



# Nationality, Immigration and Asylum Act 2002

## 2002 CHAPTER 41

An Act to make provision about nationality, immigration and asylum; to create offences in connection with international traffic in prostitution; to make provision about international projects connected with migration; and for connected purposes. [7th November 2002]

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:—

### PART 1

#### NATIONALITY

##### 1 **Naturalisation: knowledge of language and society**

(1) The following shall be inserted after the word “and” after paragraph 1(1)(c) of Schedule 1 to the British Nationality Act 1981 (c. 61) (requirements for naturalisation)

—  
“(ca) that he has sufficient knowledge about life in the United Kingdom; and”.

(2) In paragraph 2(e) of that Schedule (waiver)—

(a) for “the requirement specified in paragraph 1(1)(c)” there shall be substituted “either or both of the requirements specified in paragraph 1(1)(c) and (ca)”, and

(b) for “expect him to fulfil it” there shall be substituted “expect him to fulfil that requirement or those requirements”.

(3) The following shall be inserted after section 41(1)(b) of that Act (regulations)—

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- “(ba) for determining whether a person has sufficient knowledge of a language for the purpose of an application for naturalisation;
- (bb) for determining whether a person has sufficient knowledge about life in the United Kingdom for the purpose of an application for naturalisation;”.

(4) The following shall be inserted after section 41(1) of that Act—

“(1A) Regulations under subsection (1)(ba) or (bb) may, in particular—

- (a) make provision by reference to possession of a specified qualification;
- (b) make provision by reference to possession of a qualification of a specified kind;
- (c) make provision by reference to attendance on a specified course;
- (d) make provision by reference to attendance on a course of a specified kind;
- (e) make provision by reference to a specified level of achievement;
- (f) enable a person designated by the Secretary of State to determine sufficiency of knowledge in specified circumstances;
- (g) enable the Secretary of State to accept a qualification of a specified kind as evidence of sufficient knowledge of a language.”

#### Commencement Information

- II** S. 1 wholly in force at 1.11.2005; s. 1 not in force at Royal Assent see s. 162(2); s. 1(3)(4) in force at 6.7.2004 by [S.I. 2004/1707](#), [art. 2](#); s. 1(1)(2) in force at 1.11.2005 by [S.I. 2005/2782](#), [art. 3\(1\)](#) (subject to [art. 3\(2\)](#))

## 2 Naturalisation: spouse of citizen

(1) Paragraphs 3 and 4 of Schedule 1 to the British Nationality Act 1981 (c. 61) (requirements for naturalisation as British citizen: spouse of citizen) shall be amended as follows—

- (a) in paragraph 3(e) for “requirement specified in paragraph 1(1)(b)” substitute “requirements specified in paragraph 1(1)(b), (c) and (ca)”, and
- (b) in paragraph 4(c) omit “and (e)”.

(2) Paragraphs 7 and 8 of that Schedule (requirements for naturalisation as British overseas territories citizen: spouse of citizen) shall be amended as follows—

- (a) in paragraph 7(e) for “requirement specified in paragraph 5(1)(b)” substitute “requirements specified in paragraph 5(1)(b) and (c)”, and
- (b) in paragraph 8(c) omit “and (e)”.

## 3 Citizenship ceremony, oath and pledge

Schedule 1 (which makes provision about citizenship ceremonies, oaths and pledges) shall have effect.

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## 4 Deprivation of citizenship

- (1) The following shall be substituted for section 40 of the British Nationality Act 1981 (deprivation of citizenship)—

### “40 Deprivation of citizenship

- (1) In this section a reference to a person’s “citizenship status” is a reference to his status as—
- (a) a British citizen,
  - (b) a British overseas territories citizen,
  - (c) a British Overseas citizen,
  - (d) a British National (Overseas),
  - (e) a British protected person, or
  - (f) a British subject.
- (2) The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that the person has done anything seriously prejudicial to the vital interests of—
- (a) the United Kingdom, or
  - (b) a British overseas territory.
- (3) The Secretary of State may by order deprive a person of a citizenship status which results from his registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of—
- (a) fraud,
  - (b) false representation, or
  - (c) concealment of a material fact.
- (4) The Secretary of State may not make an order under subsection (2) if he is satisfied that the order would make a person stateless.
- (5) Before making an order under this section in respect of a person the Secretary of State must give the person written notice specifying—
- (a) that the Secretary of State has decided to make an order,
  - (b) the reasons for the order, and
  - (c) the person’s right of appeal under section 40A(1) or under section 2B of the Special Immigration Appeals Commission Act 1997 (c. 68).
- (6) Where a person acquired a citizenship status by the operation of a law which applied to him because of his registration or naturalisation under an enactment having effect before commencement, the Secretary of State may by order deprive the person of the citizenship status if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of—
- (a) fraud,
  - (b) false representation, or
  - (c) concealment of a material fact.

### 40A Deprivation of citizenship: appeal

- (1) A person who is given notice under section 40(5) of a decision to make an order in respect of him under section 40 may appeal against the decision to

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an adjudicator appointed under section 81 of the Nationality, Immigration and Asylum Act 2002 (immigration appeal).

- (2) Subsection (1) shall not apply to a decision if the Secretary of State certifies that it was taken wholly or partly in reliance on information which in his opinion should not be made public—
    - (a) in the interests of national security,
    - (b) in the interests of the relationship between the United Kingdom and another country, or
    - (c) otherwise in the public interest.
  - (3) A party to an appeal to an adjudicator under subsection (1) may, with the permission of the Immigration Appeal Tribunal, appeal to the Tribunal against the adjudicator’s determination on a point of law.
  - (4) A party to an appeal to the Immigration Appeal Tribunal under subsection (3) may bring a further appeal on a point of law—
    - (a) where the decision of the adjudicator was made in Scotland, to the Court of Session, or
    - (b) in any other case, to the Court of Appeal.
  - (5) An appeal under subsection (4) may be brought only with the permission of—
    - (a) the Tribunal, or
    - (b) if the Tribunal refuses permission, the court referred to in subsection (4)(a) or (b).
  - (6) An order under section 40 may not be made in respect of a person while an appeal under this section or section 2B of the Special Immigration Appeals Commission Act 1997 (c. 68)—
    - (a) has been instituted and has not yet been finally determined, withdrawn or abandoned, or
    - (b) could be brought (ignoring any possibility of an appeal out of time with permission).
  - (7) Rules under section 106 of the Nationality, Immigration and Asylum Act 2002 (immigration appeal: rules) may make provision about an appeal under this section.
  - (8) Directions under section 107 of that Act (practice directions) may make provision about an appeal under this section.”
- (2) The following shall be inserted before section 3 of the Special Immigration Appeals Commission Act 1997 (jurisdiction: bail)—

“2B

A person may appeal to the Special Immigration Appeals Commission against a decision to make an order under section 40 of the British Nationality Act 1981 (c. 61) (deprivation of citizenship) if he is not entitled to appeal under section 40A(1) of that Act because of a certificate under section 40A(2).”

- (3) In section 5(1)(a) and (b) and (2) of that Act (procedure) after “section 2” there shall be inserted “ or 2B ”.

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- (4) In exercising a power under section 40 of the British Nationality Act 1981 after the commencement of subsection (1) above the Secretary of State may have regard to anything which—
- (a) occurred before commencement, and
  - (b) he could have relied on (whether on its own or with other matters) in making an order under section 40 before commencement.

## 5 Resumption of citizenship

In the following provisions of the British Nationality Act 1981 (c. 61) the words “, if a woman,” shall cease to have effect—

- (a) section 10(1) and (2)(registration as British citizen following renunciation of citizenship), and
- (b) section 22(1) and (2)(registration as British overseas territories citizen following renunciation of citizenship).

### Commencement Information

**I2** S. 5 in force at Royal Assent with effect in accordance with s. 162(3)

## 6 Nationality decision: discrimination

- (1) Section 19D of the Race Relations Act 1976 (c. 74) (discrimination by public authority: permitted cases) shall be amended as follows.
- (2) In subsection (1) for “immigration and nationality functions” substitute “ immigration functions ”.
- (3) For subsections (4) and (5) substitute—
  - “(4) In subsection (1) “immigration functions” means functions exercisable by virtue of any of the enactments mentioned in subsection (5).
  - (5) Those enactments are—
    - (a) the Immigration Acts (within the meaning of section 158 of the Nationality, Immigration and Asylum Act 2002) excluding sections 28A to 28K of the Immigration Act 1971 (c. 77) so far as they relate to offences under Part III of that Act;
    - (b) the Special Immigration Appeals Commission Act 1997 (c. 68);
    - (c) provision made under section 2(2) of the European Communities Act 1972 (c. 68) which relates to immigration or asylum; and
    - (d) any provision of Community law which relates to immigration or asylum.”
- (4) Section 19E of the Race Relations Act 1976 (monitoring of use of section 19D) shall be amended as follows—
  - (a) in subsection (3)(a) for “immigration and nationality functions” substitute “ immigration functions ”, and
  - (b) omit subsection (7).
- (5) In section 71A of that Act (general statutory duty: special cases)—

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(a) in subsection (1) the words “(within the meaning of section 19D(1))” shall be omitted, and

(b) the following shall be inserted after subsection (1)—

“(1A) In subsection (1) “immigration and nationality functions” means functions exercisable by virtue of—

- (a) the Immigration Acts (within the meaning of section 158 of the Nationality, Immigration and Asylum Act 2002) excluding sections 28A to 28K of the Immigration Act 1971 so far as they relate to offences under Part III of that Act;
- (b) the British Nationality Act 1981;
- (c) the British Nationality (Falkland Islands) Act 1983 (c. 6);
- (d) the British Nationality (Hong Kong) Act 1990 (c. 34);
- (e) the Hong Kong (War Wives and Widows) Act 1996 (c. 41);
- (f) the British Nationality (Hong Kong) Act 1997 (c. 20);
- (g) the Special Immigration Appeals Commission Act 1997 (c. 68);
- (h) provision made under section 2(2) of the European Communities Act 1972 (c. 68) which relates to the subject matter of an enactment within any of paragraphs (a) to (g); or
- (i) any provision of Community law which relates to the subject matter of an enactment within any of those paragraphs.”

## 7 Nationality decision: reasons and review

(1) Section 44(2) and (3) of the British Nationality Act 1981 (c. 61) (no requirement to give reasons for discretionary decision, and no right of appeal) shall cease to have effect.

(2) Section 1(5) of the British Nationality (Hong Kong) Act 1990 (c. 34) (no requirement to give reasons for discretionary decision, and no right of appeal) shall cease to have effect.

## 8 Citizenship: registration

In paragraph 3(1)(b) of Schedule 2 to the British Nationality Act 1981 (application by person born in United Kingdom or overseas territory for registration as citizen: age requirement) the words “had attained the age of ten but” shall cease to have effect.

VALID FROM 05/06/2006

## 9 Legitimacy of child

(1) The following shall be substituted for section 50(9) of the British Nationality Act 1981 (interpretation: child)—

“(9) For the purposes of this Act a child’s mother is the woman who gives birth to the child.

(9A) For the purposes of this Act a child’s father is—

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- (a) the husband, at the time of the child’s birth, of the woman who gives birth to the child, or
  - (b) where a person is treated as the father of the child under section 28 of the Human Fertilisation and Embryology Act 1990 (c. 37) (father), that person, or
  - (c) where neither paragraph (a) nor paragraph (b) applies, any person who satisfies prescribed requirements as to proof of paternity.
- (9B) In subsection (9A)(c) “prescribed” means prescribed by regulations of the Secretary of State; and the regulations—
- (a) may confer a function (which may be a discretionary function) on the Secretary of State or another person,
  - (b) may make provision which applies generally or only in specified circumstances,
  - (c) may make different provision for different circumstances,
  - (d) must be made by statutory instrument, and
  - (e) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9C) The expressions “parent”, “child” and “descended” shall be construed in accordance with subsections (9) and (9A).”
- (2) In section 3(6) of that Act (registration of minor as British citizen)—
- (a) after paragraph (a) insert “ and ”,
  - (b) the word “and” after paragraph (b) shall cease to have effect, and
  - (c) paragraph (c) (illegitimate child) shall cease to have effect.
- (3) In section 17(6) of that Act (registration of minor as British overseas territories citizen)—
- (a) after paragraph (a) insert “ and ”,
  - (b) the word “and” after paragraph (b) shall cease to have effect, and
  - (c) paragraph (c)(illegitimate child) shall cease to have effect.
- (4) Section 47 of that Act (legitimated children) shall cease to have effect.
- (5) In Schedule 2 to that Act (persons otherwise stateless)—
- (a) in paragraph 1(1)(b) (person born in United Kingdom), the words “he is born legitimate and” shall cease to have effect, and
  - (b) in paragraph 2(1)(b) (person born in British overseas territory), the words “he is born legitimate and” shall cease to have effect.

#### Commencement Information

- I3** S. 9 wholly in force at 1.7.2006; S. 9 not in force at Royal Assent see s. 162; s. 9 in force at 5.6.2006 for specified purposes and in force at 1.7.2006 so far as not already in force by [S.I. 2006/1498](#), [art. 2](#)

## 10 Right of abode: certificate of entitlement

- (1) The Secretary of State may by regulations make provision for the issue to a person of a certificate that he has the right of abode in the United Kingdom.

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- (2) The regulations may, in particular—
- (a) specify to whom an application must be made;
  - (b) specify the place (which may be outside the United Kingdom) to which an application must be sent;
  - (c) provide that an application must be made in a specified form;
  - (d) provide that an application must be accompanied by specified documents;
  - (e) require the payment of a fee on the making of an application;
  - (f) specify the consequences of failure to comply with a requirement under any of paragraphs (a) to (e) above;
  - (g) provide for a certificate to cease to have effect after a period of time specified in or determined in accordance with the regulations;
  - (h) make provision about the revocation of a certificate.
- (3) The regulations may—
- (a) make provision which applies generally or only in specified cases or circumstances;
  - (b) make different provision for different purposes;
  - (c) include consequential, incidental or transitional provision.
- (4) The regulations—
- (a) must be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) The Immigration Act 1971 (c. 77) shall be amended as follows—
- (a) in section 3(9)(b) (proof of entitlement to right of abode) the words “issued by or on behalf of the Government of the United Kingdom certifying that he has such a right of abode” shall cease to have effect, and
  - (b) in section 33(1) for the definition of “certificate of entitlement” substitute—
 

““certificate of entitlement” means a certificate under section 10 of the Nationality, Immigration and Asylum Act 2002 that a person has the right of abode in the United Kingdom;”.
- (6) Regulations under this section may, in particular, include provision saving, with or without modification, the effect of a certificate which—
- (a) is issued before the regulations come into force, and
  - (b) is a certificate of entitlement for the purposes of sections 3(9) and 33(1) of the Immigration Act 1971 as those sections have effect before the commencement of subsection (5) above.

#### Commencement Information

**I4** S.10 partly in force; s.10(1)-(4)(6) in force at Royal Assent see s. 162(2); s. 10(5)(b) in force at 21.12.2006 by [S.I. 2006/3144](#), [art. 2](#)



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## 11 Unlawful presence in United Kingdom

- (1) This section applies for the construction of a reference to being in the United Kingdom “in breach of the immigration laws” in section 4(2) or (4) or 50(5) of, or Schedule 1 to, the British Nationality Act 1981 (c. 61).
- (2) A person is in the United Kingdom in breach of the immigration laws if (and only if) he—
  - (a) is in the United Kingdom,
  - (b) does not have the right of abode in the United Kingdom within the meaning of section 2 of the Immigration Act 1971,
  - (c) does not have leave to enter or remain in the United Kingdom (whether or not he previously had leave),
  - (d) is not a qualified person within the meaning of the Immigration (European Economic Area) Regulations 2000 (S.I. 2000/2326) (person entitled to reside in United Kingdom without leave) (whether or not he was previously a qualified person),
  - (e) is not a family member of a qualified person within the meaning of those regulations (whether or not he was previously a family member of a qualified person),
  - (f) is not entitled to enter and remain in the United Kingdom by virtue of section 8(1) of the Immigration Act 1971 (crew) (whether or not he was previously entitled), and
  - (g) does not have the benefit of an exemption under section 8(2) to (4) of that Act (diplomats, soldiers and other special cases) (whether or not he previously had the benefit of an exemption).
- (3) Section 11(1) of the Immigration Act 1971 (person deemed not to be in United Kingdom before disembarkation, while in controlled area or while under immigration control) shall apply for the purposes of this section as it applies for the purposes of that Act.
- (4) This section shall be treated as always having had effect except in relation to a person who on the commencement of this section is, or has been at any time since he last entered the United Kingdom—
  - (a) a qualified person within the meaning of the regulations referred to in subsection (2)(d), or
  - (b) a family member of a qualified person within the meaning of those regulations.
- (5) This section is without prejudice to the generality of—
  - (a) a reference to being in a place outside the United Kingdom in breach of immigration laws, and
  - (b) a reference in a provision other than one specified in subsection (1) to being in the United Kingdom in breach of immigration laws.

## 12 British citizenship: registration of certain persons without other citizenship

- (1) The following shall be inserted after section 4A of the British Nationality Act 1981 (c. 61) (registration as British citizen)—

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**“4B Acquisition by registration: certain persons without other citizenship**

- (1) This section applies to a person who has the status of—
  - (a) British Overseas citizen,
  - (b) British subject under this Act, or
  - (c) British protected person.
- (2) A person to whom this section applies shall be entitled to be registered as a British citizen if—
  - (a) he applies for registration under this section,
  - (b) the Secretary of State is satisfied that the person does not have, apart from the status mentioned in subsection (1), any citizenship or nationality, and
  - (c) the Secretary of State is satisfied that the person has not after 4th July 2002 renounced, voluntarily relinquished or lost through action or inaction any citizenship or nationality.”
- (2) In section 14(1) of that Act (meaning of British citizen “by descent”), in paragraph (d) for “section 5” there shall be substituted “ section 4B or 5 ”.

**13 British citizenship: registration of certain persons born between 1961 and 1983**

- (1) The following shall be inserted after section 4B of the British Nationality Act 1981 (registration as British citizen)—

**“4C Acquisition by registration: certain persons born between 1961 and 1983**

- (1) A person is entitled to be registered as a British citizen if—
  - (a) he applies for registration under this section, and
  - (b) he satisfies each of the following conditions.
- (2) The first condition is that the applicant was born after 7th February 1961 and before 1st January 1983.
- (3) The second condition is that the applicant would at some time before 1st January 1983 have become a citizen of the United Kingdom and Colonies by virtue of section 5 of the British Nationality Act 1948 (c. 56) if that section had provided for citizenship by descent from a mother in the same terms as it provided for citizenship by descent from a father.
- (4) The third condition is that immediately before 1st January 1983 the applicant would have had the right of abode in the United Kingdom by virtue of section 2 of the Immigration Act 1971 (c. 77) had he become a citizen of the United Kingdom and Colonies as described in subsection (3) above.”
- (2) In section 14(1) of that Act (meaning of British citizen “by descent”), in paragraph (d) after the words “section 4B” (as substituted by section 12(2) of this Act) there shall be inserted “ , 4C ”.

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## 14 Hong Kong

A person may not be registered as a British overseas territories citizen under a provision of the British Nationality Act 1981 (c. 61) by virtue of a connection with Hong Kong.

## 15 Repeal of spent provisions

Schedule 2 (which repeals spent provisions) shall have effect.

## PART 2

### ACCOMMODATION CENTRES

#### *Establishment*

## 16 Establishment of centres

- (1) The Secretary of State may arrange for the provision of premises for the accommodation of persons in accordance with this Part.
- (2) A set of premises provided under this section is referred to in this Act as an “accommodation centre”.
- (3) The Secretary of State may arrange for—
  - (a) the provision of facilities at or near an accommodation centre for sittings of adjudicators appointed for the purpose of Part 5 in accordance with a determination of the Lord Chancellor under paragraph 2 of Schedule 4;
  - (b) the provision of facilities at an accommodation centre for the taking of steps in connection with the determination of claims for asylum (within the meaning of section 18(3)).

#### *Use of centres*

PROSPECTIVE

## 17 Support for destitute asylum-seeker

- (1) The Secretary of State may arrange for the provision of accommodation for a person in an accommodation centre if—
  - (a) the person is an asylum-seeker or the dependant of an asylum-seeker, and
  - (b) the Secretary of State thinks that the person is destitute or is likely to become destitute within a prescribed period.
- (2) The Secretary of State may make regulations about procedure to be followed in respect of the provision of accommodation under this section.
- (3) The regulations may, in particular, make provision—
  - (a) specifying procedure to be followed in applying for accommodation in an accommodation centre;

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- (b) providing for an application to be combined with an application under or in respect of another enactment;
  - (c) requiring an applicant to provide information;
  - (d) specifying circumstances in which an application may not be considered (which provision may, in particular, provide for an application not to be considered 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 (e));
  - (e) about the making of enquiries by the Secretary of State;
  - (f) requiring a person to notify the Secretary of State of a change in circumstances.
- (4) Sections 18 to 20 define the following expressions for the purpose of this Part—
- (a) asylum-seeker,
  - (b) dependant, and
  - (c) destitute.

## 18 Asylum-seeker: definition

- (1) For the purposes of this Part a person is an “asylum-seeker” if—
- (a) he is at least 18 years old,
  - (b) he is in the United Kingdom,
  - (c) a claim for asylum has been made by him at a place designated by the Secretary of State,
  - (d) the Secretary of State has recorded the claim, and
  - (e) the claim has not been determined.
- (2) A person shall continue to be treated as an asylum-seeker despite subsection (1)(e) while—
- (a) his household includes a dependent child who is under 18, and
  - (b) he does not have leave to enter or remain in the United Kingdom.
- (3) A claim for asylum is a claim by a person that to remove him from or require him to leave the United Kingdom would be contrary to the United Kingdom’s obligations under—
- (a) the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol, or
  - (b) Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4th November 1950.

### Commencement Information

**I5** S. 18 partly in force; s. 18 not in force at Royal Assent see s. 162(2); s. 18 in force for certain purposes at 8.1.2003 and for further certain purposes at 10.2.2003 by S.I. 2003/1, art. 2, Sch.

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PROSPECTIVE

## 19 Destitution: definition

- (1) Where a person has dependants, he and his dependants are destitute for the purpose of this Part if they do not have and cannot obtain both—
  - (a) adequate accommodation, and
  - (b) food and other essential items.
- (2) Where a person does not have dependants, he is destitute for the purpose of this Part if he does not have and cannot obtain both—
  - (a) adequate accommodation, and
  - (b) food and other essential items.
- (3) In determining whether accommodation is adequate for the purposes of subsection (1) or (2) the Secretary of State must have regard to any matter prescribed for the purposes of this subsection.
- (4) In determining whether accommodation is adequate for the purposes of subsection (1) or (2) the Secretary of State may not have regard to—
  - (a) whether a person has an enforceable right to occupy accommodation,
  - (b) whether a person shares all or part of accommodation,
  - (c) whether accommodation is temporary or permanent,
  - (d) the location of accommodation, or
  - (e) any other matter prescribed for the purposes of this subsection.
- (5) The Secretary of State may by regulations specify items which are or are not to be treated as essential items for the purposes of subsections (1) and (2).
- (6) The Secretary of State may by regulations—
  - (a) provide that a person is not to be treated as destitute for the purposes of this Part in specified circumstances;
  - (b) enable or require the Secretary of State in deciding whether a person is destitute to have regard to income which he or a dependant of his might reasonably be expected to have;
  - (c) enable or require the Secretary of State in deciding whether a person is destitute to have regard to support which is or might reasonably be expected to be available to the person or a dependant of his;
  - (d) enable or require the Secretary of State in deciding whether a person is destitute to have regard to assets of a prescribed kind which he or a dependant of his has or might reasonably be expected to have;
  - (e) make provision as to the valuation of assets.

PROSPECTIVE

## 20 Dependant: definition

For the purposes of this Part a person is a “dependant” of an asylum-seeker if (and only if) that person—

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- (a) is in the United Kingdom, and
- (b) is within a prescribed class.

PROSPECTIVE

## 21 Sections 17 to 20: supplementary

- (1) This section applies for the purposes of sections 17 to 20.
- (2) The Secretary of State may inquire into and decide a person's age.
- (3) A claim for asylum shall be treated as determined at the end of such period as may be prescribed beginning with—
  - (a) the date on which the Secretary of State notifies the claimant of his decision on the claim [<sup>F1</sup>or (as the case may be) of the declaration of inadmissibility under section 80A or 80B], or
  - (b) if the claimant appeals against the Secretary of State's decision, the date on which the appeal is disposed of.
- (4) A notice under subsection (3)(a)—
  - (a) must be in writing, and
  - (b) if sent by first class post to the claimant's last known address or to the claimant's representative, shall be treated as being received by the claimant on the second day after the day of posting.
- (5) An appeal is disposed of when it is no longer pending for the purpose of—
  - (a) Part 5 of this Act, or
  - (b) the Special Immigration Appeals Commission Act 1997 (c. 68).

### Textual Amendments

- F1** Words in s. 21(3)(a) inserted (28.6.2022) by [Nationality and Borders Act 2022 \(c. 36\)](#), **ss. 17(6)**, 87(1); [S.I. 2022/590](#), reg. 2, **Sch. 1 para. 16**

PROSPECTIVE

## 22 Immigration and Asylum Act 1999, s. 95

The Secretary of State may provide support under section 95 of the Immigration and Asylum Act 1999 (c. 33) (destitute asylum-seeker) by arranging for the provision of accommodation in an accommodation centre.

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PROSPECTIVE

## 23 Person subject to United Kingdom entrance control

- (1) A residence [<sup>F2</sup>condition] may include a requirement to reside at an accommodation centre.
- [<sup>F3</sup>(2) In subsection (1) “residence condition” means a condition imposed under Schedule 10 to the Immigration Act 2016.]
- (3) Where a person is required to reside in an accommodation centre by virtue of subsection (1) the Secretary of State must arrange for the provision of accommodation for the person in an accommodation centre.
- (4) But if the person is required to leave an accommodation centre by virtue of section 26 or 30 he shall be treated as having broken the residence [<sup>F4</sup>condition] referred to in subsection (1).
- (5) The Secretary of State may provide support under section 4 of the Immigration and Asylum Act 1999 (persons subject to entrance control) (including that section as amended by section 49 of this Act) by arranging for the provision of accommodation in an accommodation centre.

### Textual Amendments

- F2** Word in s. 23(1) substituted (15.1.2018) by [Immigration Act 2016 \(c. 19\), s. 94\(1\), Sch. 10 para. 32\(2\)](#); [S.I. 2017/1241, reg. 2\(c\)](#) (with [Sch.](#)) (as amended by [S.I. 2018/31, reg. 2](#))
- F3** S. 23(2) substituted (15.1.2018) by [Immigration Act 2016 \(c. 19\), s. 94\(1\), Sch. 10 para. 32\(3\)](#); [S.I. 2017/1241, reg. 2\(c\)](#) (with [Sch.](#)) (as amended by [S.I. 2018/31, reg. 2](#))
- F4** Word in s. 23(4) substituted (15.1.2018) by [Immigration Act 2016 \(c. 19\), s. 94\(1\), Sch. 10 para. 32\(4\)](#); [S.I. 2017/1241, reg. 2\(c\)](#) (with [Sch.](#)) (as amended by [S.I. 2018/31, reg. 2](#))

PROSPECTIVE

## 24 Provisional assistance

- (1) If the Secretary of State thinks that a person may be eligible for the provision of accommodation in an accommodation centre under section 17, he may arrange for the provision for the person, pending a decision about eligibility, of—
  - (a) accommodation in an accommodation centre, or
  - (b) other support or assistance (of any kind).
- (2) Section 99 of the Immigration and Asylum Act 1999 (c. 33) (provision of support by local authority) shall have effect in relation to the provision of support for persons under subsection (1) above as it has effect in relation to the provision of support for asylum-seekers under sections 95 and 98 of that Act.

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## PROSPECTIVE

**25 Length of stay**

- (1) The Secretary of State may not arrange for the provision of accommodation for a person in an accommodation centre if he has been a resident of an accommodation centre for a continuous period of six months.
- (2) But—
  - (a) subsection (1) may be disappplied in respect of a person, generally or to a specified extent, by agreement between the Secretary of State and the person, and
  - (b) if the Secretary of State thinks it appropriate in relation to a person because of the circumstances of his case, the Secretary of State may direct that subsection (1) shall have effect in relation to the person as if the period specified in that subsection were the period of nine months.
- (3) Section 51 is subject to this section.
- (4) The Secretary of State may by order amend subsection (1) or (2)(b) so as to substitute a shorter period for a period specified.

## PROSPECTIVE

**26 Withdrawal of support**

- (1) The Secretary of State may stop providing support for a person under section 17 or 24 if—
  - (a) the Secretary of State suspects that the person or a dependant of his has committed an offence by virtue of section 35, or
  - (b) the person or a dependant of his has failed to comply with directions of the Secretary of State as to the time or manner of travel to accommodation provided under section 17 or 24.
- (2) The Secretary of State may by regulations specify other circumstances in which he may stop providing support for a person under section 17 or 24.
- (3) In determining whether or not to provide a person with support or assistance under section 17 or 24 of this Act or section 4, 95 or 98 of the Immigration and Asylum Act 1999 (asylum-seeker) the Secretary of State may take into account the fact that—
  - (a) he has withdrawn support from the person by virtue of this section or section 30(4) or (5), or
  - (b) circumstances exist which would have enabled the Secretary of State to withdraw support from the person by virtue of this section had he been receiving support.
- (4) This section is without prejudice to section 103 of the Immigration and Asylum Act 1999 (c. 33) (appeal against refusal to support).



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## PROSPECTIVE

*Operation of centres***27 Resident of centre**

A reference in this Part to a resident of an accommodation centre is a reference to a person for whom accommodation in the centre is provided—

- (a) under section 17,
- (b) by virtue of section 22,
- (c) by virtue of section 23, or
- (d) under section 24.

**28 Manager of centre**

A reference in this Part to the manager of an accommodation centre is a reference to a person who agrees with the Secretary of State to be wholly or partly responsible for the management of the centre.

**29 Facilities**

- (1) The Secretary of State may arrange for the following to be provided to a resident of an accommodation centre—
  - (a) food and other essential items;
  - (b) money;
  - (c) assistance with transport for the purpose of proceedings under the Immigration Acts or in connection with a claim for asylum;
  - (d) transport to and from the centre;
  - (e) assistance with expenses incurred in connection with carrying out voluntary work or other activities;
  - (f) education and training;
  - (g) facilities relating to health;
  - (h) facilities for religious observance;
  - (i) anything which the Secretary of State thinks ought to be provided for the purpose of providing a resident with proper occupation and for the purpose of maintaining good order;
  - (j) anything which the Secretary of State thinks ought to be provided for a person because of his exceptional circumstances.
- (2) The Secretary of State may make regulations specifying the amount or maximum amount of money to be provided under subsection (1)(b).
- (3) The Secretary of State may arrange for the provision of facilities in an accommodation centre for the use of a person in providing legal advice to a resident of the centre.
- (4) The Secretary of State shall take reasonable steps to ensure that a resident of an accommodation centre has an opportunity to obtain legal advice before any appointment made by an immigration officer or an official of the Secretary of State

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for the purpose of obtaining information from the resident to be used in determining his claim for asylum.

- (5) The Secretary of State may by order amend subsection (1) so as to add a reference to facilities which may be provided.

### 30 Conditions of residence

- (1) The Secretary of State may make regulations about conditions to be observed by residents of an accommodation centre.
- (2) Regulations under subsection (1) may, in particular, enable a condition to be imposed in accordance with the regulations by—
- (a) the Secretary of State, or
  - (b) the manager of an accommodation centre.
- (3) A condition imposed by virtue of this section may, in particular—
- (a) require a person not to be absent from the centre during specified hours without the permission of the Secretary of State or the manager;
  - (b) require a person to report to an immigration officer or the Secretary of State.
- (4) If a resident of an accommodation centre breaches a condition imposed by virtue of this section, the Secretary of State may—
- (a) require the resident and any dependant of his to leave the centre;
  - (b) authorise the manager of the centre to require the resident and any dependant of his to leave the centre.
- (5) If a dependant of a resident of an accommodation centre breaches a condition imposed by virtue of this section, the Secretary of State may—
- (a) require the resident and any dependant of his to leave the centre;
  - (b) authorise the manager of the centre to require the resident and any dependant of his to leave the centre.
- (6) Regulations under this section must include provision for ensuring that a person subject to a condition is notified of the condition in writing.
- (7) A condition imposed by virtue of this section is in addition to any [<sup>F5</sup>condition imposed under Schedule 10 to the Immigration Act 2016.]
- (8) A reference in this Part to a condition of residence is a reference to a condition imposed by virtue of this section.

#### Textual Amendments

- F5** Words in s. 30(7) substituted (15.1.2018) by [Immigration Act 2016 \(c. 19\), s. 94\(1\), Sch. 10 para. 33; S.I. 2017/1241, reg. 2\(c\)](#) (with [Sch.](#)) (as amended by [S.I. 2018/31, reg. 2](#))

### 31 Financial contribution by resident

- (1) A condition of residence may, in particular, require a resident of an accommodation centre to make payments to—
- (a) the Secretary of State, or
  - (b) the manager of the centre.

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- (2) The Secretary of State may make regulations enabling him to recover sums representing the whole or part of the value of accommodation and other facilities provided to a resident of an accommodation centre if—
  - (a) accommodation is provided for the resident in response to an application by him for support,
  - (b) when the application was made the applicant had assets which were not capable of being realised, and
  - (c) the assets have become realisable.
- (3) In subsection (2) “assets” includes assets outside the United Kingdom.
- (4) An amount recoverable by virtue of regulations made under subsection (2) may be recovered—
  - (a) as a debt due to the Secretary of State;
  - (b) by another prescribed method (which may include the imposition or variation of a residence condition).

## 32 Tenure

- (1) A resident of an accommodation centre shall not be treated as acquiring a tenancy of or other interest in any part of the centre (whether by virtue of an agreement between the resident and another person or otherwise).
- (2) Subsection (3) applies where—
  - (a) the Secretary of State decides to stop arranging for the provision of accommodation in an accommodation centre for a resident of the centre, or
  - (b) a resident of an accommodation centre is required to leave the centre in accordance with section 30.
- (3) Where this subsection applies—
  - (a) the Secretary of State or the manager of the centre may recover possession of the premises occupied by the resident, and
  - (b) the right under paragraph (a) shall be enforceable in accordance with procedure prescribed by regulations made by the Secretary of State.
- (4) Any licence which a resident of an accommodation centre has to occupy premises in the centre shall be an excluded licence for the purposes of the Protection from Eviction Act 1977 (c. 43).
- (5) The following shall be inserted after section 3A(7A) of the Protection from Eviction Act 1977 (disapplication of section 3: Part VI of Immigration and Asylum Act 1999 (c. 33))—

“(7B) Section 32 of the Nationality, Immigration and Asylum Act 2002 (accommodation centre: tenure) provides for a resident’s licence to occupy an accommodation centre to be an excluded licence.”
- (6) The following shall be inserted after section 23A(5A) of the Rent (Scotland) Act 1984 (c. 58) (excluded tenancies and occupancy rights)—

“(5B) Nothing in section 23 of this Act applies to a resident’s occupancy of an accommodation centre provided under section 16 or 24(1)(b) of the

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Nationality, Immigration and Asylum Act 2002 (“resident” being construed in accordance with section 27 of that Act).”

