) has leave to enter or remain in the United Kingdom given as a result of a maintenance undertaking; or

(d) has leave to enter or remain in the United Kingdom only as a result of paragraph 17 of Schedule 4.

(10) "Maintenance undertaking", in relation to any person, means a written undertaking given by another person in pursuance of the immigration rules to be responsible for that person's maintenance and accommodation.

Textual Amendments

F122 Words in s. 115(1) inserted (2.7.2002 for certain purposes, 6.10.2003 in so far as not already in force) by State Pension Credit Act 2002 (c. 16), **ss. 4(2)**, 22(3); S.I. 2002/1691, **art. 2(d)**; S.I. 2003/1766, art. 2(a)

F123 Words in s. 115(1)(c) substituted (1.9.2002 for certain purposes, otherwise 1.4.2003) by The Regulatory Reform (Carer's Allowance) Order 2002 (S.I. 2002/1457), arts. 1(b), 2(2), **Sch. paras. 1**, 3(c)

F124 S. 115(1)(f)(g) repealed (8.4.2003) by Tax Credits Act 2002 (c. 21), s. 61, **Sch. 6**; S.I. 2003/962, art. 2(4)(e), Sch. 2

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F125 Words in s. 115(2) inserted (N.I.) (2.12.2002 for certain purposes, 6.10.2003 in so far as not already in force) by State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.)), **ss. 4(2)**, 21(2); S.R. 2002/366, **art. 2(1)(d)**; S.R. 2003/373, art. 2

F126 Words in s. 115(5)(6) substituted (26.2.2003 for specified purposes, 1.4.2003 for specified purposes, 7.4.2003 in so far as not already in force) by Tax Credits Act 2002 (c. 21), s. 61, **Sch. 4 para. 21**; S.I. 2003/392, art. 2

Modifications etc. (not altering text)

C52 S. 115 applied (with modifications) (N.I.) (1.4.2007) by The Rate Relief (Qualifying Age) Regulations (Northern Ireland) 2007 (S.R. 2007/203), regs. 1(1), **12**

C53 S. 115 applied (with modifications) (N.I.) (1.4.2007) by The Rate Relief (General) Regulations (Northern Ireland) 2007 (S.R. 2007/204), regs. 1(1), **12**

C54 S. 115(9) applied (E.W.S.) (8.7.2004) by Age-Related Payments Act 2004 (c. 10), **s. 4(2)(c)**

Commencement Information

I27 S. 115 wholly in force at 3.4.2000; s. 115 not in force at Royal Assent see s. 170(2)(4); s. 115 in force for certain purposes at 1.1.2000 by S.I. 1999/3190, art. 2, **Sch.**; s. 115(1)(2) in force at 3.4.2000 by virtue of S.I. 2000/704 (see s. 170(2)); s. 115 in force at 3.4.2000 insofar as not already in force by S.I. 2000/464, art. 2, **Sch.**

Marginal Citations

M32 1995 c. 18.

M33 1992 c. 4.

M34 S.I. 1995/2705 (N.I. 15).

M35 1992 c. 7.

116 Amendment of section 21 of the National Assistance Act 1948.

In section 21 of the [M36]National Assistance Act 1948 (duty of local authorities to provide accommodation), after subsection (1), insert—

"(1A) A person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies may not be provided with residential accommodation under subsection (1)(a) if his need for care and attention has arisen solely—

(a) because he is destitute; or

(b) because of the physical effects, or anticipated physical effects, of his being destitute.

(1B) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of subsection (1A) as they apply for the purposes of that section, but for the references in subsections (5) and (7) of that section and in that paragraph to the Secretary of State substitute references to a local authority."

Marginal Citations

M36 1948 c. 29.

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117 Other restrictions on assistance: England and Wales.

(1) In section 45 of the [M37]Health Services and Public Health Act 1968 (promotion by local authorities of the welfare of old people), after subsection (4), insert—

"(4A) No arrangements under this section may be given effect to in relation to a person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies solely—

(a) because he is destitute; or

(b) because of the physical effects, or anticipated physical effects, of his being destitute.

(4B) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of subsection (4A) as they apply for the purposes of that section, but for the references in subsections (5) and (7) of that section and in that paragraph to the Secretary of State substitute references to a local authority."

[F127](2) . . . . . .

(3) **[**[F128]In section 161 of the [M38]Housing Act 1996 (allocation of housing accommodation only to qualifying persons), after subsection (2), insert—

"(2A) Regulations may not be made under subsection (2) so as to include in a prescribed class any person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies."**]**

(4) **[**[F129]In section 185 of the 1996 Act (persons from abroad not eligible for housing assistance), after subsection (2), insert—

"(2A) Regulations may not be made under subsection (2) so as to include in a prescribed class any person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies."**]**

(5) In the 1996 Act, omit section 186 (asylum-seekers and their dependants).

(6) In section 187(1) of the 1996 Act (provision of information by Secretary of State), in paragraph (a), for "or has become an asylum-seeker, or a dependant of an asylum-seeker" substitute " a person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies ".

Textual Amendments

F127 S. 117(2) repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

F128 S. 117(3) repealed (E.W.) (31.7.2002 for E., 27.1.2003 for W.) by Homelessness Act 2002 (c. 7), s. 18, **Sch. 2** (with s. 20(4)); S.I. 2002/1799, **art. 2**; S.I. 2002/1736, **art. 2(2)**, Sch. Pt. 2

F129 S. 117(4) repealed (E.W.) (31.7.2002 for E., 30.9.2002 for W.) by Homelessness Act 2002 (c. 7), s. 18, **Sch. 2** (with s. 20(4)); S.I. 2002/1799, **art. 2**; S.I. 2002/1736, **art. 2(1)**, Sch. Pt. 1

Commencement Information

I28 S. 117 partly in force; s. 117 not in force at Royal Assent see s. 170(4); s. 117(1)(2) in force at 6.12.1999 by S.I. 1999/3190, art. 2, **Sch.**; s. 117(1)-(4)(6) in force at 3.4.2000 insofar as not already in force by S.I. 2000/464, art. 2, **Sch.**

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Immigration and Asylum Act 1999 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Marginal Citations

M37 1968 c. 46.

M38 1996 c. 52.

118 Housing authority accommodation.

(1) Each housing authority must secure that, so far as practicable, a tenancy of, or licence to occupy, housing accommodation provided under the accommodation provisions is not granted to a person subject to immigration control unless—

(a) he is of a class specified in an order made by the Secretary of State; or

(b) the tenancy of, or licence to occupy, such accommodation is granted in accordance with arrangements made under section **[**[F130]4, 95 or 98**]**.

(2) "Housing authority" means—

(a) in relation to England and Wales, a local housing authority within the meaning of the [M39]Housing Act 1985;

(b) in relation to Scotland, a local authority within the meaning of the [M40]Housing (Scotland) Act 1987; and

(c) in relation to Northern Ireland, the Executive.

(3) "Accommodation provisions" means—

(a) in relation to England and Wales, Part II of the Housing Act 1985;

(b) in relation to Scotland, Part I of the Housing (Scotland) Act 1987;

(c) in relation to Northern Ireland, Part II of the [M41]Housing (Northern Ireland) Order 1981.

(4) "Licence to occupy", in relation to Scotland, means a permission or right to occupy.

(5) "Tenancy", in relation to England and Wales, has the same meaning as in the [M42]Housing Act 1985.

(6) "Person subject to immigration control" means a person who under the 1971 Act requires leave to enter or remain in the United Kingdom (whether or not such leave has been given).

(7) This section does not apply in relation to any allocation of housing to which Part VI of the [M43]Housing Act 1996 (allocation of housing accommodation) applies.

Textual Amendments

F130 Words in s. 118(1)(b) substituted (16.6.2006) by Immigration, Asylum and Nationality Act 2006 (c. 13), **ss. 43(3)**, 62(1)(2); S.I. 2006/1497, art. 3, Sch.

Commencement Information

I29 S. 118 wholly in force at 1.3.2000; s. 118 not in force at Royal Assent see s. 170(4); s. 118 in force for certain purposes at 1.1.2000 by S.I. 1999/3190, art. 2, **Sch.**; s. 118 in force at 1.3.2000 insofar as not already in force by S.I. 2000/464, art. 2, **Sch.**

Marginal Citations

M39 1985 c. 68.

M40 1987 c. 26.

M41 S.I. 1981/156 (N.I. 3).

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
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M42 1985 c. 68.
M43 1996 c. 52.

119 Homelessness: Scotland and Northern Ireland.

(1) A person subject to immigration control—
- (a) is not eligible for accommodation or assistance under the homelessness provisions, and
- (b) is to be disregarded in determining for the purposes of those provisions, whether another person—
  - (i) is homeless or is threatened with homelessness, or
  - (ii) has a priority need for accommodation,

  unless he is of a class specified in an order made by the Secretary of State.

(2) An order under subsection (1) may not be made so as to include in a specified class any person to whom section 115 applies.

(3) "The homelessness provisions" means—
- (a) in relation to Scotland, Part II of the [M44]Housing (Scotland) Act 1987; and
- (b) in relation to Northern Ireland, Part II of the [M45]Housing (Northern Ireland) Order 1988.

(4) "Person subject to immigration control" has the same meaning as in section 118.

Commencement Information
I30 S. 119 wholly in force at 1.3.2000; s. 119 not in force at Royal Assent see s. 170(4); s. 119 in force for certain purposes at 1.1.2000 by S.I. 1999/3190, art. 2, **Sch.**; s. 119 in force at 1.3.2000 insofar as not already in force by S.I. 2000/464, art. 2, **Sch.**

Marginal Citations
M44 1987 c. 26.
M45 S.I. 1988/1990 (N.I. 13).

120 Other restrictions on assistance: Scotland.

(1) In section 12 of the [M46]Social Work (Scotland) Act 1968 (general social welfare services of local authorities), after subsection (2) insert—

"(2A) A person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies is not to receive assistance under subsection (1) of this section (whether by way of residential accommodation or otherwise) if his need for assistance has arisen solely—
- (a) because he is destitute; or
- (b) because of the physical effects, or anticipated physical effects, of his being destitute.

(2B) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of subsection (2A) as they apply for the purposes of that section, but for the

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references in subsections (5) and (7) of that section and in that paragraph to the Secretary of State substitute references to a local authority."

(2) In section 13A of that Act (provision of residential accommodation with nursing), after subsection (3) insert—

"(4) No arrangements under subsection (1) above may be given effect to in relation to a person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies solely—

(a) because he is destitute; or

(b) because of the physical effects, or anticipated physical effects, of his being destitute.

(5) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of subsection (4) above as they apply for the purposes of that section, but for the references in subsections (5) and (7) of that section and in that paragraph to the Secretary of State substitute references to a local authority."

(3) In section 13B of that Act (provision of care and after-care), after subsection (2) insert—

"(3) No arrangements under subsection (1) above may be given effect to in relation to a person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies solely—

(a) because he is destitute; or

(b) because of the physical effects, or anticipated physical effects, of his being destitute.

(4) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of subsection (3) above as they apply for the purposes of that section, but for the references in subsections (5) and (7) of that section and in that paragraph to the Secretary of State substitute references to a local authority."

[F131](4) . . . . . .

[F131](5) . . . . . .

(6) In the [M47]Asylum and Immigration Appeals Act 1993, omit sections 4 and 5 and Schedule 1 (provisions relating to housing of asylum-seekers).

Textual Amendments

F131 S. 120(4)(5) repealed (S.) (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), s. 333(2), **sch. 5 Pt. 1**; S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

Commencement Information

I31 S. 120 wholly in force at 3.4.2000; s. 120 not in force at Royal Assent see s. 170(4); s. 120 in force for certain purposes at 1.3.2000 by S.I. 2000/464, art. 2, **Sch.**; s. 120 in force at 3.4.2000 insofar as not already in force by S.I. 2000/464, art. 2, **Sch.**

Marginal Citations

M46 1968 c. 49.

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
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M47 1993 c. 23.

121 Other restrictions on assistance: Northern Ireland.

(1) In Article 7 of the [M48]Health and Personal Social Services (Northern Ireland) Order 1972 (prevention of illness, care and after-care), after paragraph (2) insert—

"(3) No arrangements made under paragraph (1) may be given effect to in relation to a person to whom section 115 of the Immigration and Asylum Act 1999 applies solely—

(a) because he is destitute; or

(b) because of the physical effects, or anticipated physical effects, of his being destitute.

(3A) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of paragraph (3) as they apply for the purposes of that section, but for the references in subsections (5) and (7) of that section and in paragraph 2 of that Schedule to the Secretary of State substitute references to the Department."

(2) In Article 15 of that Order (general social welfare), after paragraph (5) insert—

"(6) Assistance may not be provided under paragraph (1) in respect of any person to whom section 115 of the Immigration and Asylum Act 1999 applies if his need for assistance has arisen solely—

(a) because he is destitute, or

(b) because of the physical effects, or anticipated physical effects, of his being destitute.

(7) Subsections (3) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of paragraph (6) as they apply for the purposes of that section, but for references to the Secretary of State in subsections (5) and (7) of that section and in paragraph 2 of that Schedule substitute references to the Department."

(3) In the Asylum and Immigration Appeals Act 1993, omit sections 4 and 5 and Schedule 1 (provisions relating to housing of asylum-seekers).

Commencement Information

I32 S. 121 wholly in force at 3.4.2000; s. 121 not in force at Royal Assent see s. 170(4); s. 121 in force for certain purposes at 1.3.2000 by S.I. 2000/464, art. 2, **Sch.**; s. 121 in force at 3.4.2000 insofar as not already in force by S.I. 2000/464, art. 2, **Sch.**

Marginal Citations

M48 S.I. 1972/1265 (N.I. 14).

122 Support for children.

(1) In this section "eligible person" means a person who appears to the Secretary of State to be a person for whom support may be provided under section 95.

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(2) Subsections (3) and (4) apply if an application for support under section 95 has been made by an eligible person whose household includes a dependant under the age of 18 ("the child").

(3) If it appears to the Secretary of State that adequate accommodation is not being provided for the child, he must exercise his powers under section 95 by offering, and if his offer is accepted by providing or arranging for the provision of, adequate accommodation for the child as part of the eligible person's household.

(4) If it appears to the Secretary of State that essential living needs of the child are not being met, he must exercise his powers under section 95 by offering, and if his offer is accepted by providing or arranging for the provision of, essential living needs for the child as part of the eligible person's household.

(5) No local authority may provide assistance under any of the child welfare provisions in respect of a dependant under the age of 18, or any member of his family, at any time when—

(a) the Secretary of State is complying with this section in relation to him; or

(b) there are reasonable grounds for believing that—

(i) the person concerned is a person for whom support may be provided under section 95; and

(ii) the Secretary of State would be required to comply with this section if that person had made an application under section 95.

(6) "Assistance" means the provision of accommodation or of any essential living needs.

(7) "The child welfare provisions" means—

(a) section 17 of the [M49]Children Act 1989 (local authority support for children and their families);

(b) section 22 of the [M50]Children (Scotland) Act 1995 (equivalent provision for Scotland); and

(c) Article 18 of the [M51]Children (Northern Ireland) Order 1995 (equivalent provision for Northern Ireland).

(8) Subsection (9) applies if accommodation provided in the discharge of the duty imposed by subsection (3) has been withdrawn.

(9) Only the relevant authority may provide assistance under any of the child welfare provisions in respect of the child concerned.

(10) "Relevant authority" means—

(a) in relation to Northern Ireland, the authority within whose area the withdrawn accommodation was provided;

(b) in any other case, the local authority within whose area the withdrawn accommodation was provided.

(11) In such circumstances as may be prescribed, subsection (5) does not apply.

Commencement Information

I33 S. 122 wholly in force at 3.4.2000; s. 122 not in force at Royal Assent see s. 170(4); s. 122 in force for certain purposes at 1.3.2000 by S.I. 2000/464, art. 2, **Sch.**; s. 122 in force at 3.4.2000 insofar as not already in force by S.I. 2000/464, art. 2, **Sch.**

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Marginal Citations

M49 1989 c. 41.
M50 1995 c. 36.
M51 S.I. 1995/775 (N.I. 2).

[F132]123 Back-dating of benefits where person recorded as refugee.

. . . . . .

Textual Amendments

F132 S. 123 repealed (14.6.2007) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 12(1), 48(3), **Sch. 4**; S.I. 2007/1602, art. 2(1)(2) (with art. 2(3)(4))

Miscellaneous

124 Secretary of State to be corporation sole for purposes of Part VI.

(1) For the purpose of exercising his functions under this Part, the Secretary of State is a corporation sole.

(2) Any instrument in connection with the acquisition, management or disposal of property, real or personal, heritable or moveable, by the Secretary of State under this Part may be executed on his behalf by a person authorised by him for that purpose.

(3) Any instrument purporting to have been so executed on behalf of the Secretary of State is to be treated, until the contrary is proved, to have been so executed on his behalf.

Modifications etc. (not altering text)

C55 S. 124 applied (7.11.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 35(1)(h)**, 162(2) (with s. 159)

125 Entry of premises.

(1) This section applies in relation to premises in which accommodation has been provided under section 95 or 98 for a supported person.

(2) If, on an application made by a person authorised in writing by the Secretary of State, a justice of the peace is satisfied that there is reason to believe that—

(a) the supported person or any dependants of his for whom the accommodation is provided is not resident in it,

(b) the accommodation is being used for any purpose other than the accommodation of the asylum-seeker or any dependant of his, or

(c) any person other than the supported person and his dependants (if any) is residing in the accommodation,

he may grant a warrant to enter the premises to the person making the application.

(3) A warrant granted under subsection (2) may be executed—

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(a) at any reasonable time;
(b) using reasonable force.

(4) In the application of subsection (2) to Scotland, read the reference to a justice of the peace as a reference to the sheriff or a justice of the peace.

126 Information from property owners.

(1) The power conferred by this section is to be exercised with a view to obtaining information about premises in which accommodation is or has been provided for supported persons.

(2) The Secretary of State may require any person appearing to him—
(a) to have any interest in, or
(b) to be involved in any way in the management or control of,
such premises, or any building which includes such premises, to provide him with such information with respect to the premises and the persons occupying them as he may specify.

(3) A person who is required to provide information under this section must do so in accordance with such requirements as may be prescribed.

(4) Information provided to the Secretary of State under this section may be used by him only in the exercise of his functions under this Part.

127 Requirement to supply information about redirection of post.

(1) The Secretary of State may require any person conveying postal packets to supply redirection information to the Secretary of State—
(a) for use in the prevention, detection, investigation or prosecution of criminal offences under this Part;
(b) for use in checking the accuracy of information relating to support provided under this Part; or
(c) for any other purpose relating to the provision of support to asylum-seekers.

(2) The information must be supplied in such manner and form, and in accordance with such requirements, as may be prescribed.

(3) The Secretary of State must make payments of such amount as he considers reasonable in respect of the supply of information under this section.

(4) "Postal packet" has the same meaning as in the **[**[F133]Postal Services Act 2000**]**.

(5) "Redirection information" means information relating to arrangements made with any person conveying postal packets for the delivery of postal packets to addresses other than those indicated by senders on the packets.

Textual Amendments

F133 Words in s. 127(4) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 124**

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
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Modifications etc. (not altering text)

C56 S. 127 applied (prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 35(1)(i)**, 162(1) (with s. 159)

PART VII

POWER TO ARREST, SEARCH AND FINGERPRINT

Power to arrest

128 Arrest without warrant.

In the 1971 Act, after section 28, insert—

"28A Arrest without warrant.

(1) A constable or immigration officer may arrest without warrant a person—
- (a) who has committed or attempted to commit an offence under section 24 or 24A; or
- (b) whom he has reasonable grounds for suspecting has committed or attempted to commit such an offence.

(2) But subsection (1) does not apply in relation to an offence under section 24(1)(d).

(3) An immigration officer may arrest without warrant a person—
- (a) who has committed an offence under section 25(1); or
- (b) whom he has reasonable grounds for suspecting has committed that offence.

(4) An immigration officer may arrest without warrant a person—
- (a) who has committed or attempted to commit an offence under section 25(2); or
- (b) whom he has reasonable grounds for suspecting has committed or attempted to commit that offence.

(5) An immigration officer may arrest without warrant a person ("the suspect") who, or whom he has reasonable grounds for suspecting—
- (a) has committed or attempted to commit an offence under section 26(1)(g); or
- (b) is committing or attempting to commit that offence.

(6) The power conferred by subsection (5) is exercisable only if either the first or the second condition is satisfied.

(7) The first condition is that it appears to the officer that service of a summons (or, in Scotland, a copy complaint) is impracticable or inappropriate because—
- (a) he does not know, and cannot readily discover, the suspect's name;
- (b) he has reasonable grounds for doubting whether a name given by the suspect as his name is his real name;

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(c) the suspect has failed to give him a satisfactory address for service; or

(d) he has reasonable grounds for doubting whether an address given by the suspect is a satisfactory address for service.

(8) The second condition is that the officer has reasonable grounds for believing that arrest is necessary to prevent the suspect—

(a) causing physical injury to himself or another person;

(b) suffering physical injury; or

(c) causing loss of or damage to property.

(9) For the purposes of subsection (7), an address is a satisfactory address for service if it appears to the officer—

(a) that the suspect will be at that address for a sufficiently long period for it to be possible to serve him with a summons (or copy complaint); or

(b) that some other person specified by the suspect will accept service of a summons (or copy complaint) for the suspect at that address.

(10) In relation to the exercise of the powers conferred by subsections (3)(b), (4)(b) and (5), it is immaterial that no offence has been committed.

(11) In Scotland the powers conferred by subsections (3), (4) and (5) may also be exercised by a constable."

Power to search and arrest

129 Search and arrest by warrant.

In the 1971 Act, after section 28A, insert—

"**28B Search and arrest by warrant.**

(1) Subsection (2) applies if a justice of the peace is, by written information on oath, satisfied that there are reasonable grounds for suspecting that a person ("the suspect") who is liable to be arrested for a relevant offence is to be found on any premises.

(2) The justice may grant a warrant authorising any immigration officer or constable to enter, if need be by force, the premises named in the warrant for the purpose of searching for and arresting the suspect.

(3) Subsection (4) applies if in Scotland the sheriff or a justice of the peace is by evidence on oath satisfied as mentioned in subsection (1).

(4) The sheriff or justice may grant a warrant authorising any immigration officer or constable to enter, if need be by force, the premises named in the warrant for the purpose of searching for and arresting the suspect.

(5) "Relevant offence" means an offence under section 24(1)(a), (b), (c), (d), (e) or (f), section 24A or section 25(2)."

130 Search and arrest without warrant.

In the 1971 Act, after section 28B, insert—

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"**28C Search and arrest without warrant.**

(1) An immigration officer may enter and search any premises for the purpose of arresting a person for an offence under section 25(1).

(2) The power may be exercised—
  (a) only to the extent that it is reasonably required for that purpose; and
  (b) only if the officer has reasonable grounds for believing that the person whom he is seeking is on the premises.

(3) In relation to premises consisting of two or more separate dwellings, the power is limited to entering and searching—
  (a) any parts of the premises which the occupiers of any dwelling comprised in the premises use in common with the occupiers of any such other dwelling; and
  (b) any such dwelling in which the officer has reasonable grounds for believing that the person whom he is seeking may be.

(4) The power may be exercised only if the officer produces identification showing that he is an immigration officer (whether or not he is asked to do so)."

Power to enter and search premises

131 Entry and search of premises.

In the 1971 Act, after section 28C, insert—

"**28D Entry and search of premises.**

(1) If, on an application made by an immigration officer, a justice of the peace is satisfied that there are reasonable grounds for believing that—
  (a) a relevant offence has been committed,
  (b) there is material on premises specified in the application which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence,
  (c) the material is likely to be relevant evidence,
  (d) the material does not consist of or include items subject to legal privilege, excluded material or special procedure material, and
  (e) any of the conditions specified in subsection (2) applies,

  he may issue a warrant authorising an immigration officer to enter and search the premises.

(2) The conditions are that—
  (a) it is not practicable to communicate with any person entitled to grant entry to the premises;
  (b) it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the evidence;
  (c) entry to the premises will not be granted unless a warrant is produced;

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(d) the purpose of a search may be frustrated or seriously prejudiced unless an immigration officer arriving at the premises can secure immediate entry to them.

(3) An immigration officer may seize and retain anything for which a search has been authorised under subsection (1).

(4) "Relevant offence" means an offence under section 24(1)(a), (b), (c), (d), (e) or (f), section 24A or section 25.

(5) In relation to England and Wales, expressions which are given a meaning by the [M52]Police and Criminal Evidence Act 1984 have the same meaning when used in this section.

(6) In relation to Northern Ireland, expressions which are given a meaning by the [M53]Police and Criminal Evidence (Northern Ireland) Order 1989 have the same meaning when used in this section.

(7) In the application of subsection (1) to Scotland—

(a) read the reference to a justice of the peace as a reference to the sheriff or a justice of the peace; and

(b) in paragraph (d), omit the reference to excluded material and special procedure material."

Marginal Citations

M52 1984 c. 60.

M53 S.I. 1989/1341 (N.I. 12).

132 Entry and search of premises following arrest.

(1) In the 1971 Act, after section 28D, insert—

"28E Entry and search of premises following arrest.

(1) This section applies if a person is arrested for an offence under this Part at a place other than a police station.

(2) An immigration officer may enter and search any premises—

(a) in which the person was when arrested, or

(b) in which he was immediately before he was arrested,

for evidence relating to the offence for which the arrest was made ("relevant evidence").

(3) The power may be exercised—

(a) only if the officer has reasonable grounds for believing that there is relevant evidence on the premises; and

(b) only to the extent that it is reasonably required for the purpose of discovering relevant evidence.

(4) In relation to premises consisting of two or more separate dwellings, the power is limited to entering and searching—

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(a) any dwelling in which the arrest took place or in which the arrested person was immediately before his arrest; and

(b) any parts of the premises which the occupier of any such dwelling uses in common with the occupiers of any other dwellings comprised in the premises.

(5) An officer searching premises under subsection (2) may seize and retain anything he finds which he has reasonable grounds for believing is relevant evidence.

(6) Subsection (5) does not apply to items which the officer has reasonable grounds for believing are items subject to legal privilege."

(2) In the 1971 Act, in Schedule 2 after paragraph 25, insert—

Entry and search of premises

"25A (1) This paragraph applies if—

(a) a person is arrested under this Schedule; or

(b) a person who was arrested by a constable (other than under this Schedule) is detained by an immigration officer under this Schedule.

(2) An immigration officer may enter and search any premises—

(a) occupied or controlled by the arrested person, or

(b) in which that person was when he was arrested, or immediately before he was arrested,

for relevant documents.

(3) The power may be exercised—

(a) only if the officer has reasonable grounds for believing that there are relevant documents on the premises;

(b) only to the extent that it is reasonably required for the purpose of discovering relevant documents; and

(c) subject to sub-paragraph (4), only if a senior officer has authorised its exercise in writing.

(4) An immigration officer may conduct a search under sub-paragraph (2)—

(a) before taking the arrested person to a place where he is to be detained; and

(b) without obtaining an authorisation under sub-paragraph (3)(c),

if the presence of that person at a place other than one where he is to be detained is necessary to make an effective search for any relevant documents.

(5) An officer who has conducted a search under sub-paragraph (4) must inform a senior officer as soon as is practicable.

(6) The officer authorising a search, or who is informed of one under sub-paragraph (5), must make a record in writing of—

(a) the grounds for the search; and

(b) the nature of the documents that were sought.

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(7) An officer searching premises under sub-paragraph (2)—
- (a) may seize and retain any documents he finds which he has reasonable grounds for believing are relevant documents; but
- (b) may not retain any such document for longer than is necessary in view of the purpose for which the person was arrested.

(8) But sub-paragraph (7)(a) does not apply to documents which the officer has reasonable grounds for believing are items subject to legal privilege.

(9) "Relevant documents" means any documents which might—
- (a) establish the arrested person's identity, nationality or citizenship; or
- (b) indicate the place from which he has travelled to the United Kingdom or to which he is proposing to go.

(10) "Senior officer" means an immigration officer not below the rank of chief immigration officer."

133 Entry and search of premises following arrest under section 25(1) of the 1971 Act.

In the 1971 Act, after section 28E, insert—

"**28F Entry and search of premises following arrest under section 25(1).**

(1) An immigration officer may enter and search any premises occupied or controlled by a person arrested for an offence under section 25(1).

