

*These notes refer to the Immigration, Asylum and Nationality Act 2006 (c.13)
which received Royal Assent on 30 March 2006*

IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Immigration, Asylum and Nationality Act 2006 which received Royal Assent on 30 March, 2006. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

BACKGROUND

3. The Act builds primarily on two published Government proposals:
4. “Controlling our borders: Making migration work for Britain” the Home Office five year strategy for asylum and immigration, published in February 2005.
5. “Confident Communities in a Secure Britain,” the Home Office Strategic Plan, 2004 – 2008 published in July 2004.
6. The Government is committed to rapid implementation of the five year strategy for asylum and immigration. Key provisions of the strategy need primary legislation to take effect and the Act therefore forms part of the strategy’s wider implementation. It also includes a number of provisions that will facilitate the enforcement and transparency of the system.

OVERVIEW

7. The Act is arranged under six headings:
 - Appeals
 - Employment
 - Information

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- Claimants and applicants
- Miscellaneous
- General

SUMMARY

Appeals

8. The provisions:

- insert a new section 83A of the Nationality, Immigration and Asylum Act 2002 to provide a right of appeal for people no longer recognised as refugees but who are being allowed to stay in the UK on another basis. The right of appeal will be solely against the decision that the person in question no longer qualifies as a refugee.
- amend section 82(2)(g) of the Nationality, Immigration and Asylum Act 2002 to insert a reference to section 10(1)(ba).
- replace sections 88A, 90 and 91 of the Nationality, Immigration and Asylum Act 2002 with a new provision which will restrict full appeal rights against refusal of entry clearance to those seeking entry clearance as a dependant or a family visitor. These categories of people will be defined in regulations.
- amend section 23 of the Immigration and Asylum Act 1999 to clarify that refusals of entry clearance that carry only a limited right of appeal shall be monitored by a person appointed by the Secretary of State.
- provide that the Secretary of State must report on the operation of the entry clearance system in light of the removal of appeal rights under section 4 within three years of that section being commenced.
- replace section 89 of the Immigration, Nationality and Asylum Act 2002 with a provision that restricts full rights of appeal against a refusal of entry at the port to those who possess an entry clearance issued for the purpose for which entry is sought.
- amend section 88 (2) of the Nationality, Immigration and Asylum Act 2002 to limit appeal rights if an applicant fails to provide a medical report or medical certificate where to do so is a requirement of the immigration rules.
- insert a new section 97A into the Nationality, Immigration and Asylum Act 2002 so that an appeal against a decision to make a deportation order which has been certified as having been made on national security grounds would normally

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only be able to be brought from outside the United Kingdom. Where the appellant has made a human rights claim the appeal can be brought in country unless the Secretary of State certifies that removal would not breach the European Convention on Human Rights (ECHR). There is an appeal against this decision to the Special Immigration Appeals Commission (SIAC).

- amend section 103D of the Nationality, Immigration and Asylum Act 2002 to allow payment from the Community Legal Service Fund for preparatory work by legal representatives on a case where reconsideration has been ordered but does then not proceed.
- amend section 104(4) of the Nationality, Immigration and Asylum Act 2002 so that an appeal brought from outside the UK shall not be abandoned if the appellant is granted leave to enter or remain. An appeal brought on race discrimination grounds shall not be treated as abandoned following a grant of leave to enter or remain where the appellant provides notice that he wishes to continue the appeal. An appeal on Refugee Convention grounds shall not be abandoned if leave is granted for a period of more than 12 months and the appellant provides notice that he wishes to continue the appeal.
- provide that section 110 of the Immigration, Nationality and Asylum Act 2002 shall cease to have effect.
- amend section 3C of the Immigration Act 1971 so that it is clear that leave is continued under this section while an appeal could be brought from within the United Kingdom.
- create a new section 3D in the Immigration Act 1971 to provide for continuing leave while an in country appeal could be brought or is pending against curtailment or revocation of leave. Repeal section 82(3) of the Nationality, Immigration and Asylum Act 2002 in consequence.
- provide that the power to certify clearly unfounded asylum and human rights claims in variation appeals under section 94 of the Nationality, Immigration and Asylum Act 2002 may be limited in relation to persons previously granted a specified form of leave. The relevant forms of leave will be specified in regulations.
- amend section 113 of the Nationality, Immigration and Asylum Act 2002, in particular the definitions of “asylum claim” and “human rights claim” by removing the requirement for such claims to be made in person at a designated place; and clarify that further submissions which follow the refusal of an asylum or human rights claim but which do not amount to a fresh claim will not carry a further right of appeal. Requirements on when asylum and human rights claims must be made in person will be moved to Immigration Rules to be made under section 47.

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- make consequential amendments to the Nationality, Immigration and Asylum Act 2002, British Nationality Act 1981 and Special Immigration Appeals Commission Act 1997 to insert reference to the new right of appeal (section 83A) and changes to the continuation of leave provisions; and updating a reference in the Race Relations Act 1976 to the immigration appellate body.

Employment

9. The provisions:

- create a power for the Secretary of State to apply a civil penalty, determined by a Code of Practice, to an employer of an adult subject to immigration control who has not been granted leave to enter or remain, whose leave is invalid, has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise) or whose conditions of entry or stay prevent them from undertaking the employment. The provisions allow for objection and/or appeal by the employer against the imposition of a penalty and the amount. An employer who complies with requirements prescribed in an order of the Secretary of State is excused from paying a penalty.
- create a new criminal offence of knowingly employing an adult who has not been granted leave to enter or remain, whose leave is invalid, has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise) or whose conditions of entry or stay prevent them from undertaking the employment in question.
- allow the Secretary of State to issue a code of practice to employers on how to avoid unlawful racial discrimination when applying these provisions.

Information

10. The provisions:

- amend paragraph 4 of Schedule 2 to the Immigration Act 1971 (c.77) to enable Immigration Officers to verify and detain passengers' identity documents and to enable Immigration Officers to require the holders of such documents to provide biometric information (which may include in particular fingerprints or features of the iris or any other part of the eye).
- Amend section 141 of the Immigration and Asylum Act 1999, which sets out a number of categories of person from whom fingerprints can be taken and stored, to allow fingerprints to be taken from a person who has been detained under paragraph 16 of Schedule 2 to the Immigration Act 1971.
- amend section 3(9) of the Immigration Act 1971 (c.77) to enable British citizens and British subjects with a right of abode to enter the United Kingdom using identity cards issued under the current Identity Cards Bill, and make minor amendments

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relating to British passport holders.