- (7) In this section a reference to an accommodation centre includes a reference to premises in which accommodation is provided under section 24(1)(b).

**33 Advisory Groups**

- (1) The Secretary of State shall appoint a group (to be known as an Accommodation Centre Advisory Group) for each accommodation centre.
- (2) The Secretary of State may by regulations—
  - (a) confer functions on Advisory Groups;
  - (b) make provision about the constitution and proceedings of Advisory Groups.
- (3) Regulations under subsection (2)(a) must, in particular, provide for members of an accommodation centre’s Advisory Group—
  - (a) to visit the centre;
  - (b) to hear complaints made by residents of the centre;
  - (c) to report to the Secretary of State.
- (4) The manager of an accommodation centre must permit a member of the centre’s Advisory Group on request—
  - (a) to visit the centre at any time;
  - (b) to visit any resident of the centre at any time, provided that the resident consents.
- (5) A member of an Advisory Group shall hold and vacate office in accordance with the terms of his appointment (which may include provision about retirement, resignation or dismissal).
- (6) The Secretary of State may—
  - (a) defray expenses of members of an Advisory Group;
  - (b) make facilities available to members of an Advisory Group.

PROSPECTIVE

*General*

**F<sup>6</sup>34 The Monitor of Accommodation Centres**

.....

**Textual Amendments**

**F6** S. 34 repealed (1.4.2008) by UK Borders Act 2007 (c. 30), ss. 54(b), 59(2); S.I. 2008/309, art. 4(e)

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### 35 Ancillary provisions

- (1) The following provisions of the Immigration and Asylum Act 1999 (c. 33) shall apply for the purposes of this Part as they apply for the purposes of Part VI of that Act (support for asylum-seeker)—
  - (a) section 105 (false representation),
  - (b) section 106 (dishonest representation),
  - (c) section 107 (delay or obstruction),
  - (d) section 108 (failure of sponsor to maintain),
  - (e) section 109 (offence committed by body),
  - (f) section 112 (recovery of expenditure),
  - (g) section 113 (recovery of expenditure from sponsor),
  - (h) section 124 (corporation sole), and
  - (i) section 127 (redirection of post).
- (2) In the application of section 112 a reference to something done under section 95 or 98 of that Act shall be treated as a reference to something done under section 17 or 24 of this Act.
- (3) In the application of section 113 a reference to section 95 of that Act shall be treated as a reference to section 17 of this Act.

#### Commencement Information

**I6** S. 35 partly in force; s. 35(1)(h) in force at Royal Assent see s. 162(2)

### 36 Education: general

- (1) For the purposes of section 13 of the Education Act 1996 (c. 56) (general responsibility of <sup>[F7]</sup>local authority) a resident of an accommodation centre shall not be treated as part of the population of a <sup>[F7]</sup>local authority] area.
- (2) A child who is a resident of an accommodation centre may not be admitted to a maintained school or a maintained nursery (subject to section 37).
- (3) But subsection (2) does not prevent a child's admission to a school which is—
  - (a) a community special school or a foundation special school, and
  - (b) named in <sup>[F8]</sup>an EHC plan maintained for the child under section 37 of the Children and Families Act 2014 or <sup>[F9]</sup>a statement in respect of the child under section 324 of the Education Act 1996 (c. 56) (special educational needs) <sup>[F9]</sup>an individual development plan maintained for the child under section 14 or 19 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018].
- (4) In subsections (2) and (3)—
  - (a) “maintained school” means a maintained school within the meaning of section 20(7) of the School Standards and Framework Act 1998 (c. 31) (definition), and
  - (b) “maintained nursery” means a facility for nursery education, within the meaning of section 117 of that Act, provided by a <sup>[F10]</sup>local authority].
- (5) The following shall not apply in relation to a child who is a resident of an accommodation centre (subject to section 37)—

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- (a) section 86(1) and (2) of the School Standards and Framework Act 1998 (parental preference),
  - (b) section 94 of that Act (appeal),
  - (c) section 19 <sup>[F11]</sup> or 19A of the Education Act 1996 (education out of school),
  - (d) <sup>[F12]</sup> section 316(2) and (3) of that Act (child with special educational needs to be educated in mainstream school), <sup>F13</sup> ...]
  - (e) <sup>[F14]</sup> paragraphs 3 and 8 of Schedule 27 to that Act (special education needs: making of statement: parental preference).]
  - <sup>[F15]</sup>(f) sections 33 and 34 of the Children and Families Act 2014 (mainstream education for children with special educational needs), <sup>[F16]</sup> and]
  - (g) sections 38 and 39 of that Act (EHC plan: request of parent for named school etc.) <sup>[F17]</sup>, and]
  - <sup>[F18]</sup>(h) section 51 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (duty to favour education for children at mainstream maintained schools).]
- <sup>[F19]</sup>(5A) The powers of the First-tier Tribunal on determining an appeal under section 51(2)(c) of the Children and Families Act 2014 (appeals against certain aspects of content of EHC plan) are subject to subsection (2) above.]
- (6) <sup>[F20]</sup> The power of the Education Tribunal for Wales under section 71(1) of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (decisions on appeals under section 70) is subject to subsection (2) above.]
- (7) A person exercising a function under this Act <sup>[F23]</sup>, Part 3 of the Children and Families Act 2014 <sup>[F24]</sup>, Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018] or the Education Act 1996 shall (subject to section 37) secure that a child who is a resident of an accommodation centre and who has special educational needs <sup>[F24]</sup> or additional learning needs] shall be educated by way of facilities provided under section 29(1)(f) of this Act unless that is incompatible with—
- (a) his receiving the special educational provision <sup>[F25]</sup> called for by his special educational needs or] which his learning difficulty calls for,
  - <sup>[F26]</sup>(aa) the child receiving the additional learning provision called for by the child's additional learning needs,]
  - (b) the provision of efficient education for other children who are residents of the centre, or
  - (c) the efficient use of resources.
- (8) A person may rely on subsection (7)(b) only where there is no action—
- (a) which could reasonably be taken by that person or by another person who exercises functions, or could exercise functions, in respect of the accommodation centre concerned, and
  - (b) as a result of which subsection (7)(b) would not apply.
- (9) An accommodation centre is not a school within the meaning of section 4 of the Education Act 1996 (definition); but—
- (a) <sup>[F27]</sup> Part 1 of the Education Act 2005 (school inspections)] shall apply to educational facilities provided at an accommodation centre as if the centre were a school (for which purpose a reference to the appropriate authority shall be taken as a reference to the person (or persons) responsible for the provision of education at the accommodation centre),

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- [<sup>F28</sup>(aa) section 36 of the Children and Families Act 2014 (assessment of education, health and care needs: England) shall have effect as if an accommodation centre were a school,]
- (b) [<sup>F29</sup>the person responsible for education at an accommodation centre may refer a case to a local authority under section 12(2)(a) of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 as though—
- (i) a child for whom education is provided at the centre under section 29(1)(f) were a child who is a registered pupil at a school, and
- (ii) that person were the governing body of the school.]
- (c) [<sup>F30</sup>section 140 of the Learning and Skills Act 2000 (c. 21) (learning difficulties: assessment of post-16 needs) shall have effect as if an accommodation centre were a school.]
- (10) Subsections (1), (2) and (5) shall not apply in relation to an accommodation centre if education is not provided for children who are residents of the centre under section 29(1)(f).
- (11) An expression used in this section and in the Education Act 1996 (c. 56) shall have the same meaning in this section as in that Act.

#### Textual Amendments

- F7** Words in s. 36(1) substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, **Sch. 2 para. 51(2)(a)**
- F8** Words in s. 36(3)(b) inserted (1.9.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), **Sch. 3 para. 79(2)**; S.I. 2014/889, art. 7(a)
- F9** Words in s. 36(3)(b) substituted (W.) (1.9.2021) by [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Consequential Amendments\) Regulations 2021 \(S.I. 2021/861\)](#), regs. 1, **6(2)(a)**
- F10** Words in s. 36(4)(b) substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, **Sch. 2 para. 51(2)(b)**
- F11** Words in s. 36(5)(c) inserted (1.9.2022 for specified purposes) by [The Curriculum and Assessment \(Wales\) Act 2021 \(Consequential Amendments\) \(Primary Legislation\) Regulations 2022 \(S.I. 2022/744\)](#), reg. 1(3), **Sch. 2 para. 7**
- F12** S. 36(5)(d) omitted (W.) (1.9.2021) by virtue of [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Consequential Amendments\) Regulations 2021 \(S.I. 2021/861\)](#), regs. 1, **6(2)(b)**
- F13** Word in s. 36(5)(d) omitted (1.9.2014) by virtue of [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), **Sch. 3 para. 79(3)**; S.I. 2014/889, art. 7(a)
- F14** S. 36(5)(e) omitted (W.) (1.9.2021) by virtue of [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Consequential Amendments\) Regulations 2021 \(S.I. 2021/861\)](#), regs. 1, **6(2)(b)**
- F15** S. 36(5)(f)(g) inserted (1.9.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), **Sch. 3 para. 79(3)**; S.I. 2014/889, art. 7(a)
- F16** Word in s. 36(5) omitted (W.) (1.9.2021) by virtue of [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Consequential Amendments\) Regulations 2021 \(S.I. 2021/861\)](#), regs. 1, **6(2)(c)**
- F17** Word in s. 36(5) inserted (W.) (1.9.2021) by [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Consequential Amendments\) Regulations 2021 \(S.I. 2021/861\)](#), regs. 1, **6(2)(d)**
- F18** S. 36(5)(h) inserted (1.9.2021) by [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Consequential Amendments\) Regulations 2021 \(S.I. 2021/861\)](#), regs. 1, **6(2)(e)**

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- F19** S. 36(5A) inserted (1.9.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 3 para. 79(4)**; S.I. 2014/889, art. 7(a)
- F20** S. 36(6) substituted (W.) (1.9.2021) by The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Consequential Amendments) Regulations 2021 (S.I. 2021/861), regs. 1, **6(2)(f)**
- F21** Words in s. 36(6) omitted (1.9.2014) by virtue of Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 3 para. 79(5)**; S.I. 2014/889, art. 7(a)
- F22** Words in s. 36(6) substituted (3.11.2008) by virtue of The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 1(1), **Sch. 3 para. 197**
- F23** Words in s. 36(7) inserted (1.9.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 3 para. 79(6)(a)**; S.I. 2014/889, art. 7(a)
- F24** Words in s. 36(7) inserted (W.) (1.9.2021) by The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Consequential Amendments) Regulations 2021 (S.I. 2021/861), regs. 1, **6(2)(g)(i)**
- F25** Words in s. 36(7)(a) inserted (1.9.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 3 para. 79(6)(b)**; S.I. 2014/889, art. 7(a)
- F26** S. 36(7)(aa) inserted (W.) (1.9.2021) by The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Consequential Amendments) Regulations 2021 (S.I. 2021/861), regs. 1, **6(2)(g)(ii)**
- F27** Words in s. 36(9)(a) substituted (1.9.2005 for E. and otherwise prosp.) by Education Act 2005 (c. 18), ss. 61, 125, **Sch. 9 para. 30**; S.I. 2005/2034, **art. 4**
- F28** S. 36(9)(aa) inserted (1.9.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 3 para. 79(7)**; S.I. 2014/889, art. 7(a)
- F29** S. 36(9)(b) substituted (W.) (1.9.2021) by The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Consequential Amendments) Regulations 2021 (S.I. 2021/861), regs. 1, **6(2)(h)**
- F30** S. 36(9)(c) omitted (W.) (1.9.2021) by virtue of The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Consequential Amendments) Regulations 2021 (S.I. 2021/861), regs. 1, **6(2)(i)**

### 37 Education: special cases

- (1) This section applies to a child if a person who provides education to residents of an accommodation centre recommends in writing to the [<sup>F31</sup>local authority] for the area in which the centre is that this section should apply to the child on the grounds that his special circumstances call for provision that can only or best be arranged by the authority.
- (2) A [<sup>F31</sup>local authority] may—
  - (a) arrange for the provision of education for a child to whom this section applies;
  - (b) disapply a provision of section 36 in respect of a child to whom this section applies.
- (3) In determining whether to exercise a power under subsection (2) in respect of a child a [<sup>F31</sup>local authority] shall have regard to any relevant guidance issued by the Secretary of State.
- (4) The governing body of a maintained school shall comply with a requirement of the [<sup>F31</sup>local authority] to admit to the school a child to whom this section applies.
- (5) Subsection (4) shall not apply where compliance with a requirement would prejudice measures taken for the purpose of complying with a duty arising under section 1(6) of the School Standards and Framework Act 1998 (c. 31) (limit on infant class size).
- (6) A [<sup>F31</sup>local authority] may not impose a requirement under subsection (4) in respect of a school unless the authority has consulted the school in accordance with regulations made by the Secretary of State.



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- (7) In the case of a maintained school for which the [<sup>F31</sup>local authority] are the admission authority, the authority may not arrange for the admission of a child to whom this section applies unless the authority has notified the school in accordance with regulations made by the Secretary of State.
- (8) In this section—
- (a) “maintained school” means a maintained school within the meaning of section 20(7) of the School Standards and Framework Act 1998 (definition), and
  - (b) an expression which is also used in the Education Act 1996 (c. 56) shall have the same meaning as it has in that Act.

#### Textual Amendments

- F31** Words in s. 37 substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, [Sch. 2 para. 51\(3\)](#)

### 38 Local authority

- (1) A local authority may in accordance with arrangements made by the Secretary of State—
- (a) assist in arranging for the provision of an accommodation centre;
  - (b) make premises available for an accommodation centre;
  - (c) provide services in connection with an accommodation centre.
- (2) In particular, a local authority may—
- (a) incur reasonable expenditure;
  - (b) provide services outside its area;
  - (c) provide services jointly with another body;
  - (d) form a company;
  - (e) tender for or enter into a contract;
  - (f) do anything (including anything listed in paragraphs (a) to (e)) for a preparatory purpose.
- (3) In this section “local authority” means—
- (a) a local authority within the meaning of section 94 of the Immigration and Asylum Act 1999 (c. 33), and
  - (b) a Northern Ireland authority within the meaning of section 110 of that Act and an Education and Library Board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/ 594 (N.I. 3)).

### 39 “Prescribed”: orders and regulations

- (1) In this Part “prescribed” means prescribed by the Secretary of State by order or regulations.
- (2) An order or regulations under this Part may—
- (a) make provision which applies generally or only in specified cases or circumstances (which may be determined wholly or partly by reference to location);

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- (b) make different provision for different cases or circumstances;
  - (c) include consequential, transitional or incidental provision.
- (3) An order or regulations under this Part must be made by statutory instrument.
- (4) An order or regulations under any of the following provisions of this Part shall be subject to annulment in pursuance of a resolution of either House of Parliament—
- (a) section 17,
  - (b) section 19,
  - (c) section 20,
  - (d) section 21,
  - (e) section 26,
  - (f) section 29,
  - (g) section 31,
  - (h) section 32,
  - (i) section 33,
  - (j) section 37,
  - (k) section 40, and
  - (l) section 41.
- (5) An order under section 25 or regulations under section 30 may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

#### 40 Scotland

- (1) The Secretary of State may not make arrangements under section 16 for the provision of premises in Scotland unless he has consulted the Scottish Ministers.
- (2) The Secretary of State may by order make provision in relation to the education of residents of accommodation centres in Scotland.
- (3) An order under subsection (2) may, in particular—
- (a) apply, disapply or modify the effect of an enactment (which may include a provision made by or under an Act of the Scottish Parliament);
  - (b) make provision having an effect similar to the effect of a provision of section 36 or 37.

#### Commencement Information

**I7** S. 40(1) partly in force; s. 40(1) in force at Royal Assent see [s. 162\(2\)](#)

#### 41 Northern Ireland

- (1) The Secretary of State may not make arrangements under section 16 for the provision of premises in Northern Ireland unless he has consulted the First Minister and the deputy First Minister.
- (2) The Secretary of State may by order make provision in relation to the education of residents of accommodation centres in Northern Ireland.
- (3) An order under subsection (2) may, in particular—

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- (a) apply, disapply or modify the effect of an enactment (which may include a provision made by or under Northern Ireland legislation);
- (b) make provision having an effect similar to the effect of a provision of section 36 or 37.

#### Commencement Information

**I8** S. 41(1) partly in force; s. 41(1) in force at Royal Assent see s. 162(2)

#### 42 Wales

The Secretary of State may not make arrangements under section 16 for the provision of premises in Wales unless he has consulted the National Assembly for Wales.

### PART 3

#### OTHER SUPPORT AND ASSISTANCE

#### 43 Asylum-seeker: form of support

- (1) The Secretary of State may make an order restricting the application of section 96(1)(b) of the Immigration and Asylum Act 1999 (c. 33) (support for asylum-seeker: essential living needs)—
  - (a) in all circumstances, to cases in which support is being provided under section 96(1)(a) (accommodation), or
  - (b) in specified circumstances only, to cases in which support is being provided under section 96(1)(a).
- (2) An order under subsection (1)(b) may, in particular, make provision by reference to—
  - (a) location;
  - (b) the date of an application.
- (3) An order under subsection (1) may include transitional provision.
- (4) An order under subsection (1)—
  - (a) must be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

PROSPECTIVE

#### 44 Destitute asylum-seeker

- (1) Section 94 of the Immigration and Asylum Act 1999 (c. 33) (support for destitute asylum-seeker) shall be amended as follows.
- (2) In subsection (1) for the definition of “asylum-seeker” substitute—

““asylum-seeker” means a person—

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- (a) who is at least 18 years old,
- (b) who is in the United Kingdom,
- (c) who has made a claim for asylum at a place designated by the Secretary of State,
- (d) whose claim has been recorded by the Secretary of State, and
- (e) whose claim has not been determined;”.

(3) In subsection (1) for the definition of “dependant” substitute—

““dependant” in relation to an asylum-seeker or a supported person means a person who—

- (a) is in the United Kingdom, and
- (b) is within a prescribed class;”.

(4) For subsection (3) substitute—

“(3) A claim for asylum shall be treated as determined for the purposes of subsection (1) at the end of such period as may be prescribed beginning with—

- (a) the date on which the Secretary of State notifies the claimant of his decision on the claim, or
- (b) if the claimant appeals against the Secretary of State’s decision, the date on which the appeal is disposed of.

(3A) A person shall continue to be treated as an asylum-seeker despite paragraph (e) of the definition of “asylum-seeker” in subsection (1) while—

- (a) his household includes a dependant child who is under 18, and
- (b) he does not have leave to enter or remain in the United Kingdom.”

(5) Omit subsections (5) and (6).

(6) The following shall be substituted for section 95(2) to (8) of the Immigration and Asylum Act 1999 (c. 33) (support for destitute asylum-seeker: interpretation)—

“(2) Where a person has dependants, he and his dependants are destitute for the purpose of this section if they do not have and cannot obtain both—

- (a) adequate accommodation, and
- (b) food and other essential items.

(3) Where a person does not have dependants, he is destitute for the purpose of this section if he does not have and cannot obtain both—

- (a) adequate accommodation, and
- (b) food and other essential items.

(4) In determining whether accommodation is adequate for the purposes of subsection (2) or (3) the Secretary of State must have regard to any matter prescribed for the purposes of this subsection.

(5) In determining whether accommodation is adequate for the purposes of subsection (2) or (3) the Secretary of State may not have regard to—

- (a) whether a person has an enforceable right to occupy accommodation,
- (b) whether a person shares all or part of accommodation,
- (c) whether accommodation is temporary or permanent,
- (d) the location of accommodation, or

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- (e) any other matter prescribed for the purposes of this subsection.
- (6) The Secretary of State may by regulations specify items which are or are not to be treated as essential items for the purposes of subsections (2) and (3).
- (7) The Secretary of State may by regulations—
  - (a) provide that a person is not to be treated as destitute for the purposes of this Part in specified circumstances;
  - (b) enable or require the Secretary of State in deciding whether a person is destitute to have regard to income which he or a dependant of his might reasonably be expected to have;
  - (c) enable or require the Secretary of State in deciding whether a person is destitute to have regard to support which is or might reasonably be expected to be available to the person or a dependant of his;
  - (d) enable or require the Secretary of State in deciding whether a person is destitute to have regard to assets of a prescribed kind which he or a dependant of his has or might reasonably be expected to have;
  - (e) make provision as to the valuation of assets.”

PROSPECTIVE

#### 45 Section 44: supplemental

- (1) The following shall be substituted for section 96(1)(b) of the Immigration and Asylum Act 1999 (ways of providing support)—
  - “(b) by providing the supported person and his dependants (if any) with food and other essential items;”.
- (2) In section 97 of the Immigration and Asylum Act 1999 (c. 33) (support: supplemental)—
  - (a) in subsection (4) for “essential living needs” there shall be substituted “ food and other essential items ”,
  - (b) in subsection (5) for “essential living needs” there shall be substituted “ food and other essential items ”, and
  - (c) in subsection (6) for “living needs” there shall be substituted “ items ”.
- (3) Paragraphs 2 and 6 of Schedule 8 to the Immigration and Asylum Act 1999 (support: regulations) shall cease to have effect.
- (4) In paragraph 3 of Schedule 9 to the Immigration and Asylum Act 1999 (support: interim provision)—
  - (a) for “Subsections (3) to (8) of section 95” substitute “ Subsections (2) to (6) of section 95 ”, and
  - (b) for “subsections (5) and (7)” substitute “ subsections (4) and (5) ”.
- (5) The following shall be substituted for section 21(1B) of the National Assistance Act 1948 (c. 29) (duty of local authority to provide accommodation: exclusion of destitute asylum-seeker: interpretation)—

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“(1B) Section 95(2) to (7) of that Act shall apply for the purposes of subsection (1A) above; and for that purpose a reference to the Secretary of State in section 95(4) or (5) shall be treated as a reference to a local authority.”

- (6) The following shall be substituted for section 45(4B) of the Health Services and Public Health Act 1968 (c. 46) (local authority promotion of welfare of elderly: exclusion of destitute asylum-seeker: interpretation)—

“(4B) Section 95(2) to (7) of that Act shall apply for the purposes of subsection (4A) above; and for that purpose a reference to the Secretary of State in section 95(4) or (5) shall be treated as a reference to a local authority.”

- (7) <sup>F32</sup>The following shall be substituted for paragraph 2(2B) of Schedule 8 to the National Health Service Act 1977 (c. 49) (local authority arrangements for prevention and care: exclusion of asylum-seeker: interpretation)—

“(2B) Section 95(2) to (7) of that Act shall apply for the purposes of subparagraph (2A) above; and for that purpose a reference to the Secretary of State in section 95(4) or (5) shall be treated as a reference to a local social services authority.”]

#### Textual Amendments

- F32** S. 45(7) repealed (coming into force in accordance with s. 8(5)(6) of the repealing Act) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), ss. 6, 8(2), [Sch. 4](#) (with [Sch. 2 Pt. 1](#), [Sch. 3 Pt. 1](#))

PROSPECTIVE

#### 46 Section 44: supplemental: Scotland and Northern Ireland

- (1) The following shall be substituted for section 12(2B) of the Social Work (Scotland) Act 1968 (c. 49)(general social welfare services of local authorities – exclusion of destitute asylum seeker: interpretation)—

“(2B) Section 95(2) to (7) of that Act shall apply for the purposes of subsection (2A) of this section; and for that purpose a reference to the Secretary of State in section 95(4) or (5) shall be treated as a reference to a local authority.”

- (2) The following shall be substituted for section 13A(5) of that Act (provision of residential accommodation with nursing – exclusion of destitute asylum seeker: interpretation)—

“(5) Section 95(2) to (7) of that Act shall apply for the purposes of subsection (4) of this section; and for that purpose a reference to the Secretary of State in section 95(4) or (5) shall be treated as a reference to a local authority.”

- (3) The following shall be substituted for section 13B(4) of that Act (provision of care and after-care – exclusion of destitute asylum seeker: interpretation)—

“(4) Section 95(2) to (7) of that Act shall apply for the purposes of subsection (3) of this section; and for that purpose a reference to the Secretary of State in section 95(4) or (5) shall be treated as a reference to a local authority.”

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[<sup>F33</sup>(4) The following shall be substituted for article 14(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (mental health services provided by local authorities)—

“(2) Section 95(2) to (7) of the Immigration and Asylum Act 1999 shall apply for the purposes of paragraph (1); and for that purpose a reference to the Secretary of State in section 95(4) or (5) shall be treated as a reference to a local authority.”.]

(6) The following shall be substituted for Article 7(3A) of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)) (prevention of illness, care and after-care: exclusion of asylum-seeker: interpretation)—

“(3A) Section 95(2) to (7) of that Act shall apply for the purpose of paragraph (3); and for that purpose a reference to the Secretary of State in section 95(4) or (5) shall be treated as a reference to the Department.”

(7) The following shall be substituted for Article 15(7) of that Order (general social welfare: exclusion of destitute asylum-seeker: interpretation)—

“(7) Section 95(2) to (7) of that Act shall apply for the purpose of paragraph (6); and for that purpose a reference to the Secretary of State in section 95(4) or (5) shall be treated as a reference to [<sup>F34</sup>an HSC trust].”

#### Textual Amendments

**F33** S. 46(4) substituted (5.10.2005) for s. 46(4)(5) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Consequential Provisions\) Order 2005 \(S.I. 2005/2078\)](#), art. 15, **Sch. 1 para. 6**

**F34** Words in s. 46(7) substituted (1.4.2022) by [Health and Social Care Act \(Northern Ireland\) 2022 \(c. 3 \(N.I.\)\)](#), s. 8(1)(b), **Sch. 1 para. 194(1)**; S.R. 2022/102, **art. 2(b)**

PROSPECTIVE

#### 47 Asylum-seeker: family with children

The following shall be substituted for section 122 of the Immigration and Asylum Act 1999 (c. 33) (destitute asylum-seeker with child: duty to support)—

##### “122 Family with children

(1) This section applies where a person (“the asylum-seeker”) applies for support under section 95 of this Act or section 17 of the Nationality, Immigration and Asylum Act 2002 (accommodation centres) if—

- (a) the Secretary of State thinks that the asylum-seeker is eligible for support under either or both of those sections, and
- (b) the asylum-seeker’s household includes a dependant child who is under 18.

(2) The Secretary of State must offer the provision of support for the child, as part of the asylum-seeker’s household, under one of the sections mentioned in subsection (1).

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- (3) A local authority (or, in Northern Ireland, an authority) may not provide assistance for a child if—
  - (a) the Secretary of State is providing support for the child in accordance with an offer under subsection (2),
  - (b) an offer by the Secretary of State under subsection (2) remains open in respect of the child, or
  - (c) the Secretary of State has agreed that he would make an offer in respect of the child under subsection (2) if an application were made as described in subsection (1).
- (4) In subsection (3) “assistance” means assistance under—
  - (a) section 17 of the Children Act 1989 (c. 41) (local authority support),
  - (b) section 22 of the Children (Scotland) Act 1995 (c. 36) (similar provision for Scotland), or
  - (c) Article 18 of the Children (Northern Ireland) Order 1995 (S.I. 1995/775 (N.I. 2)) (similar provision for Northern Ireland).
- (5) The Secretary of State may by order disapply subsection (3) in specified circumstances.
- (6) Where subsection (3) ceases to apply to a child because the Secretary of State stops providing support, no local authority may provide assistance for the child except the authority for the area within which the support was provided.”

#### 48 Young asylum-seeker

The following provisions of the Immigration and Asylum Act 1999 (c. 33) shall have effect as if the definition of asylum-seeker in section 94(1) of that Act did not exclude persons who are under 18—

- (a) section 110 (local authority expenditure on asylum-seekers), and
- (b) section 111 (grants to voluntary organisations).

#### 49 Failed asylum-seeker

(1) The following shall be added at the end of section 4 of the Immigration and Asylum Act 1999 (accommodation for person on temporary admission or release)—

- “(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.”



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- (2) The present section 4 of the Immigration and Asylum Act 1999 (c. 33) becomes subsection (1) (and its heading becomes “ Accommodation ”).

## 50 Conditions of support

- (1) The following shall be inserted after section 95(9) of the Immigration and Asylum Act 1999 (support for asylum-seeker: condition)—

“(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).”

- (2) The following shall be inserted after paragraph 6 of Schedule 9 to that Act (asylum-seeker: interim support)—

“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).”

PROSPECTIVE

## 51 Choice of form of support

- (1) The Secretary of State may refuse to provide support for a person under a provision specified in subsection (2) on the grounds that an offer has been made to the person of support under another provision specified in that subsection.
- (2) The provisions are—
- (a) sections 17 and 24 of this Act,
  - (b) section 4 of the Immigration and Asylum Act 1999 (accommodation for person temporarily admitted or released from detention), and
  - (c) sections 95 and 98 of that Act (support for destitute asylum-seeker).
- (3) In deciding under which of the provisions listed in subsection (2) to offer support to a person the Secretary of State may—
- (a) have regard to administrative or other matters which do not concern the person’s personal circumstances;
  - (b) regard one of those matters as conclusive;
  - (c) apply different criteria to different persons for administrative reasons (which may include the importance of testing the operation of a particular provision).

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## 52 Back-dating of benefit for refugee

In section 123(7) of the Immigration and Asylum Act 1999 (c. 33) (back-dating of benefit for refugee: deduction for support received) after “under this Part” there shall be inserted “ or Part 2 of the Nationality, Immigration and Asylum Act 2002 (accommodation centres) ”.

PROSPECTIVE

## 53 Asylum-seeker: appeal against refusal to support

The following shall be substituted for section 103 of the Immigration and Asylum Act 1999 (asylum support appeal)—

### “103 Appeals: general

- (1) This section applies where a person has applied for support under—
  - (a) section 95,
  - (b) section 17 of the Nationality, Immigration and Asylum Act 2002, or
  - (c) both.
- (2) The person may appeal to an adjudicator against a decision that the person is not qualified to receive the support for which he has applied.
- (3) The person may also appeal to an adjudicator against a decision to stop providing support under a provision mentioned in subsection (1).
- (4) But subsection (3) does not apply—
  - (a) to a decision to stop providing support under one of the provisions mentioned in subsection (1) if it is to be replaced immediately by support under the other provision, or
  - (b) to a decision taken on the ground that the person is no longer an asylum-seeker or the dependant of an asylum-seeker.
- (5) On an appeal under this section an adjudicator may—
  - (a) require the Secretary of State to reconsider a matter;
  - (b) substitute his decision for the decision against which the appeal is brought;
  - (c) dismiss the appeal.
- (6) An adjudicator must give his reasons in writing.
- (7) If an appeal under this section is dismissed the Secretary of State shall not consider any further application by the appellant for support under a provision mentioned in subsection (1)(a) or (b) unless the Secretary of State thinks there has been a material change in circumstances.
- (8) An appeal under this section may not be brought or continued by a person who is outside the United Kingdom.

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### **103A Appeals: location of support under section 95**

- (1) The Secretary of State may by regulations provide for a decision as to where support provided under section 95 is to be provided to be appealable to an adjudicator under this Part.
- (2) Regulations under this section may provide for a provision of section 103 to have effect in relation to an appeal under the regulations with specified modifications.

### **103B Appeals: travelling expenses**

The Secretary of State may pay reasonable travelling expenses incurred by an appellant in connection with attendance for the purposes of an appeal under or by virtue of section 103 or 103A.”

## **54 Withholding and withdrawal of support**

Schedule 3 (which makes provision for support to be withheld or withdrawn in certain circumstances) shall have effect.

### **Commencement Information**

- I9** S. 54 wholly in force at 8.1.2003; s. 54 not in force at Royal Assent see s. 162(2); s. 54 in force at 8.12.2002 for certain purposes and at 8.1.2003 so far as not already in force by [S.I. 2002/2811, art. 2, Sch.](#)

## **55 Late claim for asylum: refusal of support**

- (1) The Secretary of State may not provide or arrange for the provision of support to a person under a provision mentioned in subsection (2) if—
  - (a) the person makes a claim for asylum which is recorded by the Secretary of State, and
  - (b) the Secretary of State is not satisfied that the claim was made as soon as reasonably practicable after the person’s arrival in the United Kingdom.
- (2) The provisions are—
  - (a) sections 4, 95 and 98 of the Immigration and Asylum Act 1999 (c. 33) (support for asylum-seeker, &c.), and
  - (b) sections 17 and 24 of this Act (accommodation centre).
- (3) An authority may not provide or arrange for the provision of support to a person under a provision mentioned in subsection (4) if—
  - (a) the person has made a claim for asylum, and
  - (b) the Secretary of State is not satisfied that the claim was made as soon as reasonably practicable after the person’s arrival in the United Kingdom.
- (4) The provisions are—
  - (a) section 29(1)(b) of the Housing (Scotland) Act 1987 (c. 26) (accommodation pending review),

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- (b) section 188(3) or 204(4) of the Housing Act 1996 (c. 52) (accommodation pending review or appeal), and
  - (c) section 2 of the Local Government Act 2000 (c. 22) (promotion of well-being).
- (5) This section shall not prevent—
- (a) the exercise of a power by the Secretary of State to the extent necessary for the purpose of avoiding a breach of a person’s Convention rights (within the meaning of the Human Rights Act 1998 (c. 42)),
  - (b) the provision of support under section 95 of the Immigration and Asylum Act 1999 (c. 33) or section 17 of this Act in accordance with section 122 of that Act (children), or
  - (c) the provision of support under section 98 of the Immigration and Asylum Act 1999 or section 24 of this Act (provisional support) to a person under the age of 18 and the household of which he forms part.
- (6) An authority which proposes to provide or arrange for the provision of support to a person under a provision mentioned in subsection (4)—
- (a) must inform the Secretary of State if the authority believes that the person has made a claim for asylum,
  - (b) must act in accordance with any guidance issued by the Secretary of State to determine whether subsection (3) applies, and
  - (c) shall not be prohibited from providing or arranging for the provision of support if the authority has complied with paragraph (a) and (b) and concluded that subsection (3) does not apply.
- (7) The Secretary of State may by order—
- (a) add, remove or amend an entry in the list in subsection (4);
  - (b) provide for subsection (3) not to have effect in specified cases or circumstances.
- (8) An order under subsection (7)—
- (a) may include transitional, consequential or incidental provision,
  - (b) must be made by statutory instrument, and
  - (c) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (9) For the purposes of this section “claim for asylum” has the same meaning as in section 18.
- (10) A decision of the Secretary of State that this section prevents him from providing or arranging for the provision of support to a person is not a decision that the person does not qualify for support for the purpose of section 103 of the Immigration and Asylum Act 1999 (appeals).
- (11) This section does not prevent a person’s compliance with a residence restriction imposed in reliance on section 70 (induction).