(2) The power may be exercised—
- (a) only if the officer has reasonable grounds for suspecting that there is relevant evidence on the premises;
- (b) only to the extent that it is reasonably required for the purpose of discovering relevant evidence; and
- (c) subject to subsection (3), only if a senior officer has authorised it in writing.

(3) The power may be exercised—
- (a) before taking the arrested person to a place where he is to be detained; and
- (b) without obtaining an authorisation under subsection (2)(c),

if the presence of that person at a place other than one where he is to be detained is necessary for the effective investigation of the offence.

(4) An officer who has relied on subsection (3) must inform a senior officer as soon as is practicable.

(5) The officer authorising a search, or who is informed of one under subsection (4), must make a record in writing of—
- (a) the grounds for the search; and
- (b) the nature of the evidence that was sought.

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(6) An officer searching premises under this section may seize and retain anything he finds which he has reasonable grounds for suspecting is relevant evidence.

(7) "Relevant evidence" means evidence, other than items subject to legal privilege, that relates to the offence in question.

(8) "Senior officer" means an immigration officer not below the rank of chief immigration officer."

Power to search persons

134 Searching arrested persons.

(1) In the 1971 Act, after section 28F, insert—

"**28G Searching arrested persons.**

(1) This section applies if a person is arrested for an offence under this Part at a place other than a police station.

(2) An immigration officer may search the arrested person if he has reasonable grounds for believing that the arrested person may present a danger to himself or others.

(3) The officer may search the arrested person for—
  (a) anything which he might use to assist his escape from lawful custody; or
  (b) anything which might be evidence relating to the offence for which he has been arrested.

(4) The power conferred by subsection (3) may be exercised—
  (a) only if the officer has reasonable grounds for believing that the arrested person may have concealed on him anything of a kind mentioned in that subsection; and
  (b) only to the extent that it is reasonably required for the purpose of discovering any such thing.

(5) A power conferred by this section to search a person is not to be read as authorising an officer to require a person to remove any of his clothing in public other than an outer coat, jacket or glove; but it does authorise the search of a person's mouth.

(6) An officer searching a person under subsection (2) may seize and retain anything he finds, if he has reasonable grounds for believing that that person might use it to cause physical injury to himself or to another person.

(7) An officer searching a person under subsection (3) may seize and retain anything he finds, if he has reasonable grounds for believing—
  (a) that that person might use it to assist his escape from lawful custody; or
  (b) that it is evidence which relates to the offence in question.

(8) Subsection (7)(b) does not apply to an item subject to legal privilege."

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(2) In the 1971 Act, in Schedule 2 after paragraph 25A, insert—

Searching persons arrested by immigration officers

"25B (1) This paragraph applies if a person is arrested under this Schedule.

(2) An immigration officer may search the arrested person if he has reasonable grounds for believing that the arrested person may present a danger to himself or others.

(3) The officer may search the arrested person for—

(a) anything which he might use to assist his escape from lawful custody; or

(b) any document which might—

(i) establish his identity, nationality or citizenship; or

(ii) indicate the place from which he has travelled to the United Kingdom or to which he is proposing to go.

(4) The power conferred by sub-paragraph (3) may be exercised—

(a) only if the officer has reasonable grounds for believing that the arrested person may have concealed on him anything of a kind mentioned in that sub-paragraph; and

(b) only to the extent that it is reasonably required for the purpose of discovering any such thing.

(5) A power conferred by this paragraph to search a person is not to be read as authorising an officer to require a person to remove any of his clothing in public other than an outer coat, jacket or glove; but it does authorise the search of a person's mouth.

(6) An officer searching a person under sub-paragraph (2) may seize and retain anything he finds, if he has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or to another person.

(7) An officer searching a person under sub-paragraph (3)(a) may seize and retain anything he finds, if he has reasonable grounds for believing that he might use it to assist his escape from lawful custody.

(8) An officer searching a person under sub-paragraph (3)(b) may seize and retain anything he finds, other than an item subject to legal privilege, if he has reasonable grounds for believing that it might be a document falling within that sub-paragraph.

(9) Nothing seized under sub-paragraph (6) or (7) may be retained when the person from whom it was seized—

(a) is no longer in custody, or

(b) is in the custody of a court but has been released on bail."

135 Searching persons in police custody.

(1) In the 1971 Act, after section 28G, insert—

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"**28H Searching persons in police custody.**

(1) This section applies if a person—
  (a) has been arrested for an offence under this Part; and
  (b) is in custody at a police station or in police detention at a place other than a police station.

(2) An immigration officer may, at any time, search the arrested person in order to see whether he has with him anything—
  (a) which he might use to—
    (i) cause physical injury to himself or others;
    (ii) damage property;
    (iii) interfere with evidence; or
    (iv) assist his escape; or
  (b) which the officer has reasonable grounds for believing is evidence relating to the offence in question.

(3) The power may be exercised only to the extent that the custody officer concerned considers it to be necessary for the purpose of discovering anything of a kind mentioned in subsection (2).

(4) An officer searching a person under this section may seize anything he finds, if he has reasonable grounds for believing that—
  (a) that person might use it for one or more of the purposes mentioned in subsection (2)(a); or
  (b) it is evidence relating to the offence in question.

(5) Anything seized under subsection (4)(a) may be retained by the police.

(6) Anything seized under subsection (4)(b) may be retained by an immigration officer.

(7) The person from whom something is seized must be told the reason for the seizure unless he is—
  (a) violent or appears likely to become violent; or
  (b) incapable of understanding what is said to him.

(8) An intimate search may not be conducted under this section.

(9) The person carrying out a search under this section must be of the same sex as the person searched.

(10) "Custody officer"—
  (a) in relation to England and Wales, has the same meaning as in the [M54]Police and Criminal Evidence Act 1984;
  (b) in relation to Scotland, means the officer in charge of a police station; and
  (c) in relation to Northern Ireland, has the same meaning as in the [M55]Police and Criminal Evidence (Northern Ireland) Order 1989.

(11) "Intimate search"—

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(a) in relation to England and Wales, has the meaning given by section 65 of the Act of 1984;

(b) in relation to Scotland, means a search which consists of the physical examination of a person's body orifices other than the mouth; and

(c) in relation to Northern Ireland, has the same meaning as in the 1989 Order.

(12) "Police detention"—

(a) in relation to England and Wales, has the meaning given by section 118(2) of the 1984 Act; and

(b) in relation to Northern Ireland, has the meaning given by Article 2 of the 1989 Order.

(13) In relation to Scotland, a person is in police detention if—

(a) he has been taken to a police station after being arrested for an offence; or

(b) he is arrested at a police station after attending voluntarily at the station, accompanying a constable to it or being detained under section 14 of the [M56]Criminal Procedure (Scotland) Act 1995,

and is detained there or is detained elsewhere in the charge of a constable, but is not in police detention if he is in court after being charged."

(2) In the 1971 Act, in Schedule 2 after paragraph 25B, insert—

Searching persons in police custody

"25C (1) This paragraph applies if a person—

(a) has been arrested under this Schedule; and

(b) is in custody at a police station.

(2) An immigration officer may, at any time, search the arrested person in order to ascertain whether he has with him—

(a) anything which he might use to—

(i) cause physical injury to himself or others;

(ii) damage property;

(iii) interfere with evidence; or

(iv) assist his escape; or

(b) any document which might—

(i) establish his identity, nationality or citizenship; or

(ii) indicate the place from which he has travelled to the United Kingdom or to which he is proposing to go.

(3) The power may be exercised only to the extent that the officer considers it to be necessary for the purpose of discovering anything of a kind mentioned in sub-paragraph (2).

(4) An officer searching a person under this paragraph may seize and retain anything he finds, if he has reasonable grounds for believing that—

(a) that person might use it for one or more of the purposes mentioned in sub-paragraph (2)(a); or

(b) it might be a document falling within sub-paragraph (2)(b).

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(5) But the officer may not retain anything seized under sub-paragraph (2)(a)—

(a) for longer than is necessary in view of the purpose for which the search was carried out; or

(b) when the person from whom it was seized is no longer in custody or is in the custody of a court but has been released on bail.

(6) The person from whom something is seized must be told the reason for the seizure unless he is—

(a) violent or appears likely to become violent; or

(b) incapable of understanding what is said to him.

(7) An intimate search may not be conducted under this paragraph.

(8) The person carrying out a search under this paragraph must be of the same sex as the person searched.

(9) "Intimate search" has the same meaning as in section 28H(11)."

Marginal Citations

M54 1984 c. 60.

M55 S.I. 1989/1341 (N.I. 12).

M56 1995 c. 43.

Seized material: access and copying

136 Access and copying.

(1) In the 1971 Act, after section 28H, insert—

"**28I Seized material: access and copying.**

(1) If a person showing himself—

(a) to be the occupier of the premises on which seized material was seized, or

(b) to have had custody or control of the material immediately before it was seized,

asks the immigration officer who seized the material for a record of what he seized, the officer must provide the record to that person within a reasonable time.

(2) If a relevant person asks an immigration officer for permission to be granted access to seized material, the officer must arrange for him to have access to the material under the supervision—

(a) in the case of seized material within subsection (8)(a), of an immigration officer;

(b) in the case of seized material within subsection (8)(b), of a constable.

(3) An immigration officer may photograph or copy, or have photographed or copied, seized material.

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(4) If a relevant person asks an immigration officer for a photograph or copy of seized material, the officer must arrange for—
  (a) that person to have access to the material for the purpose of photographing or copying it under the supervision—
    (i) in the case of seized material within subsection (8)(a), of an immigration officer;
    (ii) in the case of seized material within subsection (8)(b), of a constable; or
  (b) the material to be photographed or copied.

(5) A photograph or copy made under subsection (4)(b) must be supplied within a reasonable time.

(6) There is no duty under this section to arrange for access to, or the supply of a photograph or copy of, any material if there are reasonable grounds for believing that to do so would prejudice—
  (a) the exercise of any functions in connection with which the material was seized; or
  (b) an investigation which is being conducted under this Act, or any criminal proceedings which may be brought as a result.

(7) "Relevant person" means—
  (a) a person who had custody or control of seized material immediately before it was seized, or
  (b) someone acting on behalf of such a person.

(8) "Seized material" means anything—
  (a) seized and retained by an immigration officer, or
  (b) seized by an immigration officer and retained by the police,

under this Part."

(2) In the 1971 Act, in Schedule 2 after paragraph 25C, insert—

Access and copying

"25D (1) If a person showing himself—
  (a) to be the occupier of the premises on which seized material was seized, or
  (b) to have had custody or control of the material immediately before it was seized,

asks the immigration officer who seized the material for a record of what he seized, the officer must provide the record to that person within a reasonable time.

(2) If a relevant person asks an immigration officer for permission to be granted access to seized material, the officer must arrange for that person to have access to the material under the supervision of an immigration officer.

(3) An immigration officer may photograph or copy, or have photographed or copied, seized material.

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(4) If a relevant person asks an immigration officer for a photograph or copy of seized material, the officer must arrange for—
  (a) that person to have access to the material under the supervision of an immigration officer for the purpose of photographing or copying it; or
  (b) the material to be photographed or copied.

(5) A photograph or copy made under sub-paragraph (4)(b) must be supplied within a reasonable time.

(6) There is no duty under this paragraph to arrange for access to, or the supply of a photograph or copy of, any material if there are reasonable grounds for believing that to do so would prejudice—
  (a) the exercise of any functions in connection with which the material was seized; or
  (b) an investigation which is being conducted under this Act, or any criminal proceedings which may be brought as a result.

(7) "Relevant person" means—
  (a) a person who had custody or control of seized material immediately before it was seized, or
  (b) someone acting on behalf of such a person.

(8) "Seized material" means anything which has been seized and retained under this Schedule."

Search warrants

137 Search warrants: safeguards.

In the 1971 Act, after section 28I, insert—

"**28J Search warrants: safeguards.**

(1) The entry or search of premises under a warrant is unlawful unless it complies with this section and section 28K.

(2) If an immigration officer applies for a warrant, he must—
  (a) state the ground on which he makes the application and the provision of this Act under which the warrant would be issued;
  (b) specify the premises which it is desired to enter and search; and
  (c) identify, so far as is practicable, the persons or articles to be sought.

(3) In Northern Ireland, an application for a warrant is to be supported by a complaint in writing and substantiated on oath.

(4) Otherwise, an application for a warrant is to be made ex parte and supported by an information in writing or, in Scotland, evidence on oath.

(5) The officer must answer on oath any question that the justice of the peace or sheriff hearing the application asks him.

(6) A warrant shall authorise an entry on one occasion only.

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(7) A warrant must specify—
  (a) the name of the person applying for it;
  (b) the date on which it is issued;
  (c) the premises to be searched; and
  (d) the provision of this Act under which it is issued.

(8) A warrant must identify, so far as is practicable, the persons or articles to be sought.

(9) Two copies of a warrant must be made.

(10) The copies must be clearly certified as copies.

(11) "Warrant" means a warrant to enter and search premises issued to an immigration officer under this Part or under paragraph 17(2) of Schedule 2."

138 Execution of warrants.

In the 1971 Act, after section 28J, insert—

"**28K Execution of warrants.**

(1) A warrant may be executed by any immigration officer.

(2) A warrant may authorise persons to accompany the officer executing it.

(3) Entry and search under a warrant must be—
  (a) within one month from the date of its issue; and
  (b) at a reasonable hour, unless it appears to the officer executing it that the purpose of a search might be frustrated.

(4) If the occupier of premises which are to be entered and searched is present at the time when an immigration officer seeks to execute a warrant, the officer must—
  (a) identify himself to the occupier and produce identification showing that he is an immigration officer;
  (b) show the occupier the warrant; and
  (c) supply him with a copy of it.

(5) If—
  (a) the occupier is not present, but
  (b) some other person who appears to the officer to be in charge of the premises is present,

subsection (4) has effect as if each reference to the occupier were a reference to that other person.

(6) If there is no person present who appears to the officer to be in charge of the premises, the officer must leave a copy of the warrant in a prominent place on the premises.

(7) A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued.

(8) An officer executing a warrant must make an endorsement on it stating—

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(a) whether the persons or articles sought were found; and
(b) whether any articles, other than articles which were sought, were seized.

(9) A warrant which has been executed, or has not been executed within the time authorised for its execution, must be returned—
(a) if issued by a justice of the peace in England and Wales, to the justices' chief executive appointed by the magistrates' court committee whose area includes the petty sessions area for which the justice acts;
(b) if issued by a justice of the peace in Northern Ireland, to the clerk of petty sessions for the petty sessions district in which the premises are situated;
(c) if issued by a justice of the peace in Scotland, to the clerk of the district court for the commission area for which the justice of the peace was appointed;
(d) if issued by the sheriff, to the sheriff clerk.

(10) A warrant returned under subsection (9)(a) must be retained for 12 months by the justices' chief executive.

(11) A warrant issued under subsection (9)(b) or (c) must be retained for 12 months by the clerk.

(12) A warrant returned under subsection (9)(d) must be retained for 12 months by the sheriff clerk.

(13) If during that 12 month period the occupier of the premises to which it relates asks to inspect it, he must be allowed to do so.

(14) "Warrant" means a warrant to enter and search premises issued to an immigration officer under this Part or under paragraph 17(2) of Schedule 2."

139 Interpretation.

(1) In the 1971 Act, after section 28K, insert—

"**28L Interpretation of Part III.**

In this Part, "premises" and "items subject to legal privilege" have the same meaning—
(a) in relation to England and Wales, as in the [M57]Police and Criminal Evidence Act 1984;
(b) in relation to Northern Ireland, as in the [M58]Police and Criminal Evidence (Northern Ireland) Order 1989; and
(c) in relation to Scotland, as in section 33 of the [M59]Criminal Law (Consolidation) (Scotland) Act 1995."

(2) In the 1971 Act, in Schedule 2, after paragraph 25D insert—

"25E Section 28L applies for the purposes of this Schedule as it applies for the purposes of Part III."

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Marginal Citations

M57 1984 c. 60.
M58 S.I. 1989/1341 (N.I. 12).
M59 1995 c. 39.

Detention

140 Detention of persons liable to examination or removal.

(1) In paragraph 16 of Schedule 2 to the 1971 Act, for sub-paragraph (2) substitute—

"(2) If there are reasonable grounds for suspecting that a person is someone in respect of whom directions may be given under any of paragraphs 8 to 10 or 12 to 14, that person may be detained under the authority of an immigration officer pending—

(a) a decision whether or not to give such directions;
(b) his removal in pursuance of such directions."

(2) In paragraph 17(2) of that Schedule (power to grant constable a warrant to search and arrest), for the words from "authorising any constable" to "if need be" substitute " authorising any immigration officer or constable to enter, if need be ".

Fingerprinting

141 Fingerprinting.

(1) Fingerprints may be taken by an authorised person from a person to whom this section applies.

(2) Fingerprints may be taken under this section only during the relevant period.

(3) Fingerprints may not be taken under this section 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.

(4) The person mentioned in subsection (3)(b) may not be—

(a) an officer of the Secretary of State who is not an authorised person;
(b) an authorised person.

(5) "Authorised person" means—

(a) a constable;
(b) an immigration officer;
(c) a prison officer;
(d) an officer of the Secretary of State authorised for the purpose; or
(e) a person who is employed by a contractor in connection with the discharge of the contractor's duties under a **[**[F134]removal centre**]** contract.

(6) In subsection (5)(e) "contractor" and "**[**[F135]removal centre**]** contract" have the same meaning as in Part VIII.

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(7) This section applies to—

(a) any person ("A") who, on being required to do so by an immigration officer on his arrival in the United Kingdom, fails to produce a valid passport with photograph or some other document satisfactorily establishing his identity and nationality or citizenship;

(b) any person ("B") who has been refused leave to enter the United Kingdom but has been temporarily admitted under paragraph 21 of Schedule 2 to the 1971 Act if an immigration officer reasonably suspects that B might break any condition imposed on him relating to residence or as to reporting to the police or an immigration officer;

[[F136](c) any person ("C") in respect of whom a relevant immigration decision has been made;**]**

(d) any person ("D") who has been **[**[F137]detained under paragraph 16 of Schedule 2 to the 1971 Act or arrested under paragraph 17 of that Schedule;**]**

(e) any person ("E") who has made a claim for asylum;

(f) any person ("F") who is a dependant of any of those persons.

(8) "The relevant period" begins—

(a) for A, on his failure to produce the passport or other document;

(b) for B, on the decision to admit him temporarily;

[[F138](c) for C, on the service on him of notice of the relevant immigration decision by virtue of section 105 of the Nationality, Immigration and Asylum Act 2002 (c. 41);**]**

(d) for D, on his **[**[F139]detention or arrest;**]**

(e) for E, on the making of his claim for asylum; and

(f) for F, at the same time as for the person whose dependant he is.

(9) "The relevant period" ends on the earliest of the following—

(a) the grant of leave to enter or remain in the United Kingdom;

(b) for A, B, C or D, his removal or deportation from the United Kingdom;

[[F140](c) for C—

(i) the time when the relevant immigration decision ceases to have effect, whether as a result of an appeal or otherwise, or

(ii) if a deportation order has been made against him, its revocation or its otherwise ceasing to have effect;**]**

(d) for D, his release if he is no longer liable to be detained under paragraph 16 of Schedule 2 to the 1971 Act;

(e) for E, the final determination or abandonment of his claim for asylum; and

(f) for F, at the same time as for the person whose dependant he is.

(10) No fingerprints may be taken from A if the immigration officer considers that A has a reasonable excuse for the failure concerned.

(11) No fingerprints may be taken from B unless the decision to take them has been confirmed by a chief immigration officer.

(12) An authorised person may not take fingerprints from a person under the age of sixteen unless his decision to take them has been confirmed—

(a) if he is a constable, by a person designated for the purpose by the chief constable of his police force;

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(b) if he is a person mentioned in subsection (5)(b) or (e), by a chief immigration officer;

(c) if he is a prison officer, by a person designated for the purpose by the governor of the prison;

(d) if he is an officer of the Secretary of State, by a person designated for the purpose by the Secretary of State.

(13) Neither subsection (3) nor subsection (12) prevents an authorised person from taking fingerprints if he reasonably believes that the person from whom they are to be taken is aged sixteen or over.

(14) For the purposes of subsection (7)(f), a person is a dependant of another person if—

(a) he is that person's spouse or child under the age of eighteen; and

(b) he does not have a right of abode in the United Kingdom or indefinite leave to enter or remain in the United Kingdom.

(15) "Claim for asylum" has the same meaning as in Part VI.

[[F141](16) "Relevant immigration decision" means a decision of the kind mentioned in section 82(2)(g), (h), (i), (j) or (k) of the Nationality, Immigration and Asylum Act 2002 (c. 41).**]**

[[F142](17) Section 157(1) applies to this section (in so far as it relates to removal centres by virtue of subsection (5)(e)) as it applies to Part VIII.**]**

Textual Amendments

F134 Words in s. 141(5)(e) substituted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss.**66(2)(3)(n), 162(1), (with s. 159); S.I. 2003/1, art. 2, Sch.

F135 Words in s. 141(6) substituted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss.**66(2)(3)(n), 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

F136 S. 141(7)(c) substituted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 15(2)**, 48(3); S.I. 2004/2523, art. 2, Sch.

F137 Words in s. 141(7)(d) substituted (31.8.2006) by Immigration, Asylum and Nationality Act 2006 (c. 13), **ss. 28(2)**, 62(1)(2); S.I. 2006/2226, art. 3, Sch. 1

F138 S. 141(8)(c) substituted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 15(3)**, 48(3); S.I. 2004/2523, art. 2, Sch.

F139 Words in s. 141(8)(d) substituted (31.8.2006) by Immigration, Asylum and Nationality Act 2006 (c. 13), **ss. 28(3)**, 62(1)(2); S.I. 2006/2226, art. 3, Sch. 1

F140 S. 141(9)(c) substituted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 15(4)**, 48(3); S.I. 2004/2523, art. 2, Sch.

F141 S. 141(16) added (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 15(5)**, 48(3); S.I. 2004/2523, art. 2, Sch.

F142 S. 141(17) added (31.8.2006) by Immigration, Asylum and Nationality Act 2006 (c. 13), **ss. 28(4)**, 62(1)(2); S.I. 2006/2226, art. 3, Sch. 1

Modifications etc. (not altering text)

C57 S. 141 modified by S.I. 1993/1813, art. 7(1), Sch. 4, para. 2A (as inserted (26.10.2006) by Channel Tunnel (International Arrangements) (Amendment) Order 2006 (S.I. 2006/2626), arts. 1, **2**)

C58 S. 141 extended (with modifications) by S.I. 2002/2818, art. 11(1)(f), Sch. 2, para. 1A (as inserted (18.11.2006) by Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) (Amendment) Order 2006 (S.I. 2006/2908), arts. 1, **2(a)**)

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142 Attendance for fingerprinting.

(1) The Secretary of State may, by notice in writing, require a person to whom section 141 applies to attend at a specified place for fingerprinting.

[[F143](2) In the case of a notice given to a person of a kind specified in section 141(7)(a) to (d) or (f) (in so far as it applies to a dependant of a person of a kind specified in section 141(7)(a) to (d)), the notice—

(a) must require him to attend during a specified period of at least seven days beginning with a day not less than seven days after the date given in the notice as its date of issue, and

(b) may require him to attend at a specified time of day or during specified hours.

(2A) In the case of a notice given to a person of a kind specified in section 141(7)(e) or (f) (in so far as it applies to a dependant of a person of a kind specified in section 141(7)(e)), the notice—

(a) may require him to attend during a specified period beginning with a day not less than three days after the date given in the notice as its date of issue,

(b) may require him to attend on a specified day not less than three days after the date given in the notice as its date of issue, and

(c) may require him to attend at a specified time of day or during specified hours.**]**

(3) A constable or immigration officer may arrest without warrant a person who has failed to comply with a requirement imposed on him under this section (unless the requirement has ceased to have effect).

(4) Before a person arrested under subsection (3) is released—

(a) he may be removed to a place where his fingerprints may conveniently be taken; and

(b) his fingerprints may be taken (whether or not he is so removed).

(5) A requirement imposed under subsection (1) ceases to have effect at the end of the relevant period (as defined by section 141).

Textual Amendments

F143 S. 142(2)(2A) substituted for s. 142(2) (31.8.2006) by Immigration, Asylum and Nationality Act 2006 (c. 13), **ss. 29**, 62(1)(2); S.I. 2006/2226, art. 3, Sch. 1

143 Destruction of fingerprints.

(1) If they have not already been destroyed, fingerprints must be destroyed before the end of the specified period beginning with the day on which they were taken.

(2) If a person from whom fingerprints were taken proves that he is—

(a) a British citizen, or

(b) a Commonwealth citizen who has a right of abode in the United Kingdom as a result of section 2(1)(b) of the 1971 Act,

the fingerprints must be destroyed as soon as reasonably practicable.

[F144](3) . . . . . .

[F144](4) . . . . . .

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[F144](5) . . . . . .

[F144](6) . . . . . .

[F144](7) . . . . . .

[F144](8) . . . . . .

(9) Fingerprints taken from F **[**[F145](within the meaning of section 141(7))**]** must be destroyed when fingerprints taken from the person whose dependant he is have to be destroyed.

(10) The obligation to destroy fingerprints under this section applies also to copies of fingerprints.

(11) The Secretary of State must take all reasonably practicable steps to secure—

(a) that data which are held in electronic form and which relate to fingerprints which have to be destroyed as a result of this section are destroyed or erased; or

(b) that access to such data is blocked.

(12) The person to whom the data relate is entitled, on request, to a certificate issued by the Secretary of State to the effect that he has taken the steps required by subsection (11).

(13) A certificate under subsection (12) must be issued within three months of the date of the request for it.

[F146](14) . . . . . .

(15) "Specified period" means—

(a) such period as the Secretary of State may specify by order;

(b) if no period is so specified, ten years.

Textual Amendments

F144 S. 143(3)-(8) repealed (14.12.2001) by 2001 c. 24, ss. 36(1)(a)(2), 125, **Sch. 8 Pt. 3**

F145 Words in S. 143(9) inserted (14.12.2001) by 2001 c. 24, **s. 36(1)(b)(2)**, 127(2)

F146 S. 143(14) repealed (14.12.2001) by 2001 c. 24, ss. 36(1)(c)(2), 127(2), **Sch. 8 Pt. 3**

Modifications etc. (not altering text)

C59 S. 143 extended by S.I. 2002/2818, art. 11(1)(f) (as inserted (18.11.2006) by Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) (Amendment) Order 2006 (S.I. 2006/2908), arts. 1, **2(a)**)

144 Other methods of collecting data about physical characteristics.

[[F147](1) The Secretary of State may make regulations containing provisions equivalent to sections 141, 142 and 143 in relation to such other methods of collecting data about external physical characteristics as may be prescribed.**]**

[[F148](2) In subsection (1) "external physical characteristics" includes, in particular, features of the iris or any other part of the eye.**]**

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Textual Amendments

F147 S. 144 renumbered as s. 144(1) (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 128(1)**, 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

F148 S. 144(2) added (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 128(1)**, 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

Codes of practice

145 Codes of practice.

(1) An immigration officer exercising any specified power to—

(a) arrest, question, search or take fingerprints from a person,

(b) enter and search premises, or

(c) seize property found on persons or premises,

must have regard to such provisions of a code as may be specified.

(2) Subsection (1) also applies to an authorised person exercising the power to take fingerprints conferred by section 141.

[[F149](2A) A person exercising a power under regulations made by virtue of section 144 must have regard to such provisions of a code as may be specified.**]**

(3) Any specified provision of a code may have effect for the purposes of this section subject to such modifications as may be specified.

(4) "Specified" means specified in a direction given by the Secretary of State.

(5) "Authorised person" has the same meaning as in section 141.

(6) "Code" means—

(a) in relation to England and Wales, any code of practice for the time being in force under the [M60]Police and Criminal Evidence Act 1984;

(b) in relation to Northern Ireland, any code of practice for the time being in force under the [M61]Police and Criminal Evidence (Northern Ireland) Order 1989.

(7) This section does not apply to any person exercising powers in Scotland.

Textual Amendments

F149 S. 145(2A) inserted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 128(2)**, 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

Marginal Citations

M60 1984 c. 60.

M61 S.I. 1989/1341 (N.I. 12).

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Use of force

146 Use of force.

(1) An immigration officer exercising any power conferred on him by the 1971 Act or this Act may, if necessary, use reasonable force.

