



# Nationality and Borders Act 2022

## 2022 CHAPTER 36

### PART 3

#### IMMIGRATION CONTROL

##### *Immigration offences and penalties*

#### **41 Assisting unlawful immigration or asylum seeker**

- (1) The Immigration Act 1971 is amended as follows.
- (2) In section 25(6)(a) (assisting unlawful immigration to member State or the United Kingdom: penalties) for “imprisonment for a term not exceeding 14 years” substitute “imprisonment for life”.
- (3) In section 25A(1)(a) (helping asylum seeker to enter United Kingdom) omit “and for gain”.
- (4) Before section 25C insert—

##### **“25BA Facilitation offences: application to rescuers**

- (1) A person does not commit a facilitation offence if the act of facilitation was an act done by or on behalf of, or co-ordinated by—
  - (a) Her Majesty’s Coastguard, or
  - (b) an overseas maritime search and rescue authority exercising similar functions to those of Her Majesty’s Coastguard.
- (2) In proceedings for a facilitation offence, it is a defence for the person charged with the offence to show that—
  - (a) the assisted individual had been in danger or distress at sea, and
  - (b) the act of facilitation was an act of providing assistance to the individual at any time between—

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- (i) the time when the assisted individual was first in danger or distress at sea, and
  - (ii) the time when the assisted individual was delivered to a place of safety on land.
- (3) For the purposes of subsection (2), the following are not to be treated as an act of providing assistance—
  - (a) the act of delivering the assisted individual to the United Kingdom in circumstances where—
    - (i) the United Kingdom was not the nearest place of safety on land to which the assisted individual could have been delivered, and
    - (ii) the person charged with the offence did not have a good reason for delivering the assisted individual to the United Kingdom instead of to a nearer place of safety on land;
  - (b) the act of steering a ship in circumstances where the person charged with the offence was on the same ship as the assisted individual at the time when the individual was first in danger or distress at sea.
- (4) A person is taken to have shown a fact mentioned in subsection (2) if—
  - (a) sufficient evidence of the fact is adduced to raise an issue with respect to it, and
  - (b) the contrary is not proved beyond reasonable doubt.
- (5) In this section—
  - “act of facilitation”—
    - (a) in relation to an offence under section 25 (assisting unlawful immigration), means the act mentioned in subsection (1)(a) of that section;
    - (b) in relation to an offence under section 25A (helping asylum-seeker to enter the UK), means the act of facilitating the arrival (or attempted arrival) in, or entry (or attempted entry) into, the United Kingdom of an individual, as mentioned in subsection (1)(a) of that section;
    - (c) in relation to an offence under section 25B(1) (facilitating breach of deportation order), means the act mentioned in subsection (1)(a) of that section;
    - (d) in relation to an offence under section 25B(3) (assisting entry to UK in breach of an exclusion order), means the act mentioned in subsection (3)(a) of that section;
  - “assisted individual”—
    - (a) in relation to an offence under section 25, means the individual whose breach (or attempted breach) of immigration law is facilitated by the act of facilitation;
    - (b) in relation to an offence under section 25A, means the individual whose arrival (or attempted arrival) in, or entry (or attempted entry) into, the United Kingdom is facilitated by the act of facilitation;
    - (c) in relation to an offence under section 25B(1), means the individual whose breach (or attempted breach) of a deportation order is facilitated by the act of facilitation;

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(d) in relation to an offence under section 25B(3), means the individual who is assisted to arrive in, enter or remain (or to attempt to arrive in, enter or remain) in the United Kingdom by the act of facilitation;

“facilitation offence” means—

- (a) an offence under section 25 (assisting unlawful immigration),
- (b) an offence under section 25A (helping asylum-seeker to enter the United Kingdom), or
- (c) an offence under section 25B (assisting entry to the United Kingdom in breach of deportation or exclusion order) to the extent that the section continues to apply by virtue of regulation 5(7) of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 ([S.I. 2020/1309](#));

“ship” includes—

- (a) every description of vessel (including a hovercraft), and
- (b) any other structure (whether with or without means of propulsion) constructed or used to carry persons, goods, plant or machinery by water.

### **25BB Facilitation offences: defences relating to stowaways**

- (1) In proceedings for a facilitation offence brought against a master of a ship, it is a defence for the master to show—
  - (a) that the assisted individual was a stowaway when the act of facilitation took place, and
  - (b) that the master, or a person acting on the master’s behalf, reported the presence of the assisted individual on the ship to the Secretary of State or an immigration officer—
    - (i) in a case where the ship was scheduled to go to the United Kingdom, as soon as reasonably practicable after the time when the ship’s next scheduled port of call became a port in the United Kingdom, or
    - (ii) in a case where the ship was not scheduled to go to the United Kingdom but the master of the ship decided that the ship needed to go to the United Kingdom (whether for reasons relating to the presence of the assisted individual on board or for other reasons), as soon as reasonably practicable after the master made that decision.
- (2) In proceedings for a facilitation offence, it is a defence for the person charged with the offence to show—
  - (a) that the assisted individual was a stowaway when the act of facilitation took place,
  - (b) that they were acting to ensure the security, general health, welfare or safety of the assisted individual, and
  - (c) that they had reported the presence of the assisted individual to the master of the ship as soon as reasonably practicable.
- (3) A person is taken to have shown a fact mentioned in subsection (1) or (2) if—

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- (a) sufficient evidence of the fact is adduced to raise an issue with respect to it, and
  - (b) the contrary is not proved beyond reasonable doubt.
- (4) For the purposes of this section, an individual is a stowaway on a ship if—
  - (a) they boarded the ship without the knowledge of the master of the ship, and
  - (b) the master was not aware of their presence on the ship when the ship departed from the port where the individual boarded.
- (5) But an individual ceases to be a stowaway if, after the master of the ship has become aware of their presence on the ship, the individual is given permission to leave the ship by the immigration authorities of a country that the ship arrives at (whether or not they do in fact leave the ship there).
- (6) In this section, “act of facilitation”, “assisted individual”, “facilitation offence” and “ship” have the same meanings as in section 25BA.”

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**Commencement Information**

**I1** S. 41 not in force at Royal Assent, see [s. 87\(1\)](#)

**I2** [S. 41](#) in force at 28.6.2022 by [S.I. 2022/590](#), regs. 1(2), 2, [Sch. 1 para. 21](#) (with [Sch. 2 para. 7](#))

**Changes to legislation:**

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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\(12\)](#)