



# Immigration and Asylum Act 1999

## 1999 CHAPTER 33

### PART I

#### IMMIGRATION: GENERAL

#### *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

*Status: Point in time view as at 14/02/2000.*

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(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.

(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

**II** 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—

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- “(3) “Relevant enactment” means—
- (a) this Act;
  - (b) the <sup>M1</sup>Immigration Act 1988;
  - (c) the <sup>M2</sup>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

**M1** 1988 c. 14.

**M2** 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—
- (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 <sup>M3</sup>Forgery and Counterfeiting Act 1981 (forgery and connected offences);
  - (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,
  - (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—

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- (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.

(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.

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**Marginal Citations**

**M3** 1981 c. 45.

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