[[F150](2) A person exercising a power under any of the following may if necessary use reasonable force—

(a) section 28CA, 28FA or 28FB of the 1971 Act (business premises: entry to arrest or search),

(b) section 141 or 142 of this Act, and

(c) regulations under section 144 of this Act.**]**

Textual Amendments

F150 S. 146(2) substituted (8.1.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **s. 153(2)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch.

Commencement Information

I34 S. 146 partly in force; s. 146(1) in force at Royal Assent, see s. 170(3)(o)

PART VIII

DETENTION CENTRES AND DETAINED PERSONS

Modifications etc. (not altering text)

C60 Pt. VIII modified (E.W.N.I.) (31.1.2008) by UK Borders Act 2007 (c. 30), **ss. 2(6)**, 59(2); S.I. 2008/99, art. 2(a)

Interpretation

147 Interpretation of Part VIII.

In this Part—

"certificate of authorisation" means a certificate issued by the Secretary of State under section 154;

"certified prisoner custody officer" means a prisoner custody officer certified under section 89 of the [M62]Criminal Justice Act 1991, or section 114 of the [M63]Criminal Justice and Public Order Act 1994, to perform custodial duties;

"contract monitor" means a person appointed by the Secretary of State under section 149(4);

"contracted out **[**[F151]removal centre**]**" means a **[**[F151]removal centre**]** in relation to which a **[**[F151]removal centre**]** contract is in force;

"contractor", in relation to a **[**[F151]removal centre**]** which is being run in accordance with a **[**[F151]removal centre**]** contract, means the person who has contracted to run it;

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"custodial functions" means custodial functions at a **[**[F151]removal centre**]** ;

"detained persons" means persons detained or required to be detained under the 1971 Act **[**[F152]or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State);**]**

"detainee custody officer" means a person in respect of whom a certificate of authorisation is in force;

[F153]…

"**[**[F151]removal centre**]** contract" means a contract entered into by the Secretary of State under section 149;

"**[**[F151]removal centre**]** rules" means rules made by the Secretary of State under section 153;

"directly managed **[**[F151]removal centre**]**" means a **[**[F151]removal centre**]** which is not a contracted out **[**[F151]removal centre**]**;

"escort arrangements" means arrangements made by the Secretary of State under section 156;

"escort functions" means functions under escort arrangements;

"escort monitor" means a person appointed under paragraph 1 of Schedule 13;

"prisoner custody officer"—

(a) in relation to England and Wales, has the same meaning as in the [M64]Criminal Justice Act 1991;

(b) in relation to Scotland, has the meaning given in section 114(1) of the [M65]Criminal Justice and Public Order Act 1994;

(c) in relation to Northern Ireland, has the meaning given in section 122(1) of that Act of 1994;

[[F154]"removal centre" means a place which is used solely for the detention of detained persons but which is not a short-term holding facility, a prison or part of a prison;**]**

"short-term holding facility" means a place used solely for the detention of detained persons for a period of not more than seven days or for such other period as may be prescribed.

Textual Amendments

F151 Words in s. 147 substituted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss.**66(2)(3)(a), 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

F152 Words in s. 147 inserted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 62(14)**, 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

F153 Definition in s. 147 repealed (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 66(1)(a), 162(1), **Sch. 9** (with s. 159); S.I. 2003/1, art. 2, Sch.

F154 Definition in s. 147 inserted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 66(1)(b)**, 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

Modifications etc. (not altering text)

C61 S. 147 extended (coming into force in accordance with art. 1(2) of the extending S.I.) by Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003 (S.I. 2003/2818), **art. 11(2)**

Marginal Citations

M62 1991 c. 53.

M63 1994 c. 33.

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M64 1991 c. 53.
M65 1994 c. 33.

Detention centres

148 Management of [F155removal centres].

(1) A manager must be appointed for every [F155removal centre].

(2) In the case of a contracted out [F155removal centre], the person appointed as manager must be a detainee custody officer whose appointment is approved by the Secretary of State.

(3) The manager of a [F155removal centre] is to have such functions as are conferred on him by [F155removal centre] rules.

(4) The manager of a contracted out [F155removal centre] may not—
- (a) enquire into a disciplinary charge laid against a detained person;
- (b) conduct the hearing of such a charge; or
- (c) make, remit or mitigate an award in respect of such a charge.

(5) The manager of a contracted out [F155removal centre] may not, except in cases of urgency, order—
- (a) the removal of a detained person from association with other detained persons;
- (b) the temporary confinement of a detained person in special accommodation; or
- (c) the application to a detained person of any other special control or restraint (other than handcuffs).

Textual Amendments

F155 Words in s. 148 substituted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41)**ss.**66(2)(3)(b), 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

Commencement Information

I35 S. 148 wholly in force at 2.4.2001; s. 148 not in force at Royal Assent; s. 148(3) in force at 1.8.2000 for certain purposes by S.I. 2000/1985, art. 2, **Sch.**; s. 148 in force so far as not already in force at 2.4.2001 by S.I. 2001/239, art. 2, **Sch.**

149 Contracting out of certain [F156removal centres].

(1) The Secretary of State may enter into a contract with another person for the provision or running (or the provision and running) by him, or (if the contract so provides) for the running by sub-contractors of his, of any [F156removal centre] or part of a [F156removal centre].

(2) While a [F156removal centre] contract for the running of a [F156removal centre] or part of a [F156removal centre] is in force—
- (a) the [F156removal centre] or part is to be run subject to and in accordance with the provisions of or made under this Part; and
- (b) in the case of a part, that part and the remaining part are to be treated for the purposes of those provisions as if they were separate [F156removal centres].

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(3) If the Secretary of State grants a lease or tenancy of land for the purposes of a **[**[F156]removal centre**]** contract, none of the following enactments applies to the lease or tenancy—

(a) Part II of the [M66]Landlord and Tenant Act 1954 (security of tenure);

(b) section 146 of the [M67]Law of Property Act 1925 (restrictions on and relief against forfeiture);

(c) section 19(1), (2) and (3) of the [M68]Landlord and Tenant Act 1927 and the [M69]Landlord and Tenant Act 1988 (covenants not to assign etc.);

(d) the [M70]Agricultural Holdings Act 1986;

(e) sections 4 to 7 of the [M71]Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (irritancy clauses);

(f) the [M72]Agricultural Holdings (Scotland) Act 1991 **[**[F157]and the Agricultural Holdings (Scotland) Act 2003 (asp 11)**]**;

(g) section 14 of the [M73]Conveyancing Act 1881;

(h) the [M74]Conveyancing and Law of Property Act 1892;

(i) the [M75]Business Tenancies (Northern Ireland) Order 1996.

(4) The Secretary of State must appoint a contract monitor for every contracted out **[**[F156]removal centre**]**.

(5) A person may be appointed as the contract monitor for more than one **[**[F156]removal centre**]**.

(6) The contract monitor is to have—

(a) such functions as may be conferred on him by **[**[F156]removal centre**]** rules;

(b) the status of a Crown servant.

(7) The contract monitor must—

(a) keep under review, and report to the Secretary of State on, the running of a **[**[F156]removal centre**]** for which he is appointed; and

(b) investigate, and report to the Secretary of State on, any allegations made against any person performing custodial functions at that centre.

(8) The contractor, and any sub-contractor of his, must do all that he reasonably can (whether by giving directions to the officers of the **[**[F156]removal centre**]** or otherwise) to facilitate the exercise by the contract monitor of his functions.

(9) "Lease or tenancy" includes an underlease, sublease or sub-tenancy.

(10) In relation to a **[**[F156]removal centre**]** contract entered into by the Secretary of State before the commencement of this section, this section is to be treated as having been in force at that time.

Textual Amendments

F156 Words in ss. 149, 150 substituted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss.**66(2)(3)(c), 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

F157 Words in s. 149(3)(f) inserted (S.) (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), s. 95(3)(4), **sch. para. 52** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with sch.)

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Modifications etc. (not altering text)

C62 S. 149 extended (4.11.2002) by The Immigration (Short-term Holding Facilities) Regulations 2002 (S.I. 2002/2538), **art. 2**

Commencement Information

I36 S. 149 wholly in force at 2.4.2001; S. 149 not in force at Royal Assent; s. 149(1)(3)(6)(a)(9) in force at 1.8.2000 by S.I. 2000/1985, art. 2, **Sch.**; s. 149 in force so far as not already in force at 2.4.2001 by S.I. 2001/239, art. 2, **Sch.**

Marginal Citations

M66 1954 c. 56.
M67 1925 c. 20.
M68 1927 c. 36
M69 1988 c.26.
M70 1986 c. 5.
M71 1985 c. 73.
M72 1991 c. 55.
M73 1881 c. 41.
M74 1892 c. 13.
M75 S.I. 1996/725 (N.I. 5).

150 Contracted out functions at directly managed [F156removal centres].

(1) The Secretary of State may enter into a contract with another person—
  (a) for functions at, or connected with, a directly managed **[**F156removal centre**]** to be performed by detainee custody officers provided by that person; or
  (b) for such functions to be performed by certified prisoner custody officers who are provided by that person.

(2) For the purposes of this section "**[**F156removal centre**]**" includes a short-term holding facility.

Textual Amendments

F156 Words in ss. 149, 150 substituted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss.**66(2)(3)(c), 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

151 Intervention by Secretary of State.

(1) The Secretary of State may exercise the powers conferred by this section if it appears to him that—
  (a) the manager of a contracted out **[**F158removal centre**]** has lost, or is likely to lose, effective control of the centre or of any part of it; or
  (b) it is necessary to do so in the interests of preserving the safety of any person, or of preventing serious damage to any property.

(2) The Secretary of State may appoint a person (to be known as the Controller) to act as manager of the **[**F158removal centre**]** for the period—
  (a) beginning with the time specified in the appointment; and

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(b) ending with the time specified in the notice of termination under subsection (5).

(3) During that period—

(a) all the functions which would otherwise be exercisable by the manager or the contract monitor are to be exercisable by the Controller;

(b) the contractor and any sub-contractor of his must do all that he reasonably can to facilitate the exercise by the Controller of his functions; and

(c) the staff of the **[**[F158]removal centre**]** must comply with any directions given by the Controller in the exercise of his functions.

(4) The Controller is to have the status of a Crown servant.

(5) If the Secretary of State is satisfied that a Controller is no longer needed for a particular **[**[F158]removal centre**]**, he must (by giving notice to the Controller) terminate his appointment at a time specified in the notice.

(6) As soon as practicable after making an appointment under this section, the Secretary of State must give notice of the appointment to those entitled to notice.

(7) As soon as practicable after terminating an appointment under this section, the Secretary of State must give a copy of the notice of termination to those entitled to notice.

(8) Those entitled to notice are the contractor, the manager, the contract monitor and the Controller.

Textual Amendments

F158 Words in s. 151 substituted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss.**66(2)(3)(d), 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

152 Visiting Committees and inspections.

(1) The Secretary of State must appoint a committee (to be known as the Visiting Committee) for each **[**[F159]removal centre**]**.

(2) The functions of the Visiting Committee for a **[**[F159]removal centre**]** are to be such as may be prescribed by the **[**[F159]removal centre**]** rules.

(3) Those rules must include provision—

(a) as to the making of visits to the centre by members of the Visiting Committee;

(b) for the hearing of complaints made by persons detained in the centre;

(c) requiring the making of reports by the Visiting Committee to the Secretary of State.

(4) Every member of the Visiting Committee for a **[**[F159]removal centre**]** may at any time enter the centre and have free access to every part of it and to every person detained there.

(5) In section 5A of the [M76]Prison Act 1952 (which deals with the appointment and functions of Her Majesty's Chief Inspector of Prisons), after subsection (5), insert—

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Immigration and Asylum Act 1999 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"(5A) Subsections (2) to (5) apply to **[**[F159]removal centres**]** (as defined by section 147 of the Immigration and Asylum Act 1999 and including any in Scotland) and persons detained in such **[**[F159]removal centres**]** as they apply to prisons and prisoners."

Textual Amendments

F159 Words in s. 152 substituted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss.**66(2)(3)(e), 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

Commencement Information

I37 S. 152 wholly in force at 2.4.2001; s. 152 not in force at Royal Assent; s.152(2)(3) in force at 1.8.2000 for certain purposes by S.I. 2000/1985, art. 2, **Sch.**; s. 152 in force so far as not already in force at 2.4.2001 by S.I. 2001/239, art. 2, **Sch.**

Marginal Citations

M76 1952 c. 52.

153 [[F160]Removal centre] rules.

(1) The Secretary of State must make rules for the regulation and management of **[**[F160]removal centres**]**.

(2) **[**[F160]Removal centre**]** rules may, among other things, make provision with respect to the safety, care, activities, discipline and control of detained persons.

Textual Amendments

F160 Words in s. 153 substituted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss.**66(2)(3)(f), 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

Commencement Information

I38 S. 153 wholly in force at 2.4.2001; S. 153 not in force at Royal Assent; s. 153 in force for certain purposes at 1.8.2000 by S.I. 2000/1985, art. 2, **Sch.**; S. 153 in force so far as not already in force at 2.4.2001 by S.I. 2001/239, art. 2, **Sch.**

[[F161]153A Detained persons: national minimum wage

A detained person does not qualify for the national minimum wage in respect of work which he does in pursuance of removal centre rules.**]**

Textual Amendments

F161 S. 153A inserted (31.8.2006) by Immigration, Asylum and Nationality Act 2006 (c. 13), **ss. 59(1)**, 62(1)(2); S.I. 2006/2226, art. 3, Sch. 1

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
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Custody and movement of detained persons

154 Detainee custody officers.

(1) On an application made to him under this section, the Secretary of State may certify that the applicant—

(a) is authorised to perform escort functions; or

(b) is authorised to perform both escort functions and custodial functions.

(2) The Secretary of State may not issue a certificate of authorisation unless he is satisfied that the applicant—

(a) is a fit and proper person to perform the functions to be authorised; and

(b) has received training to such standard as the Secretary of State considers appropriate for the performance of those functions.

(3) A certificate of authorisation continues in force until such date, or the occurrence of such event, as may be specified in the certificate but may be suspended or revoked under paragraph 7 of Schedule 11.

(4) A certificate which authorises the performance of both escort functions and custodial functions may specify one date or event for one of those functions and a different date or event for the other.

[[F162](5) The Secretary of State may confer functions of detainee custody officers on prison officers or prisoner custody officers.**]**

(6) A prison officer acting under arrangements made under subsection (5) has all the powers, authority, protection and privileges of a constable.

(7) Schedule 11 makes further provision about detainee custody officers.

Textual Amendments

F162 S. 154(5) substituted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 65(1)**, 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

Commencement Information

I39 S. 154 wholly in force at 2.4.2001; s. 154 not in force at Royal Assent; s. 154(1)-(6) fully in force and s. 154(7) in force for certain purposes at 3.4.2000 and s. 154(7) in force for certain purposes at 1.8.2000 by S.I. 2000/1985, art. 2, **Sch.**; s. 154 in force so far as not already in force at 2.4.2001 by S.I. 2001/239, art. 2, **Sch.**

155 Custodial functions and discipline etc. at [[F163]removal centres] .

(1) Custodial functions may be discharged at a **[**[F163]removal centre**]** only by—

(a) a detainee custody officer authorised, in accordance with section 154(1), to perform such functions; or

(b) a prison officer, or a certified prisoner custody officer, exercising functions in relation to the **[**[F163]removal centre**]**—

(i) in accordance with arrangements made under section 154(5); or

(ii) as a result of a contract entered into under section 150(1)(b).

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
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(2) Schedule 12 makes provision with respect to discipline and other matters at **[**[F163]removal centres**]** and short-term holding facilities.

Textual Amendments

F163 Words in s. 155 substituted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss.**66(2)(3)(g), 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

Commencement Information

I40 S. 155 wholly in force at 2.4.2001; s. 155 not in force at Royal Assent; S. 155(2) in force at 1.8.2000 for certain purposes by S.I. 2000/1985, art. 2, **Sch.**; s. 155 in force so far as not already in force at 2.4.2001 by S.I. 2001/239, art. 2, **Sch.**

156 Arrangements for the provision of escorts and custody.

(1) The Secretary of State may make arrangements for—

(a) the delivery of detained persons to premises in which they may lawfully be detained;

(b) the delivery of persons from any such premises for the purposes of their removal from the United Kingdom in accordance with directions given under the 1971 Act or this Act;

(c) the custody of detained persons who are temporarily outside such premises;

(d) the custody of detained persons held on the premises of any court.

(2) Escort arrangements may provide for functions under the arrangements to be performed, in such cases as may be determined by or under the arrangements, by detainee custody officers.

(3) "Court" includes—

[[F164](a) the Asylum and Immigration Tribunal;**]**

(c) the Commission.

(4) Escort arrangements may include entering into contracts with other persons for the provision by them of—

(a) detainee custody officers; or

(b) prisoner custody officers who are certified under section 89 of the Criminal Justice Act 1991, or section 114 or 122 of the [M77]Criminal Justice and Public Order Act 1994, to perform escort functions.

(5) Schedule 13 makes further provision about escort arrangements.

(6) A person responsible for performing a function of a kind mentioned in subsection (1), in accordance with a transfer direction, complies with the direction if he does all that he reasonably can to secure that the function is performed by a person acting in accordance with escort arrangements.

(7) "Transfer direction" means

[[F165](a)**]** a transfer direction given under—

[[F166](i)**]** section 48 of the [M78]Mental Health Act 1983 [F167]... (removal to hospital of, among others, persons detained under the 1971 Act); or

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[F166(ii)] in Northern Ireland, article 54 of the M79Mental Health (Northern Ireland) Order 1986 (provision corresponding to section 48 of the 1983 Act). [F168or

(b) a transfer for treatment direction given under section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 as applied by article 13 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005.]

Textual Amendments

F164 S. 156(3)(a) substituted for s. 156(3)(a)(b) (4.4.2005) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), s. 48(3), **Sch. 2 para. 15**; S.I. 2005/565, art. 2(d) (with arts. 3-9)

F165 Words in s. 156(7) renumbered as s. 156(7)(a) (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), art. 1(1), **Sch. 1 para. 5(a)**

F166 S. 156(7)(a)(b) renumbered as s. 156(7)(a)(i)(ii) (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), art. 1(1), **Sch. 1 para. 5(b)**

F167 Words in s. 156(7)(a)(i) omitted (5.10.2005) by virtue of The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), art. 1(1), **Sch. 1 para. 5(c)**

F168 S. 156(7)(b) and word added (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), art. 1(1), **Sch. 1 para. 5(d)**

Commencement Information

I41 S. 156 wholly in force at 2.4.2001; s. 156 not in force at Royal Assent; s. 156(5) in force at 1.8.2000 for certain purposes by S.I. 2000/1985, art. 2, **Sch.**; s. 156 in force so far as not already in force at 2.4.2001 by S.I. 2001/239, art. 2, **Sch.**

Marginal Citations

M77 1994 c. 33.

M78 1983 c. 20.

M79 S.I. 1986/595 (N.I. 4).

157 Short-term holding facilities.

(1) The Secretary of State may by regulations extend any provision made by or under this Part in relation to [F169removal centres] (other than one mentioned in subsection (2)) to short-term holding facilities.

(2) Subsection (1) does not apply to section 150.

(3) The Secretary of State may make rules for the regulation and management of short-term holding facilities.

Textual Amendments

F169 Words in s. 157 substituted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss.**66(2)(3)(h), 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
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Commencement Information

I42 S. 157 wholly in force at 2.4.2001; s. 157 not in force at Royal assent, see s. 170(4); s. 157 in force at 1.8.2000 for certain purposes by S.I. 2000/1985, art. 2, **Sch.**; s. 157 in force so far as not already in force 2.4.2001 by S.I. 2001/239, art. 2, **Sch.**

Miscellaneous

158 Wrongful disclosure of information.

(1) A person who is or has been employed (whether as a detainee custody officer, prisoner custody officer or otherwise)—

(a) in accordance with escort arrangements,

(b) at a contracted out **[**[F170]removal centre**]**, or

(c) to perform contracted out functions at a directly managed **[**[F170]removal centre**]**,

is guilty of an offence if he discloses, otherwise than in the course of his duty or as authorised by the Secretary of State, any information which he acquired in the course of his employment and which relates to a particular detained person.

(2) A person guilty of such an offence is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

(3) "Contracted out functions" means functions which, as the result of a contract entered into under section 150, fall to be performed by detainee custody officers or certified prisoner custody officers.

Textual Amendments

F170 Words in s. 158 substituted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss.**66(2)(3)(i), 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

159 Power of constable to act outside his jurisdiction.

(1) For the purpose of taking a person to or from a **[**[F171]removal centre**]** under the order of any authority competent to give the order, a constable may act outside the area of his jurisdiction.

(2) When acting under this section, the constable concerned retains all the powers, authority, protection and privileges of his office.

Textual Amendments

F171 Words in s. 159 substituted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss.**66(2)(3)(j), 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
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PART IX

REGISTRAR'S CERTIFICATES: PROCEDURE

160 Abolition of certificate by licence.

(1) In the [M80]Marriage Act 1949, in section 26, omit subsection (2) (marriage under superintendent registrar's certificate to be by licence issued by the registrar or without licence).

(2) In section 27 of the 1949 Act—
- (a) in subsection (1), omit "without licence";
- (b) omit subsection (2);
- (c) in subsection (3), in paragraph (a), omit "in the case of a marriage intended to be solemnized without licence,";
- (d) in subsection (3), omit paragraph (b).

(3) Section 32 of the 1949 Act (marriage under certificate by licence) shall cease to have effect.

(4) In section 31 of the 1949 Act (marriage under certificate without licence requiring 21 days' notice)—
- (a) in subsection (1), omit "without licence" and for "twenty-one" substitute " 15 ";
- (b) in subsection (2), for "twenty-one" substitute " 15 ";
- (c) in subsection (4), omit "without licence" and for "said period of twenty-one days" substitute " waiting period in relation to each notice of marriage ".

(5) In section 31 of the 1949 Act, after subsection (4) insert—

"(4A) "The waiting period", in relation to a notice of marriage, means—
- (a) the period of 15 days, or
- (b) such shorter period as may be determined by the Registrar General under subsection (5A) or by a superintendent registrar under any provision of regulations made under subsection (5D),

after the day on which the notice of marriage was entered in the marriage notice book."

(6) In section 31 of the 1949 Act, insert at the end—

"(5A) If, on an application made to the Registrar General, he is satisfied that there are compelling reasons for reducing the 15 day period because of the exceptional circumstances of the case, he may reduce that period to such shorter period as he considers appropriate.

(5B) "The 15 day period" means the period of 15 days mentioned in subsections (1) and (2).

(5C) If the Registrar General reduces the 15 day period in a particular case, the reference to 15 days in section 75(3)(a) is to be treated, in relation to that case, as a reference to the reduced period.

(5D) The Registrar General may by regulations make provision with respect to the making, and granting, of applications under subsection (5A).

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
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(5E) The regulations—

(a) may provide for the power conferred by subsection (5A) to be exercised by a superintendent registrar on behalf of the Registrar General in cases falling within a category prescribed in the regulations;

(b) may provide for the making of an appeal to the Registrar General against a decision taken by a superintendent registrar in accordance with regulations made by virtue of paragraph (a);

(c) may make different provision in relation to different cases;

(d) require the approval of the Chancellor of the Exchequer.

(5F) The Chancellor of the Exchequer may by order provide for a fee, of such an amount as may be specified in the order, to be payable on an application under subsection (5A).

(5G) The order may make different provision in relation to different cases.

(5H) The power to make regulations under subsection (5D) or an order under subsection (5F) is exercisable by statutory instrument.

(5I) Any statutory instrument made under subsection (5F) shall be subject to annulment in pursuance of a resolution of either House of Parliament."

Commencement Information

I43 S. 160 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as inserted by art. 4 of the said S.I. 2000/3099)

Marginal Citations

M80 1949 c. 76.

161 Notice of marriage.

(1) In the [M81]Marriage Act 1949, in section 27(1) (persons by whom notice of marriage must be given)—

(a) in paragraph (a), for "either" substitute "each";

(b) in paragraph (b), for "either" substitute "each" and for "each registration district in which one of them has resided" substitute "the registration district in which he or she has resided".

(2) In section 27 of the 1949 Act, in subsection (3) (matters to be stated in notice of marriage), for "and place of residence" substitute ", place of residence and nationality".

(3) In the 1949 Act, in section 26(1) (marriages which may be solemnized on authority of a certificate of a superintendent registrar), for "a certificate" substitute "two certificates".

[F172](4) . . . . . .

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F172 S. 161(4) repealed (N.I.) (1.1.2004) by The Marriage (Northern Ireland) Order 2003 (S.I. 2003/413), art. 1(2), **Sch.**; S.R. 2003/466, art. 2(b)

Commencement Information

I44 S. 161 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as inserted by art. 4 of the said S.I. 2000/3099)

Marginal Citations

M81 1949 c. 76.

162 Power to require evidence.

(1) In the Marriage Act 1949, after section 28, insert—

"**28A Power to require evidence.**

(1) A superintendent registrar to whom a notice of marriage is given under section 27, or any other person attesting a declaration accompanying such a notice, may require the person giving the notice to provide him with specified evidence—

(a) relating to that person; or

(b) if the superintendent registrar considers that the circumstances are exceptional, relating to each of the persons to be married.

(2) Such a requirement may be imposed at any time—

(a) on or after the giving of the notice of marriage; but

(b) before the superintendent registrar issues his certificate under section 31.

(3) "Specified evidence", in relation to a person, means such evidence of that person's—

(a) name and surname,

(b) age,

(c) marital status, and

(d) nationality,

as may be specified in guidance issued by the Registrar General."

F173(2) . . . . . .

Textual Amendments

F173 S. 162(2) repealed (N.I.) (1.1.2004) by The Marriage (Northern Ireland) Order 2003 (S.I. 2003/413), art. 1(2), **Sch.**; S.R. 2003/466, art. 2(b)

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
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Commencement Information

I45 S. 162 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as inserted by art. 4 of the said S.I. 2000/3099)

163 Refusal to issue certificate.

(1) In the [M82]Marriage Act 1949, in section 31(2) (issue of marriage certificate), for paragraph (a) substitute—

"(a) the superintendent registrar is not satisfied that there is no lawful impediment to the issue of the certificate; or".

(2) In the 1949 Act, after section 31, insert—

"**31A Appeal on refusal under section 31(2)(a).**

(1) If, relying on section 31(2)(a), a superintendent registrar refuses to issue a certificate, the person applying for it may appeal to the Registrar General.

(2) On such an appeal, the Registrar General must—

(a) confirm the refusal; or

(b) direct that a certificate be issued.

(3) If—

(a) relying on section 31(2)(a), a superintendent registrar refuses to issue a certificate as a result of a representation made to him, and

(b) on an appeal against the refusal, the Registrar General declares the representation to have been frivolous and to be such that it ought not to obstruct the issue of a certificate,

the person making the representation is liable for the costs of the proceedings before the Registrar General and for damages recoverable by the applicant for the certificate.

(4) For the purpose of enabling a person to recover any such costs and damages, a copy of the declaration of the Registrar General purporting to be sealed with the seal of the General Register Office is evidence that the Registrar General has declared the representation to have been frivolous and to be such that it ought not to obstruct the issue of a certificate."

[F174](3) . . . . . .

[F174](4) . . . . . .

Textual Amendments

F174 S. 163(3)(4) repealed (N.I.) (1.1.2004) by The Marriage (Northern Ireland) Order 2003 (S.I. 2003/413), art. 1(2), **Sch.**; S.R. 2003/466, art. 2(b)

Commencement Information

I46 S. 163 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as inserted by art. 4 of the said S.I. 2000/3099)

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
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Marginal Citations
M82 1949 c. 76.

PART X

MISCELLANEOUS AND SUPPLEMENTAL

164 Institution of proceedings.

In section 3(2) of the [M83]Prosecution of Offences Act 1985 (proceedings which must be conducted by the Director of Public Prosecutions), after paragraph (a) insert—

"(aa) to take over the conduct of any criminal proceedings instituted by an immigration officer (as defined for the purposes of the [M84]Immigration Act 1971) acting in his capacity as such an officer;".

Commencement Information
I47 S. 164 in force at 1.12.2004 by S.I. 2004/2997, **art. 2**

Marginal Citations
M83 1985 c. 23.
M84 1971 c. 77.