- amend paragraphs 27 and 27B of Schedule 2 to the 1971 Act to allow the Secretary of State by order to require or enable an immigration officer to require passenger lists or particulars of crew of ships or aircraft and to specify the time and manner of provision. The current power in 27(2) applies only to ships or aircraft arriving in the UK. The new power extends the power to apply to ships or aircraft expected to arrive in the UK or leaving or expected to leave the UK. The power is also extended to apply to the owner or agent of a ship or aircraft as well as the captain, as is currently the case. Paragraph 27B is amended to apply to service information in the same way as it currently applies to passenger information. Service information is information relating to the voyage or flight undertaken by the ship or aircraft as may be specified by order. Consequent amendments to the offence in section 27 of the Immigration Act 1971 are also made.
- create a new power to enable a constable of the rank of Superintendent or above to request passenger, service and crew information from an owner or agent of a ship or aircraft in the form and manner directed by the Secretary of State by Order. Create a new offence for failure to comply with this requirement.
- create a new power to enable a constable of the rank of Superintendent or above to request freight information from an owner or agent of a ship or aircraft, an owner or hirer of a vehicle, or any other person responsible for the import or export of freight in the form and manner directed by the Secretary of State by Order. Create a new offence for failure to comply with this requirement.
- create a requirement for the Secretary of State in so far as he has functions under the Immigration Acts, the police and Her Majesty's Revenue and Customs to share with each other passenger, crew, service and freight information obtained or held by them in the course of their functions to the extent that the information is likely to be of use for immigration, police or Revenue and Customs purposes (as defined in sections 20 and 21 of the Immigration and Asylum Act 1999. Information collected by HM Revenue and Customs under the former Inland Revenue's powers will be excluded from this duty to share.
- make provision for the issue of codes of practice about the use of the information shared and the extent to which or form or manner in which shared information is to be made available to the Secretary of State, the police or HM Revenue and Customs.
- enable the police to disclose passenger, crew and freight information acquired from owners or agents of ships and aircraft to police in Jersey, Guernsey, the Isle of Man or a foreign law enforcement agency.
- amend the Customs and Excise Management Act 1979 to allow for the provision of passenger information in advance of a ship or aircrafts arrival in the UK.
- provide that the Secretary of State in so far as he has functions under the

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Immigration Acts, the police and HM Revenue and Customs may disclose travel or freight information (to be specified by Order) which is obtained or held by them in the course of their functions to the Security Service, the Secret Intelligence Service and the Government Communications Headquarters to the extent that the information is likely to be of use for a purpose specified in section 1 of the Security Service Act 1989 and sections 1 or 3 of the Intelligence Services Act 1994.

- amend paragraph 3 of Schedule 2 to the Immigration Act 1971 to allow an immigration officer to examine a departing passenger to establish immigration status as well as identity, and to subject a person to further examination and short-term detention where necessary to establish identity and/or immigration status.
- introduce a new power for the Secretary of State to allow an Authorised Person (AP) to search a ship, aircraft, vehicle or other thing to satisfy themselves as to the presence of illegal entrants and, if an illegal entrant is found, to search, detain and deliver the individual to an immigration officer. Contain a power to authorise police constables and officers of HM Revenue and Customs.
- create an offence for an individual to obstruct or assault an AP while exercising these search powers, or to abscond while being detained or delivered to an immigration officer by an AP.

Claimants and applicants

11. The provisions:

- amend section 99(1) and 99(4) of the Immigration and Asylum Act 1999 to enable local authorities to provide support, in accordance with arrangements made with the Secretary of State, under section 4 of the same Act and to incur reasonable expenditure in connection with the preparation of proposals for entering into those arrangements.
- amend section 118(1)(b) of the Immigration and Asylum Act 1999 so as to allow local authorities to use their powers under existing housing legislation to grant tenancies or licences to occupy to persons subject to immigration control, including those provided with accommodation pursuant to sections 4 and 98 of the 1999 Act. The provision will ensure that accommodation provided under section 4 does not give rise to a secure tenancy among recipients of such accommodation and make other amendments to UK housing legislation to achieve the same result across the UK. The section will also make amendments to UK housing legislation similar to those made in Schedule 14 to the 1999 Act.
- amend section 4 of the Immigration and Asylum Act 1999 to enable the Secretary of State to make regulations to provide specified goods and services for those in section 4 accommodation.
- enable the Secretary of State to repeal by order paragraph 7A of Schedule 3 to

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the Nationality, Immigration and Asylum Act 2002 and certain other provisions of section 9 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 by which paragraph 7A was inserted. The order is subject to the negative resolution procedure.

- amend section 13 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 to enable those with leave to enter or remain (rather than indefinite leave to enter or remain) and who have been recognised as refugees to access integration loans and enable the Secretary of State to extend eligibility, in the regulations, to other categories of migrants.
- amend section 5A(5A) of the Prison Act 1952 to enable HM Chief Inspector of Prisons to inspect short-term holding facilities and escorts on a statutory basis.
- provide that a decision to remove a person from the UK may be made while their leave is continued by virtue of sections 3C(2)(b) or 3D(2)(a) of the Immigration Act 1971. Provide that this decision will be an immigration decision under section 82(2) of the Nationality, Immigration and Asylum Act 2002.
- amend section 10(8) of the Immigration and Asylum Act 1999 to allow an individual's leave to be invalidated by the giving of a notice of a decision to remove.
- insert a new section 44A into the British Nationality Act 1981, conferring on the Secretary of State a discretion to waive the requirement (for the purposes of naturalisation and the renunciation and resumption of citizenship) to be "of full capacity" in cases where he considers it in the applicant's best interests to do so.
- allow the Secretary of State to prescribe, in the immigration rules, procedures to be followed in making an application, and to prescribe what will happen to that application if the procedures are not followed. The Secretary of State also has power to specify that particular forms are used, and to reject applications which are not made on that form.
- enable the Secretary of State to designate, in secondary legislation, any immigration or nationality-related applications, claims, services, processes, information or advice for which a fee may be charged. Regulations may specify the amount of the fee and provide for matters such as exemptions or the consequences of failing to pay a required fee.