**Modifications etc. (not altering text)**

- C1** S. 55(1)(b) referred to (15.6.2005) by [The Displaced Persons \(Temporary Protection\) Regulations 2005 \(S.I. 2005/1379\)](#), **reg. 16(2)**

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## **56 Provision of support by local authority**

- (1) Section 99 of the Immigration and Asylum Act 1999 (provision of support by local authority) shall be amended as follows.
- (2) In subsection (1)—
  - (a) after “local authority” insert “ or Northern Ireland authority ”, and
  - (b) at the end add “ or 98 ”.
- (3) For subsections (2) and (3) substitute—
  - “(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) In subsection (4)—
  - (a) for “A local authority” substitute “ An authority ”, and
  - (b) at the end add “ or 98 ”.
- (5) In subsection (5)—
  - (a) for “a local authority” substitute “ an authority ”, and
  - (b) in paragraph (b) for “bodies who are not local authorities” substitute “ other bodies ”.

## **57 Application for support: false or incomplete information**

At the end of paragraph 12(c) of Schedule 8 to the Immigration and Asylum Act 1999 (c. 33) (asylum-seeker support: procedure: disregarding of application) there shall be inserted “ (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)) ”.

## **58 Voluntary departure from United Kingdom**

- (1) A person is a “voluntary leaver” for the purposes of this section if—
  - (a) he is not a British citizen or an EEA national,
  - (b) he leaves the United Kingdom for a place where he hopes to take up permanent residence (his “new place of residence”), and
  - (c) the Secretary of State thinks that it is in the person’s interest to leave the United Kingdom and that the person wishes to leave.
- (2) The Secretary of State may make arrangements to—
  - (a) assist voluntary leavers;
  - (b) assist individuals to decide whether to become voluntary leavers.
- (3) The Secretary of State may, in particular, make payments (whether to voluntary leavers or to organisations providing services for them) which relate to—
  - (a) travelling and other expenses incurred by or on behalf of a voluntary leaver, or a member of his family or household, in leaving the United Kingdom;

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- (b) expenses incurred by or on behalf of a voluntary leaver, or a member of his family or household, on or shortly after arrival in his new place of residence;
  - (c) the provision of services designed to assist a voluntary leaver, or a member of his family or household, to settle in his new place of residence;
  - (d) expenses in connection with a journey undertaken by a person (with or without his family or household) to prepare for, or to assess the possibility of, his becoming a voluntary leaver.
- (4) In subsection (1)(a) “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 from time to time).
- (5) The following provisions of the Immigration Act 1971 (c. 77) shall cease to have effect—
- (a) section 29 (contributions to expenses of persons returning abroad), and
  - (b) section 31(d) (expenses).

## 59 International projects

- (1) The Secretary of State may participate in a project which is designed to—
- (a) reduce migration,
  - (b) assist or ensure the return of migrants,
  - (c) facilitate co-operation between States in matters relating to migration,
  - (d) conduct or consider research about migration, or
  - (e) arrange or assist the settlement of migrants (whether in the United Kingdom or elsewhere).
- (2) In particular, the Secretary of State may—
- (a) provide financial support to an international organisation which arranges or participates in a project of a kind described in subsection (1);
  - (b) provide financial support to an organisation in the United Kingdom or another country which arranges or participates in a project of that kind;
  - (c) provide or arrange for the provision of financial or other assistance to a migrant who participates in a project of that kind;
  - (d) participate in financial or other arrangements which are agreed between Her Majesty’s Government and the government of one or more other countries and which are or form part of a project of that kind.
- (3) In this section—
- (a) “migrant” means a person who leaves the country where he lives hoping to settle in another country (whether or not he is a refugee within the meaning of any international Convention), and
  - (b) “migration” shall be construed accordingly.
- (4) Subsection (1) does not—
- (a) confer a power to remove a person from the United Kingdom, or
  - (b) affect a person’s right to enter or remain in the United Kingdom.

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## 60 Northern Ireland authorities

(1) In section 110(9) of the Immigration and Asylum Act 1999 (c. 33) (support: payment to local authority: Northern Ireland authority) after paragraph (b) there shall be added—

“; 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).”

(2) In section 94(1) of that Act (support: interpretation) after the definition of “local authority” there shall be inserted—

““Northern Ireland authority” has the meaning given by section 110(9).”

## 61 Repeal of spent provisions

The following provisions of the Immigration and Asylum Act 1999 shall cease to have effect—

- (a) section 96(4) to (6)(which relate to a provision about support for asylum-seekers which has been repealed by order), and
- (b) section 166(4)(e)(order under section 96(5): procedure).

## PART 4

### DETENTION AND REMOVAL

#### *Detention*

## 62 Detention by Secretary of State

(1) A person may be detained under the authority of the Secretary of State pending—

- (a) a decision by the Secretary of State whether to give directions in respect of the person under paragraph 10, 10A or 14 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry: removal), or
- (b) removal of the person from the United Kingdom in pursuance of directions given by the Secretary of State under any of those paragraphs.

(2) Where the Secretary of State is empowered under section 3A of that Act (powers of Secretary of State) to examine a person or to give or refuse a person leave to enter the United Kingdom, the person may be detained under the authority of the Secretary of State pending—

- (a) the person’s examination by the Secretary of State,
- (b) the Secretary of State’s decision to give or refuse the person leave to enter,
- (c) a decision by the Secretary of State whether to give directions in respect of the person under paragraph 8 or 9 of Schedule 2 to that Act (removal), or
- (d) removal of the person in pursuance of directions given by the Secretary of State under either of those paragraphs.

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- (3) A provision of Schedule 2 to that Act about a person who is detained or liable to detention under that Schedule shall apply to a person who is detained or liable to detention under this section: and for that purpose—
- (a) a reference to paragraph 16 of that Schedule shall be taken to include a reference to this section,
  - (b) a reference in paragraph 21 of that Schedule to an immigration officer shall be taken to include a reference to the Secretary of State, and
  - (c) a reference to detention under that Schedule or under a provision or Part of that Schedule shall be taken to include a reference to detention under this section.
- (4) In the case of a restriction imposed under paragraph 21 of that Schedule by virtue of this section—
- (a) a restriction imposed by an immigration officer may be varied by the Secretary of State, and
  - (b) a restriction imposed by the Secretary of State may be varied by an immigration officer.
- (5) In subsection (1) the reference to paragraph 10 of that Schedule includes a reference to that paragraph as applied by virtue of section 10 of the Immigration and Asylum Act 1999 (c. 33) (persons unlawfully in United Kingdom: removal).
- (6) Subsection (5) is without prejudice to the generality of section 159.
- (7) A power under this section which is exercisable pending a decision of a particular kind by the Secretary of State is exercisable where the Secretary of State has reasonable grounds to suspect that he may make a decision of that kind.
- (8) At the end of section 11(1) of the Immigration Act 1971 (c. 77) (person not deemed to have entered United Kingdom while detained, &c.) there shall be inserted “ or section 62 of the Nationality, Immigration and Asylum Act 2002 ”.
- (9) In section 24(1)(e) of the Immigration Act 1971 (offence: failure to comply with restriction) for “or to an immigration officer” there shall be substituted “ , to an immigration officer or to the Secretary of State ”.
- (10) In the Mental Health Act 1983 (c. 20)—
- (a) at the end of section 48(2)(d) (detained persons susceptible to transfer for mental treatment: immigration) there shall be added “ or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State) ”, and
  - (b) in the heading of section 53 (supplemental provision) the reference to the Immigration Act 1971 becomes a reference to the Immigration Acts.
- (11) In the Mental Health (Scotland) Act 1984 (c. 36)—
- (a) at the end of section 71(2)(c) (detained persons who may be transferred to hospital for mental treatment) there shall be added “ or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by the Secretary of State) ”, and
  - (b) at the end of section 74(1)(b) (further provision about such persons) there shall be added “ or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by the Secretary of State) ”.
- (12) In the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4))—



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- (a) at the end of Article 54(2)(d) (detained persons susceptible to transfer for mental treatment: immigration) there shall be added “ or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State) ”, and
  - (b) in the heading of Article 59 (supplemental provision) the reference to the Immigration Act 1971 becomes a reference to the Immigration Acts.
- (13) Section 53 of the Immigration and Asylum Act 1999 (c. 33) (bail) shall be amended as follows—
- (a) at the end of subsection (1) add “ or under section 62 of the Nationality, Immigration and Asylum Act 2002 ”, and
  - (b) at the end of subsection (3)(a) add “ or under section 62 of the Nationality, Immigration and Asylum Act 2002 ”.
- (14) In section 147 of that Act (detention centres: interpretation) at the end of the definition of “detained persons” there shall be inserted “ or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State); ”.
- (15) Section 23(2) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (detention of suspected international terrorist) shall be amended as follows—
- (a) omit “and” after paragraph (a), and
  - (b) after paragraph (b) add—
    - “, and
    - (c) section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State).”
- (16) In section 24(1) of that Act (bail) after “the Immigration Act 1971” insert “, or under section 62 of the Nationality, Immigration and Asylum Act 2002, ”.

### **63 Control of entry to United Kingdom, &c.: use of force**

In paragraph 17(2) of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry, &c.: person liable to detention: use of force) for “if need be by force” there shall be substituted “ if need be by reasonable force ”.

### **64 Escorts**

The following shall be added after paragraph 17(2) of Schedule 2 to the Immigration Act 1971 (detention for examination or removal: right to enter premises)—

- “(3) Sub-paragraph (4) applies where an immigration officer or constable—
- (a) enters premises in reliance on a warrant under sub-paragraph (2), and
  - (b) detains a person on the premises.
- (4) A detainee custody officer may enter the premises, if need be by reasonable force, for the purpose of carrying out a search.
- (5) In sub-paragraph (4)—
- “detainee custody officer” means a person in respect of whom a certificate of authorisation is in force under section 154 of the

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Immigration and Asylum Act 1999 (c. 33) (detained persons: escort and custody), and

“search” means a search under paragraph 2(1)(a) of Schedule 13 to that Act (escort arrangements: power to search detained person).”

## 65 Detention centres: custodial functions

- (1) The following shall be substituted for section 154(5) of the Immigration and Asylum Act 1999 (power to confer functions of detainee custody officers on prison officers and prisoner custody officers)—

“(5) The Secretary of State may confer functions of detainee custody officers on prison officers or prisoner custody officers.”

- (2) The following shall be added at the end of Schedule 11 to that Act (detainee custody officers)—

### “Prison officers and prisoner custody officers

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.”

- (3) The following shall be added at the end of Schedule 12 to that Act (discipline at detention centre)—

### “Prison officers and prisoner custody officers

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.”

## 66 Detention centres: change of name

- (1) In section 147 of the Immigration and Asylum Act 1999 (c. 33) (Part VIII: interpretation)—

- (a) the definition of “detention centre” shall cease to have effect, and  
 (b) the following shall be inserted after the definition of “prisoner custody officer”—

““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;”.

- (2) In the provisions listed in subsection (3) (and any relevant headings)—

- (a) for the words “detention centre” there shall be substituted the words “removal centre”, and  
 (b) for the words “detention centres” there shall be substituted the words “removal centres”.

- (3) The provisions are—

- (a) in section 147 of the Immigration and Asylum Act 1999 (Part VIII: interpretation), the definitions of “contracted out detention centre”,

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- “contractor”, “custodial functions”, “detention centre contract”, “detention centre rules”, and “directly managed detention centre”,
- (b) section 148 of that Act (management of centre),
  - (c) sections 149 and 150 of that Act (contracting out),
  - (d) section 151 of that Act (intervention by Secretary of State),
  - (e) section 152 of that Act (visiting committee),
  - (f) section 153 of that Act (rules),
  - (g) section 155 of that Act (custodial functions),
  - (h) section 157 of that Act (short-term holding facility),
  - (i) section 158 of that Act (disclosure of information),
  - (j) section 159 of that Act (power of constable),
  - (k) Schedule 11 to that Act (detainee custody officer),
  - (l) Schedule 12 to that Act (procedure at detention centre),
  - (m) Schedule 13 to that Act (escort),
  - (n) section 141(5)(e) and (6) of that Act (fingerprinting),
  - (o) section 5A(5A) of the Prison Act 1952 (c. 52) (Chief Inspector of Prisons), and
  - (p) paragraph 13 of Schedule 4A to the Water Industry Act 1991 (c. 56) (disconnection).
- (4) A reference in an enactment or instrument to a detention centre within the meaning of Part VIII of the Immigration and Asylum Act 1999 (c. 33) shall be construed as a reference to a removal centre within the meaning of that Part.

## **67 Construction of reference to person liable to detention**

- (1) This section applies to the construction of a provision which—
- (a) does not confer power to detain a person, but
  - (b) refers (in any terms) to a person who is liable to detention under a provision of the Immigration Acts.
- (2) The reference shall be taken to include a person if the only reason why he cannot be detained under the provision is that—
- (a) he cannot presently be removed from the United Kingdom, because of a legal impediment connected with the United Kingdom’s obligations under an international agreement,
  - (b) practical difficulties are impeding or delaying the making of arrangements for his removal from the United Kingdom, or
  - (c) practical difficulties, or demands on administrative resources, are impeding or delaying the taking of a decision in respect of him.
- (3) This section shall be treated as always having had effect.

### *Temporary release*

## **68 Bail**

- (1) This section applies in a case where an immigration officer not below the rank of chief immigration officer has sole or shared power to release a person on bail in accordance with—

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- (a) a provision of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry) (including a provision of that Schedule applied by a provision of that Act or by another enactment), or
  - (b) section 9A of the Asylum and Immigration Appeals Act 1993 (c. 23) (pending appeal from Immigration Appeal Tribunal).
- (2) In respect of an application for release on bail which is instituted after the expiry of the period of eight days beginning with the day on which detention commences, the power to release on bail—
- (a) shall be exercisable by the Secretary of State (as well as by any person with whom the immigration officer’s power is shared under the provision referred to in subsection (1)), and
  - (b) shall not be exercisable by an immigration officer (except where he acts on behalf of the Secretary of State).
- (3) In relation to the exercise by the Secretary of State of a power to release a person on bail by virtue of subsection (2), a reference to an immigration officer shall be construed as a reference to the Secretary of State.
- (4) The Secretary of State may by order amend or replace subsection (2) so as to make different provision for the circumstances in which the power to release on bail may be exercised by the Secretary of State and not by an immigration officer.
- (5) An order under subsection (4)—
- (a) may include consequential or transitional provision,
  - (b) must be made by statutory instrument, and
  - (c) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (6) The following provisions of Part III of the Immigration and Asylum Act 1999 (c. 33) (Bail) shall cease to have effect—
- (a) sections 44 to 52 (routine bail hearings),
  - (b) section 53(5) (bail under regulations to match bail under Part III), and
  - (c) section 55 (grants to advisory organisations).

#### **Commencement Information**

**I10** S. 68 wholly in force at 1.4.2003; s. 68 not in force at Royal Assent see s. 162(2); s. 68(6) in force at 10.2.2003 by S.I. 2003/1, art. 2, Sch. ; s. 68(1)-(5) in force at 1.4.2003 by S.I. 2003/754, art. 2, Sch. 1

## **69 Reporting restriction: travel expenses**

- (1) The Secretary of State may make a payment to a person in respect of travelling expenses which the person has incurred or will incur for the purpose of complying with a reporting restriction.
- (2) In subsection (1) “reporting restriction” means a restriction which—
- (a) requires a person to report to the police, an immigration officer or the Secretary of State, and
  - (b) is imposed under a provision listed in subsection (3).
- (3) Those provisions are—

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- (a) paragraph 21 of Schedule 2 to the Immigration Act 1971 (c. 77) (temporary admission or release from detention),
- (b) paragraph 29 of that Schedule (bail), and
- (c) paragraph 2 or 5 of Schedule 3 to that Act (pending deportation).

## 70 Induction

- (1) A residence restriction may be imposed on an asylum-seeker or a dependant of an asylum-seeker without regard to his personal circumstances if—
  - (a) it requires him to reside at a specified location for a period not exceeding 14 days, and
  - (b) the person imposing the residence restriction believes that a programme of induction will be made available to the asylum-seeker at or near the specified location.
- (2) In subsection (1) “residence restriction” means a restriction imposed under—
  - (a) paragraph 21 of Schedule 2 to the Immigration Act 1971 (temporary admission or release from detention), or
  - (b) paragraph 2(5) of Schedule 3 to that Act (control pending deportation).
- (3) In this section—
  - “asylum-seeker” has the meaning given by section 18 of this Act but disregarding section 18(1)(a),
  - “dependant of an asylum-seeker” means a person who appears to the Secretary of State to be making a claim or application in respect of residence in the United Kingdom by virtue of being a dependant of an asylum-seeker, and
  - “programme of induction” means education about the nature of the asylum process.
- (4) Regulations under subsection (3)—
  - (a) may make different provision for different circumstances,
  - (b) must be made by statutory instrument, and
  - (c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Subsection (6) applies where the Secretary of State arranges for the provision of a programme of induction (whether or not he also provides other facilities to persons attending the programme and whether or not all the persons attending the programme are subject to residence restrictions).
- (6) A local authority may arrange for or participate in the provision of the programme or other facilities.
- (7) In particular, a local authority may—
  - (a) incur reasonable expenditure;
  - (b) provide services outside its area;
  - (c) provide services jointly with another body;
  - (d) form a company;
  - (e) tender for or enter into a contract;
  - (f) do anything (including anything listed in paragraphs (a) to (e)) for a preparatory purpose.

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- (8) In this section “local authority” means—
- (a) a local authority within the meaning of section 94 of the Immigration and Asylum Act 1999 (c. 33), and
  - (b) a Northern Ireland authority within the meaning of section 110 of that Act.

## **71 Asylum-seeker: residence, &c. restriction**

- (1) This section applies to—
- (a) a person who makes a claim for asylum at a time when he has leave to enter or remain in the United Kingdom, and
  - (b) a dependant of a person within paragraph (a).
- (2) The Secretary of State or an immigration officer may impose on a person to whom this section applies any restriction which may be imposed under paragraph 21 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry: residence, reporting and occupation restrictions) on a person liable to detention under paragraph 16 of that Schedule.
- (3) Where a restriction is imposed on a person under subsection (2)—
- (a) the restriction shall be treated for all purposes as a restriction imposed under paragraph 21 of that Schedule, and
  - (b) if the person fails to comply with the restriction he shall be liable to detention under paragraph 16 of that Schedule.
- (4) A restriction imposed on a person under this section shall cease to have effect if he ceases to be an asylum-seeker or the dependant of an asylum-seeker.
- (5) In this section—
- “asylum-seeker” has the same meaning as in section 70,
- “claim for asylum” has the same meaning as in section 18, and
- “dependant” means a person who appears to the Secretary of State to be making a claim or application in respect of residence in the United Kingdom by virtue of being a dependant of another person.
- (6) Regulations under subsection (5)—
- (a) may make different provision for different circumstances,
  - (b) must be made by statutory instrument, and
  - (c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## *Removal*

## **72 Serious criminal**

- (1) This section applies for the purpose of the construction and application of Article 33(2) of the Refugee Convention (exclusion from protection).
- (2) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if he is—
- (a) convicted in the United Kingdom of an offence, and

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- (b) sentenced to a period of imprisonment of at least two years.
- (3) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if—
  - (a) he is convicted outside the United Kingdom of an offence,
  - (b) he is sentenced to a period of imprisonment of at least two years, and
  - (c) he could have been sentenced to a period of imprisonment of at least two years had his conviction been a conviction in the United Kingdom of a similar offence.
- (4) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if—
  - (a) he is convicted of an offence specified by order of the Secretary of State, or
  - (b) he is convicted outside the United Kingdom of an offence and the Secretary of State certifies that in his opinion the offence is similar to an offence specified by order under paragraph (a).
- (5) An order under subsection (4)—
  - (a) must be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) A presumption under subsection (2), (3) or (4) that a person constitutes a danger to the community is rebuttable by that person.
- (7) A presumption under subsection (2), (3) or (4) does not apply while an appeal against conviction or sentence—
  - (a) is pending, or
  - (b) could be brought (disregarding the possibility of appeal out of time with leave).
- (8) Section 34(1) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (no need to consider gravity of fear or threat of persecution) applies for the purpose of considering whether a presumption mentioned in subsection (6) has been rebutted as it applies for the purpose of considering whether Article 33(2) of the Refugee Convention applies.
- (9) Subsection (10) applies where—
  - (a) a person appeals under section 82, 83 or 101 of this Act or under section 2 of the Special Immigration Appeals Commission Act 1997 (c. 68) wholly or partly on the ground that to remove him from or to require him to leave the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention, and
  - (b) the Secretary of State issues a certificate that presumptions under subsection (2), (3) or (4) apply to the person (subject to rebuttal).
- (10) The adjudicator, Tribunal or Commission hearing the appeal—
  - (a) must begin substantive deliberation on the appeal by considering the certificate, and
  - (b) if in agreement that presumptions under subsection (2), (3) or (4) apply (having given the appellant an opportunity for rebuttal) must dismiss the appeal in so far as it relies on the ground specified in subsection (9)(a).

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(11) For the purposes of this section—

- (a) “the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol, and
- (b) a reference to a person who is sentenced to a period of imprisonment of at least two years—
  - (i) does not include a reference to a person who receives a suspended sentence (unless at least two years of the sentence are not suspended),
  - (ii) includes a reference to a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders), and
  - (iii) includes a reference to a person who is sentenced to imprisonment or detention, or ordered or directed to be detained, for an indeterminate period (provided that it may last for two years).

#### Commencement Information

**III** S. 72 wholly in force at 1.4.2003; s. 72 not in force at Royal Assent see s. 162(2); s. 72(1)–(8)(11) in force at 10.2.2003 by [S.I. 2003/1](#), [art. 2](#), [Sch.](#); s. 72(9)(10) in force at 1.4.2003 by [S.I. 2003/754](#), [art. 2](#), [Sch. 1](#)

## 73 Family

(1) The following shall be inserted after paragraph 10 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry: removal)—

“10A Where directions are given in respect of a person under any of paragraphs 8 to 10 above, directions to the same effect may be given under that paragraph in respect of a member of the person’s family.”

(2) Section 10 of the Immigration and Asylum Act 1999 (c. 33) (removal of person unlawfully in United Kingdom) shall be amended as follows.

(3) In subsection (1)(c) omit—

- (a) “(“the first directions”)", and
- (b) “(“the other person”)"

(4) The following shall be substituted for subsections (3) to (5) (removal of family)—

“(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.



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(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)."

(5) In paragraph 16(2) of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry, &c.: detention) for the words "8 to 10" there shall be substituted "8 to 10A".

#### **74 Deception**

In section 10(1) of the Immigration and Asylum Act 1999 (c. 33) (removal) the following shall be substituted for paragraph (b)—

"(b) he uses deception in seeking (whether successfully or not) leave to remain;"

#### **75 Exemption from deportation**

(1) Section 7 of the Immigration Act 1971 (existing residents exempt from deportation) shall be amended as follows.

(2) Subsection (1)(a) (which is redundant) shall cease to have effect.

(3) The following shall be substituted for subsection (1)(b)—

"(b) shall not be liable to deportation under section 3(5) if at the time of the Secretary of State's decision he had for the last five years been ordinarily resident in the United Kingdom and Islands;"

(4) The following shall be added at the end of section 10 of the Immigration and Asylum Act 1999 (removal)—

"(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."

#### **76 Revocation of leave to enter or remain**

(1) The Secretary of State may revoke a person's indefinite leave to enter or remain in the United Kingdom if the person—

- (a) is liable to deportation, but
- (b) cannot be deported for legal reasons.

(2) The Secretary of State may revoke a person's indefinite leave to enter or remain in the United Kingdom if—

- (a) the leave was obtained by deception,
- (b) the person would be liable to removal because of the deception, but
- (c) the person cannot be removed for legal or practical reasons.

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- (3) The Secretary of State may revoke a person’s indefinite leave to enter or remain in the United Kingdom if the person, or someone of whom he is a dependant, ceases to be a refugee as a result of—
- (a) voluntarily availing himself of the protection of his country of nationality,
  - (b) voluntarily re-acquiring a lost nationality,
  - (c) acquiring the nationality of a country other than the United Kingdom and availing himself of its protection, or
  - (d) voluntarily establishing himself in a country in respect of which he was a refugee.
- (4) In this section—
- “indefinite leave” has the meaning given by section 33(1) of the Immigration Act 1971 (c. 77) (interpretation),
- “liable to deportation” has the meaning given by section 3(5) and (6) of that Act (deportation),
- “refugee” has the meaning given by the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol, and
- “removed” means removed from the United Kingdom under—
- (a) paragraph 9 or 10 of Schedule 2 to the Immigration Act 1971 (control of entry: directions for removal), or
  - (b) section 10(1)(b) of the Immigration and Asylum Act 1999 (c. 33) (removal of persons unlawfully in United Kingdom: deception).
- (5) A power under subsection (1) or (2) to revoke leave may be exercised—
- (a) in respect of leave granted before this section comes into force;
  - (b) in reliance on anything done before this section comes into force.
- (6) A power under subsection (3) to revoke leave may be exercised—
- (a) in respect of leave granted before this section comes into force, but
  - (b) only in reliance on action taken after this section comes into force.
- (7) In section 10(1) of the Immigration and Asylum Act 1999 (removal of persons unlawfully in United Kingdom) after paragraph (b) (and before the word “or”) there shall be inserted—
- “(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);”.

## **77 No removal while claim for asylum pending**

- (1) While a person’s claim for asylum is pending he may not be—
- (a) removed from the United Kingdom in accordance with a provision of the Immigration Acts, or
  - (b) required to leave the United Kingdom in accordance with a provision of the Immigration Acts.
- (2) In this section—
- (a) “claim for asylum” means a claim by a person that it would be contrary to the United Kingdom’s obligations under the Refugee Convention to remove him from or require him to leave the United Kingdom, and

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- (b) a person’s claim is pending until he is given notice of the Secretary of State’s decision on it.
- (3) In subsection (2) “the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol.
- (4) Nothing in this section shall prevent any of the following while a claim for asylum is pending—
  - (a) the giving of a direction for the claimant’s removal from the United Kingdom,
  - (b) the making of a deportation order in respect of the claimant, or
  - (c) the taking of any other interim or preparatory action.
- (5) Section 15 of the Immigration and Asylum Act 1999 (c. 33) (protection from removal or deportation) shall cease to have effect.

**Modifications etc. (not altering text)**

- C2** S. 77 excluded by 1999 c. 33, s. 11(2) (as substituted (1.4.2003) by 2002 c. 41, ss. 80, 162(2) (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1 (with Sch. 2 paras. 5, 6(3))  
S. 77 extended (14.3.2003) by The Nationality Immigration and Asylum Act 2002 (Commencement No. 4) Order 2003 (S.I. 2003/754), art. 3, Sch. 2 para. 1(2) (with arts. 3, 4, Sch. 2 (as amended by: S.I. 2003/1040; S.I. 2003/1339; and S.I. 2003/2993))  
S. 77 restricted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 33, 48(1)-(3), Sch. 3 paras. 4, 9, 14, 18; S.I. 2004/2523, art. 2, Sch. (with art. 3)

**78 No removal while appeal pending**

- (1) While a person’s appeal under section 82(1) is pending he may not be—
  - (a) removed from the United Kingdom in accordance with a provision of the Immigration Acts, or
  - (b) required to leave the United Kingdom in accordance with a provision of the Immigration Acts.
- (2) In this section “pending” has the meaning given by section 104.
- (3) Nothing in this section shall prevent any of the following while an appeal is pending—
  - (a) the giving of a direction for the appellant’s removal from the United Kingdom,
  - (b) the making of a deportation order in respect of the appellant (subject to section 79), or
  - (c) the taking of any other interim or preparatory action.
- (4) This section applies only to an appeal brought while the appellant is in the United Kingdom in accordance with section 92.

**Modifications etc. (not altering text)**

- C3** S. 78 applied (with modifications) by 1997 c. 68, s. 2(2)(b) (as substituted (1.4.2003) by 2002 c. 41, ss. 114, 162(2), Sch. 7 para. 20 (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1))  
S. 78 extended (14.3.2003) by The Nationality Immigration and Asylum Act 2002 (Commencement No. 4) Order 2003 (S.I. 2003/754), art. 3, Sch. 2 para. 1(3) (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by S.I. 2003/1040, S.I. 2003/1339 and S.I. 2003/2993))

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**79 Deportation order: appeal**

- (1) A deportation order may not be made in respect of a person while an appeal under section 82(1) against the decision to make the order—
  - (a) could be brought (ignoring any possibility of an appeal out of time with permission), or
  - (b) is pending.
- (2) In this section “pending” has the meaning given by section 104.

**Modifications etc. (not altering text)**

**C4** S. 79 applied (with modifications) by 1997 c. 68, s. 2(2)(c) (as substituted (1.4.2003) by 2002 c. 41, ss. 114, 162(2), Sch. 7 para. 20 (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1))  
 S. 79 extended (14.3.2003) by The Nationality Immigration and Asylum Act 2002 (Commencement No. 4) Order 2003 (S.I. 2003/754), art. 3, Sch. 2 para. 1(4) (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by S.I. 2003/1040, S.I. 2003/1339 and S.I. 2003/2993))

**80 Removal of asylum-seeker to third country**

F35 .....

**Textual Amendments**

**F35** S. 80 repealed (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 33(3)(a), 47, 48(1)-(3), Sch. 4; S.I. 2004/2523, art. 2, Sch. (with art. 3)

**PART 5**

IMMIGRATION AND ASYLUM APPEALS

*Appeal to adjudicator*

**81 Adjudicators**

- (1) The Lord Chancellor shall appoint adjudicators for the purposes of this Part.
- (2) A person is eligible for appointment as an adjudicator only if he—
  - (a) has a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41),
  - (b) is an advocate or solicitor in Scotland of at least seven years’ standing,
  - (c) is a member of the Bar of Northern Ireland, or a solicitor of the Supreme Court of Northern Ireland, of at least seven years’ standing, or
  - (d) has legal or other experience which in the Lord Chancellor’s opinion makes him suitable for appointment.
- (3) The Lord Chancellor—
  - (a) shall appoint one of the adjudicators as Chief Adjudicator,
  - (b) may appoint one of the adjudicators as Deputy Chief Adjudicator,

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- (c) may appoint one or more adjudicators as Regional Adjudicator, and
  - (d) may appoint one or more adjudicators as Deputy Regional Adjudicator.
- (4) The Chief Adjudicator shall perform such functions as the Lord Chancellor may assign to him.
- (5) The Deputy Chief Adjudicator—
- (a) may act for the Chief Adjudicator if he is unable to act or unavailable, and
  - (b) shall perform such other functions as the Chief Adjudicator may delegate or assign to him.
- (6) A Regional Adjudicator shall perform such functions as the Chief Adjudicator may assign to him.
- (7) A Deputy Regional Adjudicator—
- (a) may act for the Regional Adjudicator whose deputy he is if the Regional Adjudicator is unable to act or unavailable, and
  - (b) shall perform such other functions as may be delegated or assigned to him by the Regional Adjudicator whose deputy he is or assigned to him by the Chief Adjudicator.
- (8) Schedule 4 (which makes further provision about adjudicators) shall have effect.

## 82 Right of appeal: general

- (1) Where an immigration decision is made in respect of a person he may appeal to an adjudicator.
- (2) In this Part “immigration decision” means—
- (a) refusal of leave to enter the United Kingdom,
  - (b) refusal of entry clearance,
  - (c) refusal of a certificate of entitlement under section 10 of this Act,
  - (d) refusal to vary a person’s leave to enter or remain in the United Kingdom if the result of the refusal is that the person has no leave to enter or remain,
  - (e) variation of a person’s leave to enter or remain in the United Kingdom if when the variation takes effect the person has no leave to enter or remain,
  - (f) revocation under section 76 of this Act of indefinite leave to enter or remain in the United Kingdom,
  - (g) a decision that a person is to be removed from the United Kingdom by way of directions under section 10(1)(a), (b) or (c) of the Immigration and Asylum Act 1999 (c. 33) (removal of person unlawfully in United Kingdom),
  - (h) a decision that an illegal entrant is to be removed from the United Kingdom by way of directions under paragraphs 8 to 10 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry: removal),
  - (i) a decision that a person is to be removed from the United Kingdom by way of directions given by virtue of paragraph 10A of that Schedule (family),
  - [<sup>F36</sup>(ia) a decision that a person is to be removed from the United Kingdom by way of directions under paragraph 12(2) of Schedule 2 to the Immigration Act 1971 (c. 77) (seamen and aircrews),]
  - (j) a decision to make a deportation order under section 5(1) of that Act, and
  - (k) refusal to revoke a deportation order under section 5(2) of that Act.

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- (3) A variation or revocation of the kind referred to in subsection (2)(e) or (f) shall not have effect while an appeal under subsection (1) against that variation or revocation—
- (a) could be brought (ignoring any possibility of an appeal out of time with permission), or
  - (b) is pending.
- (4) The right of appeal under subsection (1) is subject to the exceptions and limitations specified in this Part.

#### Textual Amendments

**F36** S. 82(2)(ia) inserted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), [ss. 31, 48\(1\)-\(3\)](#); [S.I. 2004/2523](#), [art. 2](#) Sch.

#### Modifications etc. (not altering text)

**C5** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), [arts. 3, 4](#) (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))

**C6** [S. 82\(3\)](#) applied (with modifications) (1.4.2003) by [1997 c. 68, s. 2\(2\)\(d\)](#) (as substituted (1.4.2003) by [2002 c. 41, ss. 114, 162\(2\), Sch. 7 para. 20](#) (with s. 159)); [S.I.2003/754](#) {[art. 2\(1\)](#)}, Sch. 1 (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#), and [S.I. 2003/2993](#)))

### 83 Appeal: asylum claim

- (1) This section applies where a person has made an asylum claim and—
- (a) his claim has been rejected by the Secretary of State, but
  - (b) he has been granted leave to enter or remain in the United Kingdom for a period exceeding one year (or for periods exceeding one year in aggregate).
- (2) The person may appeal to an adjudicator against the rejection of his asylum claim.