165 Procedural requirements as to applications.

In the 1971 Act, after section 31, insert—

"**31A Procedural requirements as to applications.**

(1) If a form is prescribed for a particular kind of application under this Act, any application of that kind must be made in the prescribed form.

(2) If procedural or other steps are prescribed in relation to a particular kind of application under this Act, those steps must be taken in respect of any application of that kind.

(3) "Prescribed" means prescribed in regulations made by the Secretary of State.

(4) The power to make regulations under this section is exercisable by statutory instrument.

(5) Any such statutory instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament."

Commencement Information
I48 S. 165 partly in force; s. 165 not in force at Royal Assent see s. 170(4); s. 165 in force for certain purposes at 22.5.2000 by S.I. 2000/1282, art. 2, **Sch.**
I49 S. 165 in force at 1.8.2003 in so far as not already in force by S.I. 2003/1862, **art. 2**

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
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166 Regulations and orders.

(1) Any power to make rules, regulations or orders conferred by this Act is exercisable by statutory instrument.

(2) But subsection (1) does not apply in relation to **[**[F175]orders made under section 90(1),**]** rules made under paragraph 1 of Schedule 5 or immigration rules.

(3) Any statutory instrument made as a result of subsection (1) may—

(a) contain such incidental, supplemental, consequential and transitional provision as the person making it considers appropriate;

(b) make different provision for different cases or descriptions of case; and

(c) make different provision for different areas.

(4) No order is to be made under—

(a) section 20,

(b) section 21,

(c) section 31(10),

(d) section 86(2),

(e) **[**[F176]section 96(5),**]**

(f) section 97(3),

(g) section 143(15), or

(h) paragraph 4 of Schedule 5,

unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(5) No regulations are to be made under—

[[F177](za) section 4(5),**]**

(a) section 9,

(b) section 46(8);

(c) section 53, or

(d) section 144,

unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House.

(6) Any statutory instrument made under this Act, apart from one made—

(a) under any of the provisions mentioned in subsection (4) or (5), or

(b) under section 24(3) **[**[F178], 24A(3)**]** or 170(4) or (7),

shall be subject to annulment by a resolution of either House of Parliament.

Textual Amendments

F175 Words in s. 166(2) inserted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 41(5)**, 48(3); S.I. 2004/2523, art. 2, Sch.

F176 S. 166(4)(e) ceased to have effect (7.11.2002) and repealed (prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 61(b)**, 161, 162(1)(2), **Sch. 9** (with s. 159)

F177 S. 166(5)(za) inserted (1.12.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 10(2)**, 48(3) (with s. 10(6)); S.I. 2004/2999, art. 2, Sch.

F178 Word in s. 166(6)(b) inserted (15.4.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 163**; S.I. 2005/1112, art. 2, Sch. 1

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Changes to legislation: *Immigration and Asylum Act 1999 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

167 Interpretation.

(1) In this Act—

"the 1971 Act" means the [M85]Immigration Act 1971;

"adjudicator" (except in Part VI) means an adjudicator appointed under section 57;

"Chief Adjudicator" means the person appointed as Chief Adjudicator under section 57(2);

"claim for asylum" (except in Parts V and VI and section 141) means a claim that it would be contrary to the United Kingdom's obligations under the Refugee Convention for the claimant to be removed from, or required to leave, the United Kingdom;

"the Commission" means the Special Immigration Appeals Commission;

"country" includes any territory;

"EEA State" means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as it has effect for the time being;

"the Human Rights Convention" means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950 as it has effect for the time being in relation to the United Kingdom;

[F179]…

"prescribed" means prescribed by regulations made by the Secretary of State;

"the Refugee Convention" means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and the Protocol to the Convention;

"voluntary organisations" means bodies (other than public or local authorities) whose activities are not carried on for profit.

(2) The following expressions have the same meaning as in the 1971 Act—

"certificate of entitlement";

"entry clearance";

"illegal entrant";

"immigration officer";

"immigration rules";

"port";

"United Kingdom passport";

"work permit".

Textual Amendments

F179 Definition in s. 167(1) repealed (30.3.2006) by Immigration, Asylum and Nationality Act 2006 (c. 13), ss. 62(1)(2), 64(3)(b), **Sch. 3**

Marginal Citations

M85 1971 c. 77.

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168 Expenditure and receipts.

(1) There is to be paid out of money provided by Parliament—

(a) any expenditure incurred by the Secretary of State or the Lord Chancellor in consequence of this Act; and

(b) any increase attributable to this Act in the sums so payable by virtue of any other Act.

(2) Sums received by the Secretary of State under section 5, 32, 40, 112 or 113 or by the Lord Chancellor under section 48(4) or 49(4) must be paid into the Consolidated Fund.

169 Minor and consequential amendments, transitional provisions and repeals.

(1) Schedule 14 makes minor and consequential amendments.

(2) Schedule 15 contains transitional provisions and savings.

(3) The enactments set out in Schedule 16 are repealed.

Commencement Information

I50 S. 169 partly in force; s. 169 not in force at Royal Assent see s. 170(4); s. 169(1)(2) in force for certain purposes at 6.12.1999 by S.I. 1999/3190, art. 2, **Sch.**; s. 169 in force for certain purposes at 14.2.2000 by S.I 2000/168, art. 2, Sch. (with transitional provisions in art. 3); s. 169(1)(3) in force for certain purposes at 1.3.2000 and for certain further purposes at 3.4.2000 by S.I. 2000/464, art. 2, **Sch.**; s. 169(1) in force for certain purposes at 1.8.2000 by S.I. 2000/1985, art. 2, **Sch.**; s. 169 in force for certain purposes at 2.10.2000 by S.I. 2000/2444, art. 2, **Sch. 1** (subject to arts. 3, 4, Sch. 2); s. 169(1)(3) in force for certain purposes at 1.1.2001 by S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as inserted by art. 4 of the said S.I. 2000/3099); s. 169(1)(3) in force for certain purposes at 11.12.2000 by S.I 2000/3099, art. 2, Sch.

I51 S. 169(1)(3) in force at 30.6.2003 for specified purposes by S.I. 2003/1469, art. 2, **Sch.**

170 Short title, commencement and extent.

(1) This Act may be cited as the Immigration and Asylum Act 1999.

(2) Subsections (1) and (2) of section 115 come into force on the day on which the first regulations made under Schedule 8 come into force.

(3) The following provisions come into force on the passing of this Act—

(a) section 4;

(b) section 9;

(c) section 15;

(d) section 27;

(e) section 31;

(f) section 94;

(g) section 95(13);

(h) section 99(4) and (5);

(i) sections 105 to 109;

(j) section 110(1), (2) and (8) (so far as relating to subsections (1) and (2));

(k) section 111;

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(l) section 124;
(m) section 140;
(n) section 145;
(o) section 146(1);
(p) sections 166 to 168;
(q) this section;
(r) Schedule 9;
(s) paragraphs 62(2), 73, 78, 79, 81, 82, 87, 88 and 102 of Schedule 14;
(t) paragraphs 2 and 13 of Schedule 15.

(4) The other provisions of this Act, except section 10 and paragraph 12 of Schedule 15 (which come into force in accordance with section 9), come into force on such day as the Secretary of State may by order appoint.

(5) Different days may be appointed for different purposes.

(6) This Act extends to Northern Ireland.

(7) Her Majesty may by Order in Council direct that any of the provisions of this Act are to extend, with such modifications (if any) as appear to Her Majesty to be appropriate, to any of the Channel Islands or the Isle of Man.

Subordinate Legislation Made

P1 S. 170(4) power partly exercised: different dates appointed for specified provisions by S.I. 1999/3190, art. 2, **Sch.**
S. 170(4) power partly exercised: different dates appointed for specified provisions by S.I. 2000/168, art. 2, **Sch.** (with art. 3)
S. 170(4) power partly exercised: different dates appointed for specified provisions by S.I. 2000/464, art. 2, **Sch.**
S. 170(4) power partly exercised: 22.5.2000 appointed for specified provisions by S.I. 2000/1282, art. 2, **Sch.**
S. 170(4) power partly exercised: 1.8.2000 and 30.10.2000 appointed for specified provisions by S.I. 2000/1985, art. 2, **Sch.** (with art. 3)
S. 170(4) power partly exercised: different dates appointed for specified provisions by S.I. 2000/2444, art. 2, **Sch. 1** (subject to arts. 3, 4, Sch. 2) (as amended by S.I. 2000/3099, **art. 5**)
S. 170(4) power partly exercised: 1.1.2001 appointed for specified provisions by S.I. 2000/2698, art. 2, **Sch.** (subject to art. 3) (as amended by S.I. 2000/3099, **art. 4**)
S. 170(4) power partly exercised: 11.12.2000 appointed for specified provisions by S.I. 2000/3099, art. 3, **Sch.**
S. 170(4) power partly exercised: different dates appointed for specified provisions by S.I. 2001/239, art. 2, **Sch.**
S. 170(4) power partly exercised: different dates appointed for specified provisions by S.I. 2001/1394, art. 2, **Sch.**
S. 170(4) power partly exercised: 8.12.2002 appointed for specified provisions by {S.I. 2002/2815}, art. 2, Sch.

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SCHEDULES

SCHEDULE 1

Sections 37(6) and 42(8).

SALE OF TRANSPORTERS

Modifications etc. (not altering text)

C63 S. 37 (and Sch. 1) applied (with modifications) (7.2.2001 for certain purposes and otherwise 1.3.2001) by S.I. 2001/280, **arts. 1-4** (with art. 5)

C64 Sch. 1: power to apply (with modifications) or amend conferred (prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 124(6)(7)**, 162(1) (with s. 159)

Leave of court required

1 (1) The sale of a transporter requires the leave of the court.

(2) The court is not to give its leave except on proof—

(a) that the penalty **[**[F180]or charge**]** is or was due;

(b) that the person liable to pay it or any connected expenses has failed to do so; and

(c) that the transporter which the Secretary of State seeks leave to sell is liable to sale.

Textual Amendments

F180 Words in Sch. 1 para. 1(2)(a) repealed (8.12.2002 for certain purposes, 11.5.2012 in so far as not already in force) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 161, 162(1), **Sch. 8 para. 16(2)**, **Sch. 9** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4), S.I. 2012/1263, art. 2

Commencement Information

I52 Sch. 1 para. 1 partly in force; Sch. 1 para. 1 not in force at Royal Assent see s. 170(4); Sch. 1 para. 1 in force for certain purposes at 3.4.2000 by S.I. 2000/464, art. 2, **Sch.**

Notice of proposed sale

2 Before applying for leave to sell a transporter, the Secretary of State must take such steps as may be prescribed—

(a) for bringing the proposed sale to the notice of persons whose interests may be affected by a decision of the court to grant leave; and

(b) for affording to any such person an opportunity of becoming a party to the proceedings if the Secretary of State applies for leave.

[[F181]2A Where the owner of a transporter is a party to an application for leave to sell it, in determining whether to give leave the court shall consider—

(a) the extent of any hardship likely to be caused by sale,

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(b) the extent (if any) to which the owner is responsible for the matters in respect of which the penalty notice was issued, and

(c) any other matter which appears to the court to be relevant (whether specific to the circumstances of the case or of a general nature).**]**

Textual Amendments

F181 Sch. 1 para. 2A inserted (8.12.2002 for certain purposes, otherwise prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 16(3)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)

Duty to obtain best price

3 If leave for sale is given, the Secretary of State must secure that the transporter is sold for the best price that can reasonably be obtained.

Commencement Information

I53 Sch. 1 para. 3 partly in force; Sch. 1 para. 3 not in force at Royal Assent see s. 170(4); Sch. 1 para. 3 in force for certain purposes at 3.4.2000 by S.I. 2000/464, art. 2, **Sch.**

Effect of failure to comply with paragraph 2 or 3

4 Failure to comply with any requirement of paragraph 2 or 3 in respect of any sale—

(a) is actionable against the Secretary of State at the suit of any person suffering loss in consequence of the sale; but

(b) after the sale has taken place, does not affect its validity.

Commencement Information

I54 Sch. 1 para. 4 partly in force; Sch. 1 para. 4 not in force at Royal Assent see s. 170(4); Sch. 1 para. 4 in force for certain purposes at 3.4.2000 by S.I. 2000/464, art. 2, **Sch.**

Application of proceeds of sale

5 (1) Any proceeds of sale arising from a sale under section 37 **[**[F182]or 42**]** must be applied—

(a) in making prescribed payments; and

(b) in accordance with such provision as to priority of payments as may be prescribed.

(2) The regulations may, in particular, provide for proceeds of sale to be applied in payment—

(a) of customs or excise duty,

(b) of value added tax,

(c) of expenses incurred by the Secretary of State,

(d) of any penalty **[**[F183]or charge**]** which the court has found to be due,

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(e) in the case of the sale of an aircraft, of charges due as a result of regulations made under section 73 of the [M86]Civil Aviation Act 1982,

(f) of any surplus to or among the person or persons whose interests in the transporter have been divested as a result of the sale,

but not necessarily in that order of priority.

Textual Amendments

F182 Words in Sch. 1 para. 5(1) repealed (8.12.2002 for certain purposes, otherwise prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 161, 162(1), **Sch. 8 para. 16(4)**, **Sch. 9** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)

F183 Words in Sch. 1 para. 5(2)(d) repealed (8.12.2002 for certain purposes, otherwise prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 161, 162(1), **Sch. 8 para. 16(5)**, **Sch. 9** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)

Marginal Citations

M86 1982 c. 16.

[F184] SCHEDULE 2

Section 56(2).

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Textual Amendments

F184 Schs. 2-4 repealed (1.4.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 162(1), **Sch. 9** (with s. 159 and (7.3.2005) S.I. 2005/565, arts. 1(2), 9 (with arts. 3-9)); S.I. 2003/754, art. 2(1), Sch. 1 (with arts. 3, 4, Sch. 2 para. 6)

[F184] SCHEDULE 3

Section 57(3).

. . . . . .

[F184]SCHEDULE 4

Section 58(2) to (4).

APPEALS

PART I

PROCEDURE

Notice of appealable matters

1 . . . . . .

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
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Service of notices

2 . . . . . .

Lord Chancellor's rules of procedure

3 . . . . . .

4 . . . . . .

Practice directions

5 . . . . . .

Hearings in private

6 . . . . . .

Leave to appeal

7 . . . . . .

Modifications etc. (not altering text)

C65 Sch. 4 para. 7 excluded by S.I. 2003/754, Sch. 2 para. 1(4B)(b) (as inserted (9.6.2003) by The Nationality, Immigration and Asylum Act 2002 (Commencement No. 4) (Amendment) (No. 2) Order 2003 (S.I. 2003/1339), arts. 2(2), **4**)

Offences

8 . . . . . .

Convention cases

9 . . . . . .

Racial discrimination

9A . . . . . .

PART II

EFFECT OF APPEALS

Stay on directions for removal

10 . . . . . .

11 . . . . . .

12 . . . . . .

13 . . . . . .

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14 . . . . . .

15 . . . . . .

Suspension of variation of limited leave

16 . . . . . .

Continuation of leave

17 . . . . . .

Deportation orders

18 . . . . . .

19 . . . . . .

Appeals under section 65

20 . . . . . .

PART III

DETERMINATION OF APPEALS

Determination of appeals

21 . . . . . .

Appeals to Immigration Appeal Tribunal

22 . . . . . .

Appeals from Immigration Appeal Tribunal

23 . . . . . .

Modifications etc. (not altering text)

C66 Sch. 4 para. 23 excluded by S.I. 2003/754, Sch. 2 para. 1(4B)(b) (as inserted (9.6.2003) by The Nationality, Immigration and Asylum Act 2002 (Commencement No. 4) (Amendment) (No. 2) Order 2003 (S.I. 2003/1339), arts. 2(2), **4**)

Appeals which must be dismissed

24 . . . . . .

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SCHEDULE 5

Section 83.

THE IMMIGRATION SERVICES COMMISSIONER

PART I

REGULATORY FUNCTIONS

The Commissioner's rules

1 (1) The Commissioner may make rules regulating any aspect of the professional practice, conduct or discipline of—

(a) registered persons, and

[F185(b) those acting on behalf of registered persons,]

in connection with the provision of immigration advice or immigration services.

(2) Before making or altering any rules, the Commissioner must consult such persons appearing to him to represent the views of persons engaged in the provision of immigration advice or immigration services as he considers appropriate.

(3) In determining whether a registered person is competent or otherwise fit to provide immigration advice or immigration services, the Commissioner may take into account any breach of the rules by—

(a) that person; and

[F186(b) any person acting on behalf of that person.]

(4) The rules may, among other things, make provision requiring the keeping of accounts or the obtaining of indemnity insurance.

Textual Amendments

F185 Sch. 5 para. 1(1)(b) substituted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 37(5)(a)**, 48(3); S.I. 2004/2523, art. 2, Sch.

F186 Sch. 5 para. 1(3)(b) substituted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 37(5)(b)**, 48(3); S.I. 2004/2523, art. 2, Sch.

Commencement Information

I55 Sch. 5 para. 1 wholly in force at 30.10.2000; Sch. 5 para. 1 not in force at Royal Assent see s. 170(4); Sch. 5 para. 1(1)(2)(4) in force at 22.5.2000 by S.I. 2000/1282, art. 2, **Sch.**; Sch. 5 para. 1 in force so far as not already in force at 30.10.2000 by S.I. 2000/1985, **art. 2 Sch.**

2 (1) The Commissioner's rules must be made or altered by an instrument in writing.

(2) Such an instrument must specify that it is made under this Schedule.

(3) Immediately after such an instrument is made, it must be printed and made available to the public.

(4) The Commissioner may charge a reasonable fee for providing a person with a copy of the instrument.

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(5) A person is not to be taken to have contravened a rule made by the Commissioner if he shows that at the time of the alleged contravention the instrument containing the rule had not been made available in accordance with this paragraph.

(6) The production of a printed copy of an instrument purporting to be made by the Commissioner on which is endorsed a certificate signed by an officer of the Commissioner authorised by him for that purpose and stating—
- (a) that the instrument was made by the Commissioner,
- (b) that the copy is a true copy of the instrument, and
- (c) that on a specified date the instrument was made available to the public in accordance with this paragraph,

is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.

(7) A certificate purporting to be signed as mentioned in sub-paragraph (6) is to be treated as having been properly signed unless the contrary is shown.

(8) A person who wishes in any legal proceedings to rely on an instrument containing the Commissioner's rules may require him to endorse a copy of the instrument with a certificate of the kind mentioned in sub-paragraph (6).

Commencement Information

I56 Sch. 5 para. 2 wholly in force at 30.10.2000; Sch. 5 para. 2 not in force at Royal Assent see s. 170(4); Sch. 5 para. 2(1)-(4)(6)-(8) in force at 22.5.2000 by S.I. 2000/1282, art. 2, **Sch.**;Sch. 5 para. 2 in force so far as not already in force at 30.10.2000 by S.I. 2000/1985, art. 2, **Sch.2**

Code of Standards

3 (1) The Commissioner must prepare and issue a code setting standards of conduct which those to whom the code applies are expected to meet.

(2) The code is to be known as the Code of Standards but is referred to in this Schedule as "the Code".

(3) The Code is to apply to any person providing immigration advice or immigration services other than—
- (a) a person who is authorised by a designated professional body to practise as a member of the profession whose members are regulated by that body;
- **[**[F187](b) a person who is acting on behalf of a person who is within paragraph (a);**]**
- (c) a person mentioned in section 84(6).

(4) It is the duty of any person to whom the Code applies to comply with its provisions in providing immigration advice or immigration services.

(5) If the Commissioner alters the Code, he must re-issue it.

(6) Before issuing the Code or altering it, the Commissioner must consult—
- (a) each of the designated professional bodies;
- (b) the designated judges;
- (c) the Lord President of the Court of Session;
- (d) the Lord Chief Justice of Northern Ireland; and

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(e) such other persons appearing to him to represent the views of persons engaged in the provision of immigration advice or immigration services as he considers appropriate.

(7) The Commissioner must publish the Code in such form and manner as the Secretary of State may direct.

Textual Amendments

F187 Sch. 5 para. 3(3)(b) substituted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 37(5)(c)**, 48(3); S.I. 2004/2523, art. 2, Sch.

Commencement Information

I57 Sch. 5 para. 3 wholly in force at 30.10.2000; Sch. 5 para. 3 not in force at Royal Assent see s. 170(4); Sch. 5 para. 3(1)-(3)(5)-(7) in force at 22.5.2000 by S.I. 2000/1282, art. 2, **Sch.**; Sch. 5 para. 3 in force so far as not already in force at 30.10.2000 by S.I. 2000/1985, art. 2, **Sch**

Extension of scope of the Code

4 (1) The Secretary of State may by order provide for the provisions of the Code, or such provisions of the Code as may be specified by the order, to apply to—

(a) persons authorised by any designated professional body to practise as a member of the profession whose members are regulated by that body; and

[[F188](b) persons acting on behalf of persons who are within paragraph (a).**]**

(2) If the Secretary of State is proposing to act under sub-paragraph (1) he must, before doing so, consult—

(a) the Commissioner;

(b) the Legal Services Ombudsman, if the proposed order would affect a designated professional body in England and Wales;

(c) the **[**[F189]Scottish Legal Complaints Commission**]**, if the proposed order would affect a designated professional body in Scotland;

(d) the lay observers appointed under Article 42 of the [M87]Solicitors (Northern Ireland) Order 1976, if the proposed order would affect a designated professional body in Northern Ireland.

(3) An order under sub-paragraph (1) requires the approval of—

(a) the Lord Chancellor, if it affects a designated professional body in England and Wales or Northern Ireland;

(b) the Scottish Ministers, if it affects a designated professional body in Scotland.

(4) Before deciding whether or not to give his approval under sub-paragraph (3)(a), the Lord Chancellor must consult—

(a) the designated judges, if the order affects a designated professional body in England and Wales;

(b) the Lord Chief Justice of Northern Ireland, if it affects a designated professional body in Northern Ireland.

(5) Before deciding whether or not to give their approval under sub-paragraph (3)(b), the Scottish Ministers must consult the Lord President of the Court of Session.

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Textual Amendments

F188 Sch. 5 para. 4(1)(b) substituted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 37(5)(d)**, 48(3); S.I. 2004/2523, art. 2, Sch.

F189 Words in Sch. 5 para. 4(2)(c) substituted (1.10.2008) by Legal Services Act 2007 (c. 29), **ss. 196(2)(b)**, 211(2) (with ss. 29, 192, 193); S.I. 2008/1436, art. 3(a)

Marginal Citations

M87 S.I. 1976/582 (N.I. 12).

Investigation of complaints

5 (1) The Commissioner must establish a scheme ("the complaints scheme") for the investigation by him of relevant complaints made to him in accordance with the provisions of the scheme.

(2) Before establishing the scheme or altering it, the Commissioner must consult—

(a) each of the designated professional bodies; and

(b) such other persons appearing to him to represent the views of persons engaged in the provision of immigration advice or immigration services as he considers appropriate.

(3) A complaint is a relevant complaint if it relates to—

(a) the competence or fitness of a person to provide immigration advice or immigration services,

(b) the competence or fitness of a person **[**[F190]acting on behalf of**]** a person providing immigration advice or immigration services,

(c) an alleged breach of the Code,

(d) an alleged breach of one or more of the Commissioner's rules by a person to whom they apply, or

[[F191](e) an alleged breach of a rule of a relevant regulatory body,**]**

but not if it relates to a person who is excluded from the application of subsection (1) of section 84 by subsection (6) of that section.

(4) The Commissioner may, on his own initiative, investigate any matter which he would have power to investigate on a complaint made under the complaints scheme.

(5) In investigating any such matter on his own initiative, the Commissioner must proceed as if his investigation were being conducted in response to a complaint made under the scheme.

Textual Amendments

F190 Words in Sch. 5 para. 5(3)(b) substituted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 37(5)(e)**, 48(3); S.I. 2004/2523, art. 2, Sch.

F191 Sch. 5 para. 5(3)(e) substituted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 37(5)(f)**, 48(3); S.I. 2004/2523, art. 2, Sch.

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Commencement Information

I58 Sch. 5 para. 5 wholly in force at 30.10.2000; Sch. 5 para. 5 not in force at Royal Assent see s. 170(4); Sch. 5 para. 5(1)-(3) in force at 22.5.2000 by S.I. 2000/1282, art. 2, **Sch.**;Sch. 5 para. 5 in force so far as not already in force at 30.10.2000 by S.I. 2000/1985, art. 2, **Sch.**

6 (1) The complaints scheme must provide for a person who is the subject of an investigation under the scheme to be given a reasonable opportunity to make representations to the Commissioner.

(2) Any person who is the subject of an investigation under the scheme must—

(a) take such steps as are reasonably required to assist the Commissioner in his investigation; and

(b) comply with any reasonable requirement imposed on him by the Commissioner.

(3) If a person fails to comply with sub-paragraph (2)(a) or with a requirement imposed under sub-paragraph (2)(b) the Commissioner may—

(a) in the case of a registered person, cancel his registration;

(b) in the case of a person certified by the Commissioner as exempt under section 84(4)(a), withdraw his exemption; or

[[F192](c) in any other case, refer the matter to any relevant regulatory body.**]**

Textual Amendments

F192 Sch. 5 para. 6(3)(c) substituted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 37(5)(g)**, 48(3); S.I. 2004/2523, art. 2, Sch.

Commencement Information

I59 Sch. 5 para. 6 wholly in force at 30.10.2000; Sch. 5 para. 6 not in force at Royal Assent see s. 170(4); Sch. 5 para. 6(1) in force at 22.5.2000 by S.I. 2000/1282, art. 2, **Sch.**;Sch. 5 para. 6 in force at 30.10.2000 by S.I. 2000/1985, art. 2, **Sch.**

Power to enter premises

7 (1) This paragraph applies if—

(a) the Commissioner is investigating a complaint under the complaints scheme;

(b) the complaint falls within paragraph 5(3)(a), (b) **[**[F193], (c)**]** or (d); and

(c) there are reasonable grounds for believing that particular premises are being used in connection with the provision of immigration advice or immigration services by a **[**[F194]registered or exempt person.**]**

[[F195](1A) This paragraph also applies if the Commissioner is investigating a matter under paragraph 5(5) and—

(a) the matter is of a kind described in paragraph 5(3)(a), (b)**[**[F196], (c)**]** or (d) (for which purpose a reference to an allegation shall be treated as a reference to a suspicion of the Commissioner), and

(b) there are reasonable grounds for believing that particular premises are being used in connection with the provision of immigration advice or immigration services by a **[**[F197]registered or exempt person.**]]**

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(2) The Commissioner, or a member of his staff authorised in writing by him, may enter the premises at reasonable hours.

(3) Sub-paragraph (2) does not apply to premises to the extent to which they constitute a private residence.

(4) A person exercising the power given by sub-paragraph (2) ("the investigating officer") may—
- (a) take with him such equipment as appears to him to be necessary;
- (b) require any person on the premises—
  - (i) to produce any document which he considers relates to any matter relevant to the investigation; and
  - (ii) if the document is produced, to provide an explanation of it;
- (c) require any person to state, to the best of his knowledge and belief, where any such document is to be found;
- (d) take copies of, or extracts from, any document which is produced;
- (e) require any information which is held in a computer and is accessible from the premises and which the investigating officer considers relates to any matter relevant to the investigation, to be produced in a form—
  - (i) in which it can be taken away; and
  - (ii) in which it is visible and legible.

(5) Instead of exercising the power under sub-paragraph (2), the Commissioner may require such person as he may determine ("his agent") to make a report on the provision of immigration advice or immigration services from the premises.

(6) If the Commissioner so determines, his agent may exercise the power conferred by sub-paragraph (2) as if he were a member of the Commissioner's staff appropriately authorised.

(7) If a registered person fails without reasonable excuse to allow access under sub-paragraph (2) or (6) to any premises under his occupation or control, the Commissioner may cancel his registration.

(8) The Commissioner may also cancel the registration of a registered person who—
- (a) without reasonable excuse fails to comply with a requirement imposed on him under sub-paragraph (4);
- (b) intentionally delays or obstructs any person exercising functions under this paragraph; or
- (c) fails to take reasonable steps to prevent an employee of his from obstructing any person exercising such functions.

[[F198](9) Sub-paragraphs (7) and (8) shall apply to an exempt person as they apply to a registered person, but with a reference to cancellation of registration being treated as a reference to withdrawal of exemption.