Miscellaneous

12. The provisions:

- confirm that the power of entry and arrest in deportation cases is available when a notice of intention to deport is ready but has not yet been given to a

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prospective deportee.

- provide an interpretation of Article 1F (c) in the 1951 Geneva Convention relating to the Status of Refugees to clarify that acts of committing, preparing or instigating terrorism or of encouraging or inducing others to do so constitute acts contrary to the principles and purposes of the United Nations and will result in exclusion from asylum.
- allow the Secretary of State to certify that an appellant is not entitled to the protection of Article 33 (1) of the Refugee Convention because Article 1F applies or Article 33 (2) applies on national security grounds; and require the Asylum and Immigration Tribunal and the Special Immigration Appeals Commission to dismiss the asylum appeal if they agree with the statements in the certificate.
- replace one of the current criteria for deprivation of nationality that the person concerned has done something seriously prejudicial to vital national interests with the criterion that the Secretary of State is satisfied that such deprivation is conducive to the public good.
- confer on the Secretary of State a new power to withdraw the right of abode in the United Kingdom from any person whose exclusion or removal from this country he considers to be conducive to the public good.
- extend the requirement to be “of good character”, which at present applies only to those seeking British citizenship by naturalisation, to virtually all other applicants for British nationality.
- insert a new section 153A into the Immigration and Asylum Act 1999 to exempt detained persons from the national minimum wage.

General

13. General provisions on money, repeals, commencement, extent and the title of the Act.

COMMENTARY ON SECTIONS

APPEALS

Section 1: Variation of leave to enter or remain

14. Section 1 inserts a new section 83A into the Immigration, Nationality and Asylum Act 2002 to introduce a new right of appeal for people who are no longer recognised as refugees but who are permitted to stay in the UK on another basis.

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Section 2: Removal

15. A decision to revoke a person's indefinite leave to enter or remain in the United Kingdom under section 76 of the Nationality, Immigration and Asylum Act 2002 is an "immigration decision" as defined in section 82(2)(f) of the 2002 Act which gives rise to an in-country right of appeal under section 82(1). The removal from the United Kingdom of persons whose leave has been revoked under 76(3) is provided for by section 10(1)(ba) of the Immigration and Asylum Act 1999, which was inserted by section 76(7) of the 2002 Act. However no corresponding provision was made in section 82(2)(g) of the 2002 Act for a person to have a right of appeal against a decision to remove by way of directions under section 10(1)(ba).

16. Section 2 amends section 82(2)(g) of the 2002 Act to provide a right of appeal against a decision to remove under section 10(1)(ba) of the 1999 Act. This will give the person a separate right of appeal at each of the two decision stages; the first at the revocation stage and the second at the stage the decision to remove is taken. This separation of appeal rights is considered necessary in light of the importance of Refugee Status. No decision to remove will be taken while an appeal against revocation is pending.

Section 3: Grounds of appeal

17. Section 3 amends section 84 of the Nationality, Immigration and Asylum Act. It provides that an appeal under the new section 83A may only be brought on the ground that removal would breach the United Kingdom's obligations under the Refugee Convention.

Section 4: Entry clearance

18. Sections 88A, 90 and 91 of the 2002 Act restrict rights of appeal against refusal of entry clearance in respect of some visitors and students and categories of case specified in an order of the Secretary of State. Section 4 substitutes for these sections one provision which limits all appeals against refusal of entry clearance to limited grounds (human rights and race discrimination), with the exception of those in the categories listed. The categories of applicant who will retain a full right of appeal are family visitors and people wishing to join dependents in the United Kingdom (new Section 88A(1)). Provision is also made for regulations which will define in detail the relationships, degree of dependency and circumstances which count for these categories. In particular, the regulations may specify that the UK sponsor should be lawfully settled here, or that the individuals involved should have resided together for a certain length of time (new Section 88A(2)). For applicants who are refused entry clearance in any other category there will remain a right of appeal on both human rights and race discrimination grounds (new Section 88A(3)).

19. Section 23(1) of the Immigration and Asylum Act 1999 is amended by section 4(2) to provide that the Secretary of State may appoint a person to monitor refusals of entry clearance that carry only a limited right of appeal.

20. Section 4(3) provides that the Secretary of State must lay a report before

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Parliament on the entry clearance operation of the entry clearance system and the effect of removing rights of appeal. This report must be laid within three years of section 4 being commenced.

Section 5: Failure to provide documents

21. Section 5 inserts a new subsection (ba) into section 88 (2) of the Nationality, Asylum and Immigration Act 2002, which will limit the right of appeal against refusal of entry clearance to human rights and race discrimination grounds if the reason for refusal is that the applicant failed to provide a medical report or medical certificate when required to do so by the immigration rules.

Section 6: Refusal of leave to enter

22. Section 89 of the 2002 Act restricts rights of appeal against refusal of permission to enter at the port of visitors and students who do not hold an entry clearance. The restriction limits the grounds of appeal to human rights and race discrimination and, where the appeal is exercised in the UK, asylum. Section 6 substitutes a provision which applies the restriction to all appeals against refusal of permission to enter at the port, unless the applicant has an entry clearance at the time of refusal which was issued for the specific purpose for which the person seeks entry. A right of appeal remains in all cases on both human rights and race discrimination grounds.

Section 7: Deportation

23. Section 7 inserts a new section 97A into the Nationality, Immigration and Asylum Act 2002. The section requires that an appeal against a decision to make a deportation order which has been certified as having been made on national security grounds should normally only be able to be brought from outside the United Kingdom. Where the appellant makes a human rights claim, the section allows for this to be brought in country unless the Secretary of State certifies that removal would not breach the United Kingdom's obligations under the European Convention on Human Rights (ECHR). However the section provides for an in-country appeal against this certificate to the Special Immigration Appeals Commission (SIAC).