#### Modifications etc. (not altering text)

**C7** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), [arts. 3, 4](#) (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))

[S. 83](#) modified (30.4.2006) by [The Immigration \(European Economic Area\) Regulations 2006 \(S.I. 2006/1003\)](#), [art. 30, Sch. 2 para. 4\(3\)](#)

**C8** [S. 83\(2\)](#) applied (1.4.2003) by [S.I. 2000/2326](#), [reg. 33\(1\)](#) (as inserted by [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2003 \(S.I. 2003/549\)](#)), [art. 2\(9\)](#)

VALID FROM 31/08/2006

### <sup>F37</sup>83A Appeal: variation of limited leave

- (1) This section applies where—
- (a) a person has made an asylum claim,

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- (b) he was granted limited leave to enter or remain in the United Kingdom as a refugee within the meaning of the Refugee Convention,
  - (c) a decision is made that he is not a refugee, and
  - (d) following the decision specified in paragraph (c) he has limited leave to enter or remain in the United Kingdom otherwise than as a refugee.
- (2) The person may appeal to the Tribunal against the decision to curtail or to refuse to extend his limited leave.]

#### Textual Amendments

- F37** S. 83A inserted (31.8.2006) by [Immigration, Asylum and Nationality Act 2006 \(c. 13\)](#), [ss. 1, 62](#); [S.I. 2006/2226](#), [art. 3](#), [Sch. 1](#) (subject to transitional provisions in [art. 4](#))

## 84 Grounds of appeal

- (1) An appeal under section 82(1) against an immigration decision must be brought on one or more of the following grounds—
- (a) that the decision is not in accordance with immigration rules;
  - (b) that the decision is unlawful by virtue of section 19B of the Race Relations Act 1976 (c. 74) (discrimination by public authorities) [<sup>F38</sup>or Article 20A of the Race Relations (Northern Ireland) Order 1997] ;
  - (c) that the decision is unlawful under section 6 of the Human Rights Act 1998 (c. 42) (public authority not to act contrary to Human Rights Convention) as being incompatible with the appellant’s Convention rights;
  - (d) that the appellant is an EEA national or a member of the family of an EEA national and the decision breaches the appellant’s rights under the Community Treaties in respect of entry to or residence in the United Kingdom;
  - (e) that the decision is otherwise not in accordance with the law;
  - (f) that the person taking the decision should have exercised differently a discretion conferred by immigration rules;
  - (g) that removal of the appellant from the United Kingdom in consequence of the immigration decision would breach the United Kingdom’s obligations under the Refugee Convention or would be unlawful under section 6 of the Human Rights Act 1998 as being incompatible with the appellant’s Convention rights.
- (2) In subsection (1)(d) “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 from time to time).
- (3) An appeal under section 83 must be brought on the grounds that removal of the appellant from the United Kingdom would breach the United Kingdom’s obligations under the Refugee Convention.

#### Textual Amendments

- F38** Words after "1976" inserted (N.I.) (19.7.2003) by virtue of the [Race Relations Order \(Amendment\) Regulations \(Northern Ireland\) 2003 \(S.R. 2003/341\)](#), [reg. 60](#)

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#### Modifications etc. (not altering text)

- C9** S. 84 applied (with modifications) by 1997 c. 68, **s. 2(2)(e)** (as substituted (1.4.2003) by 2002 c. 41, ss. 114, 162(2), **Sch. 7 para. 20** (with s. 159); S.I. 2003/754, art. 2(1), **Sch. 1**)  
Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), arts. 3, 4 (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by S.I. 2003/1040, S.I. 2003/1339 and S.I. 2003/2993))
- C10** S. 84(1)(2) applied in part (1.4.2003) by S.I. 2000/2326, **Sch. 2** (as substituted by [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2003 \(S.I. 2003/549\)](#), **reg. 2(10)** (with transitional provisions in reg. 3))
- C11** S. 84(1)(d) modified (1.4.2003) by S.I. 2000/2326, **reg. 33(2)** (as inserted by [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2003 \(S.I. 2003/549\)](#), **reg. 2(9)**)  
S. 84(1)(d) modified (30.4.2006) by [The Immigration \(European Economic Area\) Regulations 2006 \(S.I. 2006/1003\)](#), **reg. 30, Sch. 2 para. 4(6)**

## 85 Matters to be considered

- (1) An appeal under section 82(1) against a decision shall be treated by the adjudicator as including an appeal against any decision in respect of which the appellant has a right of appeal under section 82(1).
- (2) If an appellant under section 82(1) makes a statement under section 120, the adjudicator shall consider any matter raised in the statement which constitutes a ground of appeal of a kind listed in section 84(1) against the decision appealed against.
- (3) Subsection (2) applies to a statement made under section 120 whether the statement was made before or after the appeal was commenced.
- (4) On an appeal under section 82(1) or 83(2) against a decision an adjudicator may consider evidence about any matter which he thinks relevant to the substance of the decision, including evidence which concerns a matter arising after the date of the decision.
- (5) But in relation to an appeal under section 82(1) against refusal of entry clearance or refusal of a certificate of entitlement under section 10—
  - (a) subsection (4) shall not apply, and
  - (b) the adjudicator may consider only the circumstances appertaining at the time of the decision to refuse.

#### Modifications etc. (not altering text)

- C12** S. 85 applied (with modifications) by 1997 c. 68, **s. 2(2)(f)** (as substituted (1.4.2003) by 2002 c. 41, ss. 114, 162(2), **Sch. 7 para. 20** (with s. 159); S.I. 2003/754, art. 2(1), **Sch. 1**)  
Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), arts. 3, 4 (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by S.I. 2003/1040, S.I. 2003/1339 and S.I. 2003/2993))  
Ss. 85-87 applied (1.4.2003) by S.I. 2000/2326, **Sch. 2** (as substituted by [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2003 \(S.I. 2003/549\)](#), **reg. 2(10)** (with transitional provisions in reg. 3))
- C13** S. 85(4) applied (with modifications) by 1997 c. 68, **s. 2(3)(a)** (as substituted (1.4.2003) by 2002 c. 41, ss. 114, 162(2), **Sch. 7 para. 20** (with s. 159); S.I. 2003/754, art. 2(1), **Sch. 1**)



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PROSPECTIVE

VALID FROM 23/05/2011

[<sup>F39</sup>**85A Matters to be considered: new evidence: exceptions**

- (1) This section sets out the exceptions mentioned in section 85(5).
- (2) Exception 1 is that in relation to an appeal under section 82(1) against an immigration decision of a kind specified in section 82(2)(b) or (c) the Tribunal may consider only the circumstances appertaining at the time of the decision.
- (3) Exception 2 applies to an appeal under section 82(1) if—
  - (a) the appeal is against an immigration decision of a kind specified in section 82(2)(a) or (d),
  - (b) the immigration decision concerned an application of a kind identified in immigration rules as requiring to be considered under a “Points Based System”, and
  - (c) the appeal relies wholly or partly on grounds specified in section 84(1)(a), (e) or (f).
- (4) Where Exception 2 applies the Tribunal may consider evidence adduced by the appellants only if it—
  - (a) was submitted in support of, and at the time of making, the application to which the immigration decision related,
  - (b) relates to the appeal in so far as it relies on grounds other than those specified in subsection (3)(c),
  - (c) is adduced to prove that a document is genuine or valid, or
  - (d) is adduced in connection with the Secretary of State's reliance on a discretion under immigration rules, or compliance with a requirement of immigration rules, to refuse an application on grounds not related to the acquisition of “points” under the “Points Based System”.

[ Tribunal Procedure Rules may make provision, for the purposes of subsection (4)  
<sup>F40</sup>(5) (a), about the circumstances in which evidence is to be treated, or not treated, as submitted in support of, and at the time of making, an application.]]

**Textual Amendments**

**F39** S. 85A inserted (prosp.) by [UK Borders Act 2007 \(c. 30\)](#), **ss. 19(2)**, 59(2)

**F40** S. 85A(5) inserted (15.2.2010) by [The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 \(S.I. 2010/21\)](#), art. 1, **Sch. 1 para. 23** (with Sch. 4)

**86 Determination of appeal**

- (1) This section applies on an appeal under section 82(1) or 83.
- (2) The adjudicator must determine—

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- (a) any matter raised as a ground of appeal (whether or not by virtue of section 85(1)), and
  - (b) any matter which section 85 requires him to consider.
- (3) The adjudicator must allow the appeal in so far as he thinks that—
- (a) a decision against which the appeal is brought or is treated as being brought was not in accordance with the law (including immigration rules), or
  - (b) a discretion exercised in making a decision against which the appeal is brought or is treated as being brought should have been exercised differently.
- (4) For the purposes of subsection (3) a decision that a person should be removed from the United Kingdom under a provision shall not be regarded as unlawful if it could have been lawfully made by reference to removal under another provision.
- (5) In so far as subsection (3) does not apply, the adjudicator shall dismiss the appeal.
- (6) Refusal to depart from or to authorise departure from immigration rules is not the exercise of a discretion for the purposes of subsection (3)(b).

**Modifications etc. (not altering text)**

- C14** S. 86 applied (with modifications) by 1997 c. 68, s. 2(2)(g)(3)(b) (as substituted (1.4.2003) by 2002 c. 41, ss. 114, 162(2), Sch. 7 para. 20 (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1))
- Ss. 82-99 restricted (14.3.2003) by The Nationality, Immigration and Asylum Act 2002 (Commencement No. 4) Order 2003 (S.I. 2003/754), arts. 3, 4 (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by S.I. 2003/1040, S.I. 2003/1339 and S.I. 2003/2993))
- Ss. 85-87 applied (1.4.2003) by S.I. 2000/2326, Sch. 2 (as substituted by The Immigration (European Economic Area) (Amendment) Regulations 2003 (S.I. 2003/549), reg. 2(10) (with transitional provisions in reg. 3))

**87 Successful appeal: direction**

- (1) If an adjudicator allows an appeal under section 82 or 83 he may give a direction for the purpose of giving effect to his decision.
- (2) A person responsible for making an immigration decision shall act in accordance with any relevant direction under subsection (1).
- (3) But a direction under this section shall not have effect while an appeal under section 101 or a further appeal—
  - (a) could be brought (ignoring any possibility of an appeal out of time with permission), or
  - (b) has been brought and has not been finally determined.
- (4) A direction under subsection (1) shall be treated as part of the determination of the appeal for the purposes of section 101.

**Modifications etc. (not altering text)**

- C15** S. 87 applied (with modifications) by 1997 c. 68, s. 2(2)(h)(3)(c) (as substituted (1.4.2003) by 2002 c. 41, ss. 114, 162(2), Sch. 7 para. 20 (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1))

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Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), arts. 3, 4 (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))  
Ss. 85-87 applied (1.4.2003) by [S.I. 2000/2326, Sch. 2](#) (as substituted by [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2003 \(S.I. 2003/549\)](#), **reg. 2(10)** (with transitional provisions in [reg. 3](#)))

### *Exceptions and limitations*

## **88 Ineligibility**

- (1) This section applies to an immigration decision of a kind referred to in section 82(2) (a), (b), (d) or (e).
- (2) A person may not appeal under section 82(1) against an immigration decision which is taken on the grounds that he or a person of whom he is a dependant—
  - (a) does not satisfy a requirement as to age, nationality or citizenship specified in immigration rules,
  - (b) does not have an immigration document of a particular kind (or any immigration document),
  - (c) is seeking to be in the United Kingdom for a period greater than that permitted in his case by immigration rules, or
  - (d) is seeking to enter or remain in the United Kingdom for a purpose other than one for which entry or remaining is permitted in accordance with immigration rules.
- (3) In subsection (2)(b) “immigration document” means—
  - (a) entry clearance,
  - (b) a passport,
  - (c) a work permit or other immigration employment document within the meaning of section 122, and
  - (d) 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.
- (4) Subsection (2) does not prevent the bringing of an appeal on any or all of the grounds referred to in section 84(1)(b), (c) and (g).

#### **Modifications etc. (not altering text)**

**C16** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), arts. 3, 4 (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))

### **[<sup>F41</sup>88A Ineligibility: entry clearance**

- (1) A person may not appeal under section 82(1) against refusal of entry clearance if the decision to refuse is taken on grounds which—
  - (a) relate to a provision of immigration rules, and
  - (b) are specified for the purpose of this section by order of the Secretary of State.

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(2) Subsection (1)—

- (a) does not prevent the bringing of an appeal on either or both of the grounds referred to in section 84(1)(b) and (c), and
- (b) is without prejudice to the effect of section 88 in relation to an appeal under section 82(1) against refusal of entry clearance.]

**Textual Amendments**

**F41** S. 88A inserted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#) (c. 19), **ss. 29(1), 48(1)-(3)**; S.I. 2004/2523, **art. 2**, Sch.

**89 Visitor or student without entry clearance**

- (1) This section applies to a person who applies for leave to enter the United Kingdom—
  - (a) as a visitor,
  - (b) in order to follow a course of study for which he has been accepted and which will not last more than six months,
  - (c) in order to study but without having been accepted for a course, or
  - (d) as the dependant of a person who applies for leave to enter as a visitor or for a purpose described in paragraph (b) or (c).
- (2) A person may not appeal under section 82(1) against refusal of leave to enter the United Kingdom if at the time of the refusal he does not have entry clearance.
- (3) Subsection (2) does not prevent the bringing of an appeal on any or all of the grounds referred to in section 84(1)(b), (c) and (g).

**Modifications etc. (not altering text)**

**C17** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002](#) (Commencement No. 4) Order 2003 (S.I. 2003/754), **arts. 3, 4** (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by S.I. 2003/1040, S.I. 2003/1339 and S.I. 2003/2993))

**<sup>F42</sup>90 Non-family visitor**

- (1) A person who applies for entry clearance for the purpose of entering the United Kingdom as a visitor may appeal under section 82(1) against refusal of entry clearance only if the application was made for the purpose of visiting a member of the applicant's family.
- (2) In subsection (1) the reference to a member of the applicant's family shall be construed in accordance with regulations.
- (3) Regulations under subsection (2) may, in particular, make provision wholly or partly by reference to the duration of two individuals' residence together.
- (4) Subsection (1) does not prevent the bringing of an appeal on either or both of the grounds referred to in section 84(1)(b) and (c).

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#### Textual Amendments

**F42** S. 88A substituted (prosp.) for ss. 88A, 90, 91 by [Immigration, Asylum and Nationality Act 2006 \(c. 13\)](#), [ss. 4\(1\)](#), 62

#### Modifications etc. (not altering text)

**C18** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), arts. 3, 4 (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))

### <sup>F43</sup>91 Student

- (1) A person may not appeal under section 82(1) against refusal of entry clearance if he seeks it—
  - (a) in order to follow a course of study for which he has been accepted and which will not last more than six months,
  - (b) in order to study but without having been accepted for a course, or
  - (c) as the dependant of a person seeking entry clearance for a purpose described in paragraph (a) or (b).
- (2) Subsection (1) does not prevent the bringing of an appeal on either or both of the grounds referred to in section 84(1)(b) and (c).

#### Textual Amendments

**F43** S. 88A substituted (prosp.) for ss. 88A, 90, 91 by [Immigration, Asylum and Nationality Act 2006 \(c. 13\)](#), [ss. 4\(1\)](#), 62

#### Modifications etc. (not altering text)

**C19** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), arts. 3, 4 (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))

### 92 Appeal from within United Kingdom: general

- (1) A person may not appeal under section 82(1) while he is in the United Kingdom unless his appeal is of a kind to which this section applies.
- (2) This section applies to an appeal against an immigration decision of a kind specified in section 82(2)(c), (d), (e), (f) and (j).
- <sup>F44</sup>(3) This section also applies to an appeal against refusal of leave to enter the United Kingdom if—
  - (a) at the time of the refusal the appellant is in the United Kingdom, and
  - (b) on his arrival in the United Kingdom the appellant had entry clearance.
- (3A) But this section does not apply by virtue of subsection (3) if subsection (3B) or (3C) applies to the refusal of leave to enter.

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- (3B) This subsection applies to a refusal of leave to enter which is a deemed refusal under paragraph 2A(9) of Schedule 2 to the Immigration Act 1971 (c. 77) resulting from cancellation of leave to enter by an immigration officer—
- (a) under paragraph 2A(8) of that Schedule, and
  - (b) on the grounds specified in paragraph 2A(2A) of that Schedule.
- (3C) This subsection applies to a refusal of leave to enter which specifies that the grounds for refusal are that the leave is sought for a purpose other than that specified in the entry clearance.
- (3D) This section also applies to an appeal against refusal of leave to enter the United Kingdom if at the time of the refusal the appellant—
- (a) is in the United Kingdom,
  - (b) has a work permit, and
  - (c) is any of the following (within the meaning of the British Nationality Act 1981 (c. 61))—
    - (i) a British overseas territories citizen,
    - (ii) a British Overseas citizen,
    - (iii) a British National (Overseas),
    - (iv) a British protected person, or
    - (v) a British subject.]
- (4) This section also applies to an appeal against an immigration decision if the appellant—
- (a) has made an asylum claim, or a human rights claim, while in the United Kingdom, or
  - (b) is an EEA national or a member of the family of an EEA national and makes a claim to the Secretary of State that the decision breaches the appellant’s rights under the Community Treaties in respect of entry to or residence in the United Kingdom.

#### Textual Amendments

**F44** S. 92(3)-(3D) substituted (1.10.2004) for s. 92(3) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), **ss. 28**, 48(1)-(3); S.I. 2004/2523, **art. 2**, Sch.

#### Modifications etc. (not altering text)

**C20** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), **arts. 3, 4** (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))

## 93 Appeal from within United Kingdom: “third country” removal

F45 .....

#### Textual Amendments

**F45** S. 93 repealed (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), **ss. 33(3)(b)**, 47, 48(1)-(3), **Sch. 4**; S.I. 2004/2523, **art. 2**, Sch.

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**Modifications etc. (not altering text)**

**C21** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002](#) (Commencement No. 4) Order 2003 (S.I. 2003/754), arts. 3, 4 (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by S.I. 2003/1040, S.I. 2003/1339 and S.I. 2003/2993))

**94 Appeal from within United Kingdom: unfounded human rights or asylum claim**

(1) This section applies to an appeal under section 82(1) where the appellant has made an asylum claim or a human rights claim (or both).

[<sup>F46</sup>(1A) A person may not bring an appeal against an immigration decision of a kind specified in section 82(2)(c), (d) or (e) in reliance on section 92(2) if the Secretary of State certifies that the claim or claims mentioned in subsection (1) above is or are clearly unfounded.]

(2) A person may not bring an appeal to which this section applies [<sup>F47</sup>in reliance on section 92(4)(a)] if the Secretary of State certifies that the claim or claims mentioned in subsection (1) is or are clearly unfounded.

(3) If the Secretary of State is satisfied that an asylum claimant or human rights claimant is entitled to reside in a State listed in subsection (4) he shall certify the claim under subsection (2) unless satisfied that it is not clearly unfounded.

(4) Those States are—

- (a) <sup>F48</sup> .....
- (b) <sup>F48</sup> .....
- (c) <sup>F48</sup> .....
- (d) <sup>F48</sup> .....
- (e) <sup>F48</sup> .....
- (f) <sup>F48</sup> .....
- (g) <sup>F48</sup> .....
- (h) <sup>F48</sup> .....
- (i) <sup>F48</sup> .....
- (j) <sup>F48</sup> .....

- [<sup>F49</sup>(k) the Republic of Albania,
- (l) Bulgaria,
- (m) Serbia and Montenegro,
- (n) Jamaica,
- (o) Macedonia,
- (p) the Republic of Moldova, and
- (q) Romania.]
- [<sup>F50</sup>(r) Bangladesh,
- (s) Bolivia,
- (t) Brazil,
- (u) Ecuador,
- (v) Sri Lanka,
- (w) South Africa, and
- (x) Ukraine.]

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- (5) The Secretary of State may by order add a State, or part of a State, to the list in subsection (4) if satisfied that—
- (a) there is in general in that State or part no serious risk of persecution of persons entitled to reside in that State or part, and
  - (b) removal to that State or part of persons entitled to reside there will not in general contravene the United Kingdom’s obligations under the Human Rights Convention.
- [<sup>F51</sup>(5A) If the Secretary of State is satisfied that the statements in subsection (5) (a) and (b) are true of a State or part of a State in relation to a description of person, an order under subsection (5) may add the State or part to the list in subsection (4) in respect of that description of person.
- (5B) Where a State or part of a State is added to the list in subsection (4) in respect of a description of person, subsection (3) shall have effect in relation to a claimant only if the Secretary of State is satisfied that he is within that description (as well as being satisfied that he is entitled to reside in the State or part).
- (5C) A description for the purposes of subsection (5A) may refer to—
- (a) gender,
  - (b) language,
  - (c) race,
  - (d) religion,
  - (e) nationality,
  - (f) membership of a social or other group,
  - (g) political opinion, or
  - (h) any other attribute or circumstance that the Secretary of State thinks appropriate.]

[<sup>F52</sup>(6) The Secretary of State may by order amend the list in subsection (4) so as to omit a State or part added under subsection (5); and the omission may be—

    - (a) general, or
    - (b) effected so that the State or part remains listed in respect of a description of person.]

[<sup>F53</sup>(6A) Subsection (3) shall not apply in relation to an asylum claimant or human rights claimant who—

      - (a) is the subject of a certificate under section 2 or 70 of the Extradition Act 2003 (c. 41),
      - (b) is in custody pursuant to arrest under section 5 of that Act,
      - (c) is the subject of a provisional warrant under section 73 of that Act,
      - (d) is the subject of an authority to proceed under section 7 of the Extradition Act 1989 (c. 33) or an order under paragraph 4(2) of Schedule 1 to that Act, or
      - (e) is the subject of a provisional warrant under section 8 of that Act or of a warrant under paragraph 5(1)(b) of Schedule 1 to that Act.]

(7) A person may not bring an appeal to which this section applies in reliance on section 92(4) if the Secretary of State certifies that—

        - (a) it is proposed to remove the person to a country of which he is not a national or citizen, and



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- (b) there is no reason to believe that the person's rights under the Human Rights Convention will be breached in that country.
- (8) In determining whether a person in relation to whom a certificate has been issued under subsection (7) may be removed from the United Kingdom, the country specified in the certificate is to be regarded as—
- (a) a place where a person's life and liberty is not threatened by reason of his race, religion, nationality, membership of a particular social group, or political opinion, and
- (b) a place from which a person will not be sent to another country otherwise than in accordance with the Refugee Convention.
- (9) Where a person in relation to whom a certificate is issued under this section subsequently brings an appeal under section 82(1) while outside the United Kingdom, the appeal shall be considered as if he had not been removed from the United Kingdom.

#### Textual Amendments

- F46** S. 94(1A) inserted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 27(2), 48(1)-(3); S.I. 2004/2523, art. 2, Sch.
- F47** Words in s. 94(2) substituted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 27(3), 48(1)-(3); S.I. 2004/2523, art. 2, Sch.
- F48** S. 94(4)(a)-(j) repealed (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 27(4), 47, 48(1)-(3), Sch. 4; S.I. 2004/2523, art. 2, Sch.
- F49** S. 94(4)(k)-(q) added (1.4.2003) by The Asylum (Designated States) Order 2003 (S.I. 2003/970), art. 3
- F50** S. 94(4)(r)-(x) added (23.7.2003) by The Asylum (Designated States) (No. 2) Order 2003 (S.I. 2003/1919), art. 2
- F51** S. 94(5A)-(5C) inserted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 27(5), 48(1)-(3); S.I. 2004/2523, art. 2, Sch.
- F52** S. 94(6) substituted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 27(6), 48(1)-(3); S.I. 2004/2523, art. 2, Sch.
- F53** S. 94(6A) inserted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 27(7), 48(1)-(3); S.I. 2004/2523, art. 2, Sch.

#### Modifications etc. (not altering text)

- C22** Ss. 82-99 restricted (14.3.2003) by The Nationality, Immigration and Asylum Act 2002 (Commencement No. 4) Order 2003 (S.I. 2003/754), arts. 3, 4 (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by S.I. 2003/1040, S.I. 2003/1339 and S.I. 2003/2993))

#### Commencement Information

- I12** S. 94 wholly in force at 1.4.2003; s. 94 not in force at Royal Assent see s. 162(2); s. 94(5) in force for certain purposes at 10.2.2003 by S.I. 2003/249, art. 2, Sch.; s. 94 in force at 1.4.2003 insofar as not already in force by virtue of S.I. 2003/754, art. 2, Sch. 1

VALID FROM 01/12/2007

#### <sup>F54</sup>94A European Common List of Safe Countries of Origin

- (1) The Secretary of State shall by order prescribe a list of States to be known as the "European Common List of Safe Countries of Origin".

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- (2) Subsections (3) and (4) apply where a person makes an asylum claim or a human rights claim (or both) and that person is –
- (a) a national of a State which is listed in the European Common List of Safe Countries of Origin, or
  - (b) a Stateless person who was formerly habitually resident in such a State.
- (3) The Secretary of State shall consider the claim or claims mentioned in subsection (2) to be unfounded unless satisfied that there are serious grounds for considering that the State in question is not safe in the particular circumstances of the person mentioned in that subsection.
- (4) The Secretary of State shall also certify the claim or claims mentioned in subsection (2) under section 94(2) unless satisfied that the claim or claims is or are not clearly unfounded.
- (5) An order under subsection (1) –
- (a) may be made only if the Secretary of State thinks it necessary for the purpose of complying with the United Kingdom's obligations under Community law,
  - (b) may include transitional, consequential or incidental provision,
  - (c) shall be made by statutory instrument, and
  - (d) shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

**F54** S. 94A inserted (1.12.2007) by [The Asylum \(Procedures\) Regulations 2007 \(S.I. 2007/3187\)](#), **reg. 4**

## 95 Appeal from outside United Kingdom: removal

A person who is outside the United Kingdom may not appeal under section 82(1) on the ground specified in section 84(1)(g) (except in a case to which section 94(9) applies).

#### Modifications etc. (not altering text)

**C23** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), **arts. 3, 4** (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))

## 96 Earlier right of appeal

[<sup>F55</sup>(1) An appeal under section 82(1) against an immigration decision (“the new decision”) in respect of a person may not be brought if the Secretary of State or an immigration officer certifies—

- (a) that the person was notified of a right of appeal under that section against another immigration decision (“the old decision”) (whether or not an appeal was brought and whether or not any appeal brought has been determined),
- (b) that the claim or application to which the new decision relates relies on a matter that could have been raised in an appeal against the old decision, and

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- (c) that, in the opinion of the Secretary of State or the immigration officer, there is no satisfactory reason for that matter not having been raised in an appeal against the old decision.
- (2) An appeal under section 82(1) against an immigration decision (“the new decision”) in respect of a person may not be brought if the Secretary of State or an immigration officer certifies—
- (a) that the person received a notice under section 120 by virtue of an application other than that to which the new decision relates or by virtue of a decision other than the new decision,
- (b) that the new decision relates to an application or claim which relies on a matter that should have been, but has not been, raised in a statement made in response to that notice, and
- (c) that, in the opinion of the Secretary of State or the immigration officer, there is no satisfactory reason for that matter not having been raised in a statement made in response to that notice.]
- (4) In subsection (1) “notified” means notified in accordance with regulations under section 105.
- (5) [<sup>F56</sup>Subsections (1) and (2) apply to prevent] a person’s right of appeal whether or not he has been outside the United Kingdom since an earlier right of appeal arose or since a requirement under section 120 was imposed.
- (6) In this section a reference to an appeal under section 82(1) includes a reference to an appeal under section 2 of the Special Immigration Appeals Commission Act 1997 (c. 68) which is or could be brought by reference to an appeal under section 82(1).
- [<sup>F57</sup>(7) A certificate under subsection (1) or (2) shall have no effect in relation to an appeal instituted before the certificate is issued.]

#### Textual Amendments

- F55** S. 96(1)(2) substituted (1.10.2004) for s. 96(1)-(3) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\), ss. 30\(2\)](#), 48(1)-(3); S.I. 2004/2523, [art. 2](#), Sch.
- F56** Words in s. 96(5) substituted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\), ss. 30\(3\)](#), 48(1)-(3); S.I. 2004/2523, [art. 2](#), Sch.
- F57** S. 96(7) added (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\), ss. 30\(4\)](#), 48(1)-(3); S.I. 2004/2523, [art. 2](#), Sch.

#### Modifications etc. (not altering text)

- C24** S. 96 applied (with modifications) by 1997 c. 68, [s. 2\(2\)\(i\)](#) (as substituted (1.4.2003) by 2002 c. 41, ss. 114, 162(2), [Sch. 7 para. 20](#) (with s. 159); S.I. 2003/754, [art. 2\(1\)](#), [Sch. 1](#)))  
Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), [art. 3, 4](#) (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by S.I. 2003/1040 and S.I. 2003/1339))
- C25** S. 96(1)(a) modified (1.4.2003) by S.I. 2000/2326, [reg. 33\(3\)](#) (as inserted by [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2003 \(S.I. 2003/549\)](#), [reg. 2\(9\)](#))  
S. 96(1)(a) modified (30.4.2006) by [The Immigration \(European Economic Area\) Regulations 2006 \(S.I. 2006/1003\)](#), [reg. 31\(2\)](#), [Sch. 2 para. 4\(7\)](#)
- C26** S. 96(2)(a)(c) modified (1.4.2003) by S.I. 2000/2326, [reg. 33\(3\)](#) (as inserted by [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2003 \(S.I. 2003/549\)](#), [reg. 2\(9\)](#))

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## 97 National security, &c.

- (1) An appeal under section 82(1) or 83(2) against a decision in respect of a person may not be brought or continued if the Secretary of State certifies that the decision is or was taken—
  - (a) by the Secretary of State wholly or partly on a ground listed in subsection (2), or
  - (b) in accordance with a direction of the Secretary of State which identifies the person to whom the decision relates and which is given wholly or partly on a ground listed in subsection (2).
- (2) The grounds mentioned in subsection (1) are that the person's exclusion or removal from the United Kingdom is—
  - (a) in the interests of national security, or
  - (b) in the interests of the relationship between the United Kingdom and another country.
- (3) An appeal under section 82(1) or 83(2) against a decision may not be brought or continued if the Secretary of State certifies that the decision is or was taken wholly or partly in reliance on information which in his opinion should not be made public—
  - (a) in the interests of national security,
  - (b) in the interests of the relationship between the United Kingdom and another country, or
  - (c) otherwise in the public interest.
- (4) In subsections (1)(a) and (b) and (3) a reference to the Secretary of State is to the Secretary of State acting in person.

### Modifications etc. (not altering text)

**C27** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), arts. 3, 4 (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))

VALID FROM 31/08/2006

### <sup>F58</sup>97A National security: deportation

- (1) This section applies where the Secretary of State certifies that the decision to make a deportation order in respect of a person was taken on the grounds that his removal from the United Kingdom would be in the interests of national security.
- (2) Where this section applies—
  - (a) section 79 shall not apply,
  - (b) the Secretary of State shall be taken to have certified the decision to make the deportation order under section 97, and
  - (c) for the purposes of section 2(5) of the Special Immigration Appeals Commission Act 1997 (c. 68) (appeals from within United Kingdom) it shall be assumed that section 92 of this Act—
    - (i) would not apply to an appeal against the decision to make the deportation order by virtue of section 92(2) to (3D),

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- (ii) would not apply to an appeal against that decision by virtue of section 92(4)(a) in respect of an asylum claim, and
  - (iii) would be capable of applying to an appeal against that decision by virtue of section 92(4)(a) in respect of a human rights claim unless the Secretary of State certifies that the removal of the person from the United Kingdom would not breach the United Kingdom's obligations under the Human Rights Convention.
- (3) A person in respect of whom a certificate is issued under subsection (2)(c)(iii) may appeal to the Special Immigration Appeals Commission against the issue of the certificate; and for that purpose the Special Immigration Appeals Commission Act 1997 shall apply as to an appeal against an immigration decision to which section 92 of this Act applies.
- (4) The Secretary of State may repeal this section by order.]

#### Textual Amendments

**F58** S. 97A inserted (31.8.2006) by [Immigration, Asylum and Nationality Act 2006 \(c. 13\)](#), [ss. 7\(1\)](#), 62; [S.I. 2006/2226](#), [art. 3](#), [Sch. 1](#) (subject to transitional provisions in [art. 4](#))

## 98 Other grounds of public good

- (1) This section applies to an immigration decision of a kind referred to in section 82(2)(a) or (b).
- (2) An appeal under section 82(1) against an immigration decision may not be brought or continued if the Secretary of State certifies that the decision is or was taken—
- (a) by the Secretary of State wholly or partly on the ground that the exclusion or removal from the United Kingdom of the person to whom the decision relates is conducive to the public good, or
  - (b) in accordance with a direction of the Secretary of State which identifies the person to whom the decision relates and which is given wholly or partly on that ground.
- (3) In subsection (2)(a) and (b) a reference to the Secretary of State is to the Secretary of State acting in person.
- (4) Subsection (2) does not prevent the bringing of an appeal on either or both of the grounds referred to in section 84(1)(b) and (c).
- (5) Subsection (2) does not prevent the bringing of an appeal against an immigration decision of the kind referred to in section 82(2)(a) on the grounds referred to in section 84(1)(g).

#### Modifications etc. (not altering text)

**C28** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), [arts. 3](#), [4](#) (with transitional provisions in [arts. 3](#), [4](#), [Sch. 2](#) (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))

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## 99 Sections 96 to 98: appeal in progress

- (1) This section applies where a certificate is issued under section 96(1) or (2), 97 or 98 in respect of a pending appeal.
- (2) The appeal shall lapse.

### Modifications etc. (not altering text)

- C29** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), arts. 3, 4 (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))

### *Appeal from adjudicator*

## 100 Immigration Appeal Tribunal

- (1) There shall continue to be an Immigration Appeal Tribunal.
- (2) Schedule 5 (which makes provision about the Tribunal) shall have effect.

## 101 Appeal to Tribunal

- (1) A party to an appeal to an adjudicator under section 82 or 83 may, with the permission of the Immigration Appeal Tribunal, appeal to the Tribunal against the adjudicator's determination on a point of law.
- (2) A party to an application to the Tribunal for permission to appeal under subsection (1) may apply to the High Court or, in Scotland, to the Court of Session for a review of the Tribunal's decision on the ground that the Tribunal made an error of law.
- (3) Where an application is made under subsection (2)—
  - (a) it shall be determined by a single judge by reference only to written submissions,
  - (b) the judge may affirm or reverse the Tribunal's decision,
  - (c) the judge's decision shall be final, and
  - (d) if, in an application to the High Court, the judge thinks the application had no merit he shall issue a certificate under this paragraph (which shall be dealt with in accordance with Civil Procedure Rules).
- (4) The Lord Chancellor may by order repeal subsections (2) and (3).