(10) In this paragraph "exempt person" means a person certified by the Commissioner as exempt under section 84(4)(a).**]**

Textual Amendments

F193 Word in Sch. 5 para. 7(1)(b) inserted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 38(2)(a)**, 48(3); S.I. 2004/2523, art. 2, Sch.

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F194 Words in Sch. 5 para. 7(1)(c) substituted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 38(2)(b)**, 48(3); S.I. 2004/2523, art. 2, Sch.

F195 Sch. 5 para. 7(1A) inserted (8.1.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **s. 140(1)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 5)

F196 Word in Sch. 5 para. 7(1A)(a) inserted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 38(2)(c)**, 48(3); S.I. 2004/2523, art. 2, Sch.

F197 Words in Sch. 5 para. 7(1A)(b) substituted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 38(2)(d)**, 48(3); S.I. 2004/2523, art. 2, Sch.

F198 Sch. 5 para. 7(9)(10) inserted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 38(2)(e)**, 48(3); S.I. 2004/2523, art. 2, Sch.

Determination of complaints

8 (1) On determining a complaint under the complaints scheme, the Commissioner must give his decision in a written statement.

(2) The statement must include the Commissioner's reasons for his decision.

(3) A copy of the statement must be given by the Commissioner to—

(a) the person who made the complaint; and

(b) the person who is the subject of the complaint.

9 (1) On determining a complaint under the complaints scheme, the Commissioner may—

(a) if the person to whom the complaint relates is a registered person **[**[F199]or is acting on behalf of**]** a registered person, record the complaint and the decision on it for consideration when that registered person next applies for his registration to be continued;

(b) if the person to whom the complaint relates is a registered person **[**[F200]or is acting on behalf of**]** a registered person and the Commissioner considers the matter sufficiently serious to require immediate action, require that registered person to apply for continued registration without delay;

[[F201](c) refer the complaint and his decision on it to a relevant regulatory body;**]**

(d) if the person to whom the complaint relates is certified by the Commissioner as exempt under section 84(4)(a) or is employed by, or working under the supervision of, such a person, consider whether to withdraw that person's exemption;

(e) lay before the Tribunal a disciplinary charge against a relevant person.

(2) Sub-paragraph (3) applies if—

(a) the Tribunal is considering a disciplinary charge against a relevant person; and

(b) the Commissioner asks it to exercise its powers under that sub-paragraph.

(3) The Tribunal may give directions (which are to have effect while it is dealing with the charge)—

[[F202](a) imposing restrictions on the provision of immigration advice or immigration services by the relevant person or by a person acting on his behalf or under his supervision;**]**

[[F202](b) prohibiting the provision of immigration advice or immigration services by the relevant person or a person acting on his behalf or under his supervision.**]**

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(4) "Relevant person" means a person providing immigration advice or immigration services who is—

(a) a registered person;

[F203(b) a person acting on behalf of a registered person;]

(e) a person certified by the Commissioner as exempt under section 84(4)(a);

(f) a person to whom section 84(4)(d) applies; or

(g) a person employed by, or working under the supervision of, a person to whom paragraph (e) or (f) applies.

Textual Amendments

F199 Words in Sch. 5 para. 9(1)(a) substituted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 37(5)(h)**, 48(3); S.I. 2004/2523, art. 2, Sch.

F200 Words in Sch. 5 para. 9(1)(b) substituted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 37(5)(h)**, 48(3); S.I. 2004/2523, art. 2, Sch.

F201 Sch. 5 para. 9(1)(c) substituted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 37(5)(i)**, 48(3); S.I. 2004/2523, art. 2, Sch.

F202 Sch. 5 para. 9(3)(a)(b) substituted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 37(5)(j)**, 48(3); S.I. 2004/2523, art. 2, Sch.

F203 Sch. 5 para. 9(4)(b) substituted for Sch. 5 para. 9(4)(b)-(d) (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 37(5)(k)**, 48(3); S.I. 2004/2523, art. 2, Sch.

Complaints referred to designated professional bodies

10 (1) This paragraph applies if the Commissioner refers a complaint to a designated professional body under paragraph 9(1)(c).

(2) The Commissioner may give directions setting a timetable to be followed by the designated professional body—

(a) in considering the complaint; and

(b) if appropriate, in taking disciplinary proceedings in connection with the complaint.

(3) In making his annual report to the Secretary of State under paragraph 21, the Commissioner must take into account any failure of a designated professional body to comply (whether wholly or in part) with directions given to it under this paragraph.

(4) Sub-paragraph (5) applies if the Commissioner or the Secretary of State considers that a designated professional body has persistently failed to comply with directions given to it under this paragraph.

(5) The Commissioner must take the failure into account in determining whether to make a report under section 86(9)(b) and the Secretary of State must take it into account in determining whether to make an order under section 86(2).

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PART II

COMMISSIONER'S STATUS, REMUNERATION AND STAFF ETC

Status

11 (1) The Commissioner is to be a corporation sole.

(2) The Commissioner and the members of the Commissioner's staff are not to be regarded as the servants or agents of the Crown or as having any status, privilege or immunity of the Crown.

Period of office

12 (1) The Commissioner—
- (a) is to hold office for a term of five years; but
- (b) may resign at any time by notice in writing given to the Secretary of State.

(2) The Secretary of State may dismiss the Commissioner—
- (a) on the ground of incapacity or misconduct; or
- (b) if he is satisfied—
  - (i) that he has been convicted of a criminal offence; or
  - (ii) that a bankruptcy order has been made against him, or his estate has been sequestrated, or he has made a composition or arrangement with, or granted a trust deed for, his creditors.

(3) The Commissioner is eligible for re-appointment when his term of office ends.

Terms and conditions of appointment

13 Subject to the provisions of this Schedule, the Commissioner is to hold office on such terms and conditions as the Secretary of State may determine.

Remuneration, expenses and pensions

14 (1) There is to be paid to the Commissioner such remuneration and expenses as the Secretary of State may determine.

(2) The Secretary of State may pay, or provide for the payment of, such pensions, allowances or gratuities to or in respect of the Commissioner as he may determine.

Compensation

15 If a person ceases to be the Commissioner, otherwise than when his term of office ends, and it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation, the Secretary of State may make a payment to him of such amount as the Secretary of State may determine.

Deputy Commissioner

16 (1) The Secretary of State must appoint a person to act as Deputy Commissioner.

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(2) During any vacancy in the office of Commissioner, or at any time when he is unable to discharge his functions, the Deputy Commissioner may act in his place.

(3) Paragraphs 11(2) and 12 to 15 apply to the Deputy Commissioner as they apply to the Commissioner.

Staff

17 (1) Subject to obtaining the approval of the Secretary of State as to numbers and terms and conditions of service, the Commissioner may appoint such staff as he considers appropriate.

(2) Subject to obtaining the approval of the Secretary of State, the Commissioner may pay, or provide for the payment of, such pensions, allowances or gratuities (including by way of compensation for loss of office or employment) to or in respect of his staff as he considers appropriate.

(3) Any functions of the Commissioner may, to the extent authorised by him, be performed by the Deputy Commissioner or any of his staff.

(4) The [M88]Employers' Liability (Compulsory Insurance) Act 1969 is not to require insurance to be effected by the Commissioner.

Marginal Citations
M88 1969 c. 57.

Expenditure

18 The Secretary of State may pay to the Commissioner—
(a) any expenses incurred or to be incurred by the Commissioner in respect of his staff; and
(b) with the approval of the Treasury, such other sums for enabling the Commissioner to perform his functions as the Secretary of State thinks fit.

Receipts

19 (1) Subject to any general or specific directions given to him by the Secretary of State, sums received by the Commissioner in the exercise of his functions must be paid to the Secretary of State.

(2) Sums received by the Secretary of State under this paragraph must be paid into the Consolidated Fund.

(3) The approval of the Treasury is required for any direction given under this paragraph.

Accounts and records

20 (1) The Commissioner must—
(a) keep proper accounts and proper records in relation to his accounts;
(b) prepare a statement of accounts for each financial year; and

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(c) send copies of the statement to the Secretary of State and to the Comptroller and Auditor General on or before the specified date.

(2) The statement of accounts must be in such form as the Secretary of State may, with the approval of the Treasury, direct.

(3) The Comptroller and Auditor General must—

(a) examine, certify and report on each statement received by him under this paragraph; and

(b) lay copies of each statement and of his report before each House of Parliament.

(4) "Financial year" means the period of 12 months beginning with 1st April.

(5) "Specified date" means—

(a) 31st August next following the end of the year to which the statement relates; or

(b) such earlier date after the end of that year as the Treasury may direct.

Annual report

21 (1) The Commissioner must, as soon as is practicable after the end of each financial year, report to the Secretary of State on the performance of his functions in that year.

[[F204](2) The report must, in particular, set out the Commissioner's opinion as to the extent to which each designated professional body has—

(a) provided effective regulation of its members in their provision of immigration advice or immigration services, and

(b) complied with requests of the Commissioner for the provision of information.**]**

(3) The Secretary of State must lay a copy of the report before each House of Parliament.

(4) "Financial year" has the same meaning as in paragraph 20.

Textual Amendments

F204 Sch. 5 para. 21(2) substituted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 41(6)**, 48(3); S.I. 2004/2523, art. 2, Sch.

Proof of instruments

22 A document purporting to be an instrument issued by the Commissioner and to be signed by or on behalf of the Commissioner is to be received in evidence and treated as such an instrument unless the contrary is shown.

Disqualification for House of Commons

23 In Part III of Schedule 1 to the [M89]House of Commons Disqualification Act 1975 (offices disqualifying for membership), insert at the appropriate place—

"The Immigration Services Commissioner

The Deputy Immigration Services Commissioner".

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Marginal Citations
M89 1975 c. 24.

Disqualification for Northern Ireland Assembly

24 In Part III of Schedule 1 to the [M90]Northern Ireland Assembly Disqualification Act 1975 (offices disqualifying for membership), insert at the appropriate place—

"The Immigration Services Commissioner

The Deputy Immigration Services Commissioner".

Marginal Citations
M90 1975 c. 25.

The Parliamentary Commissioner Act 1967 (c.13)

25 In Schedule 2 of the Parliamentary Commissioner Act 1967 (departments and authorities subject to investigation) insert, at the appropriate place, " The Immigration Services Commissioner ".

SCHEDULE 6

Section 85(3).

REGISTRATION

Applications for registration

1 (1) An application for registration under section 84(2)(a) [F205]... must—
(a) be made to the Commissioner in such form and manner, and
(b) be accompanied by such information and supporting evidence,
as the Commissioner may from time to time determine.

(2) When considering an application for registration, the Commissioner may require the applicant to provide him with such further information or supporting evidence as the Commissioner may reasonably require.

Textual Amendments
F205 Words in Sch. 6 para. 1(1) repealed (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 37(6)(a), 48(3), **Sch. 4**; S.I. 2004/2523, art. 2, Sch.

Registration

2 (1) If the Commissioner considers that an applicant for registration is competent and otherwise fit to provide immigration advice and immigration services, he must register the applicant.

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(2) Registration may be made so as to have effect—
- (a) only in relation to a specified field of advice or services;
- (b) only in relation to the provision of advice or services to a specified category of person;
- (c) only in relation to the provision of advice or services to a member of a specified category of person; or
- (d) only in specified circumstances.

Review of qualifications

3 (1) At such intervals as the Commissioner may determine, each registered person must submit an application for his registration to be continued.

(2) Different intervals may be fixed by the Commissioner in relation to different registered persons or descriptions of registered person.

(3) An application for continued registration must—
- (a) be made to the Commissioner in such form and manner, and
- (b) be accompanied by such information and supporting evidence,

as the Commissioner may from time to time determine.

(4) When considering an application for continued registration, the Commissioner may require the applicant to provide him with such further information or supporting evidence as the Commissioner may reasonably require.

(5) If the Commissioner considers that an applicant for continued registration is no longer competent or is otherwise unfit to provide immigration advice or immigration services, he must cancel the applicant's registration.

(6) Otherwise, the Commissioner must continue the applicant's registration but may, in doing so, vary the registration—
- (a) so as to make it have limited effect in any of the ways mentioned in paragraph 2(2); or
- (b) so as to make it have full effect.

(7) If a registered person fails, without reasonable excuse—
- (a) to make an application for continued registration as required by sub-paragraph (1) or by a direction given by the Tribunal under **[**[F206]section 89(2)(b)**]**, or
- (b) to provide further information or evidence under sub-paragraph (4),

the Commissioner may cancel the person's registration as from such date as he may determine.

Textual Amendments

F206 Words in Sch. 6 para. 3(7)(a) substituted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 37(6)(b)**, 48(3); S.I. 2004/2523, art. 2, Sch.

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[F207 Variation of registration

Textual Amendments

F207 Sch. 6 para. 3A and heading inserted (8.1.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **s. 140(2)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 5)

3A The Commissioner may vary a person's registration—

(a) so as to make it have limited effect in any of the ways mentioned in paragraph 2(2); or

(b) so as to make it have full effect.**]**

Disqualification of certain persons

4 A person convicted of an offence under section 25 or 26(1)(d) or (g) of the 1971 Act is disqualified for registration under paragraph 2 or for continued registration under paragraph 3.

Fees

5 (1) The Secretary of State may by order specify fees for the registration or continued registration of persons on the register.

(2) No application under paragraph 1 or 3 is to be entertained by the Commissioner unless it is accompanied by the specified fee.

Commencement Information

I60 Sch. 6 para. 5 wholly in force at 30.10.2000; Sch. 6 para. 5 not in force at Royal Assent; Sch. 6 para. 5(1) in force for certain purposes at 1.8 2000 by S.I. 2000/1985, art. 2, **Sch.**; Sch. 6 para. 5 in force so far as not already in force 30.10.2000 by S.I. 2000/1985, art. 2, **Sch.**

Open registers

6 (1) The register must be made available for inspection by members of the public in a legible form at reasonable hours.

(2) A copy of the register or of any entry in the register must be provided—

(a) on payment of a reasonable fee;

(b) in written or electronic form; and

(c) in a legible form.

(3) Sub-paragraphs (1) and (2) also apply to—

(a) the record kept by the Commissioner of the persons to whom he has issued a certificate of exemption under section 84(4)(a); and

(b) the record kept by the Commissioner of the persons against whom there is in force a direction given by the Tribunal under section 89(8).

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SCHEDULE 7

Section 87(5).

THE IMMIGRATION SERVICES TRIBUNAL

Members

1 (1) The Tribunal is to consist of such number of members as the Lord Chancellor may determine.

(2) The members are to be appointed by the Lord Chancellor.

(3) A person may be appointed as a member only if—

(a) he is legally qualified; or

(b) he appears to the Lord Chancellor to have had substantial experience in immigration services or in the law and procedure relating to immigration.

The President

2 The Tribunal is to have a President appointed by the Lord Chancellor from among those of its members who are legally qualified.

Terms and conditions of appointment

3 (1) Each member is to hold and vacate office in accordance with the terms of his appointment.

(2) A member is eligible for re-appointment when his term of office ends.

(3) A member may resign at any time by notice in writing given to the Lord Chancellor.

(4) The Lord Chancellor may dismiss a member on the ground of incapacity or misconduct.

[[F208](5) The Lord Chancellor may dismiss a person under sub-paragraph (4) only with the concurrence of the appropriate senior judge.

(6) The appropriate senior judge is the Lord Chief Justice of England and Wales, unless—

(a) the person to be dismissed exercises functions wholly or mainly in Scotland, in which case it is the Lord President of the Court of Session, or

(b) that person exercises functions wholly or mainly in Northern Ireland, in which case it is the Lord Chief Justice of Northern Ireland.**]**

Textual Amendments

F208 Sch. 7 para. 3(5)(6) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 4 para. 285**; S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(x)

Remuneration and expenses

4 The Lord Chancellor may pay to any member such remuneration and expenses as he may determine.

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Proceedings

5 The Tribunal is to sit at such times and in such places as the Lord Chancellor may direct.

6 (1) The Commissioner is entitled to be represented before the Tribunal, in relation to the hearing of appeals or disciplinary charges, by such persons as he may authorise.

(2) The Commissioner may authorise a person to represent him before the Tribunal in relation to—
- (a) specified proceedings; or
- (b) all or specified categories of proceedings.

(3) "Specified" means specified by the Commissioner.

Rules of procedure

7 (1) The Lord Chancellor may make rules as to the procedure and practice to be followed in relation to the exercise of the Tribunal's functions.

(2) Before making or altering any such rules, the Lord Chancellor must consult the Scottish Ministers.

(3) Subject to the provisions of this Schedule and the rules, the Tribunal may determine its own procedure.

(4) The rules must make provision for any person appealing to the Tribunal or otherwise subject to its jurisdiction to be entitled to be legally represented.

(5) The rules may, in particular, make provision—
- (a) as to the mode and burden of proof and the giving and admissibility of evidence;
- (b) for proceedings before the Tribunal to be capable of being determined in the absence of any party to the proceedings if that party has failed, without reasonable excuse, to appear before the Tribunal or has failed to comply with any reasonable directions given by the Tribunal as to the conduct of the proceedings;
- (c) with respect to other matters preliminary or incidental to, or arising out of, any matter with respect to which the Tribunal is or may be exercising functions;
- (d) as to the period within which an appeal against a decision of the Commissioner can be brought;
- (e) authorising such functions of the Tribunal as may be specified in the rules to be exercised by a single member.

Suspending the effect of a relevant decision

8 (1) A relevant decision of the Commissioner is not to have effect while the period within which an appeal may be brought against the decision is running.

(2) If the appellant applies to the Tribunal under this paragraph, the Tribunal may direct that while the appeal is being dealt with—
- (a) no effect is to be given to the decision appealed against; or
- (b) only such limited effect is to be given to it as may be specified in the direction.

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(3) Rules under paragraph 7 must include provision requiring the Tribunal to consider applications by the Commissioner for the cancellation or variation of directions given under this paragraph.

Commencement Information

I61 Sch. 7 para. 8 partly in force; Sch. 7 para. 8 not in force at Royal Assent; Sch. 7 para. 8(3) in force at 1.8.2000 by 2000/1985, art. 2, Sch

Staff

9 (1) The Lord Chancellor may appoint such staff for the Tribunal as he considers appropriate.

(2) The Lord Chancellor may pay, or provide for the payment of, such pensions, allowances or gratuities (including by way of compensation for loss of office or employment) to or in respect of the Tribunal's staff as he considers appropriate.

Expenditure

10 The Lord Chancellor may pay such other expenses of the Tribunal as he considers appropriate.

Meaning of "legally qualified"

11 A person is legally qualified for the purposes of this Schedule if—

[[F209](a) he satisfies the judicial-appointment eligibility condition on a 5-year basis;**]**

(b) he is an advocate or solicitor in Scotland of at least **[**[F210]5**]** years' standing; or

(c) he is a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least **[**[F211]5**]** years' standing.

Textual Amendments

F209 Sch. 7 para. 11(a) substituted (21.7.2008) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, **Sch. 10 para. 32(2)**; S.I. 2008/1653, art. 2(d) (with arts. 3, 4)

F210 Word in Sch. 7 para. 11(b) substituted (21.7.2008) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, **Sch. 10 para. 32(3)**; S.I. 2008/1653, art. 2(d) (with arts. 3, 4)

F211 Word in Sch. 7 para. 11(c) substituted (21.7.2008) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, **Sch. 10 para. 32(3)**; S.I. 2008/1653, art. 2(d) (with arts. 3, 4)

Disqualification for House of Commons

12 In Part I of Schedule 1 to the [M91]House of Commons Disqualification Act 1975 (offices disqualifying for membership), insert at the appropriate place—

"Member of the Immigration Services Tribunal."

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Marginal Citations
M91 1975 c. 24.

Disqualification for Northern Ireland Assembly

13 In Part I of Schedule 1 to the [M92]Northern Ireland Assembly Disqualification Act 1975 (offices disqualifying for membership), insert at the appropriate place—

"Member of the Immigration Services Tribunal."

Marginal Citations
M92 1975 c. 25.

SCHEDULE 8

Section 95(12).

PROVISION OF SUPPORT: REGULATIONS

General regulation-making power

1 The Secretary of State may by regulations make such further provision with respect to the powers conferred on him by section 95 as he considers appropriate.

Determining whether a person is destitute

2 (1) The regulations may provide, in connection with determining whether a person is destitute, for the Secretary of State to take into account, except in such circumstances (if any) as may be prescribed—

(a) income which the person concerned, or any dependant of his, has or might reasonably be expected to have, and

(b) support which is, or assets of a prescribed kind which are, or might reasonably be expected to be, available to him or to any dependant of his,

otherwise than by way of support provided under section 95.

(2) The regulations may provide that in such circumstances (if any) as may be prescribed, a person is not to be treated as destitute for the purposes of section 95.

Modifications etc. (not altering text)
C67 Sch. 8 para. 2 applied (with modifications) (6.12.1999) by 1948 c. 29, **s. 21(1B)** (as inserted by 1999 c. 33, ss. 116, 169(2), **Sch. 15 para. 5**; S.I. 1999/3190, art. 2, **Sch.**)
Sch. 8 para. 2 applied (with modifications) (6.12.1999) by 1968 c. 46, **s. 45(4B)** (as inserted by 1999 c. 33, ss. 117(1), 169(2), **Sch. 15 para. 6**; S.I. 1999/3190, art. 2, **Sch.**)
Sch. 8 para. 2 applied (with modifications) (6.12.1999) by 1977 c. 49, **Sch. 8 para. 2(2B)** (as inserted by 1999 c. 33, ss. 117(2), 169(2), **Sch. 15 para. 9**; S.I. 1999/3190, **art. 2 Sch.**)

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
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Sch. 8 para. 2 applied (with modifications) (1.3.2000 for specified purposes and otherwise 3.4.2000) by 1968 c. 49, **ss. 12(2B)**, 13A(5), 13B(4) (as inserted by 1999 c. 33, ss. 120(1)-(3), 169(2), 170(4), **Sch. 15 para. 7**)

Sch. 8 para. 2 applied (with modifications) (1.3.2000 for specified purposes and otherwise 3.4.2000) by 1984 c. 36, **ss. 7(4)**, 8(5) (as inserted by 1999 c. 33, ss. 120(4)(5), 169(2), 170(4), **Sch. 15 para. 10**)

C68 Sch. 8 para. 2 applied (with modifications) (S.) (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), arts. 1(1), **14(2)**

Prescribed levels of support

3 The regulations may make provision—

(a) as to the circumstances in which the Secretary of State may, as a general rule, be expected to provide support in accordance with prescribed levels or of a prescribed kind;

(b) as to the circumstances in which the Secretary of State may, as a general rule, be expected to provide support otherwise than in accordance with the prescribed levels.

Provision of items and services

4 The regulations may make provision for prescribed items or services to be provided or made available to persons receiving support under section 95 for such purposes and in such circumstances as may be prescribed.

Support and assets to be taken into account

5 The regulations may make provision requiring the Secretary of State, except in such circumstances (if any) as may be prescribed, to take into account, when deciding the level or kind of support to be provided—

(a) income which the person concerned, or any dependant of his, has or might reasonably be expected to have, and

(b) support which is, or assets of a prescribed kind which are, or might reasonably be expected to be, available to him or to any dependant of his,

otherwise than by way of support provided under section 95.

Valuation of assets

6 The regulations may make provision as to the valuation of assets.

Breach of conditions

7 The regulations may make provision for the Secretary of State to take into account, when deciding—

(a) whether to provide, or to continue to provide, support under section 95, or

(b) the level or kind of support to be provided,

the extent to which any condition on which support is being, or has previously been, provided has been complied with.

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Suspension or discontinuation of support

8 (1) The regulations may make provision for the suspension or discontinuance of support under section 95 in prescribed circumstances (including circumstances in which the Secretary of State would otherwise be under a duty to provide support).

(2) The circumstances which may be prescribed include the cessation of residence—

(a) in accommodation provided under section 95; or

(b) at an address notified to the Secretary of State in accordance with the regulations.

Notice to quit

9 (1) The regulations may provide that if—

(a) as a result of support provided under section 95, a person has a tenancy or a licence to occupy accommodation,

(b) one or more of the conditions mentioned in sub-paragraph (2) are satisfied, and

(c) he is given such notice to quit as may be prescribed by the regulations,

his tenancy or licence is to be treated as ending with the period specified in that notice, regardless of when it could otherwise be brought to an end.

(2) The conditions are that—

(a) the support provided under section 95 is suspended or discontinued as a result of any provision of a kind mentioned in paragraph 8;

(b) the relevant claim for asylum has been determined;

(c) the supported person has ceased to be destitute;

(d) he is to be moved to other accommodation.

Contributions to support

10 The regulations may make provision requiring a supported person to make payments to the Secretary of State, in prescribed circumstances, by way of contributions to the cost of the provision of that support.

Recovery of sums by Secretary of State

11 (1) The regulations may provide for the recovery by the Secretary of State of sums representing the whole or part of the monetary value of support provided to a person under section 95 where it appears to the Secretary of State—

(a) that that person had, at the time when he applied for support, assets of any kind in the United Kingdom or elsewhere which were not capable of being realised; but

(b) that those assets have subsequently become, and remain, capable of being realised.

(2) An amount recoverable under regulations made by virtue of sub-paragraph (1) may be recovered—

(a) as if it were a debt due to the Secretary of State; or

(b) by such other method of recovery, including by deduction from support provided under section 95 as may be prescribed.

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Procedure

12 The regulations may make provision with respect to procedural requirements including, in particular, provision as to—

(a) the procedure to be followed in making an application for support;

(b) the information which must be provided by the applicant;

(c) the circumstances in which an application may not be entertained **[**[F212](which may, in particular, provide for an application not to be entertained where the Secretary of State is not satisfied that the information provided is complete or accurate or that the applicant is co-operating with enquiries under paragraph (d))**]**;

(d) the making of further enquiries by the Secretary of State;

(e) the circumstances in which, and person by whom, a change of circumstances of a prescribed description must be notified to the Secretary of State.

Textual Amendments

F212 Words in Sch. 8 para. 12(c) inserted (8.12.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), **s. 57** (with s. 159); S.I. 2002/2811, **art. 2**, Sch.

SCHEDULE 9

Section 95(13).

ASYLUM SUPPORT: INTERIM PROVISIONS

1 (1) The Secretary of State may by regulations make provision requiring prescribed local authorities or local authorities falling within a prescribed description of authority to provide support, during the interim period, to eligible persons.

(2) "Eligible persons" means—

(a) asylum-seekers, or

(b) their dependants,

who appear to be destitute or to be likely to become destitute within such period as may be prescribed.

(3) For the purposes of sub-paragraph (1), in Northern Ireland, a Health and Social Services Board established under Article 16 of the [M93]Health and Personal Social Services (Northern Ireland) Order 1972 is to be treated as a local authority.

Marginal Citations

M93 S.I. 1972/1265 (N.I. 14).

2 (1) The regulations must provide for the question whether a person is an eligible person to be determined by the local authority concerned.

(2) The regulations may make provision for support to be provided, before the determination of that question, to a person making a claim for support under the regulations by the Secretary of State or such local authority as may be prescribed.

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(3) "The local authority concerned" has such meaning as may be prescribed.

3 Subsections (3) to (8) of section 95 apply for the purposes of the regulations as they apply for the purposes of that section, but for the references in subsections (5) and (7) to the Secretary of State substitute references to the local authority concerned.

4 The regulations may prescribe circumstances in which support for an eligible person—

(a) must be provided;
(b) must or may be refused; or
(c) must or may be suspended or discontinued.

5 The regulations may provide that support—

(a) is to be provided in prescribed ways;
(b) is not to be provided in prescribed ways.

6 The regulations may include provision—

(a) as to the level of support that is to be provided;
(b) for support to be provided subject to conditions;
(c) requiring any such conditions to be set out in writing;
(d) requiring a copy of any such conditions to be given to such person as may be prescribed.

[[F213]6A The regulations may, in particular, require support to be provided subject to a condition of compliance with any restriction imposed under paragraph 21 of Schedule 2 to the 1971 Act (temporary admission or release from detention) or paragraph 2 or 5 of Schedule 3 to that Act (restriction pending deportation).**]**

Textual Amendments

F213 Sch. 9 para. 6A inserted (7.11.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), **s. 50(2)** (with s. 159)

7 The regulations may make provision that, in providing support, a local authority—

(a) are to have regard to such matters as may be prescribed;
(b) are not to have regard to such matters as may be prescribed.

