



Nationality and Borders Act 2022

2022 CHAPTER 36

PART 3

IMMIGRATION CONTROL

Immigration offences and penalties

40 Illegal entry and similar offences

(1) The Immigration Act 1971 is amended in accordance with subsections (2) to (7).

(2) In section 24 (illegal entry and similar offences), before subsection (1) insert—

“(A1) A person who knowingly enters the United Kingdom in breach of a deportation order commits an offence.

(B1) A person who—

- (a) requires leave to enter the United Kingdom under this Act, and
- (b) knowingly enters the United Kingdom without such leave, commits an offence.

(C1) A person who—

- (a) has only a limited leave to enter or remain in the United Kingdom, and
- (b) knowingly remains beyond the time limited by the leave, commits an offence.

(D1) A person who—

- (a) requires entry clearance under the immigration rules, and
- (b) knowingly arrives in the United Kingdom without a valid entry clearance, commits an offence.

(E1) A person who—

Changes to legislation: Nationality and Borders Act 2022, Section 40 is up to date with all changes known to be in force on or before 17 August 2023. 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) View outstanding changes

- (a) is required under immigration rules not to travel to the United Kingdom without an ETA that is valid for the person's journey to the United Kingdom, and
- (b) knowingly arrives in the United Kingdom without such an ETA, commits an offence.

(F1) A person who commits an offence under any of subsections (A1) to (E1) is liable—

- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or a fine (or both);
- (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
- (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both);
- (d) on conviction on indictment—
 - (i) for an offence under subsection (A1), to imprisonment for a term not exceeding five years or a fine (or both);
 - (ii) for an offence under any of subsections (B1) to (E1), to imprisonment for a term not exceeding four years or a fine (or both).

(G1) In relation to an offence committed before paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 comes into force, the reference in subsection (F1)(a) to 12 months is to be read as a reference to six months."

(3) In that section—

- (a) in subsection (1)—
 - (i) omit paragraph (a);
 - (ii) in paragraph (b), for the words from "either" to the end, substitute "fails to observe a condition of the leave;"
- (b) in subsection (1A), for "subsection (1)(b)(i)" substitute "subsection (C1)";
- (c) in subsection (3), for "subsection (1)(a) and (c)" substitute "subsections (A1), (B1), (D1), (E1) and (1)(c)";
- (d) in subsection (4)—
 - (i) in the words before paragraph (a), for "against subsection (1)(a)" substitute "under subsection (B1)";
 - (ii) in paragraph (b), omit the words from the first "if" to the end.
- (e) after subsection (4) insert—

"(5) In proceedings for an offence under subsection (D1) above of arriving in the United Kingdom without a valid entry clearance—

- (a) any document attached to a passport or other travel document purporting to have been issued by the Secretary of State for the purposes of providing evidence of entry clearance for a particular period is to be presumed to have been duly so issued unless the contrary is proved;
- (b) proof that a person had a valid entry clearance is to lie on the defence."

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- (4) In section 25 (assisting unlawful immigration), in subsection (2)(a), after “enter” insert “or arrive in”.
- (5) In section 28B (search and arrest by warrant), in subsection (5), for “24(1)(a), (b)” substitute “24(A1), (B1), (C1), (D1), (E1) or (1)(b)”.
- (6) In section 28D (entry and search of premises), in subsection (4), for “24(1)(a), (b)” substitute “24(A1), (B1), (C1), (D1), (E1) or (1)(b)”.
- (7) In section 28FA (search for personnel records: warrant unnecessary), in subsection (1)
 - (a) in paragraph (a), for “24(1)” substitute “24”;
 - (b) in paragraph (c), for “24(1)” substitute “24”.
- (8) In the Nationality, Immigration and Asylum Act 2002—
 - (a) in section 129(1) (duty on local authority to disclose information on suspected immigration offences), in paragraph (a), for “24(1)(a), (b), (c), (e)” substitute “24(A1), (B1), (C1), (D1), (E1) or (1)(b), (c)”;
 - (b) in section 134(1) (duty on employer to disclose information on suspected immigration offences), in paragraph (a), for “24(1)(a), (b), (c), (e)” substitute “24(A1), (B1), (C1), (D1), (E1) or (1)(b), (c)”.
- (9) In section 133(7) of the Criminal Justice and Immigration Act 2008 (conditions), for “any provision of section 24(1)” substitute “section 24”.

Commencement Information

- I1** S. 40 not in force at Royal Assent, see [s. 87\(1\)](#)
- I2** [S. 40](#) in force at 28.6.2022 for specified purposes by [S.I. 2022/590](#), [regs. 1\(2\), 2](#), [Sch. 1 para. 20](#) (with [Sch. 2 para. 7](#))

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 54(6)(c) and word inserted by [2023 c. 37 s. 57\(11\)\(b\)](#)
- s. 63(2A) inserted by [2023 c. 37 s. 29\(3\)](#)
- s. 63(3)(fa)(fb) inserted by [2023 c. 37 s. 29\(4\)\(b\)](#)
- s. 63(5A)(5B) inserted by [2023 c. 37 s. 29\(5\)](#)
- s. 63(8) inserted by [2023 c. 37 s. 28\(9\)](#)
- s. 65(8A) inserted by [2023 c. 37 s. 28\(12\)](#)