Section 8: Legal aid

24. Section 8 amends section 103D(2) and 103D(3) of the 2002 Act to provide that subsection (3) applies where the Tribunal has been ordered to reconsider its decision on an appeal rather than where it has decided the appeal following reconsideration. This amendment allows representatives to be granted Community Legal Service funding by the appropriate court for work done in preparation for a reconsideration hearing that does not then proceed because the Home Office concedes the appeal, the appeal has to be treated as abandoned or where the appellant withdraws the appeal. The previous drafting of section 103D did not cater for the situation where an appeal is withdrawn, abandoned or conceded after reconsideration has been ordered but before it takes place, and the appellant's representative has already carried out some preparatory work for the reconsideration.

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Section 9: Abandonment of appeal

25. Section 104(4) of the 2002 Act provides that when a person has an appeal pending the appeal shall be treated as abandoned if the person is granted leave to enter or remain in the United Kingdom or leaves the United Kingdom. Section 9 amends section 104 to ensure that neither of these events causes an appeal to be treated as abandoned if the appeal was not brought in the United Kingdom. This prevents anomalies such as an appeal against refusal of entry clearance being treated as abandoned if an entry clearance conferring leave to enter is later granted for a different purpose (new Section 104(4)).

26. A new section 104(4B) will allow an appeal on Refugee Convention grounds to continue if an appellant is granted leave for more than 12 months and gives notice that he wishes to continue the appeal on those grounds. A new section 104(4C) ensures that an appeal brought on race discrimination grounds will continue on those grounds if the appeal is otherwise treated as abandoned when leave is granted, provided the appellant gives notice that he wishes that aspect of his appeal to continue.

Section 10: Grants

27. Section 10 provides that section 110 of the 2002 Act, which allowed grants to be made to organisations giving advice in relation to appeals, shall cease to have effect. The section has become redundant since funding for this purpose is now the responsibility of the Legal Services Commission.

Section 11: Continuation of leave

28. Section 11 amends section 3C of the Immigration Act 1971 (the 1971 Act), which currently extends leave to enter or remain in the United Kingdom if it would expire while an application is being considered and for such time as an appeal against a decision to curtail or refuse to vary leave could be brought or is pending. The minor amendments to subsections (2) and (3) make it clear that leave shall only be continued when an in country appeal may be brought or is pending.

29. Section 3C(6) of the 1971 Act defines when an application is decided for the purposes of section 3C as when a notice of decision is given in accordance with regulations made under section 105 of the 2002 Act, but non-appealable decisions do not properly come within the terms of those Regulations. Subsection (3) replaces section 3C(6) with a provision enabling the Secretary of State to make regulations which will better define the types of notice which terminate leave extended by section 3C.

30. Subsection (5) creates a new section 3D in the Immigration Act 1971. This provides that leave shall be continued while an in country appeal against revocation or curtailment of leave may be brought or is pending. It also prevents the making of an application to vary leave while leave is continued in this way.. This replaces the provisions in section 82(3) of the Nationality, Immigration and Asylum Act, and accordingly that section is repealed.

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Section 12: Asylum and human rights claims: definition

31. Section 12 amends section 113 of the Nationality, Immigration and Asylum Act 2002. In particular it removes from the definitions of “asylum claim” and “human rights claim” the requirement for the claim to be made in person at a place designated by the Secretary of State. It is proposed instead to specify the circumstances where asylum and human rights claims would need to be made in person in Immigration Rules made under section 47.

32. The section also clarifies that further submissions that follow the refusal of an asylum or human rights claim will only attract a right of appeal if the Secretary of State considers they amount to a fresh claim.

Section 13: Appeal from within United Kingdom: certification of unfounded claims

33. Section 94 of the Nationality, Immigration and Asylum Act 2002 provides that a clearly unfounded human rights or asylum claim may be certified, with the effect that any appeal against refusal to vary or curtailment of leave may only be brought once the appellant has left the United Kingdom. Section 13 provides a regulation making power to limit the scope to certify clearly unfounded claims. Under this section the Secretary of State may make regulations to limit his power to certify clearly unfounded claims on the basis of the type of leave that the person has when the claim is made.

Section 14: Consequential amendments

34. Section 14 causes the consequential amendments listed in Schedule 1 to have effect.

Schedule 1: Immigration and Asylum Appeals: Consequential Amendments

35. Paragraphs 2 through 10 amend sections 72(9); 85(4); 86(1); 87(1); 97(1); 97(3); 103A(1); 103E(1); 106(1)(a), 106(1)(b) and 108(1)(a) of the Nationality, Immigration and Asylum Act 2002 to include reference to the new right of appeal created by section 1. Paragraphs 13 and 14 similarly amend the British Nationality Act 1981 and the Special Immigration Appeals Commission Act 1997 to incorporate the new right of appeal. Paragraph 11 amends section 112 of the 2002 Act to incorporate the new regulation making power under section 13.

36. Paragraph 12 amends the Race Relations Act 1976 to update the definition of ‘immigration appellate body’ from ‘Immigration Appeal Tribunal’ to ‘Asylum and Immigration Tribunal’.

EMPLOYMENT

Section 15: Penalty

37. Section 15 provides that a person is liable to a civil penalty if he employs an adult subject to immigration control who has not been granted leave to enter or remain

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in the United Kingdom or whose leave is invalid, has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise), or is subject to a condition preventing him from accepting the employment. An employer is excused from paying a penalty if he complies with the requirements of an order made by the Secretary of State. The excuse does not apply where the employer knew that his employment of the individual was unlawful. The section describes the matters to be covered in the penalty notice and sets out the parameters of the requirements which may be provided for in an order of the Secretary of State. Those are the requirements which, if complied with, will excuse the employer from paying the penalty.

38. Subsection (1) sets out the circumstances in which an employer may be liable to a penalty. Subsection (2) provides the Secretary of State's power to impose a penalty.

39. Subsection (3) sets out the circumstances in which an employer is excused from paying a penalty. Subsection (4) provides that the employer loses the excuse if he knew at any time during the employment that it was contrary to this section. Subsection (5) provides that as a matter of law, the onus is on the employer to satisfy the Secretary of State that he can establish an excuse under subsection (3), rather than on the Secretary of State to establish this prior to the service of a penalty notice.

40. Subsection (6) sets out the specific matters to be covered in a penalty notice, including the reason why the Secretary of State thinks the employer is liable, the amount of the penalty, the date before it should be paid, and other practical points.