8 The regulations may include provision—

(a) prescribing particular areas, or descriptions of area, (which may include a locality within their own area) in which a local authority may not place asylum-seekers while providing support for them;
(b) prescribing circumstances in which a particular area, or description of area, (which may include a locality within their own area) is to be one in which a local authority may not place asylum-seekers while providing support for them;
(c) as to the circumstances (if any) in which any such provision is not to apply.

9 (1) The regulations may make provision for the referral by one local authority to another of a claim for support made under the regulations if the local authority to whom the claim is made consider that it is not manifestly unfounded but—

(a) they are providing support for a number of asylum-seekers equal to, or greater than, the maximum number of asylum-seekers applicable to them; or

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(b) they are providing support for a number of eligible persons equal to, or greater than, the maximum number of eligible persons applicable to them.

(2) For the purposes of any provision made as a result of sub-paragraph (1), the regulations may make provision for the determination by the Secretary of State of—
(a) the applicable maximum number of asylum-seekers;
(b) the applicable maximum number of eligible persons.

(3) The regulations may make provision for any such determination to be made—
(a) for local authorities generally;
(b) for prescribed descriptions of local authority; or
(c) for particular local authorities.

(4) The regulations may provide that a referral may not be made—
(a) to a prescribed local authority;
(b) to local authorities of a prescribed description; or
(c) in prescribed circumstances.

(5) The regulations may make provision for the payment by a local authority of any reasonable travel or subsistence expenses incurred as a result of a referral made by them.

(6) The regulations may make provision for the transfer of a claim for support, or responsibility for providing support, under the regulations from one local authority to another on such terms as may be agreed between them.

(7) In exercising any power under the regulations to refer or transfer, a local authority must have regard to such guidance as may be issued by the Secretary of State with respect to the exercise of the power.

10 (1) The regulations may make provision for the referral of claims for support made to the Secretary of State to prescribed local authorities or local authorities of a prescribed description.

(2) The regulations may make provision for the payment by the Secretary of State of any reasonable travel or subsistence expenses incurred as a result of a referral made by him as a result of provision made by virtue of sub-paragraph (1).

11 The regulations may make provision requiring prescribed local authorities or other prescribed bodies to give reasonable assistance to local authorities providing support under the regulations.

12 The regulations may make provision for the procedure for making and determining claims for support.

13 The regulations may make provision for an asylum-seeker or a dependant of an asylum-seeker who has received, or is receiving, any prescribed description of support from a local authority to be taken to have been accepted for support under the regulations by a prescribed local authority.

14 A person entitled to support under the regulations is not entitled to any prescribed description of support, except to such extent (if any) as may be prescribed.

15 "The interim period" means the period—
(a) beginning on such day as may be prescribed for the purposes of this paragraph; and

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(b) ending on such day as may be so prescribed.

SCHEDULE 10

Section 102(3).

ASYLUM SUPPORT ADJUDICATORS

Modifications etc. (not altering text)

C69 Sch. 10: transfer of functions (2.4.2007) by Transfer of Functions (Asylum Support Adjudicators) Order 2007 (S.I. 2007/275), arts. 1(2), **3(b)** (with art. 4)

Adjudicators

1 (1) The **[**[F214]Lord Chancellor**]** must—

(a) appoint such number of adjudicators as he considers necessary;

(b) appoint one of the adjudicators to be the Chief Asylum Support Adjudicator; and

(c) appoint one of the adjudicators to be the Deputy Chief Asylum Support Adjudicator ("the Deputy").

(2) The adjudicators are to exercise their functions under the direction of the Chief Asylum Support Adjudicator.

(3) The Chief Asylum Support Adjudicator is to have such other functions as the **[**[F214]Lord Chancellor**]** may from time to time direct.

(4) During any vacancy in the office of Chief Asylum Support Adjudicator, or at any time when he is unable to discharge his functions, the Deputy may act in his place.

Textual Amendments

F214 Words in Sch. 10 substituted (2.4.2007) by Transfer of Functions (Asylum Support Adjudicators) Order 2007 (S.I. 2007/275), arts. 1(2), **6(1)** (with art. 4)

Terms and conditions of appointment

2 (1) Each adjudicator is to hold and vacate office in accordance with the terms of his appointment.

(2) An adjudicator is eligible for re-appointment when his term of office ends.

(3) An adjudicator may resign at any time by notice in writing given to the **[**[F214]Lord Chancellor**]** .

Textual Amendments

F214 Words in Sch. 10 substituted (2.4.2007) by Transfer of Functions (Asylum Support Adjudicators) Order 2007 (S.I. 2007/275), arts. 1(2), **6(1)** (with art. 4)

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Remuneration, expenses and pensions

3 (1) The **[**[F214]Lord Chancellor**]** may pay to any adjudicator such remuneration and expenses as he may determine.

(2) The **[**[F214]Lord Chancellor**]** may pay, or provide for the payment of, such pensions, allowances or gratuities to or in respect of any adjudicator as he may determine.

Textual Amendments

F214 Words in Sch. 10 substituted (2.4.2007) by Transfer of Functions (Asylum Support Adjudicators) Order 2007 (S.I. 2007/275), arts. 1(2), **6(1)** (with art. 4)

Compensation

4 If a person ceases to be an adjudicator, otherwise than when his term of office ends, and it appears to the **[**[F214]Lord Chancellor**]** that there are special circumstances which make it right for him to receive compensation, the **[**[F214]Lord Chancellor**]** may make a payment to him of such amount as the **[**[F214]Lord Chancellor**]** may determine.

Textual Amendments

F214 Words in Sch. 10 substituted (2.4.2007) by Transfer of Functions (Asylum Support Adjudicators) Order 2007 (S.I. 2007/275), arts. 1(2), **6(1)** (with art. 4)

Staff

5 (1) The **[**[F214]Lord Chancellor**]** may appoint such staff for the adjudicators as he considers appropriate.

(2) The **[**[F214]Lord Chancellor**]** may pay, or provide for the payment of, such pensions, allowances or gratuities (including by way of compensation for loss of office or employment) to or in respect of the adjudicators' staff as he considers appropriate.

Textual Amendments

F214 Words in Sch. 10 substituted (2.4.2007) by Transfer of Functions (Asylum Support Adjudicators) Order 2007 (S.I. 2007/275), arts. 1(2), **6(1)** (with art. 4)

Expenditure

6 The **[**[F214]Lord Chancellor**]** may pay such other expenses of the adjudicators as he considers appropriate.

Textual Amendments

F214 Words in Sch. 10 substituted (2.4.2007) by Transfer of Functions (Asylum Support Adjudicators) Order 2007 (S.I. 2007/275), arts. 1(2), **6(1)** (with art. 4)

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Proceedings

7 For the purpose of discharging their functions, adjudicators are to sit at such times and in such places as the **[**[F214]Lord Chancellor**]** may direct.

Textual Amendments

F214 Words in Sch. 10 substituted (2.4.2007) by Transfer of Functions (Asylum Support Adjudicators) Order 2007 (S.I. 2007/275), arts. 1(2), **6(1)** (with art. 4)

SCHEDULE 11

Section 154(7).

DETAINEE CUSTODY OFFICERS

Obtaining certificates of authorisation by false pretences

1 A person who, for the purpose of obtaining a certificate of authorisation for himself or for any other person—

(a) makes a statement which he knows to be false in a material particular, or

(b) recklessly makes a statement which is false in a material particular,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Powers and duties of detainee custody officers

2 (1) A detainee custody officer exercising custodial functions has power—

(a) to search (in accordance with rules made by the Secretary of State) any detained person in relation to whom the officer is exercising custodial functions; and

(b) to search any other person who is in, or is seeking to enter, any place where any such detained person is or is to be held, and any article in the possession of such a person.

(2) The power conferred by sub-paragraph (1)(b) does not authorise requiring a person to remove any of his clothing other than an outer coat, jacket or glove.

(3) As respects a detained person in relation to whom he is exercising custodial functions, it is the duty of a detainee custody officer—

(a) to prevent that person's escape from lawful custody;

(b) to prevent, or detect and report on, the commission or attempted commission by him of other unlawful acts;

(c) to ensure good order and discipline on his part; and

(d) to attend to his wellbeing.

(4) The powers conferred by sub-paragraph (1), and the powers arising by virtue of sub-paragraph (3), include power to use reasonable force where necessary.

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Modifications etc. (not altering text)

C70 Sch. 11 paras. 2, 3 extended (coming into force in accordance with art. 1(2) of the extending S.I.) by Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003 (S.I. 2003/2818), **art. 11(2)**

Commencement Information

I62 Sch. 11 para. 2 wholly in force at 2.4.2001; Sch. 11 para. 2 not in force at Royal Assent; Sch. 11 para. 2(1)(a) in force for certain purposes at 1.8.2000 by S.I. 2000/1985, art. 2, **Sch.**; Sch. 11 para 2 in force so far as not already in force at 2.4.2001 by S.I. 2001/239, art. 2, **Sch.**

Short-term holding facilities

3 (1) A detainee custody officer may perform functions of a custodial nature at a short-term holding facility (whether or not he is authorised to perform custodial functions at a **[**[F215]removal centre**]**).

(2) When doing so, he is to have the same powers and duties in relation to the facility and persons detained there as he would have if the facility were a **[**[F215]removal centre**]**.

Textual Amendments

F215 Words in Sch. 11 substituted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss.**66(2)(3)(k), 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

Modifications etc. (not altering text)

C70 Sch. 11 paras. 2, 3 extended (coming into force in accordance with art. 1(2) of the extending S.I.) by Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003 (S.I. 2003/2818), **art. 11(2)**

Assaulting a detainee custody officer

4 A person who assaults a detainee custody officer who is—

(a) acting in accordance with escort arrangements,

(b) performing custodial functions, or

(c) performing functions of a custodial nature at a short-term holding facility,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding six months or to both.

Obstructing detainee custody officers

5 A person who resists or wilfully obstructs a detainee custody officer who is—

(a) acting in accordance with escort arrangements,

(b) performing custodial functions, or

(c) performing functions of a custodial nature at a short-term holding facility,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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Uniforms and badges

6 For the purposes of paragraphs 4 and 5, a detainee custody officer is not to be regarded as acting in accordance with escort arrangements at any time when he is not readily identifiable as such an officer (whether by means of a uniform or badge which he is wearing or otherwise).

Suspension and revocation of certificates of authorisation

7 (1) If it appears to the Secretary of State that a detainee custody officer is not a fit and proper person to perform escort functions or custodial functions, he may revoke that officer's certificate so far as it authorises the performance of those functions.

(2) If it appears to the escort monitor that a detainee custody officer is not a fit and proper person to perform escort functions, he may—

(a) refer the matter to the Secretary of State; or

(b) in such circumstances as may be prescribed, suspend the officer's certificate pending a decision by the Secretary of State as to whether to revoke it.

(3) If it appears to the contract monitor for the **[**[F215]removal centre**]** concerned that a detainee custody officer is not a fit and proper person to perform custodial functions, he may—

(a) refer the matter to the Secretary of State; or

(b) in such circumstances as may be prescribed, suspend the officer's certificate pending a decision by the Secretary of State as to whether to revoke it.

Textual Amendments

F215 Words in Sch. 11 substituted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss.**66(2)(3)(k), 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

Commencement Information

I63 Sch. 11 para. 7 wholly in force at 2.4.2001; Sch. 1 para. 7 not in force at Royal Assent see s. 170(4); Sch. 1 para. 7(1) in force at 3.4.2000 by S.I. 2000/464, art. 2, **Sch.**; Sch. 11 para. 7(2)(3) in force for certain purposes at 1.8.2000 by S.I. 2000/1985, art. 2, **Sch.**; Sch. 11 para 7 in force so far as not already in force at 2.4.2001 by S.I. 2001/239, art. 2, **Sch.**

[[F216]*Prison officers and prisoner custody officers*

Textual Amendments

F216 Sch. 11 para. 8 and cross-heading added (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 65(2)**, 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

8 A reference in this Schedule to a detainee custody officer includes a reference to a prison officer or prisoner custody officer exercising custodial functions.**]**

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Immigration and Asylum Act 1999 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

SCHEDULE 12

Section 155(2).

DISCIPLINE ETC AT [F217REMOVAL CENTRES]

Textual Amendments

F217 Words in Sch. 12 substituted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss.**66(2)(3)(l), 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

Measuring and photographing detained persons

1 (1) [F217Removal centre] rules may (among other things) provide for detained persons to be measured and photographed.

(2) The rules may, in particular, prescribe—

(a) the time or times at which detained persons are to be measured and photographed;

(b) the manner and dress in which they are to be measured and photographed; and

(c) the numbers of copies of measurements or photographs that are to be made and the persons to whom they are to be sent.

Commencement Information

I64 Sch. 12 para. 1 wholly in force at 2.4.2001; Sch. 12 para. 1 not in force at Royal Assent; Sch. 12 para. 1 in force for certain purposes at 1.8.2000 by S.I. 2000/1985, art. 2, **Sch.**; Sch. 12 para. 1 in force so far as not already in force at 2.4.2001 by S.I. 2001/239, art. 2, **Sch.**

Testing for drugs or alcohol

2 (1) If an authorisation is in force, a detainee custody officer may, at the centre to which the authorisation applies and in accordance with [F217removal centre] rules, require a detained person who is confined in the centre to provide a sample for the purpose of ascertaining—

(a) whether he has a drug in his body; or

(b) whether he has alcohol in his body.

(2) The sample required may be one or more of the following—

(a) a sample of urine;

(b) a sample of breath;

(c) a sample of a specified description.

(3) Sub-paragraph (2)(c)—

(a) applies only if the authorisation so provides; and

(b) does not authorise the taking of an intimate sample.

(4) "Authorisation" means an authorisation given by the Secretary of State for the purposes of this paragraph in respect of a particular [F217removal centre].

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(5) "Drug" means a drug which is a controlled drug for the purposes of the [M94]Misuse of Drugs Act 1971.

(6) "Specified" means specified in the authorisation.

(7) "Intimate sample"—

(a) in relation to England and Wales, has the same meaning as in Part V of the [M95]Police and Criminal Evidence Act 1984;

(b) in relation to Scotland, means—

(i) a sample of blood, semen or any other tissue fluid, urine or pubic hair;

(ii) a dental impression;

(iii) a swab taken from a person's body orifice other than the mouth; and

(c) in relation to Northern Ireland, has the same meaning as in Part VI of the [M96]Police and Criminal Evidence (Northern Ireland) Order 1989.

Commencement Information

I65 Sch. 12 para. 2 wholly in force at 2.4.2001; Sch. 12 para. 2 not in force at Royal Assent; Sch. 12 para. 2 in force for certain purposes at 1.8.2000 by S.I. 2000/1985, art. 2, **Sch**; Sch. 12 para. 2 in force so far as not already in force at 2.4.2001 by S.I. 2001/239, art. 2, **Sch.**

Marginal Citations

M94 1971 c. 38.

M95 1984 c. 60.

M96 S.I. 1989/1341 (N.I. 12).

Medical examinations

3 (1) This paragraph applies if—

(a) an authorisation is in force for a **[**[F217]removal centre**]**; and

(b) there are reasonable grounds for believing that a person detained in the centre is suffering from a disease which is specified in an order in force under sub-paragraph (7).

(2) A detainee custody officer may require the detained person to submit to a medical examination at the centre.

(3) The medical examination must be conducted in accordance with **[**[F217]removal centre**]** rules.

(4) A detained person who fails, without reasonable excuse, to submit to a medical examination required under this paragraph is guilty of an offence.

(5) A person guilty of an offence under sub-paragraph (4) is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale.

(6) "Authorisation" means an authorisation given by the manager of the **[**[F217]removal centre**]** for the purpose of this paragraph.

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(7) The Secretary of State may by order specify any disease which he considers might, if a person detained in a **[**[F217]removal centre**]** were to suffer from it, endanger the health of others there.

Commencement Information

I66 Sch. 12 para. 3 wholly in force at 2.4.2001; Sch. 12 para. 3 not in force at Royal Assent; Sch. 12 para. 3(7) in force for certain purposes at 1.8.2000 by S.I. 2000/1985, art. 2, **Sch.**; Sch. 12 para. 3 in force so far as not already in force at 2.4.2001 by S.I. 2001/239, art. 2, **Sch.**

Assisting detained persons to escape

4 (1) A person who aids any detained person in escaping or attempting to escape from a **[**[F217]removal centre**]** or short-term holding facility is guilty of an offence.

(2) A person who, with intent to facilitate the escape of any detained person from a **[**[F217]removal centre**]** or short-term holding facility—

(a) conveys any thing into the centre or facility or to a detained person,

(b) sends any thing (by post or otherwise) into the centre or facility or to a person detained there,

(c) places any thing anywhere outside the centre or facility with a view to its coming into the possession of a person detained there,

is guilty of an offence.

(3) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Alcohol

5 (1) A person who, contrary to **[**[F217]removal centre**]** rules, brings or attempts to bring any alcohol into a **[**[F217]removal centre**]**, or to a detained person, is guilty of an offence.

(2) A person who places alcohol anywhere outside a **[**[F217]removal centre**]**, intending that it should come into the possession of a detained person there, is guilty of an offence.

(3) A detainee custody officer or any other person on the staff of a **[**[F217]removal centre**]** who, contrary to **[**[F217]removal centre**]** rules, allows alcohol to be sold or used in the centre is guilty of an offence.

(4) A person guilty of an offence under this paragraph is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 3 on the standard scale or to both.

(5) "Alcohol" means any spirituous or fermented liquor.

Introduction of other articles

6 (1) A person who—

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(a) conveys or attempts to convey any thing into or out of a **[**[F217]removal centre**]** or to a detained person, contrary to **[**[F217]removal centre**]** rules, and

(b) is not as a result guilty of an offence under paragraph 4 or 5,

is guilty of an offence under this paragraph.

(2) A person who—

(a) places any thing anywhere outside a **[**[F217]removal centre**]**, intending it to come into the possession of a detained person, and

(b) is not as a result guilty of an offence under paragraph 4 or 5,

is guilty of an offence under this paragraph.

(3) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Notice of penalties

7 (1) In the case of a contracted out **[**[F217]removal centre**]**, the contractor must cause a notice setting out the penalty to which a person committing an offence under paragraph 4, 5 or 6 is liable to be fixed outside the centre in a conspicuous place.

(2) In the case of any other **[**[F217]removal centre**]**, the Secretary of State must cause such a notice to be fixed outside the centre in a conspicuous place.

8 (1) In the case of a contracted out short-term holding facility, the contractor must cause a notice setting out the penalty to which a person committing an offence under paragraph 4 is liable to be fixed outside the facility in a conspicuous place.

(2) In the case of any other short-term holding facility, the Secretary of State must cause such a notice to be fixed outside the facility in a conspicuous place.

[**[F218]Prison officers and prisoner custody officers

Textual Amendments

F218 Sch. 12 para. 9 and cross-heading added (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss. 65(3)**, 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

9 A reference in this Schedule to a detainee custody officer includes a reference to a prison officer or prisoner custody officer exercising custodial functions.**]**

SCHEDULE 13

Section 156(5).

ESCORT ARRANGEMENTS

Monitoring of escort arrangements

1 (1) Escort arrangements must include provision for the appointment of a Crown servant as escort monitor.

(2) The escort monitor must—

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(a) keep the escort arrangements under review and report on them to the Secretary of State as required in accordance with the arrangements;
(b) from time to time inspect the conditions in which detained persons are transported or held in accordance with the escort arrangements;
(c) make recommendations to the Secretary of State, with a view to improving those conditions, whenever he considers it appropriate to do so;
(d) investigate, and report to the Secretary of State on, any allegation made against a detainee custody officer or prisoner custody officer in respect of any act done, or failure to act, when carrying out functions under the arrangements;

(3) Paragraph (d) of sub-paragraph (2) does not apply in relation to—
(a) detainee custody officers employed as part of the Secretary of State's staff; or
(b) an act or omission of a prisoner custody officer so far as it falls to be investigated by a prisoner escort monitor under section 81 of the [M97]Criminal Justice Act 1991 or under section 103 or 119 of the [M98]Criminal Justice and Public Order Act 1994.

Marginal Citations
M97 1991 c. 53.
M98 1994 c. 33.

Powers and duties of detainee custody officers

2 (1) A detainee custody officer acting in accordance with escort arrangements has power—
(a) to search (in accordance with rules made by the Secretary of State) any detained person for whose delivery or custody the officer is responsible in accordance with the arrangements; and
(b) to search any other person who is in, or is seeking to enter, any place where any such detained person is or is to be held, and any article in the possession of such a person.

(2) The power conferred by sub-paragraph (1)(b) does not authorise requiring a person to remove any of his clothing other than an outer coat, jacket or glove.

(3) As respects a detained person for whose delivery or custody he is responsible in accordance with escort arrangements, it is the duty of a detainee custody officer—
(a) to prevent that person's escape from lawful custody;
(b) to prevent, or detect and report on, the commission or attempted commission by him of other unlawful acts;
(c) to ensure good order and discipline on his part; and
(d) to attend to his wellbeing.

(4) The Secretary of State may make rules with respect to the performance by detainee custody officers of their duty under sub-paragraph (3)(d).

(5) The powers conferred by sub-paragraph (1), and the powers arising by virtue of sub-paragraph (3), include power to use reasonable force where necessary.

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Modifications etc. (not altering text)

C71 Sch. 13 para. 2 extended (coming into force in accordance with art. 1(2) of the extending S.I.) by Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003 (S.I. 2003/2818), **art. 11(2)**

Commencement Information

I67 Sch. 13 para. 2 wholly in force at 2.4.2001; Sch. 13 para. 2 not in force at Royal Assent; Sch. 13 para. 2(1)(a)(4) in force for certain purposes at 1.8.2000 by S.I. 2000/1985, art. 2, **Sch.**; Sch. 13 para. 2 in force so far as not already in force at 2.4.2001 by S.I. 2001/239, art. 2, **Sch.**

Breaches of discipline

3 (1) Sub-paragraph (2) applies if a detained person for whose delivery or custody a person ("A") has been responsible in accordance with escort arrangements is delivered to a **[**[F219]removal centre**]**.

(2) The detained person is to be treated, for the purposes of such **[**[F219]removal centre**]** rules as relate to disciplinary offences, as if he had been in the custody of the director of the **[**[F219]removal centre**]** at all times while A was so responsible.

(3) Sub-paragraph (4) applies if a detained person for whose delivery or custody a person ("B") has been responsible in accordance with escort arrangements is delivered to a prison.

(4) The detained person is to be treated, for the purposes of such prison rules as relate to disciplinary offences, as if he had been in the custody of the governor or controller of the prison at all times while B was so responsible.

(5) "Director" means—

(a) in the case of a contracted out **[**[F219]removal centre**]**, the person appointed by the Secretary of State in relation to the centre under section 149 or such other person as the Secretary of State may appoint for the purposes of this paragraph;

(b) in the case of any other **[**[F219]removal centre**]**, the manager of the **[**[F219]removal centre**]**.

(6) This paragraph does not authorise the punishment of a detained person under **[**[F219]removal centre**]** rules or prison rules in respect of any act or omission of his for which he has already been punished by a court.

(7) "Prison rules" means—

(a) rules made under section 47 of the [M99]Prison Act 1952;

(b) rules made under section 19 of the [M100]Prisons (Scotland) Act 1989;

(c) rules made under section 13 of the [M101]Prison Act (Northern Ireland) 1953.

Textual Amendments

F219 Words in Sch. 13 substituted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), **ss.**66(2)(3)(m), 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

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Marginal Citations

M99 1952 c. 52.
M100 1989 c. 45.
M101 1953 c.18 (N.I.).

SCHEDULE 14

Section 169(1).

CONSEQUENTIAL AMENDMENTS

The Marriages (Ireland) Act 1844 (c.81)

F220 1 . . . . . .

Textual Amendments

F220 Sch. 14 para. 1 repealed (N.I.) (1.1.2004) by The Marriage (Northern Ireland) Order 2003 (S.I. 2003/413), art. 1(2), **Sch.**; S.R. 2003/466, art. 2(b)

The Marriage Law (Ireland) Amendment Act 1863 (c.27)

F221 2 . . . . . .

Textual Amendments

F221 Sch. 14 para. 2 repealed (N.I.) (1.1.2004) by The Marriage (Northern Ireland) Order 2003 (S.I. 2003/413), art. 1(2), **Sch.**; S.R. 2003/466, art. 2(b)

The Marriage Act 1949 (c.76)

3 The Marriage Act 1949 is amended as follows.

Commencement Information

I68 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

4 In section 3(1) (marriages of persons under 21)—

(a) for "a certificate" substitute " certificates "; and
(b) omit "whether by licence or without licence,".

Commencement Information

I69 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

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5 In section 5 (methods of authorising marriages), in paragraph (d), for "a certificate" substitute " certificates ".

Commencement Information

I70 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

6 In section 17 (marriage under superintendent registrar's certificate)—

(a) for "a certificate" substitute " certificates "; and

(b) for "notice of marriage and certificate" substitute " notices of marriage and certificates ".

Commencement Information

I71 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

7 In section 25 (void marriages)—

(a) in paragraph (b), for "a certificate" substitute " certificates ";

(b) in paragraph (c), for "a certificate of a superintendent registrar which is" substitute " certificates of a superintendent registrar which are "; and

(c) in paragraph (d), for "a certificate" substitute " certificates " and for "notice of marriage and certificate" substitute " notices of marriage and certificates ".

Commencement Information

I72 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

8 In section 27(1) (notice of marriage), for "a certificate" substitute " certificates ".

Commencement Information

I73 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

9 In section 27A (additional information required in certain cases)—

(a) in subsections (2) and (3), for the first "the notice" substitute " each notice ";

(b) in subsection (4), for the first "The person" substitute " Each person "; and

(c) in subsection (6), for "either" substitute " each ".

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Commencement Information

I74 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

10 In section 27B (provisions relating to section 1(3) marriages)—

(a) in subsection (1), for "a certificate" substitute " certificates ";

(b) in subsections (4) and (6), omit "or licence"; and

(c) in subsection (5), omit ", or certificate and licence,".

Commencement Information

I75 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

11 In section 28(1) (declaration to accompany notice of marriage), omit "or licence" and for paragraph (b) substitute—

"(b) that the persons to be married have for the period of 7 days immediately before the giving of the notice had their usual places of residence within the registration district or registration districts in which notice is given;".

Commencement Information

I76 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

12 In section 29 (caveat against issue of certificate or licence), omit every "or licence".

Commencement Information

I77 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

13 In section 30 (provision for issue of certificate to be forbidden) for first "a certificate" substitute " certificates ".

Commencement Information

I78 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

14 In section 31 (marriage certificates)—

(a) in subsections (1) and (4), for "a certificate" substitute " certificates "; and

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(b) in subsection (5), for "one of the persons to be married" substitute " the person by whom notice of marriage was given ".

Commencement Information

I79 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

15 For section 33 substitute—

"**33 Period of validity of certificate.**

(1) A marriage may be solemnized on the authority of certificates of a superintendent registrar at any time within the period which is the applicable period in relation to that marriage.

(2) If the marriage is not solemnized within the applicable period—

(a) the notices of marriage and the certificates are void; and

(b) no person may solemnize the marriage on the authority of those certificates.

(3) The applicable period, in relation to a marriage, is the period beginning with the day on which the notice of marriage was entered in the marriage notice book and ending—

(a) in the case of a marriage which is to be solemnized in pursuance of section 26(1)(dd), 37 or 38, on the expiry of three months; and

(b) in the case of any other marriage, on the expiry of twelve months.

(4) If the notices of marriage given by each person to be married are not given on the same date, the applicable period is to be calculated by reference to the earlier of the two dates."

Commencement Information

I80 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

16 For section 34 substitute—

"**34 Marriages normally to be solemnized in registration district in which one party resides.**

Subject to section 35, a superintendent registrar may not issue a certificate for the solemnization of a marriage elsewhere than within a registration district in which one of the persons to be married has resided for 7 days immediately before the giving of the notice of marriage."

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Commencement Information

I81 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

17 (1) Section 35 (marriages in registration district in which neither party resides) is amended as follows.

(2) In subsection (1)—

(a) omit “, or if the marriage is to be by licence, a certificate and a licence,”; and

(b) for “or certificate and licence is issued” substitute “ is issued in respect of each of the persons to be married ”.

(3) In subsections (2) and (4), omit “or, if the marriage is to be by licence, a certificate and a licence,”.

(4) In subsections (2A) and (2B), omit “or, if the marriage is to be by licence, a certificate and licence,”.

