

**2002 No. 2811 (C. 87)**

**IMMIGRATION**

**The Nationality, Immigration and Asylum Act 2002  
(Commencement No. 1) Order 2002**

*Made - - - - - 13th November 2002*

In exercise of the powers conferred upon him by section 162(1) and (6) of the Nationality, Immigration and Asylum Act 2002(a), the Secretary of State hereby makes the following Order:

**Citation and interpretation**

**1.**—(1) This Order may be cited as the Nationality, Immigration and Asylum Act 2002 (Commencement No. 1) Order 2002.

(2) In this Order, “the 1999 Act” means the Immigration and Asylum Act 1999(b) and “the 2002 Act” means the Nationality, Immigration and Asylum Act 2002.

**Commencement**

**2.** The provisions of the 2002 Act specified in column 1 of the Schedule to this Order shall come into force on the date specified in column 2 of that Schedule but where a particular purpose is specified in relation to any such provision in column 3 of that Schedule, the provision concerned shall come into force on that date only for that purpose.

**Transitional provision**

**3.** Until Part V of the 2002 Act (immigration and asylum appeals) comes into force, the substitution of section 11 of the 1999 Act (removal of asylum claimants under standing arrangements with member states) by section 80 of the 2002 Act (removal of asylum-seeker to third country) shall take effect as if subsections (2) to (4) of section 11, as substituted, were not in force, and subsections (2) and (3) of section 11, as they were before the substitution, continued in force.

**4.** The amendments of the 1999 Act made by paragraphs 1 to 12, and 15 to 17 of Schedule 8 to the 2002 Act (carriers’ liability) shall not apply in respect of a penalty notice (within the meaning of section 35(2) of the 1999 Act) which was issued to a person before the commencement of those paragraphs.

**5.** The amendment of the 1999 Act made by section 140(1) of the 2002 Act (Immigration Services Commissioner) shall not apply in respect of an investigation begun by the Commissioner under paragraph 5 (5) of Schedule 5 to the 1999 Act before the commencement of the said section 140(1).

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(a) 2002 c. 41.  
(b) 1999 c. 33.

6. Until section 134 of the 2002 Act (employer) comes into force, the insertion by section 154 of the 2002 Act (power to search for evidence) of section 28FB in the Immigration Act 1971(a) (search for personnel records: with warrant) shall take effect as if the said section 28FB were not yet in force.

Home Office  
13th November 2002

*Filkin*  
Parliamentary Under-Secretary of State

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(a) 1971 c. 77.

SCHEDULE

Article 2

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Section 54 and paragraphs 2, 8, 9, 10, 11, 12, 15 and 16 of Schedule 3 (withholding and withdrawal of support)	8th December 2002	For the purpose of enabling the Secretary of State to exercise the power to make subordinate legislation
Section 54 and Schedule 3 (withholding and withdrawal of support) (so far as not already in force)	8th January 2003	
Section 55 (late claim for asylum: refusal of support)	8th January 2003	
Section 57 (application for support: false or incomplete information)	8th December 2002	
Section 80 (removal of asylum-seeker to third country)	8th December 2002	
Section 119 (deemed leave on cancellation of notice)	8th January 2003	
Section 125 and paragraphs 1, 2, 7, 11 and 13 of Schedule 8 (carriers' liability)	14th November 2002	For the purpose of enabling the Secretary of State to exercise the power to make subordinate legislation under section 32 (2A), 35 (5), (7), (9), (12) and (13), 37 (5B) and (7) and 40A (4) and (6) of the 1999 Act
Section 125 and paragraph 3 of Schedule 8 (carriers' liability)	14th November 2002	For the purpose of enabling the Secretary of State to exercise the power under section 32A (1), (3) and (4) of the 1999 Act to lay a draft code of practice before Parliament and bring the code of practice into force
Section 125 and paragraphs 1 to 12 and 16 and 17 of Schedule 8 (carriers' liability)	8th December 2002	For the purposes of clandestine entrants (within the meaning of section 32 (1) of the 1999 Act) who arrive in the United Kingdom concealed in a vehicle or a rail freight wagon <sup>(a)</sup>
Section 125 and paragraphs 13 to 15 of Schedule 8 (carriers' liability)	8th December 2002	
Section 140 (Immigration Services Commissioner)	8th January 2003	
Section 141 (EEA ports: juxtaposed controls)	8th January 2003	

(a) Schedule 8 amends Part II of the Immigration and Asylum Act 1999 (c. 33) which has not been brought into force in respect of clandestine entrants who arrive in the United Kingdom concealed in a ship or aircraft.