### Modifications etc. (not altering text)

- C30** Ss. 101-103 applied (1.4.2003) by [S.I. 2000/2326](#), Sch. 2 (as substituted by [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2003 \(S.I. 2003/549\)](#), **reg. 2(10)** (with transitional provisions in **reg. 3**))
- Ss. 101-103 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), arts. 3, 4 (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))

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- C31** S. 101(1) extended (9.6.2003) by S.I. 2003/754, Sch. 2 para. 1(4A) (as amended by The Nationality, Immigration and Asylum Act 2002 (Commencement No. 4) (Amendment) (No. 2) Order 2003 (S.I. 2003/1339), art. 4)
- C32** S. 101(2)(3) applied (with modifications) (9.6.2003) by S.I. 2003/754, Sch. 2 para. 1(4B)(a) (as amended by The Nationality, Immigration and Asylum Act 2002 (Commencement No. 4) (Amendment) (No. 2) Order 2003 (S.I. 2003/1339), art. 4)

## 102 Decision

- (1) On an appeal under section 101 the Immigration Appeal Tribunal may—
- affirm the adjudicator’s decision;
  - make any decision which the adjudicator could have made;
  - remit the appeal to an adjudicator;
  - affirm a direction given by the adjudicator under section 87;
  - vary a direction given by the adjudicator under that section;
  - give any direction which the adjudicator could have given under that section.
- (2) In reaching their decision on an appeal under section 101 the Tribunal may consider evidence about any matter which they think relevant to the adjudicator’s decision, including evidence which concerns a matter arising after the adjudicator’s decision.
- (3) But where the appeal under section 82 was against refusal of entry clearance or refusal of a certificate of entitlement—
- subsection (2) shall not apply, and
  - the Tribunal may consider only the circumstances appertaining at the time of the decision to refuse.
- (4) In remitting an appeal to an adjudicator under subsection (1)(c) the Tribunal may, in particular—
- require the adjudicator to determine the appeal in accordance with directions of the Tribunal;
  - require the adjudicator to take additional evidence with a view to the appeal being determined by the Tribunal.

### Modifications etc. (not altering text)

- C33** Ss. 101-103 applied (1.4.2003) by S.I. 2000/2326, Sch. 2 (as substituted by The Immigration (European Economic Area) (Amendment) Regulations 2003 (S.I. 2003/549), reg. 2(10) (with transitional provisions in reg. 3))
- Ss. 101-103 restricted (14.3.2003) by The Nationality, Immigration and Asylum Act 2002 (Commencement No. 4) Order 2003 (S.I. 2003/754), arts. 3, 4 (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by S.I. 2003/1040, S.I. 2003/1339 and S.I. 2003/2993))
- S. 102 applied (with modifications) (9.6.2003) by S.I. 2003/754, Sch. 2 para. 1(4B)(a) (as amended by The Nationality, Immigration and Asylum Act 2002 (Commencement No. 4) (Amendment) (No. 2) Order 2003 (S.I. 2003/1339), art. 4)

## 103 Appeal from Tribunal

- (1) Where the Immigration Appeal Tribunal determines an appeal under section 101 a party to the appeal may bring a further appeal on a point of law—

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- (a) where the original decision of the adjudicator was made in Scotland, to the Court of Session, or
  - (b) in any other case, to the Court of Appeal.
- (2) An appeal under this section may be brought only with the permission of—
- (a) the Tribunal, or
  - (b) if the Tribunal refuses permission, the court referred to in subsection (1)(a) or (b).
- (3) The remittal of an appeal to an adjudicator under section 102(1)(c) is not a determination of the appeal for the purposes of subsection (1) above.

**Modifications etc. (not altering text)**

- C34** Ss. 101-103 applied (1.4.2003) by [S.I. 2000/2326, Sch. 2](#) (as substituted by [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2003 \(S.I. 2003/549\)](#), [reg. 2\(10\)](#) (with transitional provisions in [reg. 3](#)))
- Ss. 101-103 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), [arts. 3, 4](#) (with transitional provisions in [arts. 3, 4, Sch. 2](#) (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))
- S. 103 applied (with modifications) (9.6.2003) by [S.I. 2003/754, Sch. 2 para. 1\(4B\)\(a\)](#) (as amended by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) \(Amendment\) \(No. 2\) Order 2003 \(S.I. 2003/1339\)](#), [art. 4](#))

*Procedure*

VALID FROM 04/04/2005

**[<sup>F59</sup>103A] Review of Tribunal's decision**

- (1) A party to an appeal under section 82 or 83 may apply to the appropriate court, on the grounds that the Tribunal made an error of law, for an order requiring the Tribunal to reconsider its decision on the appeal.
- (2) The appropriate court may make an order under subsection (1)—
  - (a) only if it thinks that the Tribunal may have made an error of law, and
  - (b) only once in relation to an appeal.
- (3) An application under subsection (1) must be made—
  - (a) in the case of an application by the appellant made while he is in the United Kingdom, within the period of 5 days beginning with the date on which he is treated, in accordance with rules under section 106, as receiving notice of the Tribunal's decision,
  - (b) in the case of an application by the appellant made while he is outside the United Kingdom, within the period of 28 days beginning with the date on which he is treated, in accordance with rules under section 106, as receiving notice of the Tribunal's decision, and
  - (c) in the case of an application brought by a party to the appeal other than the appellant, within the period of 5 days beginning with the date on which he



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is treated, in accordance with rules under section 106, as receiving notice of the Tribunal’s decision.

- (4) But—
- (a) rules of court may specify days to be disregarded in applying subsection (3) (a), (b) or (c), and
  - (b) the appropriate court may permit an application under subsection (1) to be made outside the period specified in subsection (3) where it thinks that the application could not reasonably practicably have been made within that period.
- (5) An application under subsection (1) shall be determined by reference only to—
- (a) written submissions of the applicant, and
  - (b) where rules of court permit, other written submissions.
- (6) A decision of the appropriate court on an application under subsection (1) shall be final.
- (7) In this section a reference to the Tribunal’s decision on an appeal does not include a reference to—
- (a) a procedural, ancillary or preliminary decision, or
  - (b) a decision following remittal under section 103B, 103C or 103E.
- (8) This section does not apply to a decision of the Tribunal where its jurisdiction is exercised by three or more legally qualified members.
- (9) In this section “the appropriate court” means—
- (a) in relation to an appeal decided in England or Wales, the High Court,
  - (b) in relation to an appeal decided in Scotland, the Court of Session, and
  - (c) in relation to an appeal decided in Northern Ireland, the High Court in Northern Ireland.
- (10) An application under subsection (1) to the Court of Session shall be to the Outer House.]

#### Textual Amendments

**F59** S. 103A inserted (4.4.2005) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#) (c. 19), [ss. 26\(6\), 48\(1\)-\(3\)](#) (with transitional provisions in [Sch. 2](#)); [S.I. 2005/565](#), [art. 2](#) (with savings in arts. 3-9)

VALID FROM 04/04/2005

#### [<sup>F60</sup>103B Appeal from Tribunal following reconsideration

- (1) Where an appeal to the Tribunal has been reconsidered, a party to the appeal may bring a further appeal on a point of law to the appropriate appellate court.
- (2) In subsection (1) the reference to reconsideration is to reconsideration pursuant to—
- (a) an order under section 103A(1), or
  - (b) remittal to the Tribunal under this section or under section 103C or 103E.

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- (3) An appeal under subsection (1) may be brought only with the permission of—
  - (a) the Tribunal, or
  - (b) if the Tribunal refuses permission, the appropriate appellate court.
- (4) On an appeal under subsection (1) the appropriate appellate court may—
  - (a) affirm the Tribunal’s decision;
  - (b) make any decision which the Tribunal could have made;
  - (c) remit the case to the Tribunal;
  - (d) affirm a direction under section 87;
  - (e) vary a direction under section 87;
  - (f) give a direction which the Tribunal could have given under section 87.
- (5) In this section “the appropriate appellate court” means—
  - (a) in relation to an appeal decided in England or Wales, the Court of Appeal,
  - (b) in relation to an appeal decided in Scotland, the Court of Session, and
  - (c) in relation to an appeal decided in Northern Ireland, the Court of Appeal in Northern Ireland.
- (6) An appeal under subsection (1) to the Court of Session shall be to the Inner House.]

#### Textual Amendments

**F60** S. 103B inserted (4.4.2005) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#) (c. 19), **ss. 26(6)**, 48(1)-(3) (with transitional provisions in [Sch. 2](#)); S.I. 2005/565, **art. 2** (with savings in arts. 3-9)

VALID FROM 04/04/2005

#### [<sup>F61</sup>103C Appeal from Tribunal instead of reconsideration

- (1) On an application under section 103A in respect of an appeal the appropriate court, if it thinks the appeal raises a question of law of such importance that it should be decided by the appropriate appellate court, may refer the appeal to that court.
- (2) On a reference under subsection (1) the appropriate appellate court may—
  - (a) affirm the Tribunal’s decision;
  - (b) make any decision which the Tribunal could have made;
  - (c) remit the case to the Tribunal;
  - (d) affirm a direction under section 87;
  - (e) vary a direction under section 87;
  - (f) give a direction which the Tribunal could have given under section 87;
  - (g) restore the application under section 103A to the appropriate court.
- (3) In this section—
 

“the appropriate court” has the same meaning as in section 103A, and

“the appropriate appellate court” has the same meaning as in section 103B.

**Status:** Point in time view as at 10/12/2004. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Nationality, Immigration and Asylum Act 2002 is up to date with all changes known to be in force on or before 21 May 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)

(4) A reference under subsection (1) to the Court of Session shall be to the Inner House.]

### Textual Amendments

**F61** S. 103C inserted (4.4.2005) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 26(6), 48(1)-(3) (with transitional provisions in Sch. 2); S.I. 2005/565, art. 2 (with savings in arts. 3-9)

VALID FROM 04/04/2005

### [<sup>F62</sup>103D] Reconsideration: legal aid

- (1) On the application of an appellant under section 103A, the appropriate court may order that the appellant's costs in respect of the application under section 103A shall be paid out of the Community Legal Service Fund established under section 5 of the Access to Justice Act 1999 (c. 22).
- (2) Subsection (3) applies where the Tribunal has decided an appeal following reconsideration pursuant to an order made—
  - (a) under section 103A(1), and
  - (b) on the application of the appellant.
- (3) The Tribunal may order that the appellant's costs—
  - (a) in respect of the application for reconsideration, and
  - (b) in respect of the reconsideration,shall be paid out of that Fund.
- (4) The Secretary of State may make regulations about the exercise of the powers in subsections (1) and (3).
- (5) Regulations under subsection (4) may, in particular, make provision—
  - (a) specifying or providing for the determination of the amount of payments;
  - (b) about the persons to whom the payments are to be made;
  - (c) restricting the exercise of the power (whether by reference to the prospects of success in respect of the appeal at the time when the application for reconsideration was made, the fact that a reference has been made under section 103C(1), the circumstances of the appellant, the nature of the appellant's legal representatives, or otherwise).
- (6) Regulations under subsection (4) may make provision—
  - (a) conferring a function on the Legal Services Commission;
  - (b) modifying a duty or power of the Legal Services Commission in respect of compliance with orders under subsection (3);
  - (c) applying (with or without modifications), modifying or disapplying a provision of, or of anything done under, an enactment relating to the funding of legal services.
- (7) Before making regulations under subsection (4) the Secretary of State shall consult such persons as he thinks appropriate.

**Status:** Point in time view as at 10/12/2004. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Nationality, Immigration and Asylum Act 2002 is up to date with all changes known to be in force on or before 21 May 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)

- (8) This section has effect only in relation to an appeal decided in—
- (a) England,
  - (b) Wales, or
  - (c) Northern Ireland.
- (9) In relation to an appeal decided in Northern Ireland this section shall have effect—
- (a) as if a reference to the Community Legal Service Fund were to the fund established under paragraph 4(2)(a) of Schedule 3 to the Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/ 435 (N.I. 10)), and
  - (b) with any other necessary modifications.]

#### Textual Amendments

**F62** S. 103D inserted (4.4.2005 for E.W.S and 30.4.2007 for N.I.) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), **ss. 26(6)**, 48(1)-(3) (with transitional provisions in [Sch. 2](#)); S.I. 2005/565, **art. 2** (with savings in [arts. 3-9](#)); S.I. 2007/845, **art. 2**

VALID FROM 04/04/2005

#### [<sup>F63</sup>103E Appeal from Tribunal sitting as panel

- (1) This section applies to a decision of the Tribunal on an appeal under section 82 or 83 where its jurisdiction is exercised by three or more legally qualified members.
- (2) A party to the appeal may bring a further appeal on a point of law to the appropriate appellate court.
- (3) An appeal under subsection (2) may be brought only with the permission of—
  - (a) the Tribunal, or
  - (b) if the Tribunal refuses permission, the appropriate appellate court.
- (4) On an appeal under subsection (2) the appropriate appellate court may—
  - (a) affirm the Tribunal’s decision;
  - (b) make any decision which the Tribunal could have made;
  - (c) remit the case to the Tribunal;
  - (d) affirm a direction under section 87;
  - (e) vary a direction under section 87;
  - (f) give a direction which the Tribunal could have given under section 87.
- (5) In this section “the appropriate appellate court” means—
  - (a) in relation to an appeal decided in England or Wales, the Court of Appeal,
  - (b) in relation to an appeal decided in Scotland, the Court of Session, and
  - (c) in relation to an appeal decided in Northern Ireland, the Court of Appeal in Northern Ireland.
- (6) A further appeal under subsection (2) to the Court of Session shall be to the Inner House.

**Status:** Point in time view as at 10/12/2004. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Nationality, Immigration and Asylum Act 2002 is up to date with all changes known to be in force on or before 21 May 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)

- (7) In this section a reference to the Tribunal’s decision on an appeal does not include a reference to—
- (a) a procedural, ancillary or preliminary decision, or
  - (b) a decision following remittal under section 103B or 103C.]

#### Textual Amendments

**F63** S. 103E inserted (4.4.2005) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), [ss. 26\(6\), 48\(1\)-\(3\)](#) (with transitional provisions in [Sch. 2](#)); S.I. 2005/565, [art. 2](#) (with savings in [arts. 3-9](#))

### 104 Pending appeal

- (1) An appeal under section 82(1) is pending during the period—
  - (a) beginning when it is instituted, and
  - (b) ending when it is finally determined, withdrawn or abandoned (or when it lapses under section 99).
- (2) An appeal under section 82(1) is not finally determined for the purposes of subsection (1)(b) while a further appeal or an application under section 101(2)—
  - (a) has been instituted and is not yet finally determined, withdrawn or abandoned, or
  - (b) may be brought (ignoring the possibility of an appeal out of time with permission).
- (3) The remittal of an appeal to an adjudicator under section 102(1)(c) is not a final determination for the purposes of subsection (2) above.
- (4) An appeal under section 82(1) shall be treated as abandoned if the appellant—
  - (a) is granted leave to enter or remain in the United Kingdom, or
  - (b) leaves the United Kingdom.
- (5) An appeal under section 82(2)(a), (c), (d), (e) or (f) shall be treated as finally determined if a deportation order is made against the appellant.

#### Modifications etc. (not altering text)

**C35** S. 104 applied (with modifications) by [1997 c. 68, s. 2\(2\)\(j\)](#) (as substituted (1.4.2003) by [2002 c. 41, ss. 114, 162\(2\), Sch. 7 para. 20](#) (with s. 159)); S.I. 2003/754, [art. 2\(1\), Sch. 1](#))

### 105 Notice of immigration decision

- (1) The Secretary of State may make regulations requiring a person to be given written notice where an immigration decision is taken in respect of him.
- (2) The regulations may, in particular, provide that a notice under subsection (1) of a decision against which the person is entitled to appeal under section 82(1) must state—
  - (a) that there is a right of appeal under that section, and
  - (b) how and when that right may be exercised.

**Status:** Point in time view as at 10/12/2004. This version of this Act contains provisions that are not valid for this point in time.

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(3) The regulations may make provision (which may include presumptions) about service.

**Modifications etc. (not altering text)**

**C36** S. 105 applied (with modifications) by 1997 c. 68, s. 2(2)(k) (as substituted (1.4.2003) by 2002 c. 41, ss. 114, 162(2), Sch. 7 para. 20 (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1))

**106 Rules**

- (1) The Lord Chancellor may make rules—
- (a) regulating the exercise of the right of appeal under section 82, 83 or 101;
  - (b) prescribing procedure to be followed in connection with proceedings under section 82, 83, 101(1) or 103.
- (2) In particular, rules under subsection (1)—
- (a) must entitle an appellant to be legally represented at any hearing of his appeal;
  - (b) may enable or require an appeal to be determined without a hearing;
  - (c) may enable or require an appeal to be dismissed without substantive consideration where practice or procedure has not been complied with;
  - (d) may enable or require an adjudicator or the Immigration Appeal Tribunal to treat an appeal as abandoned in specified circumstances;
  - (e) may enable or require an adjudicator or the Tribunal to determine an appeal in the absence of parties in specified circumstances;
  - (f) may enable or require an adjudicator or the Tribunal to determine an appeal by reference only to written submissions in specified circumstances;
  - (g) may make provision about the adjournment of an appeal by an adjudicator (which may include provision prohibiting an adjudicator from adjourning except in specified circumstances);
  - (h) may make provision about the treatment of adjourned appeals by an adjudicator (which may include provision requiring an adjudicator to determine an appeal within a specified period);
  - (i) may make provision about the use of electronic communication in the course of or in connection with a hearing;
  - (j) may make provision about the remittal of an appeal by the Tribunal to an adjudicator under section 102;
  - (k) may enable an adjudicator to set aside a decision of himself or another adjudicator;
  - (l) may enable the Tribunal to set aside a decision of the Tribunal;
  - (m) must make provision about the consolidation of appeals (which may, in particular, include provision for the adjournment or remission of a further appeal under section 101);
  - (n) may make provision (which may include presumptions) about service;
  - (o) may confer ancillary powers on an adjudicator or the Tribunal;
  - (p) may confer a discretion on an adjudicator or the Tribunal;
  - (q) may require an adjudicator or the Tribunal to give notice of a determination to a specified person;
  - (r) may require or enable notice of a determination to be given on behalf of an adjudicator or the Tribunal;

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- (s) may make provision about the grant of bail by an adjudicator or the Tribunal (which may, in particular, include provision which applies or is similar to any enactment).
- (3) Rules under subsection (1)—
- (a) may enable an adjudicator or the Tribunal to make an award of costs or expenses,
  - (b) may make provision (which may include provision conferring discretion on a court) for the taxation or assessment of costs or expenses,
  - (c) may make provision about interest on an award of costs or expenses (which may include provision conferring a discretion or providing for interest to be calculated in accordance with provision made by the rules),
  - (d) may enable an adjudicator or the Tribunal to disallow all or part of a representative's costs or expenses,
  - (e) may enable an adjudicator or the Tribunal to require a representative to pay specified costs or expenses, and
  - (f) shall make provision in respect of proceedings before an adjudicator or the Tribunal which has an effect similar to that of section 101(3)(d) and the Civil Procedure Rules referred to there.
- (4) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed in accordance with rules under subsection (1) to attend before an adjudicator or the Tribunal—
- (a) to give evidence, or
  - (b) to produce a document.
- (5) A person who is guilty of an offence under subsection (4) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Modifications etc. (not altering text)**

C37 S. 106 extended by 1981 c. 61, s. 40A(7) (as substituted (1.4.2003) by 2002 c. 41, ss. 4(1), 162(2) (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1))

**107 Practice directions**

- (1) The President of the Immigration Appeal Tribunal may give directions as to the practice to be followed by the Tribunal.
- (2) The Chief Adjudicator may give directions as to the practice to be followed by adjudicators.

**Modifications etc. (not altering text)**

C38 S. 107 extended by 1981 c. 61, s. 40A(8) (as substituted (1.4.2003) by 2002 c. 41, ss. 4(1), 162(2) (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1))

**108 Forged document: proceedings in private**

- (1) This section applies where it is alleged—

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- (a) that a document relied on by a party to an appeal under section 82, 83 or 101 is a forgery, and
  - (b) that disclosure to that party of a matter relating to the detection of the forgery would be contrary to the public interest.
- (2) The adjudicator or the Immigration Appeal Tribunal—
- (a) must investigate the allegation in private, and
  - (b) may proceed in private so far as necessary to prevent disclosure of the matter referred to in subsection (1)(b).

### General

## 109 European Union and European Economic Area

- (1) Regulations may provide for, or make provision about, an appeal against an immigration decision taken in respect of a person who has or claims to have a right under any of the Community Treaties.
- (2) The regulations may—
- (a) apply a provision of this Act or the Special Immigration Appeals Commission Act 1997 (c. 68) with or without modification;
  - (b) make provision similar to a provision made by or under this Act or that Act;
  - (c) disapply or modify the effect of a provision of this Act or that Act.
- (3) In subsection (1) “immigration decision” means a decision about—
- (a) a person’s entitlement to enter or remain in the United Kingdom, or
  - (b) removal of a person from the United Kingdom.

## 110 Grants

- (1) The Secretary of State may make a grant to a voluntary organisation which provides—
- (a) advice or assistance to persons who have a right of appeal under this Part;
  - (b) other services for the welfare of those persons.
- (2) A grant under this section may be subject to terms or conditions (which may include conditions as to repayment).

### Modifications etc. (not altering text)

**C39** S. 110 applied (with modifications) by 1997 c. 68, s. 2(2)(1)(3)(d) (as substituted (1.4.2003) by 2002 c. 41, ss. 114, 162(2), Sch. 7 para. 20 (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1))

**C40** S. 110 extended by 2001 c. 24, s. 27(10) (as substituted (1.4.2003) by 2002 c. 41, ss. 114, 162(2), Sch. 7 para. 30 (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1))

## 111 Monitor of certification of claims as unfounded

- (1) The Secretary of State shall appoint a person to monitor the use of the powers under sections 94(2) and 115(1).
- (2) The person appointed under this section shall make a report to the Secretary of State—
- (a) once in each calendar year, and



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- (b) on such occasions as the Secretary of State may request.
- (3) Where the Secretary of State receives a report under subsection (2)(a) he shall lay a copy before Parliament as soon as is reasonably practicable.
- (4) The person appointed under this section shall hold and vacate office in accordance with the terms of his appointment (which may include provision about retirement, resignation or dismissal).
- (5) The Secretary of State may—
  - (a) pay fees and allowances to the person appointed under this section;
  - (b) defray expenses of the person appointed under this section.
- (6) A person who is employed within a government department may not be appointed under this section.

## 112 Regulations, &c.

- (1) Regulations under this Part shall be made by the Secretary of State.
- (2) Regulations and rules under this Part—
  - (a) must be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Regulations and rules under this Part—
  - (a) may make provision which applies generally or only in a specified case or in specified circumstances,
  - (b) may make different provision for different cases or circumstances,
  - (c) may include consequential, transitional or incidental provision, and
  - (d) may include savings.

[<sup>F64</sup>(3A) An order under section 88A—

- (a) must be made by statutory instrument,
- (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament, and
- (c) may include transitional provision.]

(4) An order under section 94(5) or 115(8)—

- (a) must be made by statutory instrument,
- (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament, and
- (c) may include transitional provision.

(5) An order under section 94(6) or 115(9)—

- (a) must be made by statutory instrument,
- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament, and
- (c) may include transitional provision.

[<sup>F65</sup>(5A) If an instrument makes provision under section 94(5) and 94(6)—

- (a) subsection (4)(b) above shall apply, and
- (b) subsection (5)(b) above shall not apply.]

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- (6) An order under section 101(4)—
- (a) must be made by statutory instrument,
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament,
  - (c) may include consequential or transitional provision, and
  - (d) may include savings.

#### Textual Amendments

- F64** S. 112(3A) inserted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 29(2), 48(1)-(3); S.I. 2005/2523, art. 2, Sch.
- F65** S. 112(5A) inserted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 27(8), 48(1)-(3); S.I. 2005/2523, art. 2, Sch.

### 113 Interpretation

- (1) In this Part, unless a contrary intention appears—
- “asylum claim” means a claim made by a person to the Secretary of State at a place designated by the Secretary of State that to remove the person from or require him to leave the United Kingdom would breach the United Kingdom’s obligations under the Refugee Convention,
- “entry clearance” has the meaning given by section 33(1) of the Immigration Act 1971 (c. 77) (interpretation),
- “human rights claim” means a claim made by a person to the Secretary of State at a place designated by the Secretary of State that to remove the person from or require him to leave the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998 (c. 42) (public authority not to act contrary to Convention) as being incompatible with his Convention rights,
- “the Human Rights Convention” has the same meaning as “the Convention” in the Human Rights Act 1998 and “Convention rights” shall be construed in accordance with section 1 of that Act,
- “illegal entrant” has the meaning given by section 33(1) of the Immigration Act 1971,
- “immigration rules” means rules under section 1(4) of that Act (general immigration rules),
- “prescribed” means prescribed by regulations,
- “the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol,
- “visitor” means a visitor in accordance with immigration rules, and
- “work permit” has the meaning given by section 33(1) of the Immigration Act 1971 (c. 77) (interpretation).
- (2) A reference to varying leave to enter or remain in the United Kingdom does not include a reference to adding, varying or revoking a condition of leave.

### 114 Repeal

- (1) Part IV of the Immigration and Asylum Act 1999 (c. 33) (appeals) shall cease to have effect.

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- (2) Schedule 6 (which makes transitional provision in connection with the repeal of Part IV of that Act and its replacement by this Part) shall have effect.
- (3) Schedule 7 (consequential amendments) shall have effect.

#### Commencement Information

**I13** S. 114 wholly in force at 1.4.2003; s. 114 not in force at Royal Assent see s. 162(2); s. 114(3) in force at 10.2.2003 by [S.I. 2003/1](#), [art. 2](#), [Sch.](#); s. 114(1)(2) in force at 1.4.2003 by [S.I. 2003/754](#), [art. 2](#), [Sch. 1](#)

### 115 Appeal from within United Kingdom: unfounded human rights or asylum claim: transitional provision

- (1) A person may not bring an appeal under section 65 or 69 of the Immigration and Asylum Act 1999 (human rights and asylum) while in the United Kingdom if—
  - (a) the Secretary of State certifies that the appeal relates to a human rights claim or an asylum claim which is clearly unfounded, and
  - (b) the person does not have another right of appeal while in the United Kingdom under Part IV of that Act.
- (2) A person while in the United Kingdom may not bring an appeal under section 69 of that Act, or raise a question which relates to the Human Rights Convention under section 77 of that Act, if the Secretary of State certifies that—
  - (a) it is proposed to remove the person to a country of which he is not a national or citizen, and
  - (b) there is no reason to believe that the person's rights under the Human Rights Convention will be breached in that country.
- (3) A person while in the United Kingdom may not bring an appeal under section 65 of that Act (human rights) if the Secretary of State certifies that—
  - (a) it is proposed to remove the person to a country of which he is not a national or citizen, and
  - (b) there is no reason to believe that the person's rights under the Human Rights Convention will be breached in that country.
- (4) In determining whether a person in relation to whom a certificate has been issued under subsection (2) or (3) may be removed from the United Kingdom, the country specified in the certificate is to be regarded as—
  - (a) a place where a person's life and liberty is not threatened by reason of his race, religion, nationality, membership of a particular social group, or political opinion, and
  - (b) a place from which a person will not be sent to another country otherwise than in accordance with the Refugee Convention.
- (5) Where a person in relation to whom a certificate is issued under this section subsequently brings an appeal or raises a question under section 65, 69 or 77 of that Act while outside the United Kingdom, the appeal or question shall be considered as if he had not been removed from the United Kingdom.

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- (6) If the Secretary of State is satisfied that a person who makes a human rights claim or an asylum claim is entitled to reside in a State listed in subsection (7), he shall issue a certificate under subsection (1) unless satisfied that the claim is not clearly unfounded.
- (7) Those States are—
- (a) the Republic of Cyprus,
  - (b) the Czech Republic,
  - (c) the Republic of Estonia,
  - (d) the Republic of Hungary,
  - (e) the Republic of Latvia,
  - (f) the Republic of Lithuania,
  - (g) the Republic of Malta,
  - (h) the Republic of Poland,
  - (i) the Slovak Republic, and
  - (j) the Republic of Slovenia.
  - [<sup>F66</sup>(k) the Republic of Albania,
  - (l) Bulgaria,
  - (m) Serbia and Montenegro,
  - (n) Jamaica,
  - (o) Macedonia,
  - (p) the Republic of Moldova, and
  - (q) Romania.]
- (8) The Secretary of State may by order add a State, or part of a State, to the list in subsection (7) if satisfied that—
- (a) there is in general in that State or part no serious risk of persecution of persons entitled to reside in that State or part, and
  - (b) removal to that State or part of persons entitled to reside there will not in general contravene the United Kingdom’s obligations under the Human Rights Convention.
- (9) The Secretary of State may by order remove from the list in subsection (7) a State or part added under subsection (8).
- (10) In this section “asylum claim” and “human rights claim” have the meanings given by section 113 but—
- (a) a reference to a claim in that section shall be treated as including a reference to an allegation, and
  - (b) a reference in that section to making a claim at a place designated by the Secretary of State shall be ignored.

#### Textual Amendments

**F66** S. 115(7)(k)-(q) added (1.4.2003) by [The Asylum \(Designated States\) Order 2003 \(S.I. 2003/970\)](#), [art. 4](#)

#### Modifications etc. (not altering text)

**C41** S. 115 extended (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), [art. 3](#), [Sch. 2 para. 1\(5\)](#) (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))

**Status:** Point in time view as at 10/12/2004. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Nationality, Immigration and Asylum Act 2002 is up to date with all changes known to be in force on or before 21 May 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)

S. 115 continued (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), [art. 4\(1\)](#) (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))

## 116 Special Immigration Appeals Commission: Community Legal Service

In paragraph 2(1) of Schedule 2 to the Access to Justice Act 1999 (c. 22) (Community Legal Service: courts and tribunals in which advocacy may be funded) the following shall be inserted after paragraph (h) (and before the word “or” which appears immediately after that paragraph)—

“(ha) the Special Immigration Appeals Commission.”

## 117 Northern Ireland appeals: legal aid

- (1) In Part 1 of Schedule 1 to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (S.I. 1981/228 (N.I. 8)) (proceedings for which legal aid may be given under Part II of that Order) the following shall be inserted after paragraph 6—

“6A Proceedings before an adjudicator appointed for the purposes of Part 5 of the Nationality, Immigration and Asylum Act 2002, the Immigration Appeal Tribunal or the Special Immigration Appeals Commission.”

- (2) The amendment made by subsection (1) is without prejudice to the power to make regulations under Article 10(2) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 amending or revoking the provision inserted by that subsection.

## PART 6

### IMMIGRATION PROCEDURE

#### *Applications*

## 118 Leave pending decision on variation application

The following shall be substituted for section 3C of the Immigration Act 1971 (c. 77) (continuation of leave to enter or remain pending decision on application for variation)

### “3C Continuation of leave pending variation 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 for variation of the leave,
  - (b) the application for variation is made before the leave expires, and
  - (c) the leave expires without the application for variation having been decided.
- (2) The leave is extended by virtue of this section during any period when—
- (a) the application for variation is neither decided nor withdrawn,

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- (b) an appeal under section 82(1) of the Nationality, Asylum and Immigration Act 2002 could be brought against the decision on the application for variation (ignoring any possibility of an appeal out of time with permission), or
  - (c) an appeal under that section against that decision is pending (within the meaning of section 104 of that Act).
- (3) Leave extended by virtue of this section shall lapse if the applicant leaves the United Kingdom.
- (4) A person may not make an application for variation of his leave to enter or remain in the United Kingdom while that leave is extended by virtue of this section.
- (5) But subsection (4) does not prevent the variation of the application mentioned in subsection (1)(a).
- (6) In this section a reference to an application being decided is a reference to notice of the decision being given in accordance with regulations under section 105 of that Act (notice of immigration decision).”

#### 119 Deemed leave on cancellation of notice

In paragraph 6(3) of Schedule 2 to the Immigration Act 1971 (c. 77) (deemed leave on cancellation of notice of refusal) after “and the immigration officer does not at the same time give him indefinite or limited leave to enter” there shall be inserted “ or require him to submit to further examination ”.

#### 120 Requirement to state additional grounds for application

- (1) This section applies to a person if—
- (a) he has made an application to enter or remain in the United Kingdom, or
  - (b) an immigration decision within the meaning of section 82 has been taken or may be taken in respect of him.
- (2) The Secretary of State or an immigration officer may by notice in writing require the person to state—
- (a) his reasons for wishing to enter or remain in the United Kingdom,
  - (b) any grounds on which he should be permitted to enter or remain in the United Kingdom, and
  - (c) any grounds on which he should not be removed from or required to leave the United Kingdom.
- (3) A statement under subsection (2) need not repeat reasons or grounds set out in—
- (a) the application mentioned in subsection (1)(a), or
  - (b) an application to which the immigration decision mentioned in subsection (1)(b) relates.

#### Modifications etc. (not altering text)

**C42** S. 120 applied (1.4.2003) by S.I. 2000/2326, reg. 26A (as inserted by [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2003 \(S.I. 2003/549\)](#), reg. 2(7))

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## 121 Compliance with procedure

The following shall be inserted after section 31A(3) of the Immigration Act 1971 (procedural requirements for application)—

“(3A) Regulations under this section may provide that a failure to comply with a specified requirement of the regulations—

- (a) invalidates an application,
- (b) does not invalidate an application, or
- (c) invalidates an application in specified circumstances (which may be described wholly or partly by reference to action by the applicant, the Secretary of State, an immigration officer or another person).”

### *Work permit*

## 122 Fee for work permit, &c.

(1) The Secretary of State may by regulations require an application for an immigration employment document to be accompanied by a fee prescribed in the regulations.

(2) In subsection (1) “immigration employment document” means—

- (a) a work permit, 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.

(3) Regulations under subsection (1)—

- (a) may make provision which applies generally or only in specified cases or circumstances (or except in specified cases or circumstances), and
- (b) may make different provision for different cases or circumstances.

(4) In particular, regulations by virtue of subsection (3)(a) which create an exception may make provision by reference to an arrangement with the Secretary of State under which a payment is made in respect of—

- (a) a specified number or class of applications, or
- (b) a specified period of time.

(5) Regulations under subsection (1)—

- (a) must be made by statutory instrument, and
- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) In this section—

“immigration rules” has the meaning given by section 33(1) of the Immigration Act 1971 (c. 77) (interpretation), and  
“work permit” has the meaning given by that section.

## 123 Advice about work permit, &c.

(1) Section 82 of the Immigration and Asylum Act 1999 (c. 33) (immigration advice and services: interpretation) shall be amended as follows.

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(2) In the definition of “relevant matters” in subsection (1), after paragraph (b) there shall be inserted—

“(ba) an application for an immigration employment document;”.

(3) At the end of the section add—

“(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.”