(5) In subsection (5)—

(a) for “a certificate” substitute “ certificates ”;

(b) for “the notice” substitute “ each notice ”; and

(c) for “the certificate” substitute “ each certificate ”.

Commencement Information

I82 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

18 Omit section 36 (superintendent registrar not normally to issue licences for marriages in registered buildings outside his district).

Commencement Information

I83 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

19 In section 37(1) (one party resident in Scotland)—

(a) for first “a certificate” substitute “ certificates ”; and

(b) omit “without licence”.

Commencement Information

I84 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

20 (1) Section 38 (one party resident in Northern Ireland) is amended as follows.

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(2) In subsection (1)—

(a) for "a certificate" substitute " certificates "; and

(b) omit "without licence".

(3) In subsection (2), for "and place of residence" substitute " , place of residence and nationality ".

(4) In subsection (3), for "twenty-one" substitute " 15 ".

Commencement Information

I85 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

21 In section 39(1) (issue of certificates on board Her Majesty's ships)—

(a) for first "a certificate" substitute " certificates "; and

(b) omit "without licence".

Commencement Information

I86 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

22 In section 40 (forms of certificates for marriage), omit subsection (2).

Commencement Information

I87 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

23 In section 44(1) (solemnization of marriage in registered buildings), for "a notice of marriage and certificate" substitute " the notices of marriage and certificates ".

Commencement Information

I88 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

24 In section 45(1) (solemnization of marriage in register office)—

(a) for "a certificate" substitute " certificates ";

(b) for first "notice" substitute " notices ";

(c) for "notice has" substitute " notices have "; and

(d) for "certificate or certificate and licence, as the case may be, has or" substitute " certificates ".

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Commencement Information

I89 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

25 In section 47(2) (marriages according to usages of Society of Friends), in paragraph (a), for "the person" substitute " each person ".

Commencement Information

I90 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

26 In section 48(1) (proof of certain matters not necessary to validity of marriages), in paragraph (a), for "notice" substitute " notices ".

Commencement Information

I91 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

27 In section 49 (void marriages)—

(a) in paragraph (b), after "issued" insert " , in respect of each of the persons to be married, ";

(b) omit paragraph (c);

(c) in paragraph (d), for "a certificate which is" substitute " certificates which are "; and

(d) in paragraph (e), for "notice" substitute " notices " and for "certificate" substitute " certificates ".

Commencement Information

I92 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

28 In section 50 (person to whom certificate to be delivered)—

(a) in subsection (1), for "a certificate" substitute " certificates " and omit "the certificate or, if notice of marriage has been given to more than one superintendent registrar,";

(b) omit subsection (2); and

(c) in subsection (3), for "certificate or certificate and licence, as the case may be," substitute " certificates ".

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Commencement Information

I93 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

29 In section 51(1) (fees of registrars for attending marriages), omit from first "the sum" to "case,".

Commencement Information

I94 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

30 (1) Section 75 (offences relating to solemnization of marriages) is amended as follows.

(2) In subsection (1)(b), for "a certificate" substitute " certificates ".

(3) In subsection (2)—

(a) in paragraph (a)(ii), for "notice of marriage and certificate" substitute " notices of marriage and certificates ";

(b) in paragraph (d), for "a certificate" substitute " certificates " and for from "(not being" to "book" substitute " before the expiry of the waiting period in relation to each notice of marriage "; and

(c) in paragraph (e), for "a certificate" substitute " certificates ".

(4) After subsection (2), insert—

"(2A) In subsection (2)(d) "the waiting period" has the same meaning as in section 31(4A)."

(5) In subsection (3), for paragraph (a) substitute—

"(a) issues any certificate for marriage before the expiry of 15 days from the day on which the notice of marriage was entered in the marriage notice book;".

(6) In subsection (3), in paragraph (b), omit "or licence".

Commencement Information

I95 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

31 In section 78(3) (interpretation), in paragraph (a), for "the notice" substitute " each notice ".

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Commencement Information

I96 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

32 In Schedule 4 (provisions of Act which are excluded or modified in their application to naval, military and air force chapels), in Part III (exclusion of provisions relating to marriages otherwise than according to the rites of the Church of England), omit "The proviso to subsection (2) of section twenty-six".

Commencement Information

I97 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

PROSPECTIVE

The Prison Act 1952 (c.52)

33 In section 55 of the Prison Act 1952 (provisions extending to Scotland) at the end insert—

"(4A) Subsections (2) to (5) of section 5A, as applied by subsection (5A) of that section, extend to Scotland."

PROSPECTIVE

The Firearms Act 1968 (c. 27)

34 The Firearms Act 1968 is amended as follows.

35 In Schedule 1 (offences for which there is an additional penalty if committed when in possession of a firearm), after paragraph 5B insert—

"5C. An offence under paragraph 4 of Schedule 11 to the Immigration and Asylum Act 1999 (assaulting a detainee custody officer)."

36 In Schedule 2 (which lists corresponding Scottish offences), after paragraph 13A insert—

"13B. An offence under paragraph 4 of Schedule 11 to the Immigration and Asylum Act 1999 (assaulting a detainee custody officer)."

The Family Law Reform Act 1969 (c.46)

37 In section 2(3) (provisions relating to marriage), omit "or licence" in both cases.

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Commencement Information

I98 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

The Marriage (Registrar General's Licence) Act 1970 (c.34)

38 The Marriage (Registrar General's Licence) Act 1970 is amended as follows.

Commencement Information

I99 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

39 In section 1(1) (marriages which may be solemnised by Registrar General's licence), for "a certificate" substitute " certificates ".

Commencement Information

I100 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

40 In section 5 (caveat against issue of Registrar General's licence), omit "or licence".

Commencement Information

I101 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

41 In section 6 (marriage of persons under 18), for "a certificate" substitute " certificates ".

Commencement Information

I102 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

42 In section 13 (void marriages)—

(a) in paragraph (a), for ""certificate" substitute " "certificates " and for ""Registrar" substitute " "a Registrar "; and

(b) omit paragraph (b).

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Commencement Information

I103 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

The Immigration Act 1971 (c.77)

43 The 1971 Act is amended as follows.

Commencement Information

I104 Sch. 14 para. 43 partly in force; Sch. 14 para. 43 not in force at Royal Assent see s. 170(4); Sch. 14 para. 43 in force for certain purposes at 14.2.2000 by S.I. 2000/168, art. 2, **Sch.** (with transitional provisions in art. 3); Sch. 14 para. 43 in force for certain purposes at 1.3.2000 and for certain further purposes at 3.4.2000 by S.I. 2000/464, art. 2, **Sch.**; Sch. 14 para. 43 in force for certain purposes at 2.10.2000 by S.I. 2000/2444, art. 2, **Sch. 1** (subject to arts. 3, 4, Sch. 2)

44 (1) In section 3 (general provisions for regulation and control), in subsection (1)(a), after "in accordance with" insert " the provisions of, or made under, ".

(2) In section 3, for subsection (5) substitute—

"(5) A person who is not a British citizen is liable to deportation from the United Kingdom if—

(a) the Secretary of State deems his deportation to be conducive to the public good; or

(b) another person to whose family he belongs is or has been ordered to be deported."

Commencement Information

I105 Sch. 14 para. 44 wholly in force; Sch. 14 para. 44 not in force at Royal Assent see s. 170(4); Sch. 14 para. 44(1) in force at 14.2.2000 by S.I. 2000/168, art. 2, **Sch.** (with transitional provisions in art. 3); Sch. 14 para. 44(2) in force at 2.10.2000 by S.I. 2000/2444, art. 2, **Sch. 1** (subject to arts. 3, 4, Sch. 2)

45 In section 4(1) (giving or refusal of leave to enter or remain to be in writing except where allowed by the Act) for "allowed by" substitute " allowed by or under ".

46 In section 7(1) (exemption of certain residents from deportation)—

F222(a) . . . . . .

(b) in paragraph (b), for ", (b) or (c)" substitute "or (b) or 10 of the Immigration and Asylum Act 1999".

Textual Amendments

F222 Sch. 14 para. 46(a) repealed (1.4.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 162(1), **Sch. 9** (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1 (with arts. 3, 4)

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Commencement Information

I106 Sch. 14 para. 46 wholly in force at 2.10.2000 by S.I. 2000/2444, art. 2, **Sch. 1** (subject to the transitional provisions in arts. 3, 4, Sch. 2)

PROSPECTIVE

47 (1) Section 10 (entry otherwise than by sea or air) is amended as follows.

(2) In subsection (1), omit from "and any such Order" to the end.

(3) After subsection (1), insert—

"(1A) Her Majesty may by Order in Council direct that paragraph 27B or 27C of Schedule 2 shall have effect in relation to trains or vehicles as it has effect in relation to ships or aircraft.

(1B) Any Order in Council under this section may make—

(a) such adaptations or modifications of the provisions concerned, and

(b) such supplementary provisions,

as appear to Her Majesty to be necessary or expedient for the purposes of the Order."

(4) In subsection (2), for "this section" substitute " subsection (1) ".

PROSPECTIVE

48 In section 11(1) (entry to the United Kingdom), at the end insert " or by Part III of the Immigration and Asylum Act 1999 ".

49 Omit Part II.

Commencement Information

I107 Sch. 14 para. 49 partly in force; Sch. 14 para. 49 not in force at Royal Assent see s. 170(4); Sch. 14 para. 49 in force for certain purposes at 14.2.2000 by S.I. 2000/168, art. 2, **Sch.** (with transitional provisions in art. 3); Sch. 14 para. 49 in force for certain purposes at 2.10.2000 by S.I. 2000/2444, art. 2, **Sch. 1** (subject to arts. 3, 4, Sch. 2)

50 In section 24 (illegal entry and similar offences), omit subsections (1)(aa) and (2).

F223 51 . . . . . .

Textual Amendments

F223 Sch. 14 para. 51 repealed (1.4.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 162(1), **Sch. 9** (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1 (with arts. 3, 4)

52 (1) Section 27 (offences by persons connected with ships or aircraft) is amended as follows.

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(2) In paragraph (a)(ii), after "Schedule 2 or 3" insert " or under the Immigration and Asylum Act 1999 ".

(3) In paragraph (b)(iii)—

(a) after "arrangements for" insert " or in connection with "; and

(b) at the end insert "or under the Immigration and Asylum Act 1999; or

(iv) he fails, without reasonable excuse, to comply with the requirements of paragraph 27B or 27C of Schedule 2;".

Commencement Information

I108 Sch. 14 para. 52 wholly in force at 2.10.2000; Sch. 14 para. 52 not in force at Royal Assent see s. 170(4); Sch. 14 para. 52(1) in force for certain purposes at 1.3.2000 and for certain further purposes at 3.4.2000 by S.I. 2000/464, art. 2, **Sch**; Sch. 14 para. 52(3)(a) in force at 1.3.2000 and para. 52(3)(b) in force at 3.4.2000 by S.I. 2000/464, art. 2, **Sch.**; Sch. 14 para. 52 in force so far as not already in force at 2.10.2000 by S.I. 2000/2444, art. 2, **Sch. 1** (subject to arts. 3, 4, Sch. 2)

F224 53 . . . . . .

Textual Amendments

F224 Sch. 14 para. 53 repealed (1.4.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 162(1), **Sch. 9** (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1 (with arts. 3, 4)

54 (1) Section 32 (proof of documents) is amended as follows.

(2) In subsection (2)—

(a) for "this Act" substitute " the Immigration Acts "; and

(b) after second "by him" insert " or on his behalf ".

(3) In subsection (3), for "proceedings under Part II of this Act" substitute " other proceedings under the Immigration Acts ".

(4) In subsection (4)—

(a) for first "this Act" substitute " the Immigration Acts "; and

(b) for "proceedings under Part II of this Act" substitute " other proceedings under the Immigration Acts ".

(5) After subsection (4) insert—

"(5) "Immigration Acts" has the same meaning as in the Immigration and Asylum Act 1999."

(6) The amendments made by sub-paragraphs (2)(a) and (5) apply whenever the document in question was made or issued.

55 In section 33 (interpretation), for subsection (4) substitute—

"(4) For the purposes of this Act, the question of whether an appeal is pending shall be determined—

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(a) in relation to an appeal to the Special Immigration Appeals Commission, in accordance with section 7A of the Special Immigration Appeals Commission Act 1997;

(b) in any other case, in accordance with section 58(5) to (10) of the Immigration and Asylum Act 1999".

Commencement Information

I109 Sch. 14 paras. 55, 65, 66, 69, 70, 84, 103-106, 114, 115, 120, 122-128 wholly in force at 2.10.2000 by S.I. 2000/2444, art. 2, **Sch. 1** (subject to the transitional provisions in arts. 3, 4, Sch. 2)

56 In Schedule 2 (administrative provisions as to control on entry), in paragraph 2(1) (purposes for which persons arriving in the United Kingdom may be examined), for paragraph (c) substitute—

"(c) whether, if he may not—

(i) he has been given leave which is still in force,

(ii) he should be given leave and for what period or on what conditions (if any), or

(iii) he should be refused leave."

57 In Schedule 2, after paragraph 2, insert—

" Examination of persons who arrive with continuing leave

2A (1) This paragraph applies to a person who has arrived in the United Kingdom with leave to enter which is in force but which was given to him before his arrival.

(2) He may be examined by an immigration officer for the purpose of establishing—

(a) whether there has been such a change in the circumstances of his case, since that leave was given, that it should be cancelled;

(b) whether that leave was obtained as a result of false information given by him or his failure to disclose material facts; or

(c) whether there are medical grounds on which that leave should be cancelled.

(3) He may also be examined by an immigration officer for the purpose of determining whether it would be conducive to the public good for that leave to be cancelled.

(4) He may also be examined by a medical inspector or by any qualified person carrying out a test or examination required by a medical inspector.

(5) A person examined under this paragraph may be required by the officer or inspector to submit to further examination.

(6) A requirement under sub-paragraph (5) does not prevent a person who arrives—

(a) as a transit passenger,

(b) as a member of the crew of a ship or aircraft, or

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(c) for the purpose of joining a ship or aircraft as a member of the crew,

from leaving by his intended ship or aircraft.

(7) An immigration officer examining a person under this paragraph may by notice suspend his leave to enter until the examination is completed.

(8) An immigration officer may, on the completion of any examination of a person under this paragraph, cancel his leave to enter.

(9) Cancellation of a person's leave under sub-paragraph (8) is to be treated for the purposes of this Act and Part IV of the Immigration and Asylum Act 1999 as if he had been refused leave to enter at a time when he had a current entry clearance.

(10) A requirement imposed under sub-paragraph (5) and a notice given under sub-paragraph (7) must be in writing."

58 In Schedule 2, in paragraph 4(1) and (2) (production of information and documents in connection with examinations), after "paragraph 2" insert " , 2A ".

59 In Schedule 2, for paragraph 7 substitute—

" Power to require medical examination after entry

7 (1) This paragraph applies if an immigration officer examining a person under paragraph 2 decides—

(a) that he may be given leave to enter the United Kingdom; but

(b) that a further medical test or examination may be required in the interests of public health.

(2) This paragraph also applies if an immigration officer examining a person under paragraph 2A decides—

(a) that his leave to enter the United Kingdom should not be cancelled; but

(b) that a further medical test or examination may be required in the interests of public health.

(3) The immigration officer may give the person concerned notice in writing requiring him—

(a) to report his arrival to such medical officer of health as may be specified in the notice; and

(b) to attend at such place and time and submit to such test or examination (if any), as that medical officer of health may require.

(4) In reaching a decision under paragraph (b) of sub-paragraph (1) or (2), the immigration officer must act on the advice of—

(a) a medical inspector; or

(b) if no medical inspector is available, a fully qualified medical practitioner."

60 In Schedule 2, in paragraph 16 (detention of persons liable to examination), after sub-paragraph (1), insert—

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Immigration and Asylum Act 1999 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"(1A) A person whose leave to enter has been suspended under paragraph 2A may be detained under the authority of an immigration officer pending—

(a) completion of his examination under that paragraph; and

(b) a decision on whether to cancel his leave to enter."

61 In Schedule 2, in paragraph 18 (treatment of persons detained), after sub-paragraph (2) insert—

"(2A) The power conferred by sub-paragraph (2) includes power to take fingerprints."

62 In Schedule 2, paragraph 21 (temporary admission of persons liable to detention) is amended as follows.

(2) After sub-paragraph (2) insert—

"(2A) The provisions that may be included in restrictions as to residence imposed under sub-paragraph (2) include provisions of such a description as may be prescribed by regulations made by the Secretary of State.

(2B) The regulations may, among other things, provide for the inclusion of provisions—

(a) prohibiting residence in one or more particular areas;

(b) requiring the person concerned to reside in accommodation provided under section 4 of the Immigration and Asylum Act 1999 and prohibiting him from being absent from that accommodation except in accordance with the restrictions imposed on him.

(2C) The regulations may provide that a particular description of provision may be imposed only for prescribed purposes.

(2D) The power to make regulations conferred by this paragraph is exercisable by statutory instrument and includes a power to make different provision for different cases.

(2E) But no regulations under this paragraph are to be made unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House."

(3) In sub-paragraph (3), after "2" insert " or 2A ".

(4) In sub-paragraph (4)(a), omit "under paragraph 2 above".

Commencement Information

I110 Sch. 14 para. 62 wholly in force at 14.2.2000; Sch. 14 para. 62(2) in force at Royal Assent see s. 170(3)(s); and by S.I. 2000/168, art. 2, **Sch** (with transitional provisions in art. 3) it is provided that Sch. 14 para. 62(1)(3)(4) shall come into force at 14.2.2000

63 In Schedule 2, in paragraph 22 (temporary release of persons liable to detention), in sub-paragraph (1)(a), after "examination;" insert—

"(aa) a person detained under paragraph 16(1A) above pending completion of his examination or a decision on whether to cancel his leave to enter;".

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Immigration and Asylum Act 1999 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

64 (1) In Schedule 2, paragraph 26 (supplementary duties of those connected with ships or aircraft or with ports) is amended as follows.

(2) In sub-paragraph (1), omit "and have not been given leave".

(3) After sub-paragraph (1) insert—

"(1A) Sub-paragraph (1) does not apply in such circumstances, if any, as the Secretary of State may by order prescribe."

(4) After sub-paragraph (3) insert—

"(3A) The power conferred by sub-paragraph (1A) is exercisable by statutory instrument; and any such instrument shall be subject to annulment by a resolution of either House of Parliament."

65 In Schedule 2, omit paragraph 28.

Commencement Information

I111 Sch. 14 paras. 55, 65, 66, 69, 70, 84, 103-106, 114, 115, 120, 122-128 wholly in force at 2.10.2000 by S.I. 2000/2444, art. 2, **Sch. 1** (subject to the transitional provisions in arts. 3, 4, Sch. 2)

F225 66 . . . . . .

Textual Amendments

F225 Sch. 14 para. 66 repealed (1.4.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 162(1), **Sch. 9** (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1 (with arts. 3, 4)

67 In Schedule 2, in paragraph 34 (grant of bail pending removal), in sub-paragraph (1), after "examination" insert " , detained under paragraph 16(1A) above pending completion of his examination or a decision on whether to cancel his leave to enter ".

68 In Schedule 3, in paragraph 2(4) (application of certain provisions if person detained under Schedule 3), for "and 18" substitute " ,18 and 25A to 25E ".

69 In Schedule 3 (supplementary provision as to deportation), in paragraph 3—

(a) for "16 or 17" substitute " 66 or 67 of the Immigration and Asylum Act 1999 ";

(b) omit "in paragraph 28(2), (3) and (6) and"; and

(c) for "15(1)(a)" substitute " 63(1)(a) or 69(4)(a) of the Immigration and Asylum Act 1999 ".

Commencement Information

I112 Sch. 14 para. 69 wholly in force at 2.10.2000 by S.I. 2000/2444, art. 2, **Sch. 1** (subject to the transitional provisions in arts. 3, 4, Sch. 2)

70 In Schedule 4 (integration of United Kingdom and Islands immigration law), for paragraph 3 (deportation) substitute—

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Changes to legislation: *Immigration and Asylum Act 1999 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"3 (1) This Act has effect in relation to a person who is subject to an Islands deportation order as if the order were a deportation order made against him under this Act.

(2) Sub-paragraph (1) does not apply if the person concerned is—

(a) a British citizen;

(b) an EEA national;

(c) a member of the family of an EEA national; or

(d) a member of the family of a British citizen who is neither such a citizen nor an EEA national.

(3) The Secretary of State does not, as a result of sub-paragraph (1), have power to revoke an Islands deportation order.

(4) In any particular case, the Secretary of State may direct that paragraph (b), (c) or (d) of sub-paragraph (2) is not to apply in relation to the Islands deportation order.

(5) Nothing in this paragraph makes it unlawful for a person in respect of whom an Islands deportation order is in force in any of the Islands to enter the United Kingdom on his way from that island to a place outside the United Kingdom.

(6) "Islands deportation order" means an order made under the immigration laws of any of the Islands under which a person is, or has been, ordered to leave the island and forbidden to return.

(7) Subsections (10) and (12) to (14) of section 80 of the Immigration and Asylum Act 1999 apply for the purposes of this section as they apply for the purposes of that section."

Commencement Information

I113 Sch. 14 paras. 55, 65, 66, 69, 70, 84, 103-106, 114, 115, 120, 122-128 wholly in force at 2.10.2000 by S.I. 2000/2444, art. 2, **Sch. 1** (subject to the transitional provisions in arts. 3, 4, Sch. 2)

The House of Commons Disqualification Act 1975 (c. 24)

71 In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (disqualifying offices)—

(a) omit—

"Adjudicator appointed for the purposes of the Immigration Act 1971"; and

(b) at the appropriate places, insert—

"Adjudicator appointed for the purposes of the Immigration and Asylum Act 1999;and"

" Asylum Support Adjudicator."

Modifications etc. (not altering text)

C72 Sch. 14 para. 71 modified (14.2.2000) by S.I. 2000/168, **art. 3**

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Immigration and Asylum Act 1999 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

The Northern Ireland Assembly Disqualification Act 1975 (c. 25)

72 In Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (disqualifying offices)—

(a) omit—

"Adjudicator appointed for the purposes of the Immigration Act 1971"; and

(b) at the appropriate places, insert—

"Adjudicator appointed for the purposes of the Immigration and Asylum Act 1999;"

and

"Asylum Support Adjudicator."

Modifications etc. (not altering text)
C73 Sch.14 para. 72 modified (14.2.2000) by S.I. 2000/168, **art. 3**

The Protection from Eviction Act 1977 (c.43)

73 In section 3A of the Protection from Eviction Act 1977 (excluded tenancies and licences), after subsection (7), insert—

"(7A) A tenancy or licence is excluded if it is granted in order to provide accommodation under Part VI of the Immigration and Asylum Act 1999."

The Education (Scotland) Act 1980 (c. 44)

74 Section 53 of the Education (Scotland) Act 1980 (requirement to provide school meals etc) is amended as follows—

(a) in subsection (3)—

(i) for the words from the beginning to "an", where it occurs for the second time, substitute—

"(3) Subsection (3AA) below applies in relation to a pupil—

(a) whose parents are in receipt of—

(i) income support;

(ii) an income-based jobseeker's allowance (payable under the [M102]Jobseekers Act 1995); or

(iii) support provided under Part VI of the Immigration and Asylum Act 1999; or

(b) who is himself in receipt of income support or an income-based jobseeker's allowance.

(3AA) An"; and

(ii) for "him", where it occurs for the first time, substitute " the pupil "; and

(b) in subsection (3A), for "Subsections (1), (2) and (3)" substitute " Subsections (1) to (3AA) ".

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Immigration and Asylum Act 1999 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Marginal Citations

M102 1995 c. 18.

PROSPECTIVE

The Firearms (Northern Ireland) Order 1981 (S.I. 1981/155 (N.I. 2))

75 In Schedule 1 to the Firearms (Northern Ireland) Order 1981 (offences for which there is an additional penalty if committed when in possession of a firearm), after paragraph 4 insert—

"4A An offence under paragraph 4 of Schedule 11 to the Immigration and Asylum Act 1999 (assaulting a detainee custody officer)."

The Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26))

76 In Article 98(11) of the Magistrates' Courts (Northern Ireland) Order 1981 (enforcement of orders for periodical payment of money), at the end, insert—

"(k) section 113 of the Immigration and Asylum Act 1999."

The Marriage Act 1983 (c.32)

77 In section 1 of the Marriage Act 1983 (marriages of house-bound and detained persons in England and Wales)—

(a) in subsection (1), for "a superintendent registrar's certificate" substitute " certificates of a superintendent registrar "; and

(b) in subsection (2)(a), for "the notice" substitute " each notice ".

Commencement Information

I114 Sch. 14 paras. 1-32, 37-42 and 77 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, **Sch.** (as amended by S.I. 2000/3099, **art. 4**) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said S.I. 2000/3099)

The Housing (Northern Ireland) Order 1983 (S.I. 1983/1118 (N.I. 15))

78 In Schedule 2 to the Housing (Northern Ireland) Order 1983 (tenancies which are not secure tenancies), after paragraph 3, insert—

" Accommodation for asylum-seekers

3A (1) A tenancy is not a secure tenancy if it is granted in order to provide accommodation under Part VI of the Immigration and Asylum Act 1999.

(2) A tenancy mentioned in sub-paragraph (1) becomes a secure tenancy if the landlord notifies the tenant that it is to be regarded as a secure tenancy."

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Immigration and Asylum Act 1999 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

The Rent (Scotland) Act 1984 (c.58)

79 In section 23A of the Rent (Scotland) Act 1984 (excluded tenancies and occupancy rights), after subsection (5) insert—

"(5A) Nothing in section 23 of this Act applies to a tenancy or right of occupancy if it is granted in order to provide accommodation under Part VI of the Immigration and Asylum Act 1999."

The Police and Criminal Evidence Act 1984 (c.60)

80 (1) The Police and Criminal Evidence Act 1984 is amended as follows.

(2) In section 8 (power of justice to authorise entry and search of premises), at the end insert—

"(6) This section applies in relation to a relevant offence (as defined in section 28D(4) of the Immigration Act 1971) as it applies in relation to a serious arrestable offence."

(3) In section 22 (retention), at the end insert—

"(6) This section also applies to anything retained by the police under section 28H(5) of the [M103]Immigration Act 1971."

(4) In section 61 (fingerprints), in subsection (9)(a), after "1971" insert " , section 141 of the Immigration and Asylum Act 1999 or regulations made under section 144 of that Act ".

Commencement Information

I115 Sch. 14 para. 80 partly in force; Sch. 14 para. 80 not in force at Royal Assent see s. 170(4); Sch. 14 para. 80(2)(3) wholly in force and s. 80(1) in force for certain purposes at 14.2.2000 by S.I. 2000/168, art. 2, **Sch.** (with transitional provisions in art. 3)

Marginal Citations

M103 1971 c. 77.

The Housing Act 1985 (c.68)

81 In Schedule 1 to the Housing Act 1985 (tenancies which cannot be secure tenancies), after paragraph 4, insert—

" Accommodation for asylum-seekers

4A (1) A tenancy is not a secure tenancy if it is granted in order to provide accommodation under Part VI of the Immigration and Asylum Act 1999.

(2) A tenancy mentioned in sub-paragraph (1) becomes a secure tenancy if the landlord notifies the tenant that it is to be regarded as a secure tenancy."

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Immigration and Asylum Act 1999 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

The Housing (Scotland) Act 1987 (c.26)

82 In Schedule 2 to the Housing (Scotland) Act 1987 (tenancies which cannot be secure tenancies), after paragraph 5 insert—

" Accommodation for asylum-seekers

5A (1) A tenancy shall not be a secure tenancy if it is granted in order to provide accommodation under Part VI of the Immigration and Asylum Act 1999.

(2) A tenancy mentioned in sub-paragraph (1) becomes a secure tenancy if the landlord notifies the tenant that it is to be regarded as a secure tenancy."