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Sections 152 (arrest by immigration officer), 153 (power of entry), 154 (power to search for evidence) and 155 (sections 153 and 154; supplemental)	8th January 2003	
Section 157 (consequential and incidental provision)	8th January 2003	
Section 161 and Schedule 9 (repeals), the entries relating to sections 33 (2) (b), 34 (3) (c) and (5), 36 (1), 37 (3) (c), 39, 42 and 43 of the Immigration and Asylum Act 1999	8th December 2002	

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force, on 8th January 2003, sections 54, 55, 119, 140, 141, 152, 153, 154, 155 and 157 of, and Schedule 3 to, the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”).

Schedule 3 to the 2002 Act provides that certain classes of person are ineligible for support or assistance under provisions listed in paragraph 1 of the Schedule unless they fall within one of the exceptions set out in paragraph 2 of the Schedule. The classes in question are those with refugee status abroad, citizens of other EEA States, failed asylum seekers and persons unlawfully in the United Kingdom. The Schedule enables the Secretary of State to make regulations providing for arrangements to be made enabling a person falling into one of the first two classes mentioned above to be given travel assistance to leave the United Kingdom, and to be accommodated pending their departure. The Schedule creates certain summary offences in relation to those arrangements.

Section 55 of the 2002 Act prohibits, subject to certain exceptions, the provision of support by the Secretary of State to an asylum seeker if the Secretary of State is not satisfied that the asylum claim was made as soon as reasonably practicable after the person’s arrival in the United Kingdom. Local authorities are also prohibited from providing support under certain enactments set out in section 55(4).

Section 119 of the 2002 Act amends paragraph 6(3) of Schedule 2 to the Immigration Act 1971 so as to enable an immigration officer who cancels a notice refusing a person leave to enter to require him to submit to further examination.

Section 140 of the 2002 Act clarifies the Immigration Services Commissioner’s existing powers of entry when investigating certain matters. The Order provides that this clarification will not affect investigations begun by him before its commencement.

Section 141 of the 2002 Act gives the Secretary of State a power by order to give effect to an international agreement which concerns immigration control at an EEA port from which passengers travel by sea to the United Kingdom.

Section 152 enables an immigration officer to apply to a justice of the peace for an arrest warrant in certain cases. Sections 153 to 155 give constables and immigration officers new powers of entry to premises and search for evidence. The new power to search by warrant for personnel records does not come into force until section 134 of the 2002 Act comes into force.

Section 157 enables the Secretary of State by order to make consequential or incidental provision in connection with a provision of the 2002 Act.

This Order also brings into force, on 8th December 2002, sections 57, 80, 125 and 161 of, and Schedule 8 and certain provisions in Schedule 9 to, the 2002 Act.

Section 57 of the 2002 Act amends Schedule 8 to the Immigration and Asylum Act 1999 (“the 1999 Act”) so as to enable the Secretary of State to make regulations providing for an application for support by an asylum seeker not to be entertained by the Secretary of State if he is not satisfied that the information provided is complete or accurate or that the applicant is co-operating with the Secretary of State’s enquiries.

Section 80 of the 2002 Act substitutes a new section 11 of the 1999 Act (removal of seekers under standing arrangements with member states), principally so that that section applies to standing arrangements in force between two or more member states. Until Part V of the 2002 Act (immigration and asylum appeals) comes into force, this Order provides that subsections (2) and (3) of section 11 of the 1999 Act (before the substitution) continue in force and subsections (2) to (4) of the substituted section 11 do not come into force.

Schedule 8 to the 2002 Act amends Part II of the 1999 Act (carriers’ liability) principally so as to prohibit the Secretary of State from imposing a penalty on a responsible person above a prescribed maximum and so as to introduce a right of appeal for a responsible person to a county court against the imposition and amount of a penalty. These changes will not apply in respect of a penalty which was issued to a person before the commencement of Schedule 8. Schedule 8 also introduces a similar right of appeal for carriers on whom a charge has been imposed for carrying passengers without proper documents.

Schedule 9 to the 2002 Act is commenced in respect of the repeal of certain provisions in Part II of the 1999 Act.

Finally, this Order commences certain provisions of the 2002 Act on 14th November 2002 and 8th December 2002 for the purpose of enabling the exercise of powers to make subordinate legislation and lay a draft code of practice before Parliament.



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£2.00

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Printed and published in the UK by The Stationery Office Limited  
under the authority and superintendence of Carol Tullo, Controller of  
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.  
E1670 11/2002 121670 19585

ISBN 0-11-044052-8



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