#### Commencement Information

**I14** S. 123 wholly in force at 1.4.2004; s. 123 not in force at Royal Assent see s. 162; s. 123 in force at 1.4.2004 by [S.I. 2003/754](#), [art. 2](#), [Sch. 1](#) (as amended by [S.I. 2003/1339](#) and [S.I. 2003/2993](#))

VALID FROM 18/07/2012

#### *Authority-to-carry scheme*

#### **124 Authority to carry**

- (1) Regulations made by the Secretary of State may authorise him to require a person (a “carrier”) to pay a penalty if the carrier brings a passenger to the United Kingdom and—
  - (a) the carrier was required by an authority-to-carry scheme to seek authority under the scheme to carry the passenger, and
  - (b) the carrier did not seek authority before the journey to the United Kingdom commenced or was refused authority under the scheme.
- (2) An “authority-to-carry scheme” is a scheme operated by the Secretary of State which requires carriers to seek authority to bring passengers to the United Kingdom.
- (3) An authority-to-carry scheme must specify—
  - (a) the class of carrier to which it applies (which may be defined by reference to a method of transport or otherwise), and
  - (b) the class of passenger to which it applies (which may be defined by reference to nationality, the possession of specified documents or otherwise).
- (4) The Secretary of State may operate different authority-to-carry schemes for different purposes.
- (5) Where the Secretary of State makes regulations under subsection (1) he must—
  - (a) identify in the regulations the authority-to-carry scheme to which they refer, and
  - (b) lay the authority-to-carry scheme before Parliament.



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- (6) Regulations under subsection (1) may, in particular—
- (a) apply or make provision similar to a provision of sections 40 to 43 of and Schedule 1 to the Immigration and Asylum Act 1999 (c. 33) (charge for passenger without document);
  - (b) do anything which may be done under a provision of any of those sections;
  - (c) amend any of those sections.
- (7) Regulations by virtue of subsection (6)(a) may, in particular—
- (a) apply a provision with modification;
  - (b) apply a provision which confers power to make legislation.
- (8) The grant or refusal of authority under an authority-to-carry scheme shall not be taken to determine whether a person is entitled or permitted to enter the United Kingdom.
- (9) Regulations under this section—
- (a) must be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

#### *Evasion of procedure*

### **125 Carriers' liability**

Schedule 8 (which amends Part II of the Immigration and Asylum Act 1999 (carriers' liability)) shall have effect.

#### **Commencement Information**

**I15** S. 125 partly in force; s. 125 not in force at Royal Assent see s. 162(2); s. 125 in force at 14.11.2002 and 8.12.2002 for certain purposes by [S.I. 2002/2811](#), [art. 2](#), [Sch.](#)

#### *Provision of information by traveller*

### **126 Physical data: compulsory provision**

- (1) The Secretary of State may by regulations—
- (a) require an immigration application to be accompanied by specified information about external physical characteristics of the applicant;
  - (b) enable an authorised person to require an individual who makes an immigration application to provide information about his external physical characteristics;
  - (c) enable an authorised person to require an entrant to provide information about his external physical characteristics.
- (2) In subsection (1) “immigration application” means an application for—
- (a) entry clearance,
  - (b) leave to enter or remain in the United Kingdom, or
  - (c) variation of leave to enter or remain in the United Kingdom.

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- (3) Regulations under subsection (1) may not—
- (a) impose a requirement in respect of a person to whom section 141 of the Immigration and Asylum Act 1999 (c. 33) (fingerprinting) applies, during the relevant period within the meaning of that section, or
  - (b) enable a requirement to be imposed in respect of a person to whom that section applies, during the relevant period within the meaning of that section.
- (4) Regulations under subsection (1) may, in particular—
- (a) require, or enable an authorised person to require, the provision of information in a specified form;
  - (b) require an individual to submit, or enable an authorised person to require an individual to submit, to a specified process by means of which information is obtained or recorded;
  - (c) make provision about the effect of failure to provide information or to submit to a process (which may, in particular, include provision for an application to be disregarded or dismissed if a requirement is not satisfied);
  - (d) confer a function (which may include the exercise of a discretion) on an authorised person;
  - (e) require an authorised person to have regard to a code (with or without modification);
  - (f) require an authorised person to have regard to such provisions of a code (with or without modification) as may be specified by direction of the Secretary of State;
  - (g) make provision about the use and retention of information provided (which may include provision permitting the use of information for specified purposes which do not relate to immigration);
  - (h) make provision which applies generally or only in specified cases or circumstances;
  - (i) make different provision for different cases or circumstances.
- (5) Regulations under subsection (1) must—
- (a) include provision about the destruction of information obtained or recorded by virtue of the regulations,
  - (b) require the destruction of information at the end of the period of ten years beginning with the day on which it is obtained or recorded in a case for which destruction at the end of another period is not required by or in accordance with the regulations, and
  - (c) include provision similar to section 143(2) and (10) to (13) of the Immigration and Asylum Act 1999 (c. 33) (fingerprints: destruction of copies and electronic data).
- (6) In so far as regulations under subsection (1) require an individual under the age of 16 to submit to a process, the regulations must make provision similar to section 141(3) to (5) and (13) of the Immigration and Asylum Act 1999 (fingerprints: children).
- (7) In so far as regulations under subsection (1) enable an authorised person to require an individual under the age of 16 to submit to a process, the regulations must make provision similar to section 141(3) to (5), (12) and (13) of that Act (fingerprints: children).
- (8) Regulations under subsection (1)—

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- (a) must be made by statutory instrument, and
- (b) shall not be made unless a draft of the regulations has been laid before and approved by resolution of each House of Parliament.

(9) In this section—

“authorised person” has the meaning given by section 141(5) of the Immigration and Asylum Act 1999 (authority to take fingerprints),

“code” has the meaning given by section 145(6) of that Act (code of practice),

“entrant” has the meaning given by section 33(1) of the Immigration Act 1971 (c. 77) (interpretation),

“entry clearance” has the meaning given by section 33(1) of that Act, and

“external physical characteristics” includes, in particular, features of the iris or any other part of the eye.

## **127 Physical data: voluntary provision**

- (1) The Secretary of State may operate a scheme under which an individual may supply, or submit to the obtaining or recording of, information about his external physical characteristics to be used (wholly or partly) in connection with entry to the United Kingdom.
- (2) In particular, the Secretary of State may—
  - (a) require an authorised person to use information supplied under a scheme;
  - (b) make provision about the collection, use and retention of information supplied under a scheme (which may include provision requiring an authorised person to have regard to a code);
  - (c) charge for participation in a scheme.
- (3) In this section the following expressions have the same meaning as in section 126—
  - (a) “authorised person”,
  - (b) “code”, and
  - (c) “external physical characteristics”.

## **128 Data collection under Immigration and Asylum Act 1999**

- (1) The following shall be added at the end of section 144 of the Immigration and Asylum Act 1999 (c. 33) (collection of data about external physical characteristics) (which becomes subsection (1))—
  - “(2) In subsection (1) “external physical characteristics” includes, in particular, features of the iris or any other part of the eye.”
- (2) The following shall be inserted after section 145(2) of that Act (codes of practice)—
  - “(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.”

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### *Disclosure of information by public authority*

#### **129 Local authority**

- (1) The Secretary of State may require a local authority to supply information for the purpose of establishing where a person is if the Secretary of State reasonably suspects that—
  - (a) the person has committed an offence under section 24(1)(a), (b), (c), (e) or (f), 24A(1) or 26(1)(c) or (d) of the Immigration Act 1971 (c. 77) (illegal entry, deception, &c.), and
  - (b) the person is or has been resident in the local authority’s area.
- (2) A local authority shall comply with a requirement under this section.
- (3) In the application of this section to England and Wales “local authority” means—
  - (a) a county council,
  - (b) a county borough council,
  - (c) a district council,
  - (d) a London borough council,
  - (e) the Common Council of the City of London, and
  - (f) the Council of the Isles of Scilly.
- (4) In the application of this section to Scotland “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39).
- (5) In the application of this section to Northern Ireland—
  - (a) a reference to a local authority shall be taken as a reference to the Northern Ireland Housing Executive, and
  - (b) the reference to a local authority’s area shall be taken as a reference to Northern Ireland.

#### **130 Inland Revenue**

- (1) The Commissioners of Inland Revenue may supply the Secretary of State with information for the purpose of establishing where a person is if the Secretary of State reasonably suspects—
  - (a) that the person does not have leave to enter or remain in the United Kingdom, and
  - (b) that the person does not have permission to work in accordance with section 1(2) of the Immigration Act 1971 (c. 77) (general principles).
- (2) The Commissioners of Inland Revenue may supply the Secretary of State with information for the purpose of establishing where a person is if the Secretary of State reasonably suspects that the person has undertaken employment in the United Kingdom in breach of—
  - (a) a condition attached to leave to enter or remain in the United Kingdom,
  - (b) a restriction imposed under paragraph 21 of Schedule 2 to the Immigration Act 1971 (control of entry), or
  - (c) a restriction imposed under paragraph 2 of Schedule 3 to that Act (deportation).

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- (3) The Commissioners of Inland Revenue may supply the Secretary of State with information for the purpose of determining whether an applicant for naturalisation under the British Nationality Act 1981 (c. 61) is of good character.
- (4) The Commissioners of Inland Revenue may supply the Secretary of State with information for the purpose of applying, in the case of an applicant for entry clearance within the meaning of section 33 of the Immigration Act 1971, a provision of rules under section 3 of that Act relating to maintenance or accommodation.
- (5) Information supplied to the Secretary of State under any of subsections (1) to (4) may be supplied by him to another person only—
  - (a) for a purpose specified in any of those subsections,
  - (b) for the purpose of legal proceedings, or
  - (c) with consent (which may be general or specific) of the Commissioners of Inland Revenue, for a purpose for which the Commissioners could supply the information.
- (6) A power of the Commissioners of Inland Revenue under this section—
  - (a) may be exercised on their behalf only by a person authorised (generally or specifically) for the purpose, and
  - (b) may be exercised despite any statutory or other requirement of confidentiality.

**Modifications etc. (not altering text)**

**C43** S. 130 restricted (7.4.2005 at 5:45pm) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), ss. 16, 17, 53(1), [Sch. 2 para. 20](#) (with s. 22); S.I. 2005/1126, [art. 2\(1\)](#)

**131 Police, &c.**

Information may be supplied under section 20 of the Immigration and Asylum Act 1999 (c. 33) (supply of information to Secretary of State) for use for the purpose of determining whether an applicant for naturalisation under the British Nationality Act 1981 is of good character.

**132 Supply of document, &c. to Secretary of State**

- (1) Section 20 of the Immigration and Asylum Act 1999 (supply of information to Secretary of State) shall be amended as follows.
- (2) After subsection (1) insert—

“(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.”
- (3) In subsection (2) after “information” insert “, document or article”.
- (4) After subsection (2) insert—

“(2A) The Secretary of State may—

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- (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)."

(5) In subsection (6) after “information” insert “, documents or articles”.

### 133 Medical inspectors

(1) This section applies to a person if an immigration officer acting under Schedule 2 to the Immigration Act 1971 (c. 77) (control on entry, &c.) has brought the person to the attention of—

- (a) a medical inspector appointed under paragraph 1(2) of that Schedule, or
- (b) a person working under the direction of a medical inspector appointed under that paragraph.

(2) A medical inspector may disclose to a health service body—

- (a) the name of a person to whom this section applies,
- (b) his place of residence in the United Kingdom,
- (c) his age,
- (d) the language which he speaks,
- (e) the nature of any disease with which the inspector thinks the person may be infected,
- (f) relevant details of the person’s medical history,
- (g) the grounds for an opinion mentioned in paragraph (e) (including the result of any test or examination which has been carried out), and
- (h) the inspector’s opinion about action which the health service body should take.

(3) A disclosure may be made under subsection (2) only if the medical inspector thinks it necessary for the purpose of—

- (a) preventative medicine,
- (b) medical diagnosis,
- (c) the provision of care or treatment, or
- (d) the management of health care services.

(4) For the purposes of this section “health service body” in relation to a person means a body which carries out functions in an area which includes his place of residence and which is—

- (a) in relation to England—
  - (i) a Primary Care Trust established under section 16A of the National Health Service Act 1977 (c. 49),
  - (ii) a National Health Service Trust established under section 5 of the National Health Service and Community Care Act 1990 (c. 19),
  - [<sup>F67</sup>(*ia*) an NHS foundation trust,]
  - (iii) a Strategic Health Authority established under section 8 of the National Health Service Act 1977,
  - (iv) a Special Health Authority established under section 11 of that Act, or
  - (v) the Public Health Laboratory Service Board,
- (b) in relation to Wales—

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- (i) a Health Authority or Local Health Board established under section 8 or 16BA of that Act,
- (ii) a National Health Service Trust established under section 5 of the National Health Service and Community Care Act 1990, or
- (iii) the Public Health Laboratory Service Board,
- (c) in relation to Scotland—
  - (i) a Health Board, Special Health Board or National Health Service Trust established under section 2 or 12A of the National Health Service (Scotland) Act 1978 (c. 29), or
  - (ii) the Common Services Agency for the Scottish Health Service established under section 10 of that Act, or
- (d) in relation to Northern Ireland—
  - (i) a Health and Social Services Board established under the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)),
  - (ii) 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)), or
  - (iii) the Department of Health, Social Services and Public Safety.

#### Textual Amendments

**F67** S. 133(4)(a)(iia) inserted (1.4.2004) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. 34, 199, [Sch. 4 para. 128](#); S.I. 2004/759, [art. 2](#)

#### *Disclosure of information by private person*

### 134 Employer

- (1) The Secretary of State may require an employer to supply information about an employee whom the Secretary of State reasonably suspects of having committed an offence under—
  - (a) section 24(1)(a), (b), (c), (e) or (f), 24A(1) or 26(1)(c) or (d) of the Immigration Act 1971 (c. 77) (illegal entry, deception, &c.),
  - (b) section 105(1)(a), (b) or (c) of the Immigration and Asylum Act 1999 (c. 33) (support for asylum-seeker: fraud), or
  - (c) section 106(1)(a), (b) or (c) of that Act (support for asylum-seeker: fraud).
- (2) The power under subsection (1) may be exercised to require information about an employee only if the information—
  - (a) is required for the purpose of establishing where the employee is, or
  - (b) relates to the employee's earnings or to the history of his employment.
- (3) In this section a reference to an employer or employee—
  - (a) includes a reference to a former employer or employee, and
  - (b) shall be construed in accordance with section 8(8) of the Asylum and Immigration Act 1996 (c. 49) (restrictions on employment).
- (4) Where—

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- (a) a business (the “employment agency”) arranges for one person (the “worker”) to provide services to another (the “client”), and
  - (b) the worker is not employed by the employment agency or the client,
- this section shall apply as if the employment agency were the worker’s employer while he provides services to the client.

### 135 Financial institution

- (1) The Secretary of State may require a financial institution to supply information about a person if the Secretary of State reasonably suspects that—
  - (a) the person has committed an offence under section 105(1)(a), (b) or (c) or 106(1)(a), (b) or (c) of the Immigration and Asylum Act 1999 (c. 33) (support for asylum-seeker: fraud),
  - (b) the information is relevant to the offence, and
  - (c) the institution has the information.
- (2) In this section “financial institution” means—
  - (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to accept deposits, and
  - (b) a building society (within the meaning given by the Building Societies Act 1986 (c. 53)).

### 136 Notice

- (1) A requirement to provide information under section 134 or 135 must be imposed by notice in writing specifying—
  - (a) the information,
  - (b) the manner in which it is to be provided, and
  - (c) the period of time within which it is to be provided.
- (2) A period of time specified in a notice under subsection (1)(c)—
  - (a) must begin with the date of receipt of the notice, and
  - (b) must not be less than ten working days.
- (3) A person on whom a notice is served under subsection (1) must provide the Secretary of State with the information specified in the notice.
- (4) Information provided under subsection (3) must be provided—
  - (a) in the manner specified under subsection (1)(b), and
  - (b) within the time specified under subsection (1)(c).
- (5) In this section “working day” means a day which is not—
  - (a) Saturday,
  - (b) Sunday,
  - (c) Christmas Day,
  - (d) Good Friday, or
  - (e) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in any part of the United Kingdom.



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### **137 Disclosure of information: offences**

- (1) A person commits an offence if without reasonable excuse he fails to comply with section 136(3).
- (2) A person who is guilty of an offence under subsection (1) shall be liable on summary conviction to—
  - (a) imprisonment for a term not exceeding three months,
  - (b) a fine not exceeding level 5 on the standard scale, or
  - (c) both.

### **138 Offence by body**

- (1) Subsection (2) applies where an offence under section 137 is committed by a body corporate and it is proved that the offence—
  - (a) was committed with the consent or connivance of an officer of the body, or
  - (b) was attributable to neglect on the part of an officer of the body.
- (2) The officer, as well as the body, shall be guilty of the offence.
- (3) In this section a reference to an officer of a body corporate includes a reference to—
  - (a) a director, manager or secretary,
  - (b) a person purporting to act as a director, manager or secretary, and
  - (c) if the affairs of the body are managed by its members, a member.
- (4) Where an offence under section 137 is committed by a partnership (other than a limited partnership), each partner shall be guilty of the offence.
- (5) Subsection (1) shall have effect in relation to a limited partnership as if—
  - (a) a reference to a body corporate were a reference to a limited partnership, and
  - (b) a reference to an officer of the body were a reference to a partner.

### **139 Privilege against self-incrimination**

- (1) Information provided by a person pursuant to a requirement under section 134 or 135 shall not be admissible in evidence in criminal proceedings against that person.
- (2) This section shall not apply to proceedings for an offence under section 137.

## *Immigration services*

### **140 Immigration Services Commissioner**

- (1) The following shall be inserted after paragraph 7(1) of Schedule 5 to the Immigration and Asylum Act 1999 (c. 33) (investigation by Commissioner: power of entry)—

“(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) or (d) (for which purpose a reference to an allegation shall be treated as a reference to a suspicion of the Commissioner), and

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- (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 registered person.”
- (2) The following shall be inserted after paragraph 3 of Schedule 6 to the Immigration and Asylum Act 1999 (c. 33) (registration by Commissioner)—

**“Variation of registration**

- 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.”
- (3) The following shall be inserted after section 87(3)(e) of the Immigration and Asylum Act 1999 (Immigration Services Tribunal: jurisdiction) (before the word “or”)—
  - “(ea) to vary a registration under paragraph 3A of that Schedule;”.

*Immigration control*

**141 EEA ports: juxtaposed controls**

- (1) The Secretary of State may by order make provision for the purpose of giving effect to an international agreement which concerns immigration control at an EEA port (whether or not it also concerns other aspects of frontier control at the port).
- (2) An order under this section may make any provision which appears to the Secretary of State—
  - (a) likely to facilitate implementation of the international agreement (including those aspects of the agreement which relate to frontier control other than immigration control), or
  - (b) appropriate as a consequence of provision made for the purpose of facilitating implementation of the agreement.
- (3) In particular, an order under this section may—
  - (a) provide for a law of England and Wales to have effect, with or without modification, in relation to a person in a specified area or anything done in a specified area;
  - (b) provide for a law of England and Wales not to have effect in relation to a person in a specified area or anything done in a specified area;
  - (c) provide for a law of England and Wales to be modified in its effect in relation to a person in a specified area or anything done in a specified area;
  - (d) disapply or modify an enactment in relation to a person who has undergone a process in a specified area;
  - (e) disapply or modify an enactment otherwise than under paragraph (b), (c) or (d);
  - (f) make provision conferring a function (which may include—
    - (i) provision conferring a discretionary function;
    - (ii) provision conferring a function on a servant or agent of the government of a State other than the United Kingdom);
  - (g) create or extend the application of an offence;

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- (h) impose or permit the imposition of a penalty;
  - (i) require the payment of, or enable a person to require the payment of, a charge or fee;
  - (j) make provision about enforcement (which may include—
    - (i) provision conferring a power of arrest, detention or removal from or to any place;
    - (ii) provision for the purpose of enforcing the law of a State other than the United Kingdom);
  - (k) confer jurisdiction on a court or tribunal;
  - (l) confer immunity or provide for indemnity;
  - (m) make provision about compensation;
  - (n) impose a requirement, or enable a requirement to be imposed, for a person to co-operate with or to provide facilities for the use of another person who is performing a function under the order or under the international agreement (which may include a requirement to provide facilities without charge);
  - (o) make provision about the disclosure of information.
- (4) An order under this section may—
- (a) make provision which applies generally or only in specified circumstances;
  - (b) make different provision for different circumstances;
  - (c) amend an enactment.
- (5) An order under this section—
- (a) must be made by statutory instrument,
  - (b) may not be made unless the Secretary of State has consulted with such persons as appear to him to be appropriate, and
  - (c) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (6) In this section—
- “EEA port” means a port in an EEA State from which passengers are commonly carried by sea to or from the United Kingdom,
- “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 from time to time),
- “frontier control” means the enforcement of law which relates to, or in so far as it relates to, the movement of persons or goods into or out of the United Kingdom or another State,
- “immigration control” means arrangements made in connection with the movement of persons into or out of the United Kingdom or another State,
- “international agreement” means an agreement made between Her Majesty’s Government and the government of another State, and
- “specified area” means an area (whether of the United Kingdom or of another State) specified in an international agreement.

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### *Country information*

#### **142 Advisory Panel on Country Information**

- (1) The Secretary of State shall appoint a group of not fewer than ten nor more than 20 individuals (to be known as the Advisory Panel on Country Information).
- (2) The Secretary of State shall appoint one member of the Advisory Panel as its Chairman.
- (3) The function of the Advisory Panel shall be to consider and make recommendations to the Secretary of State about the content of country information.
- (4) In this section “country information” means information about conditions in countries outside the United Kingdom which the Secretary of State compiles and makes available, for purposes connected with immigration, to—
  - (a) immigration officers, and
  - (b) other officers of the Secretary of State.
- (5) The function of the Advisory Panel shall be shared among its members in accordance with arrangements made by the Chairman.
- (6) A member of the Advisory Panel shall hold and vacate office in accordance with the terms of his appointment (which may include provision about retirement, resignation or dismissal).
- (7) The Secretary of State may—
  - (a) pay fees and allowances to members of the Advisory Panel;
  - (b) defray expenses of members of the Advisory Panel;
  - (c) make staff and other facilities available to the Advisory Panel.

## **PART 7**

### OFFENCES

#### *Substance*

#### **143 Assisting unlawful immigration, &c.**

The following shall be substituted for section 25 of the Immigration Act 1971 (c. 77) (assisting illegal entry)—

#### **“25 Assisting unlawful immigration to member State**

- (1) A person commits an offence if he—
  - (a) does an act which facilitates the commission of a breach of immigration law by an individual who is not a citizen of the European Union,
  - (b) knows or has reasonable cause for believing that the act facilitates the commission of a breach of immigration law by the individual, and
  - (c) knows or has reasonable cause for believing that the individual is not a citizen of the European Union.

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- (2) In subsection (1) “immigration law” means a law which has effect in a member State and which controls, in respect of some or all persons who are not nationals of the State, entitlement to—
- (a) enter the State,
  - (b) transit across the State, or
  - (c) be in the State.
- (3) A document issued by the government of a member State certifying a matter of law in that State—
- (a) shall be admissible in proceedings for an offence under this section, and
  - (b) shall be conclusive as to the matter certified.
- (4) Subsection (1) applies to anything done—
- (a) in the United Kingdom,
  - (b) outside the United Kingdom by an individual to whom subsection (5) applies, or
  - (c) outside the United Kingdom by a body incorporated under the law of a part of the United Kingdom.
- (5) This subsection applies to—
- (a) a British citizen,
  - (b) a British overseas territories citizen,
  - (c) a British National (Overseas),
  - (d) a British Overseas citizen,
  - (e) a person who is a British subject under the British Nationality Act 1981 (c. 61), and
  - (f) a British protected person within the meaning of that Act.
- (6) A person guilty of an offence under this section shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years, to a fine or to both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.

## **25A Helping asylum-seeker to enter United Kingdom**

- (1) A person commits an offence if—
- (a) he knowingly and for gain facilitates the arrival in the United Kingdom of an individual, and
  - (b) he knows or has reasonable cause to believe that the individual is an asylum-seeker.
- (2) In this section “asylum-seeker” means a person who intends to claim that to remove him from or require him to leave the United Kingdom would be contrary to the United Kingdom’s obligations under—
- (a) the Refugee Convention (within the meaning given by section 167(1) of the Immigration and Asylum Act 1999 (c. 33) (interpretation)), or
  - (b) the Human Rights Convention (within the meaning given by that section).

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- (3) Subsection (1) does not apply to anything done by a person acting on behalf of an organisation which—
  - (a) aims to assist asylum-seekers, and
  - (b) does not charge for its services.
- (4) Subsections (4) to (6) of section 25 apply for the purpose of the offence in subsection (1) of this section as they apply for the purpose of the offence in subsection (1) of that section.

### **25B Assisting entry to United Kingdom in breach of deportation or exclusion order**

- (1) A person commits an offence if he—
  - (a) does an act which facilitates a breach of a deportation order in force against an individual who is a citizen of the European Union, and
  - (b) knows or has reasonable cause for believing that the act facilitates a breach of the deportation order.
- (2) Subsection (3) applies where the Secretary of State personally directs that the exclusion from the United Kingdom of an individual who is a citizen of the European Union is conducive to the public good.
- (3) A person commits an offence if he—
  - (a) does an act which assists the individual to arrive in, enter or remain in the United Kingdom,
  - (b) knows or has reasonable cause for believing that the act assists the individual to arrive in, enter or remain in the United Kingdom, and
  - (c) knows or has reasonable cause for believing that the Secretary of State has personally directed that the individual's exclusion from the United Kingdom is conducive to the public good.
- (4) Subsections (4) to (6) of section 25 apply for the purpose of an offence under this section as they apply for the purpose of an offence under that section.

### **25C Forfeiture of vehicle, ship or aircraft**

- (1) This section applies where a person is convicted on indictment of an offence under section 25, 25A or 25B.
- (2) The court may order the forfeiture of a vehicle used or intended to be used in connection with the offence if the convicted person—
  - (a) owned the vehicle at the time the offence was committed,
  - (b) was at that time a director, secretary or manager of a company which owned the vehicle,
  - (c) was at that time in possession of the vehicle under a hire-purchase agreement,
  - (d) was at that time a director, secretary or manager of a company which was in possession of the vehicle under a hire-purchase agreement, or
  - (e) was driving the vehicle in the course of the commission of the offence.
- (3) The court may order the forfeiture of a ship or aircraft used or intended to be used in connection with the offence if the convicted person—

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- (a) owned the ship or aircraft at the time the offence was committed,
  - (b) was at that time a director, secretary or manager of a company which owned the ship or aircraft,
  - (c) was at that time in possession of the ship or aircraft under a hire-purchase agreement,
  - (d) was at that time a director, secretary or manager of a company which was in possession of the ship or aircraft under a hire-purchase agreement,
  - (e) was at that time a charterer of the ship or aircraft, or
  - (f) committed the offence while acting as captain of the ship or aircraft.
- (4) But in a case to which subsection (3)(a) or (b) does not apply, forfeiture may be ordered only—
- (a) in the case of a ship, if subsection (5) or (6) applies;
  - (b) in the case of an aircraft, if subsection (5) or (7) applies.
- (5) This subsection applies where—
- (a) in the course of the commission of the offence, the ship or aircraft carried more than 20 illegal entrants, and
  - (b) a person who, at the time the offence was committed, owned the ship or aircraft or was a director, secretary or manager of a company which owned it, knew or ought to have known of the intention to use it in the course of the commission of an offence under section 25, 25A or 25B.
- (6) This subsection applies where a ship's gross tonnage is less than 500 tons.
- (7) This subsection applies where the maximum weight at which an aircraft (which is not a hovercraft) may take off in accordance with its certificate of airworthiness is less than 5,700 kilogrammes.
- (8) Where a person who claims to have an interest in a vehicle, ship or aircraft applies to a court to make representations on the question of forfeiture, the court may not make an order under this section in respect of the ship, aircraft or vehicle unless the person has been given an opportunity to make representations.
- (9) In the case of an offence under section 25, the reference in subsection (5)(a) to an illegal entrant shall be taken to include a reference to—
- (a) an individual who seeks to enter a member State in breach of immigration law (within the meaning of section 25), and
  - (b) an individual who is a passenger for the purpose of section 145 of the Nationality, Immigration and Asylum Act 2002 (traffic in prostitution).
- (10) In the case of an offence under section 25A, the reference in subsection (5)(a) to an illegal entrant shall be taken to include a reference to—
- (a) an asylum-seeker (within the meaning of that section), and
  - (b) an individual who is a passenger for the purpose of section 145(1) of the Nationality, Immigration and Asylum Act 2002.
- (11) In the case of an offence under section 25B, the reference in subsection (5)(a) to an illegal entrant shall be taken to include a reference to an individual who is a passenger for the purpose of section 145(1) of the Nationality, Immigration and Asylum Act 2002.”

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#### 144 Section 143: consequential amendments

- (1) The Immigration Act 1971 (c. 77) shall be amended as follows.
- (2) Section 25A (detention of ship, aircraft or vehicle) shall be renumbered as section 25D (and its title becomes “Detention of ship, aircraft or vehicle”) and—
- (a) in subsection (1) for “section 25(1)(a) or (b)” substitute “ section 25, 25A or 25B ”,
  - (b) in subsections (2) and (4) for “section 25(6)” substitute “ section 25C ”,
  - (c) for subsection (3) substitute—
    - “(3) A person (other than the arrested person) may apply to the court for the release of a ship, aircraft or vehicle on the grounds that—
    - (a) he owns the ship, aircraft or vehicle,
    - (b) he was, immediately before the detention of the ship, aircraft or vehicle, in possession of it under a hire-purchase agreement, or
    - (c) he is a charterer of the ship or aircraft.”,
- and
- (d) omit subsection (7).
- (3) In section 28A (arrest without warrant)—
- (a) in subsection (3)(a) for “section 25(1)” substitute “ section 25, 25A or 25B ”,
  - (b) omit subsection (4),
  - (c) in subsection (10) omit “, (4)(b)”, and
  - (d) in subsection (11) omit “, (4)”.
- (4) In section 28B(5) (search and arrest by warrant) for “, section 24A or section 25(2)” substitute “ , 24A ”.
- (5) In section 28C(1) (search and arrest without warrant) for “section 25(1)” substitute “ section 25, 25A or 25B ”.
- (6) In section 28D(4) (entry and search of premises) for “section 24A or section 25” substitute “ 24A, 25, 25A, 25B ”.
- (7) In section 28F (the title to which becomes “Entry and search of premises following arrest under section 25, 25A or 25B”) in subsection (1) for “section 25(1)” substitute “ section 25, 25A, 25B ”.
- (8) After section 33(1) (interpretation) insert—
- “(1A) A reference to being an owner of a vehicle, ship or aircraft includes a reference to being any of a number of persons who jointly own it.”

#### 145 Traffic in prostitution

F68 .....

##### Textual Amendments

**F68** S. 145 repealed (1.5.2004) by [Sexual Offences Act 2003 \(c. 42\)](#), ss. 139, 140, 141, Sch. 6 para. 48, [Sch. 7](#); S.I. 2004/874, art. 2



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## 146 Section 145: supplementary

F69

### Textual Amendments

**F69** S. 146 repealed (1.5.2004) by [Sexual Offences Act 2003 \(c. 42\)](#), ss. 139, 140, 141, Sch. 6 para. 48, [Sch. 7](#); [S.I. 2004/874](#), [art. 2](#)

## 147 Employment

(1) Section 8 of the Asylum and Immigration Act 1996 (c. 49) (employment: offence) shall be amended as follows.

(2) For subsection (2) (defence) substitute—

“(2) It is a defence for a person charged with an offence under this section to prove that before the employment began any relevant requirement of an order of the Secretary of State under subsection (2A) was complied with.

(2A) An order under this subsection may—

- (a) require the production to an employer of a document of a specified description;
- (b) require the production to an employer of one document of each of a number of specified descriptions;
- (c) require an employer to take specified steps to retain, copy or record the content of a document produced to him in accordance with the order;
- (d) make provision which applies generally or only in specified circumstances;
- (e) make different provision for different circumstances.”

(3) After subsection (6) insert—

“(6A) Where an offence under this section is committed by a partnership (other than a limited partnership) each partner shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(6B) Subsection (5) shall have effect in relation to a limited partnership as if—

- (a) a reference to a body corporate were a reference to a limited partnership, and
- (b) a reference to an officer of the body were a reference to a partner.”

(4) At the end of the section add—

“(9) Section 28(1) of the Immigration Act 1971 (c. 77) (extended time limit for prosecution) shall apply in relation to an offence under this section.

(10) An offence under this section shall be treated as—

- (a) a relevant offence for the purpose of sections 28B and 28D of that Act (search, entry and arrest), and
- (b) an offence under Part III of that Act (criminal proceedings) for the purposes of sections 28E, 28G and 28H (search after arrest).”

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### Commencement Information

**I16** S. 147 wholly in force at 1.5.2004; s. 147 not in force at Royal Assent see s. 162(2); s. 147(1)(3)(4) in force and s. 147(2) in force for certain purposes at 1.4.2003 by S.I. 2003/754, **art. 2**, **Sch. 1**; s. 147 in force at 1.5.2004 in so far as not already in force by S.I. 2004/1201, **art. 2**

## 148 Registration card

The following shall be inserted after section 26 of the Immigration Act 1971 (general offences)—

### “26A Registration card

- (1) In this section “registration card” means a document which—
  - (a) carries information about a person (whether or not wholly or partly electronically), and
  - (b) is issued by the Secretary of State to the person wholly or partly in connection with a claim for asylum (whether or not made by that person).
- (2) In subsection (1) “claim for asylum” has the meaning given by section 18 of the Nationality, Immigration and Asylum Act 2002.
- (3) A person commits an offence if he—
  - (a) makes a false registration card,
  - (b) alters a registration card with intent to deceive or to enable another to deceive,
  - (c) has a false or altered registration card in his possession without reasonable excuse,
  - (d) uses or attempts to use a false registration card for a purpose for which a registration card is issued,
  - (e) uses or attempts to use an altered registration card with intent to deceive,
  - (f) makes an article designed to be used in making a false registration card,
  - (g) makes an article designed to be used in altering a registration card with intent to deceive or to enable another to deceive, or
  - (h) has an article within paragraph (f) or (g) in his possession without reasonable excuse.
- (4) In subsection (3) “false registration card” means a document which is designed to appear to be a registration card.
- (5) A person who is guilty of an offence under subsection (3)(a), (b), (d), (e), (f) or (g) shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding ten years, to a fine or to both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.
- (6) A person who is guilty of an offence under subsection (3)(c) or (h) shall be liable—

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- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.
- (7) The Secretary of State may by order—
- (a) amend the definition of “registration card” in subsection (1);
  - (b) make consequential amendment of this section.
- (8) An order under subsection (7)—
- (a) must be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.”