41. Subsection (7) sets out the parameters of the requirements which may be placed on employers by way of an order of the Secretary of State. The requirements, if complied with, will excuse the employer from paying a penalty. They relate to the checking, copying and retention of specified documents.

Section 16: Objection

42. Section 16 sets out the procedure for employers to object to the Secretary of State in relation to a penalty notice, and for the Secretary of State to consider objections.

43. Subsections (1) and (2) provide that an employer may object to his liability to the imposition of a penalty and to the amount. He may also object on the grounds that he is excused payment because he has complied with the requirements of an order under section 11 subsection (7).

44. Subsection (3) sets out the form the objection must take. It enables the Secretary of State to prescribe the manner and time period in which the objection should be made.

45. Subsections (4) and (5) cover the actions to be carried out by the Secretary of State on receipt of an objection, and the possible outcomes of his consideration. Subsection (4) provides that the Secretary of State must consider an objection and may cancel, reduce, increase it or take no action. Subsection (5) provides that where the Secretary of State considers a notice of objection, he must have regard to the code of practice issued under section 19 specifying the criteria to be applied in determining the amount. The Secretary of State must inform the objector of his decision within a prescribed or agreed period. If the penalty is increased, a new notice must be issued. If the penalty is reduced, the Secretary of State must inform the objector of the reduced

amount.

Section 17: Appeal

46. Section 17 sets out the arrangements for an employer wishing to appeal to the court against a penalty.

47. Subsection (1) provides that an employer on whom a penalty is served may appeal to the court on the grounds that he is not liable to the penalty, the amount is too high, or he is excused payment having complied with the specified requirements.

48. Subsection (2) covers the actions that may be taken by the court. Subsection (3) clarifies the nature of the appeal and the matters to which the court must have regard in determining the case. Subsection (4) specifies the time period within which an appeal may be brought. The 28 day period runs from the specified date upon which the notice is given, including where the Secretary of State imposes a new notice increasing the penalty following his consideration of an objection under section 16. The 28 day period also runs from the date on which, having considered an objection under section 16, the Secretary of State gives the employer notice that the penalty is reduced or that he intends to make no change to the penalty. Subsection (5) provides that an appeal may be brought by an employer irrespective of whether he has objected to the Secretary of State under section 16 and the outcome of any objection. Subsection (6) defines "court" for the purpose of the section.

Section 18: Enforcement

49. Section 18 covers the arrangements for enforcing a penalty imposed by the Secretary of State. Subsection (1) provides that the amount may be recovered as a debt. Subsection (2) restricts the matters that may be raised in proceedings for the enforcement of the penalty. In such proceedings, no question may be raised as to the employer's liability to the penalty or its amount, because the legislation provides a separate right of action in relation to these matters in section 17. Subsection (3) provides that any penalty money paid to the Secretary of State shall be paid into the Consolidated Fund.

Section 19: Code of practice

50. Section 19 requires the Secretary of State to issue a code of practice specifying the criteria to be applied in determining whether to impose a penalty and the amount. The code must be laid before Parliament in draft before it can come into force by order of the Secretary of State, who must review the code from time to time.

Section 20: Orders

51. Section 20 elaborates on the Secretary of State's order-making powers under sections 15, 16 and 19. An order under section 15(2) is subject to the affirmative resolution procedure. The other order-making powers under section 15, 16 and 19 are subject to the negative resolution procedure.

Section 21: Offence

52. Section 21 creates a new criminal offence of employing a person knowing that

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which received Royal Assent on 30 March 2006*

they are an adult subject to immigration control who has not been granted leave to enter or remain (unless granted permission to work by the Secretary of State), or whose leave to remain is invalid, has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise) or subject to a condition preventing him from accepting the employment. On conviction following indictment, the maximum penalty is two years imprisonment and/or a fine. On summary conviction, the maximum penalty is 12 months imprisonment in England and Wales (once section 154(1) of the Criminal Justice Act 2003 is commenced), 6 months in Scotland or Northern Ireland, or a fine up to the statutory maximum, or both.

53. Subsection (3) provides that the offence is to be treated as a relevant offence for the purpose of sections 28B and 28D of the Immigration Act 1971 and an offence under Part III of that Act for the purposes of sections 28E, 28G and 28H. The practical effect of this is to provide immigration officers with arrest, entry and search powers in relation to the offence.

Section 22: Offence: bodies corporate, &c

54. Section 22 defines the liability of bodies corporate, officers of bodies, and members of partnerships in relation to the criminal offence in section 21. Subsection (1) provides that a body shall be treated as knowing a fact about an employee if a person who has responsibility within that body for an aspect of the employment knows the fact. Subsection (2) provides that where an offence under section 20 is committed by a body corporate with the consent or connivance of an officer of the body, the officer as well as the body shall be treated as having committed the offence. Subsection (3) defines an officer of a body for the purpose of the section, and subsection (4) relates to partnerships.

Section 23: Discrimination: code of practice

55. Section 23 requires the Secretary of State to issue a code of practice to employers specifying how to avoid contravening the Race Relations Act 1976 or the Race Relations (Northern Ireland) Order 1996 while avoiding liability for a civil penalty under section 15 or the commission of a criminal offence under section 21.

56. Subsection (2) sets out the steps the Secretary of State must take to consult certain bodies before issuing the code. Subsection (3) provides that the code shall be brought into operation following an order made by the Secretary of State. Subsection (4) provides that a breach of the code does not make a person liable to civil or criminal proceedings, but may be taken into account by a court of tribunal. Subsection (5) provides that the Secretary of State shall review the code and may revise and re-issue a new code following the review. Subsection (6) provides that until the dissolution of the Commission for Racial Equality, reference to the Commission for Equality and Human Rights in subsection (2)(a)(i) shall be treated as a reference to the Commission for Racial Equality.

Section 24: Temporary admission, &c.

57. Section 24 provides that where a person is at large in the United Kingdom by virtue of having been granted temporary admission or release from detention under paragraph 21(1) of Schedule 2 to the Immigration Act 1971, he is to be treated

*These notes refer to the Immigration, Asylum and Nationality Act 2006 (c.13)
which received Royal Assent on 30 March 2006*

for the purpose of the employer's liability to a penalty in section 15 or the commission of an offence in section 21 as if the person had been granted leave to enter the United Kingdom and any restriction as to employment shall be treated as a condition of leave. The practical effect of this is that an employer is not liable to a penalty under section 15 and commits no offence under section 21 if he employs someone who does not have leave to enter or remain, but has been granted temporary admission or release together with permission to take employment under paragraph 21(1) of Schedule 2 to the Immigration Act 1971.