The Immigration Act 1988 (c.14)

83 The Immigration Act 1988 is amended as follows.

Commencement Information

I116 Sch. 14 para. 83 partly in force: Sch. 14 para. 83 in force for certain purposes at 2.10.2000 by S.I. 2000/2444, art. 2, **Sch. 1** (subject to arts. 3, 4, Sch. 2)

I117 Sch. 14 para. 83 in force at 30.6.2003 for specified purposes by S.I. 2003/1469, art. 2, **Sch.**

84 Omit section 5 (restricted right of appeal against deportation in cases of breach of limited leave).

Commencement Information

I118 Sch. 14 paras. 55, 65, 66, 69, 70, 84, 103-106, 114, 115, 120, 122-128 wholly in force at 2.10.2000 by S.I. 2000/2444, art. 2, **Sch. 1** (subject to the transitional provisions in arts. 3, 4, Sch. 2)

PROSPECTIVE

85 Omit section 8 (examination of passengers before arrival).

86 Omit section 9 (charges).

Commencement Information

I119 Sch. 14 para. 86 in force at 30.6.2003 by S.I. 2003/1469, art. 2, **Sch.**

The Housing (Scotland) Act 1988 (c.43)

87 In Schedule 4 to the Housing (Scotland) Act 1988 (tenancies which cannot be assured tenancies), after paragraph 11A insert—

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
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" Accommodation for asylum-seekers

11B A tenancy granted under arrangements for the provision of support for asylum-seekers or dependants of asylum-seekers made under Part VI of the Immigration and Asylum Act 1999."

The Housing Act 1988 (c.50)

88 In Schedule 1 to the Housing Act 1988 (tenancies which are not assured tenancies), after paragraph 12, insert—

" Accommodation for asylum-seekers

12A (1) A tenancy granted by a private landlord under arrangements for the provision of support for asylum-seekers or dependants of asylum-seekers made under Part VI of the Immigration and Asylum Act 1999.

(2) "Private landlord" means a landlord who is not within section 80(1) of the [M104]Housing Act 1985."

Marginal Citations
M104 1985 c. 68.

The Prevention of Terrorism (Temporary Provisions) Act 1989 (c.4)

[F226]89 . . . . . .

Textual Amendments
F226 Sch. 14 para. 89 repealed (19.2.2001) by 2000 c. 11, s. 128, **Sch. 16 Pt. I**; S.I. 2001/421, **art. 2**

The Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12))

90 (1) The Police and Criminal Evidence (Northern Ireland) Order 1989 is amended as follows.

(2) In Article 10 (provision for Northern Ireland corresponding to section 8 of the 1984 Act), at the end insert—

"(6) This Article applies in relation to a relevant offence (as defined in section 28D(4) of the Immigration Act 1971) as it applies in relation to a serious arrestable offence."

(3) In Article 24 (provision for Northern Ireland corresponding to section 22 of the 1984 Act), at the end insert—

"(6) This Article also applies to anything retained by the police under section 28H(5) of the [M105]Immigration Act 1971."

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
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(4) In Article 61 (fingerprints) in paragraph (9)(a), after "1971" insert " , section 141 of the Immigration and Asylum Act 1999 or regulations made under section 144 of that Act ".

Commencement Information

I120 Sch. 14 para. 90 partly in force; Sch. 14 para. 90 not in force at Royal Assent see s. 170(4); Sch. 14 para. 90(2)(3) wholly in force and s. 90(1) in force for certain purposes at 14.2.2000 by S.I. 2000/168, art. 2, **Sch.** (with transitional provisions in art. 3)

Marginal Citations

M105 1971 c. 77.

The Courts and Legal Services Act 1990 (c.41)

91 (1) The Courts and Legal Services Act 1990 is amended as follows.

(2) In Schedule 10 (judicial and other appointments), omit paragraph 34.

(3) In Schedule 11 (judges etc. barred from legal practice), in the entry relating to the Immigration Appeal Tribunal, omit "appointed under Schedule 5 to the Immigration Act 1971" and after that entry insert—

"Adjudicator for the purposes of the Immigration and Asylum Act 1999 (other than Asylum Support Adjudicator)".

Modifications etc. (not altering text)

C74 Sch. 14 para. 91 modified (14.2.2000) by S.I. 2000/168, **art. 3**

The Social Security Contributions and Benefits Act 1992 (c.4)

92 In the Social Security Contributions and Benefits Act 1992, omit section 146A (persons subject to immigration control).

The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c.7)

93 In the Social Security Contributions and Benefits (Northern Ireland) Act 1992, omit section 142A (persons subject to immigration control).

The Tribunals and Inquiries Act 1992 (c.53)

94 The Tribunals and Inquiries Act 1992 is amended as follows.

Commencement Information

I121 Sch. 14 para. 94 partly in force; Sch. 14 para. 94 not in force at Royal Assent see s. 170(4); Sch. 14 para. 94 in force for certain purposes at 14.2.2000 by S.I. 2000/168, art. 2, **Sch.** (with transitional provisions in art. 3)

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Immigration and Asylum Act 1999 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

95 In Schedule 1 (tribunals under the supervision of the Council on Tribunals), after paragraph 2 insert—

"Asylum-seekers support	2A. Asylum Support Adjudicators established under section 102 of the Immigration and Asylum Act 1999."

F227 96 . . . . . .

Textual Amendments

F227 Sch. 14 para. 96 repealed (1.4.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 162(1), **Sch. 9** (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1 (with arts. 3, 4)

PROSPECTIVE

F228 97 . . . . . .

Textual Amendments

F228 Sch. 14 para. 97 repealed (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 4 Pt. 1** (with Sch. 5)

The Judicial Pensions and Retirement Act 1993 (c.8)

98 (1) The Judicial Pensions and Retirement Act 1993 is amended as follows.

F229 (2) . . . . . .

F229 (3) . . . . . .

(4) In Schedule 6 (retirement date for certain judicial offices), omit paragraphs 37 and 38.

Textual Amendments

F229 Sch. 14 para. 98(2)(3) repealed (1.4.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 162(1), **Sch. 9** (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1 (with arts. 3, 4)

Modifications etc. (not altering text)

C75 Sch. 14 para. 98 modified (14.2.2000) by S.I. 2000/168, **art. 3**

The Asylum and Immigration Appeals Act 1993 (c.23)

99 The Asylum and Immigration Appeals Act 1993 is amended as follows.

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Immigration and Asylum Act 1999 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I122 Sch. 14 para. 99 partly in force; Sch. 14 para. 99 not in force at Royal Assent see s. 170(4); Sch. 14 para. 99 in force for certain purposes at 3.4.2000 by S.I. 2000/464, art. 2, **Sch.** and in force for certain purposes at 2.10.2000 by S.I. 2000/2444, art. 2, **Sch. 1** (subject to arts. 3, 4, Sch. 2)

PROSPECTIVE

100 Omit section 3 (fingerprinting).

101 Omit sections 4 and 5 and Schedule 1 (housing of asylum-seekers and their dependants).

102 (1) Omit section 6 (protection of asylum claimants from deportation etc.).

(2) This paragraph is to be treated as having come into force on 26th July 1993.

103 Omit section 7 (curtailment of leave).

Commencement Information

I123 Sch. 14 paras. 55, 65, 66, 69, 70, 84, 103-106, 114, 115, 120, 122-128 wholly in force at 2.10.2000 by S.I. 2000/2444, art. 2, **Sch. 1** (subject to the transitional provisions in arts. 3, 4, Sch. 2)

104 Omit sections 8, 9, 10 and 11 and Schedule 2 (which relate to appeals).

Commencement Information

I124 Sch. 14 paras. 55, 65, 66, 69, 70, 84, 103-106, 114, 115, 120, 122-128 wholly in force at 2.10.2000 by S.I. 2000/2444, art. 2, **Sch. 1** (subject to the transitional provisions in arts. 3, 4, Sch. 2)

105 For paragraph (a) of section 9A(1) (bail pending appeal from Immigration Appeal Tribunal), substitute—

"(a) has an appeal under Part IV of the Immigration and Asylum Act 1999 which is pending by reason of an appeal, or an application for leave to appeal;".

Commencement Information

I125 Sch. 14 paras. 55, 65, 66, 69, 70, 84, 103-106, 114, 115, 120, 122-128 wholly in force at 2.10.2000 by S.I. 2000/2444, art. 2, **Sch. 1** (subject to the transitional provisions in arts. 3, 4, Sch. 2)

106 In section 9A(6), for "section 9 above" substitute " paragraph 23 of Schedule 4 of the Immigration and Asylum Act 1999 ".

Commencement Information

I126 Sch. 14 paras. 55, 65, 66, 69, 70, 84, 103-106, 114, 115, 120, 122-128 wholly in force at 2.10.2000 by S.I. 2000/2444, art. 2, **Sch. 1** (subject to the transitional provisions in arts. 3, 4, Sch. 2)

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Immigration and Asylum Act 1999 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PROSPECTIVE

107 Omit section 12 (carriers' liability).

The Asylum and Immigration Act 1996 (c.49)

108 The Asylum and Immigration Act 1996 is amended as follows.

Commencement Information

I127 Sch. 14 para. 108 partly in force; Sch. 14 para. 108 not in force at Royal Assent see s. 170(4); Sch. 14 para. 108 in force for certain purposes at 14.2.2000 by S.I. 2000/168, art. 2, **Sch.** (with transitional provisions in art. 3); Sch. 14 para. 108 in force for certain purposes at 1.3.2000 and for certain further purposes at 3.4.2000 by S.I. 2000/464, art. 2, **Sch.**; Sch. 14 para. 108 in force for certain purposes at 2.10.2000 by S.I. 2000/2444, art. 2, **Sch. 1** (subject to arts. 3, 4, Sch. 2)

109 Omit section 7 (power of arrest and search warrants).

110 Omit section 9 (entitlement to housing accommodation and assistance).

111 Omit section 10 (entitlement to child benefit).

112 Omit section 11 (saving for social security regulations).

113 Omit Schedule 1 (modifications of social security regulations).

114 In Schedule 2, omit sub-paragraphs (2) and (3) of paragraph 1, paragraph 3 and paragraph 4(2) (which are spent as a result of this Act).

Commencement Information

I128 Sch. 14 paras. 55, 65, 66, 69, 70, 84, 103-106, 114, 115, 120, 122-128 wholly in force at 2.10.2000 by S.I. 2000/2444, art. 2, **Sch. 1** (subject to the transitional provisions in arts. 3, 4, Sch. 2)

115 In Schedule 3, omit paragraphs 1, 2 and 5 (which are spent as a result of this Act).

Commencement Information

I129 Sch. 14 paras. 55, 65, 66, 69, 70, 84, 103-106, 114, 115, 120, 122-128 wholly in force at 2.10.2000 by S.I. 2000/2444, art. 2, **Sch. 1** (subject to the transitional provisions in arts. 3, 4, Sch. 2)

PROSPECTIVE

The Housing Act 1996 (c.52)

116 In section 183(2) of the Housing Act 1996 (interpretation of expressions related to assistance), in the definition of "eligible for assistance", omit "or section 186 (asylum seekers and their dependants)".

Status: *Point in time view as at 01/10/2008. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Immigration and Asylum Act 1999 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

The Education Act 1996 (c. 56)

[F230]117 . . . . . .

Textual Amendments

F230 Sch. 14 para. 117 repealed (31.3.2003 for W., 1.4.2003 for E.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 22 Pt. 3** (with ss. 210(8), 214(4)); S.I. 2002/3185, art. 5, Sch. Pt. II; S.I. 2003/124, art. 4

The Special Immigration Appeals Commission Act 1997 (c.68)

118 The Special Immigration Appeals Commission Act 1997 is amended as follows.

Commencement Information

I130 Sch. 14 para. 118 partly in force; Sch. 14 para. 118 not in force at Royal Assent see s. 170(4); Sch. 14 para. 118 in force for certain purposes at 14.2.2000 by S.I. 2000/168, art. 2, **Sch.** (with transitional provisions in art. 3); Sch. 14 para. 118 in force for certain purposes at 1.8.2000 by S.I. 2000/1985, art. 2, **Sch.** and in force for certain purposes at 2.10.2000 by S.I. 2000/2444, art. 2, **Sch. 1** (subject to arts. 3, 4, Sch. 2)

[F231]119 . . . . . .

Textual Amendments

F231 Sch. 14 para. 119 repealed (2.10.2000) by S.I. 2000/2326, **art. 32(4)(a)** (with application as mentioned in regs. 9, 28 and 36 of the said S.I.)

[F232]120 . . . . . .

Textual Amendments

F232 Sch. 14 paras. 120-121 repealed (1.4.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 162(1), **Sch. 9** (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1 (with arts. 3, 4)

[F232]121 . . . . . .

Textual Amendments

F232 Sch. 14 paras. 120-121 repealed (1.4.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 162(1), **Sch. 9** (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1 (with arts. 3, 4)

122 In section 4 (determination of appeals), after subsection (1) insert—

"(1A) If a certificate under section 70(4)(b) of the Immigration and Asylum Act 1999 has been issued, the Commission on an appeal to it under this Act may, instead of determining the appeal, quash the certificate and remit the appeal to an adjudicator."

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Changes to legislation: *Immigration and Asylum Act 1999 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I131 Sch. 14 paras. 55, 65, 66, 69, 70, 84, 103-106, 114, 115, 120, 122-124, 126-128 wholly in force at 2.10.2000 by S.I. 2000/2444, art. 2, **Sch. 1** (subject to the transitional provisions in arts. 3, 4, Sch. 2)

123 In section 7 (appeals from Commission), omit subsection (4).

Commencement Information

I132 Sch. 14 paras. 55, 65, 66, 69, 70, 84, 103-106, 114, 115, 120, 122-124, 126-128 wholly in force at 2.10.2000 by S.I. 2000/2444, art. 2, **Sch. 1** (subject to the transitional provisions in arts. 3, 4, Sch. 2)

124 After section 7, insert—

"**7A Pending appeals.**

(1) For the purposes of this Act, an appeal to the Commission is to be treated as pending during the period beginning when notice of appeal is given and ending when the appeal is finally determined, withdrawn or abandoned.

(2) An appeal is not to be treated as finally determined while a further appeal may be brought.

(3) If a further appeal is brought, the original appeal is not to be treated as finally determined until the further appeal is determined, withdrawn or abandoned.

(4) A pending appeal to the Commission is to be treated as abandoned if the appellant leaves the United Kingdom.

(5) A pending appeal to the Commission is to be treated as abandoned if the appellant is granted leave to enter or remain in the United Kingdom.

(6) But subsection (5) does not apply to an appeal brought under section 2(1) as a result of section 70(4) of the Immigration and Asylum Act 1999.

(7) A pending appeal brought under section 2(1) as a result of section 62(3) of that Act is to be treated as abandoned if a deportation order is made against the appellant."

Commencement Information

I133 Sch. 14 paras. 55, 65, 66, 69, 70, 84, 103-106, 114, 115, 120, 122-124, 126-128 wholly in force at 2.10.2000 by S.I. 2000/2444, art. 2, **Sch. 1** (subject to the transitional provisions in arts. 3, 4, Sch. 2)

125 In Schedule 1 (supplementary provision as to Commission), in paragraph 5(b)—

(a) in sub-paragraph (i), for "paragraph 1 of Schedule 5 to the Immigration Act 1971" substitute "section 57(2) of the Immigration and Asylum Act 1999"; and

(b) in sub-paragraph (ii), for "paragraph 7 of that Schedule" substitute "paragraph 1(3) of Schedule 2 to that Act".

F233 126 . . . . . .

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Textual Amendments

F233 Sch. 14 paras. 126-129 repealed (1.4.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 162(1), **Sch. 9** (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1 (with arts. 3, 4)

[F233]127 . . . . . .

Textual Amendments

F233 Sch. 14 paras. 126-129 repealed (1.4.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 162(1), **Sch. 9** (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1 (with arts. 3, 4)

[F233]128 . . . . . .

Textual Amendments

F233 Sch. 14 paras. 126-129 repealed (1.4.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 162(1), **Sch. 9** (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1 (with arts. 3, 4)

[F233]129 . . . . . .

Textual Amendments

F233 Sch. 14 paras. 126-129 repealed (1.4.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 162(1), **Sch. 9** (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1 (with arts. 3, 4)

SCHEDULE 15

Section 169(2).

TRANSITIONAL PROVISIONS AND SAVINGS

Leave to enter or remain

1 (1) An order made under section 3A of the 1971 Act may make provision with respect to leave given before the commencement of section 1.

(2) An order made under section 3B of the 1971 Act may make provision with respect to leave given before the commencement of section 2.

Section 2 of the Asylum and Immigration Act 1996

2 (1) This paragraph applies in relation to any time before the commencement of the repeal by this Act of section 2 of the [M106]Asylum and Immigration Act 1996.

(2) That section has effect, and is to be deemed always to have had effect, as if the reference to section 6 of the [M107]Asylum and Immigration Appeals Act 1993 were a reference to section 15, and any certificate issued under that section is to be read accordingly.

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Marginal Citations
M106 1996 c. 49.
M107 1993 c. 23.

Adjudicators and the Tribunal

3 (1) Each existing member of the Tribunal is to continue as a member of the Tribunal as if he had been duly appointed by the Lord Chancellor under Schedule 2.

(2) Each existing adjudicator is to continue as an adjudicator as if he had been duly appointed by the Lord Chancellor under Schedule 3.

(3) The terms and conditions for a person to whom sub-paragraph (1) or (2) applies remain those on which he held office immediately before the appropriate date.

(4) The provisions of Schedule 7 to the [M108]Judicial Pensions and Retirement Act 1993 (transitional provisions for retirement dates), so far as applicable in relation to an existing member or adjudicator immediately before the appropriate date, continue to have effect.

(5) The repeal by this Act of Schedule 5 to the 1971 Act (provisions with respect to adjudicators and the Tribunal) does not affect any entitlement which an existing member or adjudicator had immediately before the appropriate date as a result of a determination made under paragraph 3(1)(b) or 9(1)(b) of that Schedule.

(6) "The appropriate date" means—
(a) in relation to existing members of the Tribunal, the date on which section 56 comes into force; and
(b) in relation to existing adjudicators, the date on which section 57 comes into force.

(7) "Existing member" means a person who is a member of the Tribunal immediately before the appropriate date.

(8) "Existing adjudicator" means a person who is an adjudicator immediately before the appropriate date.

Marginal Citations
M108 1993. c. 8.

References to justices' chief executive

4 At any time before the coming into force of section 90 of the Access to Justice Act 1999—
(a) the reference in section 48(3)(b) to the justices' chief executive appointed by the magistrates' court committee whose area includes the petty sessions area for which the specified court acts is to be read as a reference to the clerk of that court; and
(b) the reference in section 28K(9)(a) and (10) of the 1971 Act (inserted by section 138) to the justices' chief executive appointed by the magistrates'

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court committee whose area includes the petty sessions area for which the justice acts is to be read as a reference to the clerk to the justices for the petty sessions area for which the justice acts.

Commencement Information

I134 Sch. 15 para. 4 partly in force; Sch. 15 para. 4 not in force at Royal Assent see s. 170(4); Sch. 15 para. 4(b) in force at 14.2.2000 by S.I. 2000/168, art. 2, **Sch.** (with transitional provisions in art. 3)

Duties under National Assistance Act 1948

5 Section 116 has effect, in relation to any time before section 115 is brought into force, as if section 115 came into force on the passing of this Act.

Duties under Health Services and Public Health Act 1968

6 Section 117(1) has effect, in relation to any time before section 115 is brought into force, as if section 115 came into force on the passing of this Act.

PROSPECTIVE

Duties under Social Work (Scotland) Act 1968

7 Subsections (1) to (3) of section 120 have effect, in relation to any time before section 115 is brought into force, as if section 115 came into force on the passing of this Act.

PROSPECTIVE

Duties under Health and Personal Social Services (Northern Ireland) Order 1972

8 Subsections (1) and (2) of section 121 have effect, in relation to any time before section 115 is brought into force, as if section 115 came into force on the passing of this Act.

Duties under National Health Service Act 1977

9 Section 117(2) has effect, in relation to any time before section 115 is brought into force, as if section 115 came into force on the passing of this Act.

PROSPECTIVE

Duties under Mental Health (Scotland) Act 1984

F234 10 . . . . . .

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Textual Amendments

F234 Sch. 15 para. 10 repealed (S.) (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), s. 333(2), **sch. 5 Pt. 1**; S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

Appeals relating to deportation orders

11 Section 15 of the 1971 Act, section 5 of the [M109]Immigration Act 1988 and the [M110]Immigration (Restricted Right of Appeal against Deportation) (Exemption) Order 1993 are to continue to have effect in relation to any person on whom the Secretary of State has, before the commencement of the repeal of those sections, served a notice of his decision to make a deportation order.

Commencement Information

I135 Sch. 15 para. 11 wholly in force at 2.10.2000 by S.I. 2000/2444, art. 2, **Sch. 1** (subject to the transitional provisions in arts. 3, 4, Sch. 2)

Marginal Citations

M109 1988 c. 14
M110 S.I. 1993/1656

12 (1) Sub-paragraph (2) applies if, on the coming into force of section 10, sections 15 of the 1971 Act and 5 of the Immigration Act 1988 have been repealed by this Act.

(2) Those sections are to continue to have effect in relation to any person—

(a) who applied during the regularisation period fixed by section 9, in accordance with the regulations made under that section, for leave to remain in the United Kingdom, and

(b) on whom the Secretary of State has since served a notice of his decision to make a deportation order.

Commencement Information

I136 Sch. 15 para. 12 wholly in force at 2.10.2000 by virtue of S.I. 2000/265, **reg. 3** and S.I. 2000/2444, art. 2, **Sch. 1** (subject to the transitional provisions in arts. 3, 4, Sch. 2)

Assistance under Part VII of the Housing Act 1996

13 (1) The Secretary of State may by order provide for any provision of Part VII of the [M111]Housing Act 1996 (homelessness) to have effect in relation to section 185(2) persons, during the interim period, with such modifications as may be specified in the order.

(2) An order under this paragraph may, in particular, include provision—

(a) for the referral of section 185(2) persons by one local housing authority to another by agreement between the authorities;

(b) as to the suitability of accommodation for such persons;

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(c) as to out-of-area placements of such persons.

(3) "Interim period" means the period beginning with the passing of this Act and ending on the coming into force of the repeal of section 186 of the Act of 1996 (asylum-seekers and their dependants) by this Act (as to which see section 117(5)).

(4) "Local housing authority" has the same meaning as in the Act of 1996.

(5) "Section 185(2) person" means a person who—

(a) is eligible for housing assistance under Part VII of the Act of 1996 as a result of regulations made under section 185(2) of that Act; and

(b) is not made ineligible by section 186 (or any other provision) of that Act.

(6) The fact that an order may be made under this paragraph only in respect of the interim period does not prevent it from containing provisions of a kind authorised under section 166(3)(a) which are to have continuing effect after the end of that period.

Marginal Citations

M111 1996 c. 52.

Provision of support

14 (1) The Secretary of State may, by directions given to a local authority to whom Schedule 9 applies, require the authority to treat the interim period fixed for the purposes of that Schedule as coming to an end—

(a) for specified purposes,

(b) in relation to a specified area or locality, or

(c) in relation to persons of a specified description,

on such earlier day as may be specified.

(2) The Secretary of State may, by directions given to an authority to whom an amended provision applies, provide for specified descriptions of person to be treated—

(a) for specified purposes, or

(b) in relation to a specified area or locality,

as being persons to whom section 115 applies during such period as may be specified.

(3) Directions given under this paragraph may—

(a) make such consequential, supplemental or transitional provision as the Secretary of State considers appropriate; and

(b) make different provision for different cases or descriptions of case.

(4) "Specified" means specified in the directions.

(5) "Amended provision" means any provision amended by—

(a) section 116;

(b) section 117(1) or (2);

(c) section 120; or

(d) section 121.

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SCHEDULE 16

Section 169(3).

REPEALS

Commencement Information

I137 Sch. 16 partly in force; Sch. 16 not in force at Royal Assent, see s. 170(4); Sch. 16 in force for certain purposes at: 14.2.2000 by S.I. 2000/168, art. 2, Sch. (with art. 3); 1.3.2000 and 3.4.2000 by S.I. 2000/464, art. 2, Sch.; 2.10.2000 by S.I. 2000/2444, art. 2, Sch. 1 (subject to arts. 3, 4, Sch. 2); 1.1.2001 by S.I. 2000/2698, art. 2, Sch. (subject to art. 3) (as amended by S.I. 2000/3099, art. 4); 11.12.2000 by S.I. 2000/3099, art. 2, Sch.; 8.12.2002 by S.I. 2002/2815, **art. 2**, Sch.

I138 Sch. 16 in force at 30.6.2003 for specified purposes by S.I. 2003/1469, art. 2, **Sch.**

Chapter	Short title	Extent of repeal
1949 c. 76.	The Marriage Act 1949.	In section 3(1), "whether by licence or without licence,".
		Section 26(2).
		In section 27, in subsection (1) "without licence", subsection (2), in subsection (3)(a) "in the case of a marriage intended to be solemnized without licence,", and subsection (3)(b).
		In section 27B, in subsections (4) and (6) "or licence", and in subsection (5) ", or certificate and licence,".
		In section 28(1), "or licence" .
		In section 29, every "or licence".
		In section 31, in subsection (1) "without licence", and in subsection (4) "without licence".
		Section 32.
		In section 35, in subsection (1) ", or if the marriage is to be by licence, a certificate and a licence,", in subsections (2) and (4) "or, if the marriage is to be by licence, a certificate and a licence,", and in subsections (2A) and (2B) "or, if the

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		marriage is to be by licence, a certificate and licence,”.
		Section 36.
		In section 37(1), “without licence”.
		In section 38(1), “without licence”.
		In section 39(1), “without licence”.
		Section 40(2).
		Section 49(c).
		In section 50, in subsection (1) “the certificate or, if notice of marriage has been given to more than one superintendent registrar”, and subsection (2).
		In section 51(1), from first “the sum” to “case,”.
		In section 75(3), in paragraph (b) “or licence”.
		In Schedule 4, in Part III, “The proviso to subsection (2) of section twenty-six”.
1969 c. 46	The Family Law Reform Act 1969.	In section 2(3), “or licence” in both cases.
1970 c. 34.	The Marriage (Registrar General’s Licence) Act 1970.	In section 5, “or licence”.
		Section 13(b).
1971 c. 77.	The Immigration Act 1971.	In section 10(1), from “and any such Order” to the end.
		Part II.
		In section 24, subsections (1)(aa) and (2).
		Section 25(3).
		In Schedule 2, in paragraph 21(4)(a) “under paragraph 2 above”, in paragraph 26(1) “and have not been given leave” and paragraph 28.

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		In Schedule 3, in paragraph 3, "in paragraph 28(2), (3) and (6) and".
		Schedule 5.
1975 c. 24.	The House of Commons Disqualification Act 1975.	In Schedule 1, in Part III, "Adjudicator appointed for the purposes of the Immigration Act 1971".
1975 c. 25.	The Northern Ireland Assembly Disqualification Act 1975.	In Schedule 1, in Part III, "Adjudicator appointed for the purposes of the Immigration Act 1971".
1987 c. 24.	The Immigration (Carriers' Liability) Act 1987.	The whole Act.
1988 c. 14.	The Immigration Act 1988.	Section 5.
		Section 8.
		Section 9.
1990 c. 41.	The Courts and Legal Services Act 1990.	In Schedule 10, paragraph 34.
		In Schedule 11, in the entry relating to the Immigration Appeal Tribunal, "appointed under Schedule 5 to the Immigration Act 1971".
1992 c. 4.	The Social Security Contributions and Benefits Act 1992.	Section 146A.
1992 c. 7.	The Social Security Contributions and Benefits (Northern Ireland) Act 1992.	Section 142A.
1993 c. 8.	The Judicial Pensions and Retirement Act 1993.	In Schedule 6, paragraphs 37 and 38.
1993 c. 23.	The Asylum and Immigration Appeals Act 1993.	Section 3.
		Section 4.
		Section 5.
		Section 6.
		Section 7.
		Section 8.
		Section 9.
		Section 10.
		Section 11.

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		Section 12.
		Schedule 1.
		Schedule 2.
1996 c. 49.	The Asylum and Immigration Act 1996.	Section 1.
		Section 2.
		Section 3.
		Section 4.
		Section 7.
		Section 9.
		Section 10.
		Section 11.
		In Schedule 2, paragraphs 1(2) and (3), 3 and 4(2).
		In Schedule 3, paragraphs 1, 2 and 5.
1996 c. 52.	The Housing Act 1996.	In section 183(2), in the definition “eligible for assistance”, “or section 186 (asylum seekers and their dependants)”.
		Section 186.
		In Schedule 16, paragraph 3.
1997 c. 68.	The Special Immigration Appeals Commission Act 1997.	Section 7(4).
		In Schedule 2, paragraph 5.

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Changes to legislation:
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