## 149 Immigration stamp

The following shall be inserted after section 26A of the Immigration Act 1971 (c. 77) (registration card: falsification, &c.) (inserted by section 148 above)—

### “26B Possession of immigration stamp

- (1) A person commits an offence if he has an immigration stamp in his possession without reasonable excuse.
- (2) A person commits an offence if he has a replica immigration stamp in his possession without reasonable excuse.
- (3) In this section—
  - (a) “immigration stamp” means a device which is designed for the purpose of stamping documents in the exercise of an immigration function,
  - (b) “replica immigration stamp” means a device which is designed for the purpose of stamping a document so that it appears to have been stamped in the exercise of an immigration function, and
  - (c) “immigration function” means a function of an immigration officer or the Secretary of State under the Immigration Acts.
- (4) A person who is guilty of an offence under this section shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.”

## 150 Sections 148 and 149: consequential amendments

- (1) The following shall be inserted after section 28A(9) of the Immigration Act 1971 (arrest without warrant)—

“(9A) A constable or immigration officer may arrest without warrant a person—

- (a) who has committed an offence under section 26A or 26B; or
- (b) whom he has reasonable grounds for suspecting has committed an offence under section 26A or 26B.”

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- (2) In section 28B(5) of that Act (search and arrest by warrant) after “, 24A” there shall be inserted “, 26A or 26B.”
- (3) In section 28D(4) of that Act (search of premises) after “, 25B” there shall be inserted “, 26A or 26B.”

### 151 False information

In section 26(3) of the Immigration Act 1971 (general offences: “relevant enactment”)

- (a) the word “or” after paragraph (c) shall cease to have effect, and
- (b) after paragraph (d) there shall be inserted—
- “; or
- (e) the Nationality, Immigration and Asylum Act 2002 (apart from Part 5).”

#### *Procedure*

### 152 Arrest by immigration officer

The following shall be inserted after section 28A of the Immigration Act 1971 (c. 77) (arrest without warrant)—

#### “28AA Arrest with warrant

- (1) This section applies if on an application by an immigration officer a justice of the peace is satisfied that there are reasonable grounds for suspecting that a person has committed an offence under—
- (a) section 24(1)(d), or
- (b) section 8 of the Asylum and Immigration Act 1996 (c. 49) (employment: offence).
- (2) The justice of the peace may grant a warrant authorising any immigration officer to arrest the person.
- (3) In the application of this section to Scotland a reference to a justice of the peace shall be treated as a reference to the sheriff or a justice of the peace.”

### 153 Power of entry

- (1) The following shall be inserted after section 28C of the Immigration Act 1971 (search and arrest without warrant)—

#### “28CA Business premises: entry to arrest

- (1) A constable or immigration officer may enter and search any business premises for the purpose of arresting a person—
- (a) for an offence under section 24,
- (b) for an offence under section 24A, or

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- (c) under paragraph 17 of Schedule 2.
- (2) The power under subsection (1) may be exercised only—
  - (a) to the extent that it is reasonably required for a purpose specified in subsection (1),
  - (b) if the constable or immigration officer has reasonable grounds for believing that the person whom he is seeking is on the premises,
  - (c) with the authority of the Secretary of State (in the case of an immigration officer) or a Chief Superintendent (in the case of a constable), and
  - (d) if the constable or immigration officer produces identification showing his status.
- (3) Authority for the purposes of subsection (2)(c)—
  - (a) may be given on behalf of the Secretary of State only by a civil servant of the rank of at least Assistant Director, and
  - (b) shall expire at the end of the period of seven days beginning with the day on which it is given.
- (4) Subsection (2)(d) applies—
  - (a) whether or not a constable or immigration officer is asked to produce identification, but
  - (b) only where premises are occupied.
- (5) Subsection (6) applies where a constable or immigration officer—
  - (a) enters premises in reliance on this section, and
  - (b) detains a person on the premises.
- (6) A detainee custody officer may enter the premises for the purpose of carrying out a search.
- (7) In subsection (6)—
  - “detainee custody officer” means a person in respect of whom a certificate of authorisation is in force under section 154 of the Immigration and Asylum Act 1999 (c. 33) (detained persons: escort and custody), and
  - “search” means a search under paragraph 2(1)(a) of Schedule 13 to that Act (escort arrangements: power to search detained person).”
- (2) The following shall be substituted for section 146(2) of the Immigration and Asylum Act 1999 (use of force)—
  - “(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.”

## 154 Power to search for evidence

The following shall be inserted after section 28F of the Immigration Act 1971 (c. 77) (entry and search)—

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### “28FA Search for personnel records: warrant unnecessary

- (1) This section applies where—
  - (a) a person has been arrested for an offence under section 24(1) or 24A(1),
  - (b) a person has been arrested under paragraph 17 of Schedule 2,
  - (c) a constable or immigration officer reasonably believes that a person is liable to arrest for an offence under section 24(1) or 24A(1), or
  - (d) a constable or immigration officer reasonably believes that a person is liable to arrest under paragraph 17 of Schedule 2.
- (2) A constable or immigration officer may search business premises where the arrest was made or where the person liable to arrest is if the constable or immigration officer reasonably believes—
  - (a) that a person has committed an immigration employment offence in relation to the person arrested or liable to arrest, and
  - (b) that employee records, other than items subject to legal privilege, will be found on the premises and will be of substantial value (whether on their own or together with other material) in the investigation of the immigration employment offence.
- (3) A constable or officer searching premises under subsection (2) may seize and retain employee records, other than items subject to legal privilege, which he reasonably suspects will be of substantial value (whether on their own or together with other material) in the investigation of—
  - (a) an immigration employment offence, or
  - (b) an offence under section 105 or 106 of the Immigration and Asylum Act 1999 (c. 33) (support for asylum-seeker: fraud).
- (4) The power under subsection (2) may be exercised only—
  - (a) to the extent that it is reasonably required for the purpose of discovering employee records other than items subject to legal privilege,
  - (b) if the constable or immigration officer produces identification showing his status, and
  - (c) if the constable or immigration officer reasonably believes that at least one of the conditions in subsection (5) applies.
- (5) Those conditions are—
  - (a) that it is not practicable to communicate with a person entitled to grant access to the records,
  - (b) that permission to search has been refused,
  - (c) that permission to search would be refused if requested, and
  - (d) that the purpose of a search may be frustrated or seriously prejudiced if it is not carried out in reliance on subsection (2).
- (6) Subsection (4)(b) applies—
  - (a) whether or not a constable or immigration officer is asked to produce identification, but
  - (b) only where premises are occupied.
- (7) In this section “immigration employment offence” means an offence under section 8 of the Asylum and Immigration Act 1996 (c. 49) (employment).

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### **28FB Search for personnel records: with warrant**

- (1) This section applies where on an application made by an immigration officer in respect of business premises a justice of the peace is satisfied that there are reasonable grounds for believing—
  - (a) that an employer has provided inaccurate or incomplete information under section 134 of the Nationality, Immigration and Asylum Act 2002 (compulsory disclosure by employer),
  - (b) that employee records, other than items subject to legal privilege, will be found on the premises and will enable deduction of some or all of the information which the employer was required to provide, and
  - (c) that at least one of the conditions in subsection (2) is satisfied.
- (2) Those conditions are—
  - (a) that it is not practicable to communicate with a person entitled to grant access to the premises,
  - (b) that it is not practicable to communicate with a person entitled to grant access to the records,
  - (c) that entry to the premises or access to the records will not be granted unless a warrant is produced, and
  - (d) that the purpose of a search may be frustrated or seriously prejudiced unless an immigration officer arriving at the premises can secure immediate entry.
- (3) The justice of the peace may issue a warrant authorising an immigration officer to enter and search the premises.
- (4) Subsection (7)(a) of section 28D shall have effect for the purposes of this section as it has effect for the purposes of that section.
- (5) An immigration officer searching premises under a warrant issued under this section may seize and retain employee records, other than items subject to legal privilege, which he reasonably suspects will be of substantial value (whether on their own or together with other material) in the investigation of—
  - (a) an offence under section 137 of the Nationality, Immigration and Asylum Act 2002 (disclosure of information: offences) in respect of a requirement under section 134 of that Act, or
  - (b) an offence under section 105 or 106 of the Immigration and Asylum Act 1999 (c. 33) (support for asylum-seeker: fraud)."

### **155 Sections 153 and 154: supplemental**

The following shall be added at the end of section 28L of the Immigration Act 1971 (c. 77) (interpretation) (which becomes subsection (1))—

- “(2) In this Part “business premises” means premises (or any part of premises) not used as a dwelling.
- (3) In this Part “employee records” means records which show an employee’s—
  - (a) name,
  - (b) date of birth,

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- (c) address,
- (d) length of service,
- (e) rate of pay, or
- (f) nationality or citizenship.

(4) The Secretary of State may by order amend section 28CA(3)(a) to reflect a change in nomenclature.

(5) An order under subsection (4)—

- (a) must be made by statutory instrument, and
- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

### 156 Time limit on prosecution

- (1) In section 28(1) of the Immigration Act 1971 (c. 77) (extended time limit for prosecution) the words “, 24A, 25” shall cease to have effect.
- (2) Section 24A(4) of that Act (deception: application of extended time limit) shall cease to have effect.

## PART 8

### GENERAL

### 157 Consequential and incidental provision

- (1) The Secretary of State may by order make consequential or incidental provision in connection with a provision of this Act.
- (2) An order under this section may, in particular—
  - (a) amend an enactment;
  - (b) modify the effect of an enactment.
- (3) An order under this section must be made by statutory instrument.
- (4) An order under this section which amends an enactment shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (5) Any other order under this section shall be subject to annulment pursuant to a resolution of either House of Parliament.

### 158 Interpretation: “the Immigration Acts”

[<sup>F70</sup>(1) A reference to “the Immigration Acts” shall be construed in accordance with section 44 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.]

(3) The following shall be substituted for section 32(5) of the Immigration Act 1971—

“(5) In subsection (4) “the Immigration Acts” has the meaning given by section 158 of the Nationality, Immigration and Asylum Act 2002.”



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- (4) The following shall be substituted for the definition of “the Immigration Acts” in section 167(1) of the Immigration and Asylum Act 1999—

““the Immigration Acts” has the meaning given by section 158 of the Nationality, Immigration and Asylum Act 2002.”

#### Textual Amendments

- F70** S. 158(1) substituted (1.10.2004) for s. 158(1)(2) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\), ss. 44, 48\(1\)-\(3\)](#); S.I. 2004/2523, [art. 2](#), Sch.

### 159 Applied provision

- (1) Subsection (2) applies where this Act amends or refers to a provision which is applied by, under or for purposes of—
- (a) another provision of the Act which contains the provision, or
  - (b) another Act.
- (2) The amendment or reference shall have effect in relation to the provision as applied.
- (3) Where this Act applies a provision of another Act, a reference to that provision in any enactment includes a reference to the provision as applied by this Act.

### 160 Money

- (1) Expenditure of the Secretary of State or the Lord Chancellor in connection with a provision of this Act shall be paid out of money provided by Parliament.
- (2) An increase attributable to this Act in the amount payable out of money provided by Parliament under another enactment shall be paid out of money provided by Parliament.
- (3) A sum received by the Secretary of State or the Lord Chancellor in connection with a provision of this Act shall be paid into the Consolidated Fund.

### 161 Repeals

The provisions listed in Schedule 9 are hereby repealed to the extent specified.

#### Commencement Information

- I17** S. 161 partly in force; s. 161 in force in relation to specified entry in Sch. 9 at Royal Assent see s. 162(2); s. 161 in force at 8.12.2002 in relation to further specified entries in Sch. 9 by [S.I. 2002/2811, art. 2, Sch.](#); s. 161 in force at 10.2.2003 in relation to further specified entries by [S.I. 2003/1, art. 2, Sch.](#); s. 161 in force at 1.4.2003 in relation to further specified entries by [S.I. 2003/754, art. 2, Sch. 1](#)

### 162 Commencement

- (1) Subject to subsections (2) to (5), the preceding provisions of this Act shall come into force in accordance with provision made by the Secretary of State by order.

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- (2) The following provisions shall come into force on the passing of this Act—
- (a) section 6,
  - (b) section 7,
  - (c) section 10(1) to (4) and (6),
  - (d) section 11,
  - (e) section 15 (and Schedule 2),
  - (f) section 16,
  - (g) section 35(1)(h),
  - (h) section 38,
  - (i) section 40(1),
  - (j) section 41(1),
  - (k) section 42,
  - (l) section 43,
  - (m) section 48,
  - (n) section 49,
  - (o) section 50,
  - (p) section 56,
  - (q) section 58,
  - (r) section 59,
  - (s) section 61,
  - (t) section 67,
  - (u) section 69,
  - (v) section 70,
  - (w) section 115 and paragraph 29 of Schedule 7 (and the relevant entry in Schedule 9),
  - (x) section 157, and
  - (y) section 160.
- (3) Section 5 shall have effect in relation to—
- (a) an application made after the passing of this Act, and
  - (b) an application made, but not determined, before the passing of this Act.
- (4) Section 8 shall have effect in relation to—
- (a) an application made on or after a date appointed by the Secretary of State by order, and
  - (b) an application made, but not determined, before that date.
- (5) Section 9 shall have effect in relation to a child born on or after a date appointed by the Secretary of State by order.
- (6) An order under subsection (1) may—
- (a) make provision generally or for a specified purpose only (which may include the purpose of the application of a provision to or in relation to a particular place or area);
  - (b) make different provision for different purposes;
  - (c) include transitional provision;
  - (d) include savings;
  - (e) include consequential provision;

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(f) include incidental provision.

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

#### Subordinate Legislation Made

- P1** S. 162(1)(6) power partly exercised: different dates appointed for specified provisions by [S.I. 2002/2811](#), art. 2, Sch.; different dates appointed for specified provisions and purposes by [S.I. 2003/1](#), art. 2, Sch; 10.2.2003 for specified provisions and purposes by [S.I. 2003/249](#), art. 2, Sch.; different dates appointed for specified provisions and purposes by [S.I. 2003/754](#), art. 2, Sch. 1 (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)); 8.4.2003 by [S.I. 2003/1040](#), art. 1; 9.6.2003 by [S.I. 2003/1339](#), art. 2; 19.11.2003 by [S.I. 2003/2993](#), art. 2; 1.1.2004 for specified provisions by [S.I. 2003/3156](#), art. 2 (with arts. 3, 4); 1.5.2004 for specified provision by [S.I. 2004/1201](#), art. 2; different dates appointed for specified provisions by [S.I. 2004/1707](#), arts. 2, 3; 10.12.2004 for specified provision by [S.I. 2004/2998](#), art. 2; 1.11.2005 for specified provision by [S.I. 2005/2782](#), {art. 3(1)} (subject to art. 3(2))
- P2** S. 162(1) power exercised: 30.7.2003 appointed for specified provisions by [S.I. 2003/1747](#), art. 2; 21.12.2006 appointed for specified provision by [S.I. 2006/3144](#), art. 2
- P3** S. 162(1)(5) power exercised: different dates appointed for specified provisions and purposes by [S.I. 2006/1498](#), arts. 2, 3
- P4** S. 162(4) power fully exercised: 1.4.2003 appointed by [S.I. 2003/754](#), art. 2(2)

## 163 Extent

- (1) A provision of this Act which amends or repeals a provision of another Act or inserts a provision into another Act has the same extent as the provision amended or repealed or as the Act into which the insertion is made (ignoring, in any case, extent by virtue of an Order in Council).
- (2) Sections 145 and 146 extend only to—
- England and Wales, and
  - Northern Ireland.
- (3) A provision of this Act to which neither subsection (1) nor subsection (2) applies extends to—
- England and Wales,
  - Scotland, and
  - Northern Ireland.
- (4) Her Majesty may by Order in Council direct that a provision of this Act is to extend, with or without modification or adaptation, to—
- any of the Channel Islands;
  - the Isle of Man.
- (5) Subsection (4) does not apply in relation to the extension to a place of a provision which extends there by virtue of subsection (1).

## 164 Short title

This Act may be cited as the Nationality, Immigration and Asylum Act 2002.

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## SCHEDULES

### SCHEDULE 1

Section 3

#### CITIZENSHIP CEREMONY, OATH AND PLEDGE

1 The following shall be substituted for section 42 of the British Nationality Act 1981 (c. 61) (registration and naturalisation: fee and oath)—

**“42 Registration and naturalisation: citizenship ceremony, oath and pledge**

- (1) A person of full age shall not be registered under this Act as a British citizen unless he has made the relevant citizenship oath and pledge specified in Schedule 5 at a citizenship ceremony.
- (2) A certificate of naturalisation as a British citizen shall not be granted under this Act to a person of full age unless he has made the relevant citizenship oath and pledge specified in Schedule 5 at a citizenship ceremony.
- (3) A person of full age shall not be registered under this Act as a British overseas territories citizen unless he has made the relevant citizenship oath and pledge specified in Schedule 5.
- (4) A certificate of naturalisation as a British overseas territories citizen shall not be granted under this Act to a person of full age unless he has made the relevant citizenship oath and pledge specified in Schedule 5.
- (5) A person of full age shall not be registered under this Act as a British Overseas citizen or a British subject unless he has made the relevant citizenship oath specified in Schedule 5.
- (6) Where the Secretary of State thinks it appropriate because of the special circumstances of a case he may—
  - (a) disapply any of subsections (1) to (5), or
  - (b) modify the effect of any of those subsections.
- (7) Sections 5 and 6 of the Oaths Act 1978 (c. 19) (affirmation) apply to a citizenship oath; and a reference in this Act to a citizenship oath includes a reference to a citizenship affirmation.

**42A Registration and naturalisation: fee**

- (1) A person shall not be registered under a provision of this Act as a citizen of any description or as a British subject unless any fee payable by virtue of this Act in connection with the registration has been paid.
- (2) A certificate of naturalisation shall not be granted to a person under a provision of this Act unless any fee payable by virtue of this Act in connection with the grant of the certificate has been paid.

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## **42B Registration and naturalisation: timing**

- (1) A person who is registered under this Act as a citizen of any description or as a British subject shall be treated as having become a citizen or subject—
  - (a) immediately on making the required citizenship oath and pledge in accordance with section 42, or
  - (b) where the requirement for an oath and pledge is disapplied, immediately on registration.
- (2) A person granted a certificate of naturalisation under this Act as a citizen of any description shall be treated as having become a citizen—
  - (a) immediately on making the required citizenship oath and pledge in accordance with section 42, or
  - (b) where the requirement for an oath and pledge is disapplied, immediately on the grant of the certificate.
- (3) In the application of subsection (1) to registration as a British Overseas citizen or as a British subject the reference to the citizenship oath and pledge shall be taken as a reference to the citizenship oath.”

- 2 The following shall be substituted for Schedule 5 to the British Nationality Act 1981 (c. 61)—

### “SCHEDULE 5

#### CITIZENSHIP OATH AND PLEDGE

- 1 The form of citizenship oath and pledge is as follows for registration of or naturalisation as a British citizen—

#### **OATH**

“I,*[name]*, swear by Almighty God that, on becoming a British citizen, I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law.”

#### **PLEDGE**

“I will give my loyalty to the United Kingdom and respect its rights and freedoms. I will uphold its democratic values. I will observe its laws faithfully and fulfil my duties and obligations as a British citizen.”

- 2 The form of citizenship oath and pledge is as follows for registration of or naturalisation as a British overseas territories citizen—

#### **OATH**

“I,*[name]*, swear by Almighty God that, on becoming a British overseas territories citizen, I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law.”

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### PLEDGE

“I will give my loyalty to *[name of territory]* and respect its rights and freedoms. I will uphold its democratic values. I will observe its laws faithfully and fulfil my duties and obligations as a British overseas territories citizen.”

3 The form of citizenship oath is as follows for registration of a British Overseas citizen—

“I, *[name]*, swear by Almighty God that, on becoming a British Overseas citizen, I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law.”

4 The form of citizenship oath is as follows for registration of a British subject—

“I, *[name]*, swear by Almighty God that, on becoming a British subject, I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law.”

3 Section 41 of the British Nationality Act 1981 (c. 61) (regulations) shall be amended as follows.

4 For subsection (1)(d) substitute—

- “(d) for the time within which an obligation to make a citizenship oath and pledge at a citizenship ceremony must be satisfied;
- (da) for the time within which an obligation to make a citizenship oath or pledge must be satisfied;
- (db) for the content and conduct of a citizenship ceremony;
- (dc) for the administration and making of a citizenship oath or pledge;
- (dd) for the registration and certification of the making of a citizenship oath or pledge;
- (de) for the completion and grant of a certificate of registration or naturalisation;”.

5 In subsection (2)(c)—

- (a) for “the taking there of any oath of allegiance” substitute “ the making there of a citizenship oath or pledge ”, and
- (b) for “granted or taken” substitute “ or granted ”.

6 In subsection (3)(a) for “taking of oaths of allegiance” substitute “ making of oaths and pledges of citizenship ”.

7 After subsection (3) insert—

“(3A) Regulations under subsection (1)(d) to (de) may, in particular—

- (a) enable the Secretary of State to designate or authorise a person to exercise a function (which may include a discretion) in connection with a citizenship ceremony or a citizenship oath or pledge;
- (b) require, or enable the Secretary of State to require, a local authority to provide specified facilities and to make specified arrangements in connection with citizenship ceremonies;
- (c) impose, or enable the Secretary of State to impose, a function (which may include a discretion) on a local authority or on a registrar.

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(3B) In subsection (3A)—

“local authority” means—

- (a) in relation to England and Wales, a county council, a county borough council, a metropolitan district council, a London Borough Council and the Common Council of the City of London, and
- (b) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39), and

“registrar” means—

- (a) in relation to England and Wales, a superintendent registrar of births, deaths and marriages (or, in accordance with section 8 of the Registration Service Act 1953 (c. 37), a deputy superintendent registrar), and
- (b) in relation to Scotland, a district registrar within the meaning of section 7(12) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c. 49).”

8 The Secretary of State may make a payment to a local authority in respect of anything done by the authority in accordance with regulations made by virtue of section 41(3A) of the British Nationality Act 1981 (c. 61).

9 (1) A local authority must—

- (a) comply with a requirement imposed on it by regulations made by virtue of that section, and
- (b) carry out a function imposed on it by regulations made by virtue of that section.

(2) A local authority on which a requirement or function is imposed by regulations made by virtue of that section—

- (a) may provide facilities or make arrangements in addition to those which it is required to provide or make, and
- (b) may make a charge for the provision of facilities or the making of arrangements under paragraph (a) which does not exceed the cost of providing the facilities or making the arrangements.

## SCHEDULE 2

Section 15

### NATIONALITY: REPEAL OF SPENT PROVISIONS

1 The following provisions of the British Nationality Act 1981 (c. 61) shall cease to have effect—

- (a) section 7(registration as British citizen by virtue of residence or employment),
- (b) section 8(registration as British citizen by virtue of marriage),
- (c) section 9(registration as British citizen by virtue of father’s status),
- (d) section 19(registration as British Dependent Territories citizen by virtue of residence),
- (e) section 20(registration as British Dependent Territories citizen by virtue of marriage),

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- (f) section 21(registration as British Dependent Territories citizen by virtue of father’s status),
  - (g) section 27(2)(entitlement of minor to registration as British Overseas citizen),
  - (h) section 28(registration as British Overseas citizen by virtue of marriage), and
  - (i) section 33(registration as British subject of certain women by virtue of earlier entitlement).
- 2 Nothing in this Schedule has any effect in relation to a registration made under a provision before its repeal.

### SCHEDULE 3

Section 54

#### WITHHOLDING AND WITHDRAWAL OF SUPPORT

##### *Ineligibility for support*

- 1 (1) A person to whom this paragraph applies shall not be eligible for support or assistance under—
- (a) section 21 or 29 of the National Assistance Act 1948 (c. 29) (local authority: accommodation and welfare),
  - (b) section 45 of the Health Services and Public Health Act 1968 (c. 46) (local authority: welfare of elderly),
  - (c) section 12 or 13A of the Social Work (Scotland) Act 1968 (c. 49) (social welfare services),
  - (d) Article 7 or 15 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)) (prevention of illness, social welfare, &c.),
  - (e) section 21 of and Schedule 8 to the National Health Service Act 1977 (c. 49) (social services),
  - (f) section 29(1)(b) of the Housing (Scotland) Act 1987 (c. 26) (interim duty to accommodate in case of apparent priority need where review of a local authority decision has been requested),
  - (g) section 17, 23C, 24A or 24B of the Children Act 1989 (c. 41) (welfare and other powers which can be exercised in relation to adults),
  - (h) Article 18, 35 or 36 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)) (welfare and other powers which can be exercised in relation to adults),
  - (i) sections 22, 29 and 30 of the Children (Scotland) Act 1995 (c. 36) (provisions analogous to those mentioned in paragraph (g)),
  - (j) section 188(3) or 204(4) of the Housing Act 1996 (c. 52) (accommodation pending review or appeal),
  - (k) section 2 of the Local Government Act 2000 (c. 22) (promotion of well-being),
  - (l) a provision of the Immigration and Asylum Act 1999 (c. 33), or
  - (m) a provision of this Act.



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- (2) A power or duty under a provision referred to in sub-paragraph (1) may not be exercised or performed in respect of a person to whom this paragraph applies (whether or not the person has previously been in receipt of support or assistance under the provision).
- (3) An approval or directions given under or in relation to a provision referred to in sub-paragraph (1) shall be taken to be subject to sub-paragraph (2).

#### *Exceptions*

- 2 (1) Paragraph 1 does not prevent the provision of support or assistance—
  - (a) to a British citizen, or
  - (b) to a child, or
  - (c) under or by virtue of regulations made under paragraph 8, 9 or 10 below, or
  - (d) in a case in respect of which, and to the extent to which, regulations made by the Secretary of State disapply paragraph 1, or
  - (e) in circumstances in respect of which, and to the extent to which, regulations made by the Secretary of State disapply paragraph 1.
- (2) Regulations under sub-paragraph (1)(d) may confer a discretion on the Secretary of State.
- (3) Regulations under sub-paragraph (1)(e) may, in particular, disapply paragraph 1 to the provision of support or assistance by a local authority to a person where the authority—
  - (a) has taken steps in accordance with guidance issued by the Secretary of State to determine whether paragraph 1 would (but for the regulations) apply to the person, and
  - (b) has concluded on the basis of those steps that there is no reason to believe that paragraph 1 would apply.
- (4) Regulations under sub-paragraph (1)(d) or (e) may confer a discretion on an authority.
- (5) A local authority which is considering whether to give support or assistance to a person under a provision listed in paragraph 1(1) shall act in accordance with any relevant guidance issued by the Secretary of State under sub-paragraph (3)(a).
- (6) A reference in this Schedule to a person to whom paragraph 1 applies includes a reference to a person in respect of whom that paragraph is disappplied to a limited extent by regulations under sub-paragraph (1)(d) or (e), except in a case for which the regulations provide otherwise.

#### **Commencement Information**

**I18** Sch. 3 para. 2 wholly in force at 8.1.2003; Sch. 3 para. 2 not in force at Royal Assent see s. 162(2); Sch. 3 para. 2 in force at 8.12.2002 for certain purposes and at 8.1.2003 so far as not already in force by S.I. 2002/2811, art. 2, Sch.

- 3 Paragraph 1 does not prevent the exercise of a power or the performance of a duty if, and to the extent that, its exercise or performance is necessary for the purpose of avoiding a breach of—

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- (a) a person's Convention rights, or
- (b) a person's rights under the Community Treaties.

*First class of ineligible person: refugee status abroad*

- 4 (1) Paragraph 1 applies to a person if he—
- (a) has refugee status abroad, or
  - (b) is the dependant of a person who is in the United Kingdom and who has refugee status abroad.
- (2) For the purposes of this paragraph a person has refugee status abroad if—
- (a) he does not have the nationality of an EEA State, and
  - (b) the government of an EEA State other than the United Kingdom has determined that he is entitled to protection as a refugee under the Refugee Convention.

*Second class of ineligible person: citizen of other EEA State*

- 5 Paragraph 1 applies to a person if he—
- (a) has the nationality of an EEA State other than the United Kingdom, or
  - (b) is the dependant of a person who has the nationality of an EEA State other than the United Kingdom.

*Third class of ineligible person: failed asylum-seeker*

- 6 (1) Paragraph 1 applies to a person if—
- (a) he was (but is no longer) an asylum-seeker, and
  - (b) he fails to cooperate with removal directions issued in respect of him.
- (2) Paragraph 1 also applies to a dependant of a person to whom that paragraph applies by virtue of sub-paragraph (1).

*Fourth class of ineligible person: person unlawfully in United Kingdom*

- 7 Paragraph 1 applies to a person if—
- (a) he is in the United Kingdom in breach of the immigration laws within the meaning of section 11, and
  - (b) he is not an asylum-seeker.

*<sup>F71</sup>Fifth class of ineligible person: failed asylum-seeker with family*

**Textual Amendments**

**F71** Sch. 3 para. 7A and preceding cross-heading inserted (1.12.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 9(1), 48(1)-(3); S.I. 2004/2999, art. 2, Sch. (with transitional provisions in art. 4)

- 7A (1) Paragraph 1 applies to a person if—
- (a) he—

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- (i) is treated as an asylum-seeker for the purposes of Part VI of the Immigration and Asylum Act 1999 (c. 33) (support) by virtue only of section 94(3A) (failed asylum-seeker with dependent child), or
    - (ii) is treated as an asylum-seeker for the purposes of Part 2 of this Act by virtue only of section 18(2),
  - (b) the Secretary of State has certified that in his opinion the person has failed without reasonable excuse to take reasonable steps—
    - (i) to leave the United Kingdom voluntarily, or
    - (ii) to place himself in a position in which he is able to leave the United Kingdom voluntarily,
  - (c) the person has received a copy of the Secretary of State’s certificate, and
  - (d) the period of 14 days, beginning with the date on which the person receives the copy of the certificate, has elapsed.
- (2) Paragraph 1 also applies to a dependant of a person to whom that paragraph applies by virtue of sub-paragraph (1).
- (3) For the purpose of sub-paragraph (1)(d) if the Secretary of State sends a copy of a certificate by first class post to a person’s last known address, the person shall be treated as receiving the copy on the second day after the day on which it was posted.
- (4) The Secretary of State may by regulations vary the period specified in sub-paragraph (1)(d).]

**Modifications etc. (not altering text)**

**C44** Sch. 3 para. 7A: power to repeal conferred (prosp.) by [Immigration, Asylum and Nationality Act 2006](#) (c. 13), **ss. 44, 62**

*Travel assistance*

- 8 The Secretary of State may make regulations providing for arrangements to be made enabling a person to whom paragraph 1 applies by virtue of paragraph 4 or 5 to leave the United Kingdom.

**Commencement Information**

**I19** Sch. 3 para. 8 wholly in force at 8.1.2003; Sch. 3 para. 8 not in force at Royal Assent see [s. 162\(2\)](#); Sch. 3 para. 8 in force at 8.12.2002 for certain purposes and at 8.1.2003 so far as not already in force by [S.I. 2002/2811](#), [art. 2](#), **Sch.**

*Temporary accommodation*

- 9 (1) The Secretary of State may make regulations providing for arrangements to be made for the accommodation of a person to whom paragraph 1 applies pending the implementation of arrangements made by virtue of paragraph 8.
- (2) Arrangements for a person by virtue of this paragraph—
  - (a) may be made only if the person has with him a dependent child, and
  - (b) may include arrangements for a dependent child.

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#### Commencement Information

**I20** Sch. 3 para. 9 wholly in force at 8.1.2003; Sch. 3 para. 9 not in force at Royal Assent see s. 162(2); Sch. 3 para. 9 in force at 8.12.2002 for certain purposes and at 8.1.2003 so far as not already in force by S.I. 2002/2811, art. 2, Sch.

- 10 (1) The Secretary of State may make regulations providing for arrangements to be made for the accommodation of a person if—
- (a) paragraph 1 applies to him by virtue of paragraph 7, and
  - (b) he has not failed to cooperate with removal directions issued in respect of him.
- (2) Arrangements for a person by virtue of this paragraph—
- (a) may be made only if the person has with him a dependent child, and
  - (b) may include arrangements for a dependent child.

#### Commencement Information

**I21** Sch. 3 para. 10 wholly in force at 8.1.2003; Sch. 3 para. 10 not in force at Royal Assent see s. 162(2); Sch. 3 para. 10 in force at 8.12.2002 for certain purposes and at 8.1.2003 so far as not already in force by S.I. 2002/2811, art. 2, Sch.

#### *Assistance and accommodation: general*

- 11 Regulations under paragraph 8, 9 or 10 may—
- (a) provide for the making of arrangements under a provision referred to in paragraph 1(1) or otherwise;
  - (b) confer a function (which may include the exercise of a discretion) on the Secretary of State, a local authority or another person;
  - (c) provide that arrangements must be made in a specified manner or in accordance with specified principles;
  - (d) provide that arrangements may not be made in a specified manner;
  - (e) require a local authority or another person to have regard to guidance issued by the Secretary of State in making arrangements;
  - (f) require a local authority or another person to comply with a direction of the Secretary of State in making arrangements.

#### Commencement Information

**I22** Sch. 3 para. 11 wholly in force at 8.1.2003; Sch. 3 para. 11 not in force at Royal Assent see s. 162(2); Sch. 3 para. 11 in force at 8.12.2002 for certain purposes and at 8.1.2003 so far as not already in force by S.I. 2002/2811, art. 2, Sch.

- 12 (1) Regulations may, in particular, provide that if a person refuses an offer of arrangements under paragraph 8 or fails to implement or cooperate with arrangements made for him under that paragraph—
- (a) new arrangements may be made for him under paragraph 8, but
  - (b) new arrangements may not be made for him under paragraph 9.

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- (2) Regulations by virtue of this paragraph may include exceptions in the case of a person who—
- (a) has a reason of a kind specified in the regulations for failing to implement or cooperate with arrangements made under paragraph 8, and
  - (b) satisfies any requirements of the regulations for proof of the reason.

#### Commencement Information

**I23** Sch. 3 para. 12 wholly in force at 8.1.2003; Sch. 3 para. 12 not in force at Royal Assent see s. 162(2); Sch. 3 para. 12 in force at 8.12.2002 for certain purposes and at 8.1.2003 so far as not already in force by S.I. 2002/2811, art. 2, Sch.

#### Offences

- 13 (1) A person who leaves the United Kingdom in accordance with arrangements made under paragraph 8 commits an offence if he—
- (a) returns to the United Kingdom, and
  - (b) requests that arrangements be made for him by virtue of paragraph 8, 9 or 10.
- (2) A person commits an offence if he—
- (a) requests that arrangements be made for him by virtue of paragraph 8, 9 or 10, and
  - (b) fails to mention a previous request by him for the making of arrangements under any of those paragraphs.
- (3) A person who is guilty of an offence under this paragraph shall be liable on summary conviction to imprisonment for a term not exceeding six months.