INFORMATION

Section 27: Documents produced or found

58. This section amends paragraph 4 of Schedule 2 to the Immigration Act 1971 by deleting paragraph 4(2A), substituting paragraph 4(4) and adding a new paragraph 4(5). It makes two substantive changes. First, it brings together the provisions on detention and examination of passports and other documents produced by passengers, or found on them, while being examined under Schedule 2 and provides that the same conditions govern detention and examination for all documents. Second, it provides a new power to enable immigration officers to require passengers being examined under Schedule 2 to provide biometric information (such as fingerprints) for the purpose of ascertaining whether a passenger in question is the rightful holder of the passport or other document he produces.

Section 28: fingerprinting

59. Section 28 amends section 141 of the Immigration and Asylum Act 1999 to enable fingerprints to be taken and stored from people who are detained under paragraph 16 of Schedule 2 of the Immigration Act 1971.

60. Section 141 sets out a number of categories of person from whom fingerprints can be taken and stored by the Immigration and Nationality Directorate. It sets out the period during which fingerprints can be taken, and makes provision for destruction. Section 141(7)(d) currently permits fingerprints to be taken and stored from a person who has been arrested under paragraph 17 of Schedule 2 to the 1971 Act.

61. Subsection (2) amends section 141(7)(d) of the 1999 Act to enable fingerprints to be taken and stored from a person who has been detained as well as arrested under Schedule 2 of the 1971 Act.

62. Subsection (3) makes a consequential amendment to include detention as well as arrest for the purposes of calculating the relevant period when fingerprints can be taken under section 141 of the 1999 Act.

Section 29: Attendance for fingerprinting

63. Section 29 amends section 142 of the Immigration and Asylum Act 1999.

64. Section 141 of the Immigration and Asylum Act 1999 allows an authorized

*These notes refer to the Immigration, Asylum and Nationality Act 2006 (c.13)
which received Royal Assent on 30 March 2006*

person (as defined) to take fingerprints from a person to whom the section applies. The section applies to, amongst others, asylum-seekers and their dependants. Section 142 of that Act allows the Secretary of State, by notice in writing, to require a person to whom section 141 applies to attend a specified place for fingerprinting. Section 142(2) currently states that the notice must give the person a period of at least seven days within which to attend. Further, that period cannot begin until at least seven days have passed since the date of the notice. The notice may also require the person to attend on a specified time of day or during specified hours. In relation to asylum-seekers and their dependants only, this section seeks to amend section 142 so that a notice under the section:

- may require the person to attend during a specified period, beginning with a day not less than three days after the date given in the notice as its date of issue,
- may require the person to attend on a specified day not less than three days after the date given in the notice as its date of issue, and
- may require the person to attend at a specified time of day or during specified hours.

Section 30: Proof of right of abode

65. Section 30 makes a series of amendments to section 3(9) of the Immigration Act 1971 which relates to the means by which a person seeking leave to enter the UK and claiming to have the right of abode there shall prove that right. The documents which can be used for this include a United Kingdom passport describing him as a British citizen, but not a United Kingdom passport describing him as a British subject with the right of abode in the United Kingdom. These individuals are, instead, able to evidence their right of abode by production of a certificate of entitlement as mentioned in s.3(9)(b) of the Immigration Act 1971. Section 30, sub-section (1)(b) remedies this by adding the passport issued to a British subject and endorsed with the right of abode in the United Kingdom to s.3(9).

66. Sub-sections (1)(c) and (d) add to the documents which may be used as evidence the identity cards issued to British citizens and to British subjects with a right of abode in the United Kingdom under the provisions in the current Identity Cards Bill. This will enable these cards to be used for travel within the European Economic Area in the same way as other Member States' national identity cards are used now.

67. Section 30, by replacing section 3(9) in its entirety, removes the now redundant reference to a passport issued to a "citizen of the United Kingdom and Colonies", as this category has not existed since 1 January 1983 when the British Nationality Act 1981 came into force.

Section 31: Provision of information to immigration officers

68. Section 31(2) amends Paragraph 27 of Schedule 2 to the Immigration Act 1971 to enable the collection of passenger lists and crew information on or before the arrival of a ship or aircraft into the United Kingdom. As it stands paragraph 27(2) allows passenger lists or crew information to be requested for ships or aircraft arriving in the

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which received Royal Assent on 30 March 2006*

UK but this allows information to be collected in advance. Section 31(2) also introduces a new power to request passenger lists or crew information from a ship or aircraft which is leaving or is expected to leave the United Kingdom.

69. Paragraph 27(2) is amended to apply to the owners or agents of ship or aircraft as well as the captain.

70. It also amends paragraph 27(2) to enable the Secretary of State to require the information to be provided in the form and manner that he directs for example by electronic means.

71. Section 31(3) amends Paragraph 27(B) of Schedule 2 to the Immigration Act 1971 to enable an immigration officer also to request service information about the voyage or flight relating to ships or aircraft of the carrier. Service information will be specified in secondary legislation.

72. Section 31(3) also makes consequential amendments to offences under section 27 of the Immigration Act 1971.

Section 32: Passenger and crew information: police powers

73. This section provides information acquisition powers for the Police in respect of ships and aircraft arriving (or expected to arrive) in or leaving (or expected to leave) the UK. A constable of at least the rank of superintendent may request passenger or crew information from the owner or agent of a ship or aircraft. Passenger and crew information will be specified in secondary legislation. It is also possible for the constable of at least the rank of superintendent to request service information which will also be specified in secondary legislation.

74. Secondary legislation will also specify the form and manner in which information is to be provided.

75. The section requires passengers and crew members to provide the owner or agent of a ship or aircraft with any information that he requires for the purposes of complying with a requirement to provide information.

76. Requests shall be in writing, may apply generally throughout a specified period (not exceeding six months) or only to one or more specified ships or aircraft and must state the information required and the date or time by which the information must be provided.