#### Information

- 14 (1) If it appears to a local authority that paragraph 1 applies or may apply to a person in the authority's area by virtue of [<sup>F72</sup>paragraph 6, 7 or 7A], the authority must inform the Secretary of State.
- (2) A local authority shall act in accordance with any relevant guidance issued by the Secretary of State for the purpose of determining whether paragraph 1 applies or may apply to a person in the authority's area by virtue of [<sup>F72</sup>paragraph 6, 7 or 7A].

#### Textual Amendments

**F72** Words in Sch. 3 para. 14(1)(2) substituted (1.12.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 9(2), 48(1)-(3); S.I. 2004/2999, art. 2, Sch. (with transitional provisions in art. 4)

#### Power to amend Schedule

- 15 The Secretary of State may by order amend this Schedule so as—
- (a) to provide for paragraph 1 to apply or not to apply to a class of person;
  - (b) to add or remove a provision to or from the list in paragraph 1(1);
  - (c) to add, amend or remove a limitation of or exception to paragraph 1.

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#### Commencement Information

**I24** Sch. 3 para. 15 wholly in force at 8.1.2003; Sch. 3 para. 15 not in force at Royal Assent see s. 162(2); Sch. 3 para. 15 in force at 8.12.2002 for certain purposes and at 8.1.2003 so far as not already in force by S.I. 2002/2811, art. 2, Sch.

#### *Orders and regulations*

- 16 (1) An order or regulations under this Schedule must be made by statutory instrument.
- (2) An order or regulations under this Schedule may—
- (a) make provision which applies generally or only in specified cases or circumstances or only for specified purposes;
  - (b) make different provision for different cases, circumstances or purposes;
  - (c) make transitional provision;
  - (d) make consequential provision (which may include provision amending a provision made by or under this or another Act).
- (3) An order under this Schedule, regulations under paragraph 2(1)(d) or (e) or other regulations which include consequential provision amending an enactment shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (4) Regulations under this Schedule to which sub-paragraph (3) does not apply shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Commencement Information

**I25** Sch. 3 para. 16 wholly in force at 8.1.2003; Sch. 3 para. 16 not in force at Royal Assent see s. 162(2); Sch. 3 para. 16 in force at 8.12.2002 for certain purposes and at 8.1.2003 so far as not already in force by S.I. 2002/2811, art. 2, Sch.

#### *Interpretation*

- 17 (1) In this Schedule—
- “asylum-seeker” means a person—
- (a) who is at least 18 years old,
  - (b) who has made a claim for asylum (within the meaning of section 18(3)), and
  - (c) whose claim has been recorded by the Secretary of State but not determined,
- “Convention rights” has the same meaning as in the Human Rights Act 1998 (c. 42),
- “child” means a person under the age of eighteen,
- “dependant” and “dependent” shall have such meanings as may be prescribed by regulations made by the Secretary of State,
- “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 from time to time),
- “local authority”—

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- (a) in relation to England and Wales, has the same meaning as in section 129(3),
- (b) in relation to Scotland, has the same meaning as in section 129(4), and
- (c) in relation to Northern Ireland, means a health service body within the meaning of section 133(4)(d) and the Northern Ireland Housing Executive (for which purpose a reference to the authority’s area shall be taken as a reference to Northern Ireland),

“the Refugee Convention” means the Convention relating to the status of Refugees done at Geneva on 28th July 1951 and its Protocol, and

“removal directions” means directions under Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry, &c.), under Schedule 3 to that Act (deportation) or under section 10 of the Immigration and Asylum Act 1999 (c. 33) (removal of person unlawfully in United Kingdom).

- (2) For the purpose of the definition of “asylum-seeker” in sub-paragraph (1) a claim is determined if—
  - (a) the Secretary of State has notified the claimant of his decision,
  - (b) no appeal against the decision can be brought (disregarding the possibility of an appeal out of time with permission), and
  - (c) any appeal which has already been brought has been disposed of.
- (3) For the purpose of sub-paragraph (2)(c) an appeal is disposed of when it is no longer pending for the purpose of—
  - (a) Part 5 of this Act, or
  - (b) the Special Immigration Appeals Commission Act 1997 (c. 68).
- (4) The giving of directions in respect of a person under a provision of the Immigration Acts is not the provision of assistance to him for the purposes of this Schedule.

## F73 SCHEDULE 4

Section 81

### IMMIGRATION AND ASYLUM APPEALS: ADJUDICATORS

#### Textual Amendments

- F73** Sch. 4 substituted (4.4.2005) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), ss. 26(4), 48(1)-(3), [Sch. 1](#); S.I. 2005/545, [art. 2](#) (with savings in arts. 3-9)

#### *Term of office*

- 1 (1) An adjudicator—
  - (a) may resign by notice in writing to the Lord Chancellor,
  - (b) shall cease to hold office on reaching the age of 70, and
  - (c) otherwise, shall hold and vacate office in accordance with the terms of his appointment.
- (2) Sub-paragraph (1)(b) is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (c. 8) (extension to age 75).

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### *Proceedings*

- 2 The Chief Adjudicator shall arrange for adjudicators to sit at times and places determined by the Lord Chancellor.
- 3 The Chief Adjudicator may determine—
- (a) that a specified appeal shall be heard by more than one adjudicator;
  - (b) that appeals of a specified kind shall be heard by more than one adjudicator;
  - (c) that proceedings of a specified kind in relation to an appeal shall be heard by more than one adjudicator.
- 4 An adjudicator shall undertake duties allocated to him by the Chief Adjudicator.

### *Staff*

- 5 The Lord Chancellor may appoint staff for the adjudicators.

### *Money*

- 6 The Lord Chancellor—
- (a) may pay remuneration and allowances to adjudicators,
  - (b) may pay remuneration and allowances to staff of the adjudicators, and
  - (c) may defray expenses of the adjudicators.
- 7 The Lord Chancellor may pay compensation to a person who ceases to be an adjudicator if the Lord Chancellor thinks it appropriate because of special circumstances.

## SCHEDULE 5

Section 100

### THE IMMIGRATION APPEAL TRIBUNAL

### *Membership*

- 1 The Lord Chancellor shall appoint the members of the Tribunal.
- 2 (1) A member—
- (a) may resign by notice in writing to the Lord Chancellor,
  - (b) shall cease to be a member on reaching the age of 70, and
  - (c) otherwise, shall hold and vacate office in accordance with the terms of his appointment.
- (2) Sub-paragraph (1)(b) is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (c. 8) (extension to age 75).





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- 10 The Lord Chancellor may pay compensation to a person who ceases to be a member of the Tribunal if the Lord Chancellor thinks it appropriate because of special circumstances.

*Interpretation: legally qualified member*

- 11 (1) For the purpose of this Schedule a member of the Tribunal is legally qualified if he—
- (a) has a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41),
  - (b) is an advocate or solicitor in Scotland of at least seven years' standing,
  - (c) is a member of the Bar of Northern Ireland, or a solicitor of the Supreme Court of Northern Ireland, of at least seven years' standing, or
  - (d) is appointed by the Lord Chancellor as a legally qualified member.
- (2) A person may be appointed by the Lord Chancellor under sub-paragraph (1)(d) only if he has legal or other experience which in the Lord Chancellor's opinion makes him suitable for appointment as a legally qualified member.

## SCHEDULE 6

Section 114

### IMMIGRATION AND ASYLUM APPEALS: TRANSITIONAL PROVISION

#### *“Commencement”*

- 1 In this Schedule “commencement” means the coming into force of Part 5 of this Act.

#### *Adjudicator*

- 2 Where a person is an adjudicator under section 57 of the Immigration and Asylum Act 1999 (c. 33) immediately before commencement his appointment shall have effect after commencement as if made under section 81 of this Act.

#### *Tribunal*

- 3 (1) Where a person is a member of the Immigration Appeal Tribunal immediately before commencement his appointment shall have effect after commencement as if made under Schedule 5.
- (2) Where a person is a member of staff of the Immigration Appeal Tribunal immediately before commencement his appointment shall have effect after commencement as if made under Schedule 5.

#### *Earlier appeal*

- 4 In the application of section 96—
- (a) a reference to an appeal or right of appeal under a provision of this Act includes a reference to an appeal or right of appeal under the Immigration and Asylum Act 1999,

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- (b) a reference to a requirement imposed under this Act includes a reference to a requirement of a similar nature imposed under that Act,
- (c) a reference to a statement made in pursuance of a requirement imposed under a provision of this Act includes a reference to anything done in compliance with a requirement of a similar nature under that Act, and
- (d) a reference to notification by virtue of this Act includes a reference to notification by virtue of any other enactment.

### *Saving*

- 5 (1) This Schedule is without prejudice to the power to include transitional provision in an order under section 162.
- (2) An order under that section may, in particular, provide for a reference to a provision of Part 5 of this Act to be treated as being or including a reference (with or without modification) to a provision of the Immigration and Asylum Act 1999 (c. 33).

## SCHEDULE 7

Section 114

### IMMIGRATION AND ASYLUM APPEALS: CONSEQUENTIAL AMENDMENTS

#### *Immigration Act 1971 (c. 77)*

- 1 In section 33(4) of the Immigration Act 1971 (c. 77) (pending appeal: interpretation) for paragraphs (a) and (b) substitute “in accordance with section 104 of the Nationality, Immigration and Asylum Act 2002 (pending appeals)”.
- 2 In paragraph 2A(9) of Schedule 2 to that Act (control of entry: person with continuing leave) for “Part IV of the Immigration and Asylum Act 1999” substitute “ Part 5 of the Nationality, Immigration and Asylum Act 2002 (immigration and asylum appeals) ”.
- 3 In paragraph 4(4) of that Schedule (examination and detention of documents) for “an appeal under this Act” substitute “ an appeal under the Nationality, Immigration and Asylum Act 2002 ”.
- 4 In paragraph 8(2) of that Schedule (time within which directions may be given) after “United Kingdom” insert “ (ignoring any period during which an appeal by him under the Immigration Acts is pending) ”.
- 5 In paragraph 25 of that Schedule (rules) for “section 22 of this Act” substitute “ section 106 of the Nationality, Immigration and Asylum Act 2002 (appeals) ”.
- 6 In paragraph 29 of that Schedule (bail pending appeal)—
  - (a) in sub-paragraph (1), for the words from “section” to “1999” substitute “ Part 5 of the Nationality, Immigration and Asylum Act 2002 ”, and
  - (b) for the words “Appeal Tribunal” substitute, in each place, “ Immigration Appeal Tribunal ”.
- 7 In paragraph 2(2) of Schedule 3 to that Act (deportation) for “section 18 of this Act” substitute “ section 105 of the Nationality, Immigration and Asylum Act 2002 (notice of decision) ”.
- 8 For paragraph 3 of that Schedule (deportation: effect of appeal) substitute—

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- “3 So far as they relate to an appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 against a decision of the kind referred to in section 82(2)(j) or (k) of that Act (decision to make deportation order and refusal to revoke deportation order), paragraphs 29 to 33 of Schedule 2 to this Act shall apply for the purposes of this Schedule as if the reference in paragraph 29(1) to Part I of that Schedule were a reference to this Schedule.”

*House of Commons Disqualification Act 1975 (c. 24)*

- 9 In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (disqualifying offices) for “Adjudicator appointed for the purposes of the Immigration and Asylum Act 1999.” substitute “ Adjudicator appointed for the purposes of Part 5 of the Nationality, Immigration and Asylum Act 2002. ”.

*Northern Ireland Assembly Disqualification Act 1975 (c. 25)*

- 10 In Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (disqualifying offices) for “Adjudicator appointed for the purposes of the Immigration and Asylum Act 1999.” substitute “ Adjudicator appointed for the purposes of Part 5 of the Nationality, Immigration and Asylum Act 2002. ”.

*Race Relations Act 1976 (c. 74)*

- 11 In section 53(1) (restriction of proceedings) for “Part IV of the Immigration and Asylum Act 1999” substitute “ Part 5 of the Nationality, Immigration and Asylum Act 2002 ”.

- 12 Section 57A (immigration cases) shall be amended as follows—
- (a) in subsection (1)(a) for “Part IV of the 1999 Act” substitute “ Part 5 of the 2002 Act ”,
  - (b) in subsection (5) for the definition of “the Immigration Acts” substitute—
 

““the Immigration Acts” has the meaning given by section 158 of the 2002 Act;”,
  - (c) in that subsection in the definition of “immigration appellate body” for “the 1999 Act” substitute “ Part 5 of the 2002 Act ”,
  - (d) in that subsection for the definition of “immigration authority” substitute—
 

““immigration authority” means the Secretary of State, an immigration officer or a person responsible for the grant or refusal of entry clearance (within the meaning of section 33(1) of the Immigration Act 1971 (c. 77));”,
  - (e) in that subsection in the definition of “pending” for “Part IV of the 1999 Act” substitute “ Part 5 of the 2002 Act ”,
  - (f) in that subsection in the definition of “relevant decision” for “Part IV of the 1999 Act” substitute “ Part 5 of the 2002 Act ”,
  - (g) in that subsection in the definition of “relevant immigration proceedings” for “Part IV of the 1999 Act” substitute “ Part 5 of the 2002 Act ”, and
  - (h) in that subsection for the definition of “the 1999 Act” substitute—

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“the 2002 Act” means the Nationality, Immigration and Asylum Act 2002;”.

- 13 In section 62(1)(ba) (persistent discrimination) for “Part IV of the Immigration and Asylum Act 1999” substitute “ Part 5 of the Nationality, Immigration and Asylum Act 2002 ”.
- 14 In section 65(7)(b) (help for aggrieved person) for “Part IV of the Immigration and Asylum Act 1999” substitute “ Part 5 of the Nationality, Immigration and Asylum Act 2002 ”.
- 15 In section 66 (assistance by Commission)—
- (a) in subsection (8) for “Part IV of the Immigration and Asylum Act 1999” substitute “ Part 5 of the Nationality, Immigration and Asylum Act 2002 ”, and
  - (b) in subsection (9)—
    - (i) for “Part IV of the Act of 1999” substitute “ Part 5 of the Act of 2002 ”,
    - (ii) for “rules under section 5 or 8 of that Act;” substitute “ rules under that Act; ”, and
    - (iii) for “rules under paragraph 3 or 4 of Schedule 4 to that Act.” substitute “ rules under that Act. ”.

*Courts and Legal Services Act 1990 (c. 41)*

- 16 In Schedule 11 to the Courts and Legal Services Act 1990 (judges &c. barred from legal practice) for “Adjudicator for the purposes of the Immigration and Asylum Act 1999 (other than Asylum Support Adjudicator)” substitute “ Adjudicator appointed for the purposes of Part 5 of the Nationality, Immigration and Asylum Act 2002 ”.

*Tribunals and Inquiries Act 1992 (c. 53)*

- 17 In paragraph 22 of Schedule 1 to the Tribunals and Inquiries Act 1992 (tribunals under the supervision of the Council on Tribunals)—
- (a) in sub-paragraph (a), for “section 57 of the Immigration and Asylum Act 1999” substitute “ section 81 of the Nationality, Immigration and Asylum Act 2002 ”, and
  - (b) in sub-paragraph (b), for “section 56 of that Act” substitute “ section 100 of that Act ”.

*Judicial Pensions and Retirement Act 1993 (c. 8)*

- 18 In Part II of Schedule 1 to the Judicial Pensions and Retirement Act 1993 (offices which may be qualifying judicial offices) for “Adjudicator for the purposes of the Immigration and Asylum Act 1999 (other than Asylum Support Adjudicator)” substitute “Adjudicator appointed for the purposes of Part 5 of the Nationality, Immigration and Asylum Act 2002”.

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- 19 In Schedule 5 to that Act (retirement provisions: the relevant offices) for “Adjudicator for the purposes of the Immigration and Asylum Act 1999 (other than Asylum Support Adjudicator)” substitute “Adjudicator appointed for the purposes of Part 5 of the Nationality, Immigration and Asylum Act 2002”.

*Special Immigration Appeals Commission Act 1997 (c. 68)*

- 20 The following shall be substituted for section 2 of the Special Immigration Appeals Commission Act 1997 (jurisdiction: appeals)—

**“2 Jurisdiction: appeals**

- (1) A person may appeal to the Special Immigration Appeals Commission against a decision if—
- (a) he would be able to appeal against the decision under section 82(1) or 83(2) of the Nationality, Immigration and Asylum Act 2002 but for a certificate of the Secretary of State under section 97 of that Act (national security, &c.), or
  - (b) an appeal against the decision under section 82(1) or 83(2) of that Act lapsed under section 99 of that Act by virtue of a certificate of the Secretary of State under section 97 of that Act.
- (2) The following provisions shall apply, with any necessary modifications, in relation to an appeal against an immigration decision under this section as they apply in relation to an appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002—
- (a) section 3C of the Immigration Act 1971 (c. 77) (continuation of leave pending variation decision),
  - (b) section 78 of the Nationality, Immigration and Asylum Act 2002 (no removal while appeal pending),
  - (c) section 79 of that Act (deportation order: appeal),
  - (d) section 82(3) of that Act (variation or revocation of leave to enter or remain: appeal),
  - (e) section 84 of that Act (grounds of appeal),
  - (f) section 85 of that Act (matters to be considered),
  - (g) section 86 of that Act (determination of appeal),
  - (h) section 87 of that Act (successful appeal: direction),
  - (i) section 96 of that Act (earlier right of appeal),
  - (j) section 104 of that Act (pending appeal),
  - (k) section 105 of that Act (notice of immigration decision), and
  - (l) section 110 of that Act (grants).
- (3) The following provisions shall apply, with any necessary modifications, in relation to an appeal against the rejection of a claim for asylum under this section as they apply in relation to an appeal under section 83(2) of the Nationality, Immigration and Asylum Act 2002—
- (a) section 85(4) of that Act (matters to be considered),
  - (b) section 86 of that Act (determination of appeal),
  - (c) section 87 of that Act (successful appeal: direction), and
  - (d) section 110 of that Act (grants).

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- (4) An appeal against the rejection of a claim for asylum under this section shall be treated as abandoned if the appellants leaves the United Kingdom.
- (5) A person may bring or continue an appeal against an immigration decision under this section while he is in the United Kingdom only if he would be able to bring or continue the appeal while he was in the United Kingdom if it were an appeal under section 82(1) of that Act.
- (6) In this section “immigration decision” has the meaning given by section 82(2) of the Nationality, Immigration and Asylum Act 2002.”
- 21 Section 2A of that Act (human rights) shall cease to have effect.
- 22 Section 4 of that Act (determination of appeals) shall cease to have effect.
- 23 In section 5 of that Act (procedure)—
- (a) in subsections (1)(a) and (b) and (2) omit “or 2A”, and
- (b) after subsection (2) insert—
- “(2A) Rules under this section may, in particular, do anything which may be done by rules under section 106 of the Nationality, Immigration and Asylum Act 2002 (appeals: rules).”
- 24 Section 7A of that Act (pending appeals) shall cease to have effect.
- 25 In paragraph 5 of Schedule 1 to that Act—
- (a) in sub-paragraph (b)(i), for “section 57(2) of the Immigration and Asylum Act 1999” substitute “ section 81(3)(a) of the Nationality, Immigration and Asylum Act 2002 ”, and
- (b) in sub-paragraph (b)(ii), for “paragraph 1(3) of Schedule 2” substitute “ paragraph 11 of Schedule 5 ”.
- 26 Schedule 2 to that Act shall cease to have effect.

*Immigration and Asylum Act 1999 (c. 33)*

- 27 In section 23(1) of the Immigration and Asylum Act 1999 (monitoring refusal of entry clearance) for “section 60(5)” there shall be substituted “ section 90 or 91 of the Nationality, Immigration and Asylum Act 2002 ”.
- 28 In section 53(4) of that Act (bail) for “this Act” there shall be substituted “ the Nationality, Immigration and Asylum Act 2002 ”.
- 29 (1) Paragraph 9 of Schedule 4 to that Act (appeals: procedure: Convention cases) shall be amended as follows—
- (a) in sub-paragraph (1)(a), omit “(4), (5)”, and
- (b) omit sub-paragraphs (4) and (5).
- (2) This paragraph is without prejudice to—
- (a) the effect after commencement of this paragraph of a certificate issued before commencement, or
- (b) the power of the Secretary of State after the commencement of this paragraph to issue a certificate in respect of a claim made before commencement.

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*Anti-terrorism, Crime and Security Act 2001 (c. 24)*

30 The following shall be substituted for section 27(10) of the Anti-terrorism, Crime and Security Act 2001 (grants)—

“(10) The reference in section 110 of the Nationality, Immigration and Asylum Act 2002 (immigration and asylum appeal: grant to voluntary organisation) to persons who have rights of appeal under Part 5 of that Act shall be treated as including a reference to suspected international terrorists.”

*Proceeds of Crime Act 2002 (c. 29)*

31 The following shall be substituted for paragraph 4 of Schedule 2 to the Proceeds of Crime Act 2002 (lifestyle offences: England and Wales: people trafficking)—

- “4 (1) An offence under section 25, 25A or 25B of the Immigration Act 1971 (c. 77) (assisting unlawful immigration etc.).
- (2) An offence under section 145 of the Nationality, Immigration and Asylum Act 2002 (traffic in prostitution).”

32 In paragraph 4 of Schedule 4 to that Act (lifestyle offences: Scotland: people trafficking) for “section 25(1) of the Immigration Act 1971 (assisting illegal entry etc.)” there shall be substituted “ section 25, 25A or 25B of the Immigration Act 1971 (assisting unlawful immigration etc.) ”.

33 The following shall be substituted for paragraph 4 of Schedule 5 to that Act (lifestyle offences: Northern Ireland: people trafficking)—

- “4 (1) An offence under section 25, 25A or 25B of the Immigration Act 1971 (assisting unlawful immigration etc.).
- (2) An offence under section 145 of the Nationality, Immigration and Asylum Act 2002 (traffic in prostitution).”

SCHEDULE 8

Section 125

CARRIERS’ LIABILITY

1 The Immigration and Asylum Act 1999 (c. 33) shall be amended as follows.

**Commencement Information**

**I26** Sch. 8 para. 1 partly in force; Sch. 8 para. 1 not in force at Royal Assent see s. 162(2); Sch. 8 para. 1 in force at 14.11.2002 and 8.12.2002 for certain purposes by S.I. 2002/2811, art. 2, Sch.

2 (1) Section 32 (penalty for carrying clandestine entrant) shall be amended as follows.

(2) After subsection (1)(a) insert—

“(aa) he arrives in the United Kingdom concealed in a rail freight wagon,”.

(3) For subsection (2) substitute—



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“(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.

(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.”

(4) For subsection (4) substitute—

“(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 subsection (5)—

- (a) in paragraph (a) for the second “or” substitute “ and ”, and
- (b) in paragraphs (b) and (c) for “or” substitute “ and ”.

(6) After subsection (5) insert—

“(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.”

(7) In subsection (6)(a) and (b) for “or” substitute “ and ”.

(8) After subsection (6) insert—

“(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.”

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#### Commencement Information

**I27** Sch. 8 para. 2 partly in force; Sch. 8 para. 2 not in force at Royal Assent see s. 162(2); Sch. 8 para. 2 in force at 14.11.2002 and 8.12.2002 for certain purposes by S.I. 2002/2811, art. 2, Sch.

3 After section 32 insert—

#### “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.”

#### Commencement Information

**I28** Sch. 8 para. 3 partly in force; Sch. 8 para. 3 not in force at Royal Assent see s. 162(2); Sch. 8 para. 3 in force at 14.11.2002 and 8.12.2002 for certain purposes by S.I. 2002/2811, art. 2, Sch.

4 The heading of section 33 (code of practice) becomes “ Prevention of clandestine entrants: code of practice ”.

#### Commencement Information

**I29** Sch. 8 para. 4 partly in force; Sch. 8 para. 4 not in force at Royal Assent see s. 162(2); Sch. 8 para. 4 in force at 8.12.2002 for certain purposes by S.I. 2002/2811, art. 2, Sch.

5 In section 33(2)(b) omit “both Houses of”.

#### Commencement Information

**I30** Sch. 8 para. 5 partly in force; Sch. 8 para. 5 not in force at Royal Assent see s. 162(2); Sch. 8 para. 5 in force at 8.12.2002 for certain purposes by S.I. 2002/2811, art. 2, Sch.

- 6 (1) Section 34 (defence) shall be amended as follows.
- (2) For subsection (1) substitute—

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“(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.”

(3) In subsection (3)(c) omit the first “that”.

(4) After subsection (3) insert—

“(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.”

(5) Omit subsection (5).

(6) For subsection (6) substitute—

“(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.”

#### Commencement Information

**I31** Sch. 8 para. 6 partly in force; Sch. 8 para. 6 not in force at Royal Assent see s. 162(2); Sch. 8 para. 6 in force at 8.12.2002 for certain purposes by S.I. 2002/2811, art. 2, Sch.

7 (1) Section 35 (notification and objection) shall be amended as follows.

(2) In subsection (2)(d)(i) for “must” substitute “ may ”.

(3) For subsections (3) to (8) substitute—

“(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
- (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

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- (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.”
- (4) In subsection (9)—
- (a) for the first “served” substitute “ issued ”, and
  - (b) for “served on” substitute “ issued to ”.
- (5) At the end add—
- “(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.”

#### Commencement Information

**I32** Sch. 8 para. 7 partly in force; Sch. 8 para. 7 not in force at Royal Assent see s. 162(2); Sch. 8 para. 7 in force at 14.11.2002 and 8.12.2002 for certain purposes by S.I. 2002/2811, art. 2, Sch.

8

After section 35 insert—

#### “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

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- (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);
  - (b) the penalty has been increased or reduced under section 35(6)."

#### Commencement Information

**I33** Sch. 8 para. 8 partly in force; Sch. 8 para. 8 not in force at Royal Assent see s. 162(2); Sch. 8 para. 8 in force at 8.12.2002 for certain purposes by S.I. 2002/2811, art. 2, Sch.

- 9 (1) Section 36 (detention of vehicle) shall be amended as follows.
- (2) In subsection (1)—
- (a) for “given” substitute “ issued ”,
  - (b) after paragraph (b) omit “or”, and
  - (c) after paragraph (c) insert “or
  - (d) rail freight wagon.”.
- (3) After subsection (2) insert—
- “(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.”

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#### Commencement Information

**I34** Sch. 8 para. 9 partly in force; Sch. 8 para. 9 not in force at Royal Assent see s. 162(2); Sch. 8 para. 9 in force at 8.12.2002 for certain purposes by S.I. 2002/2811, art. 2, Sch.

10 After section 36 insert—

#### “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.
- (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.”

#### Commencement Information

**I35** Sch. 8 para. 10 partly in force; Sch. 8 para. 10 not in force at Royal Assent see s. 162(2); Sch. 8 para. 10 in force at 8.12.2002 for certain purposes by S.I. 2002/2811, art. 2, Sch.

- 11 (1) Section 37 (effect of detention of transporter) shall be amended as follows.
- (2) In subsection (1) for “section 36” substitute “ section 36(1) ”.
  - (3) In subsection (2) for “claiming an interest in the transporter,” substitute “ whose interests may be affected by detention of the transporter, ”.
  - (4) In subsection (3)(c) omit “and the applicant has a compelling need to have the transporter released”.
  - (5) After subsection (3) insert—

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“(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).”

(6) After subsection (5) insert—

“(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.”

(7) After subsection (6) add—

“(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.”

#### Commencement Information

**I36** Sch. 8 para. 11 partly in force; Sch. 8 para. 11 not in force at Royal Assent see s. 162(2); Sch. 8 para. 11 in force at 14.11.2002 and 8.12.2002 for certain purposes by S.I. 2002/2811, art. 2, Sch.

12 Section 39(rail freight) shall cease to have effect.

#### Commencement Information

**I37** Sch. 8 para. 12 partly in force; Sch. 8 para. 12 not in force at Royal Assent see s. 162(2); Sch. 8 para. 12 in force at 8.12.2002 for certain purposes by S.I. 2002/2811, art. 2, Sch.

13 For section 40 (charge in respect of passenger without proper documents) substitute—

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#### **“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
  - (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).



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#### **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.
- (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).

#### **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—
  - (a) allow the appeal and cancel the charge, or
  - (b) dismiss the appeal.

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- (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).”

#### Commencement Information

**I38** Sch. 8 para. 13 wholly in force at 8.12.2002; Sch. 8 para. 13 not in force at Royal Assent see s. 162(2); Sch. 8 para. 13 in force at 14.11.2002 for certain purposes and wholly in force at 8.12.2002 by S.I. 2002/2811, art. 2, Sch.

- 14 Section 42(power to detain vehicle, &c. carrying person without proper travel documents) shall cease to have effect.
- 15 In section 43 (interpretation) (which becomes subsection (1))—
- (a) in the definition of “concealed” for “or aircraft” substitute “ , aircraft or rail freight wagon ”,
  - (b) omit the definition of “court”,
  - (c) after the definition of “equipment” insert—
    - ““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;”,
  - (d) in the definition of “owner” omit paragraph (b) and the word “and” immediately preceding it,
  - (e) for the definition of “rail freight wagon” substitute—
    - ““rail freight wagon” means—
      - (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);”,
  - (f) after the definition of “ship” insert—
    - ““shuttle-train” has the meaning given by section 1(9) of the Channel Tunnel Act 1987 (c. 53);”,
  - (g) in the definition of “transporter” for “or aircraft” substitute “ , aircraft or rail freight wagon ”, and

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(h) at the end insert—

“(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.”

16 (1) Schedule 1 (sale of transporter) shall be amended as follows.

(2) In paragraph 1(2)(a) omit “or charge”.

(3) After paragraph 2 insert—

“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,
- (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) In paragraph 5(1) omit “or 42”.

(5) In paragraph 5(2)(d) omit “or charge”.

#### Commencement Information

**I39** Sch. 8 para. 16 partly in force; Sch. 8 para. 16 not in force at Royal Assent see s. 162(2); Sch. 8 para. 16 in force at 8.12.2002 for certain purposes by S.I. 2002/2811, art. 2, Sch.

17 (1) This paragraph applies to a code of practice which—

- (a) has effect, before the coming into force of paragraph 12 of this Schedule, by virtue of sections 33 and 39 of the Immigration and Asylum Act 1999 (c. 33) (power to apply provisions about carriers’ liability to rail freight), and
- (b) could be issued under section 33 of that Act after the coming into force of paragraph 2 of this Schedule.

(2) A code of practice to which this paragraph applies—

- (a) shall continue to have effect after the coming into force of paragraph 12 of this Schedule, and
- (b) shall be treated after that time as if made and brought into operation under section 33 alone.

#### Commencement Information

**I40** Sch. 8 para. 17 partly in force; Sch. 8 para. 17 not in force at Royal Assent see s. 162(2); Sch. 8 para. 17 in force at 8.12.2002 for certain purposes by S.I. 2002/2811, art. 2, Sch.

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## SCHEDULE 9

Section 161

## REPEALS

**Commencement Information**

**I41** Sch. 9 partly in force; Sch. 9 in force in relation to specified entry at Royal Assent see s. 162(2); Sch. 9 in force in relation to further specified entries: at 8.12.2002 by S.I. 2002/2811, art. 2, Sch.; 10.2.2003 by S.I. 2003/1, art. 2, Sch.; 1.4.2003 by S.I. 2003/754, art. 2, Sch. 1

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Immigration Act 1971 (c. 77)	In section 3(9)(b), the words “issued by or on behalf of the Government of the United Kingdom certifying that he has such a right of abode”. Section 7(1)(a). Section 24A(4). Section 25A(7). In section 26(3) the word “or” after paragraph (c). In section 28(1) the words “, 24A, 25”. In section 28A— subsection (4), in subsection (10), “, (4)(b)”, and in subsection (11), “, (4)”. Section 29. Section 31(d).
Race Relations Act 1976 (c. 74)	Section 19E(7). In section 71A(1), the words “(within the meaning of section 19D(1))”.
British Nationality Act 1981 (c. 61)	In section 3(6), paragraph (c) and the word “and” immediately preceding it. Sections 7 to 9. In section 10— in subsection (1), the words “, if a woman,” and in subsection (2), the words “if a woman.” In section 17(6), paragraph (c) and the word “and” immediately preceding it. Sections 19 to 21. In section 22— in subsection (1), the words “, if a woman,” and in subsection (2), the words “if a woman.” Section 27(2). Section 28. Section 33. Section 44(2) and (3). Section 47. In Schedule 1—

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	in paragraph 4(c), the words “and (e)”, and in paragraph 8(c), the words “and (e)”. In Schedule 2— in paragraphs 1(1)(b) and 2(1)(b), the words “he is born legitimate and”, and in paragraph 3(1)(b), the words “had attained the age of ten but”. In Schedule 4— in paragraph 2, in the second column of the Table, the entry relating to section 29(1) of the Immigration Act 1971, and paragraph 6.
British Nationality (Falkland Islands) Act 1983 (c. 6)	Section 4(3)(b).
British Nationality (Hong Kong) Act 1990 (c. 34)	Section 1(5).
Asylum and Immigration Act 1996 (c. 49)	Section 5.
Special Immigration Appeals Commission Act 1997 (c. 68)	Section 2A. Section 4. In section 5(1)(a) and (b) and (2), the words “or 2A”. Section 7A. Schedule 2.
Immigration and Asylum Act 1999 (c. 33)	In section 10(1)(c), the words “(“the first directions”)” and “(“the other person”)”. Section 15. Section 29. In section 33(2)(b), the words “both Houses of”. In section 34— in subsection (3)(c), the first “that”, and subsection (5). In section 36(1), the word “or” immediately preceding paragraph (c). In section 37(3)(c), the words “and the applicant has a compelling need to have the transporter released”. Section 38(1) and (3). Section 39. Section 42. In section 43, in the definition of “owner” paragraph (b) and the word “and” immediately preceding it. Sections 44 to 52. Section 53(5). Section 55. Sections 56 to 81. Section 94(5) and (6). Section 96(4) to (6).

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	In section 147, the definition of “detention centre”.
	Section 166(4)(e).
	In Schedule 1—
	in paragraph 1(2)(a), the words “or charge”,
	in paragraph 5(1), the words “or 42”, and
	in paragraph 5(2)(d), the words “or charge”.
	In paragraph 9 of Schedule 4, the words
	“(4), (5)” in sub-paragraph (1)(a), and sub-
	paragraphs (4) and (5).
	Schedules 2 to 4.
	In Schedule 8, paragraphs 2 and 6.
	In Schedule 14, paragraphs 46(a), 51, 53, 66,
	96, 98(2) and (3), 120 to 121 and 126 to 129.
Race Relations (Amendment) Act 2000 (c. 34)	In Schedule 2, paragraphs 23 to 29 and 32 to 40.

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