77. Since police functions in Scotland are devolved, Scottish Police will be able to capture information for police purposes if they are or relate to reserved matters e.g. national security.

Section 33: Freight information: police powers

78. This section provides freight information acquisition powers for the Police in respect of ships, aircraft and vehicles arriving (or expected to arrive) in or leaving (or expected to leave) the UK. A constable of at least the rank of superintendent may request freight data from an owner or agent of a ship or aircraft, the owner or hirer or a

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which received Royal Assent on 30 March 2006*

vehicle, or any other person responsible for the import or export of goods.

79. Freight information will be specified in secondary legislation.

80. Requests shall be in writing, may apply generally throughout a specified period (not exceeding six months) or only to one or more specified ships, aircraft or vehicles and must state the information required and the date or time by which the information must be provided.

81. It makes comparable provision to that in section 32.

Section 34: Offence

82. This section explains the penalties that can be applied in England, Wales, Northern Ireland and Scotland for non-compliance with a requirement to provide information under section 32 or 33.

Section 35: Power of Revenue and Customs to obtain information

83. This section amends section 35(2) and (3) of the Customs & Excise Management Act to mean that the report provisions which these sections empower the Commissioners to direct apply to every ship and aircraft arriving or expected to arrive in the UK. The effect of this change is to allow the Commissioners' Directions made under section 35 to be amended to require the provision of the passenger data they direct to be made in advance of the arrival of the means of transport.

Section 36: Duty to share information

84. Section 36 introduces a new power which provides for information obtained or held by the Border Agencies (Immigration Service, Police Service and HM Revenue and Customs) in the course of their functions to be shared, to the extent that the information is likely to be of use for immigration, police or Revenue and Customs purposes (which are terms defined in sections 20 and 21 of the Immigration and Asylum Act 1999).

85. Subsection (4) provides for the Secretary of State and the Treasury to issue jointly an order specifying the type of information to which this duty to share applies. Subsection (7) specifies that an order made under subsection (4) will exclude information collected by HM Revenue and Customs under the former Inland Revenue's powers.

The duty on a chief officer of police in Scotland to share information only applies to information which is likely to be of use for immigration, revenue and customs purposes and police purposes in so far as they are or relate to reserved matters (within the meaning of the Scotland Act 1998).

Section 37: Information sharing: code of practice

86. Section 37 will require the Secretary of State and the Treasury jointly to issue a Code or Codes of Practice governing use of information shared in accordance with section 36(2) and the extent to which, or form and manner in which, shared information is to be made available with those sections.

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which received Royal Assent on 30 March 2006*

87. Subsections (2) and (4) provide that a draft of the Code of Practice will be laid before Parliament before being issued and that the code of practice will come into force by means of an order, subject to the negative resolution procedure. Subsection (3) provides that a Code of Practice may be reviewed but that any revision will be subject to the procedures set out in subsections (2) and (4).

Section 38: Disclosure of information for security purposes

88. Section 38 introduces a discretionary power which supports the disclosure of information relating to travel or freight for security purposes and defines the actors and purposes to whom the provision applies.

89. The section provides that the Secretary of State in so far as he has functions under the Immigration Acts, a chief officer of the police and HM Revenue and Customs may disclose information which is obtained or held by them in the course of their functions to the Security and Intelligence Agencies (SIAs) to the extent that the information is likely to be of use for a purpose specified in section 1 of the Security Service Act 1989 and sections 1 or 3 of the Intelligence Services Act 1994 (namely, national security, economic well being of the UK and support in combating serious crime). It is not necessary to provide for a reciprocal power for the provision of data by the SIAs to the Border Agencies because such disclosures, where necessary, may be made on the basis of existing legislation.

90. The Secretary of State and the Treasury will specify jointly by order the information that may be disclosed. Subsection (6) clarifies that the powers specified jointly by the Secretary of State and the Treasury do not apply to information collected by HM Revenue and Customs under the former Inland Revenue's powers.

Section 39: Disclosure to law enforcement agencies

91. Section 39 provides a power for a police service to disclose information obtained in accordance with sections 32 or 33 to the police services in Jersey, Guernsey, the Isle of Man and a foreign law enforcement agency. A foreign law enforcement agency is defined as a person outside the UK with functions similar to a police force in the UK or SOCA.

92. The section applies to Scotland.

Section 40: Searches: contracting out

93. Subsection (1) permits an authorised person to search a ship, aircraft, vehicle or other thing for the purpose of identifying individuals who an immigration officer may wish to examine. The reference to "other thing" reflects the search of things on board ships or aircraft in paragraph 1(5) of Schedule 2.

94. Subsection (2) defines an authorised person and makes it clear that a ship, aircraft, vehicle or other thing can only be searched if an Immigration Officer would have power to search it under paragraph 1(5) of Schedule 2 to the Immigration Act 1971.

95. Subsection (3) & (4) states that the Secretary of State may authorise a specified class of constable for the purposes of this section or with the consent of the

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which received Royal Assent on 30 March 2006*

Commissioners for Her Majesty's Revenue and Customs, authorise an officer or a specified class of officer of Revenue and Customs for the purpose of this section.

96. Subsection (5) provides that before authorising a person (other than a constable or officer of Revenue and Customs) for the purposes of this section, the Secretary of State must be satisfied that the person is fit and proper for the purpose and properly trained.

97. Subsection (6) sets out the arrangements which the Secretary of State may make for the exercise by authorised persons of the powers conferred by this section (which include the power to enter into contracts with private contractors for the provision of authorised persons other than constables and officers of Revenue and Customs).

98. Subsection (7)(a) gives the authorised person ancillary powers of search and detention in relation to any individual who the authorised person discovers while exercising the power to search. It provides for power to search for items that may be used for self-harm, cause harm to others, or to assist in escape from detention. Furthermore powers are provided to search for items establishing information concerning identity, nationality, citizenship or information about the individual's journey.

99. Subsection (7)(b) gives the power to retain items found during the course of a section (7)(a) search and to deliver them to an Immigration Officer.

100. Subsection (7)(c)(d) &(e) allows an authorised person to detain an individual for a period of up to three hours, pending the arrival of an Immigration Officer or to deliver the individual to an Immigration Officer as soon as is reasonably practicable. Subsection (e) provides for the authorised person to use reasonable force pursuant to carrying out his duties under paragraphs (a) to (d).

101 Subsection (8)(a) stipulates that searches may not include the removal of clothing other than an outer coat, jacket or glove, but the individual being searched may be required to open his mouth.

102. Subsection (8)(b) excludes items subject to legal privilege from the powers of seizure. Legal privilege is as defined in:

- Police and Criminal Evidence Act 1984 (c.60) (England and Wales)
- Proceeds of Crime Act 2002 (c.29) (Scotland)
- Police and Criminal Evidence (Northern Ireland) Order 1989 (SI.1989/1341 (N.I 12))

Section 41: Section 40: supplemental

103. Section 41 covers the appointment of a Monitor, contractual matters, offences and supplemental provisions.

104. Subsection (1) requires the Secretary of State to appoint a Monitor. This person will be a Crown Servant and his or her role will be to monitor the exercise of powers of authorised persons other than constables or officers of Revenue and Customs and

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which received Royal Assent on 30 March 2006*

periodically undertake inspections into the exercise of those powers, reporting back to the Secretary of State about any allegation or failings in the exercise or application of those powers.

105. Subsection (2) provides for the Secretary of State to revoke the authorisation given to constables and officers of Revenue and Customs.

106. Subsection (3) permits the Secretary of State to stipulate conditions when granting authorisation to a person other than a constable or officer of Revenue and Customs and provides for the Secretary of State, by written notice, to suspend or revoke the authorisation. The Secretary of State shall stipulate the term of authorisation (by reference to dates or otherwise).

107. Subsection (4) explains what is meant by "specified class" of constable or officer of Revenue and Customs in section 40(3) & 40(4) and provides that the specification may be by reference to named individuals, the functions to be exercised, the location or circumstances in which a person is exercising the function or any other matter.

108. Subsection (5) requires that an Immigration Officer receiving an individual or article delivered by an authorised person shall treat that individual or article as if they had been discovered by an Immigration Officer undertaking a search under schedule 2 of the Immigration Act 1971. This Act does not amend the application of existing procedures applied by an Immigration Officer to individuals or articles discovered.

109. Subsection (6) provides that a person is guilty of an offence if he;

- absconds from detention
- absconds either whilst being transferred to a place or having arrived
- absconds prior to being delivered to an Immigration Officer
- obstructs an authorised person who is exercising his powers under this Act.
- assaults an authorised person who is exercising his powers under this Act.

110. Subsection (7) provides that an offence is not committed under subsection (6) unless the authorised person is readily identifiable as a constable or officer of Revenue and Customs or as an authorised person (by means of a uniform, badge or other means of identification).

111. Subsection (8) provides that on summary conviction for the offences listed in subsection (6), a person shall be liable to imprisonment for a term not exceeding 51 weeks in England or Wales or 6 months in Scotland or Northern Ireland or to a fine not exceeding level 5 on the standard scale or both a fine and imprisonment.

112. Subsection (9) provides that in relation to a conviction occurring before the commencement of section 281(5) of the Criminal Justice Act 2003 (c.44) (Magistrates Powers') reference in subsection (7)(a) to 51 weeks shall be treated as a reference to 6 months.

*These notes refer to the Immigration, Asylum and Nationality Act 2006 (c.13)
which received Royal Assent on 30 March 2006*

Section 42: information: embarking passengers

113. Section 42 amends paragraphs 3 and 16 of Schedule 2 to the Immigration Act 1971, which currently enables an immigration officer to examine departing passengers to establish nationality and identity.

114. Subsection (2) amends paragraph 3 so as to extend the powers of examination on embarkation to cover three new kinds of information. An immigration officer will have the power to examine an embarking passenger not only for the purpose of establishing whether he is a British citizen, and if not, his identity, but also to establish whether:

- his entry to the United Kingdom was lawful;
- he has complied with any conditions of leave to enter or remain in the United Kingdom; and
- his return to the United Kingdom is prohibited or restricted.

115. Subsection 2 also amends paragraph 3 so as to enable an immigration officer to require a person to submit to further examination by giving him written notice that he must do so.

116. Subsection 3 amends paragraph 16 of Schedule 2 to the 1971 Act by introducing the power for a person to be detained under the authority of an immigration officer where he has been required to submit to further examination on embarkation. The detention can only be for a maximum of 12 hours pending the completion of the further examination.

117. Subsection 4 is a consequential amendment to make clear that paragraph 21 of Schedule 2 to the 1971 Act, which makes provision for temporary admission, does not apply to detention of departing passengers. As detention is permitted only for a maximum of 12 hours the power to grant temporary admission is not necessary.

CLAIMANTS AND APPLICANTS

Section 43: Accommodation

118. Section 43(1) amends section 99 of the Immigration and Asylum Act 1999 (“the 1999 Act”) so that local authorities may now also provide accommodation in accordance with arrangements made by the Secretary of State under section 4 of that Act, as well as in accordance with arrangements made under sections 95 and 98. Under subsection (2), which amends section 99(4), they may also incur reasonable expenditure in connection with the preparation of proposals for entering into those arrangements.

119. Subsection (3) amends section 118(1)(b) of the 1999 Act so as to ensure that where accommodation is provided by a housing authority under its housing powers, this accommodation is not granted to a person subject to immigration control unless the tenancy of, or licence to occupy, such accommodation is granted in accordance with arrangements made under sections 4 and 98. This replicates the position in respect of housing authority accommodation provided in accordance with arrangements made

*These notes refer to the Immigration, Asylum and Nationality Act 2006 (c.13)
which received Royal Assent on 30 March 2006*

under section 95.

120. Subsection (4) makes amendments in relation to housing legislation. Paragraph (a) removes entitlement to protection under the Protection from Eviction Act 1977 from persons accommodated under section 4; they can therefore be required to leave accommodation provided under section 4 without a court order having been obtained. Paragraph (b) removes those accommodated under section 4 from the ordinary creation of a secure tenancy in Northern Ireland, paragraph (d) makes the same provision in relation to England and Wales and subsections (5) and (6) make similar provision in Scotland. Paragraph (c) removes those accommodated under section 4 from Scottish legislation concerning the prohibition of eviction without due process of law. Paragraph (e) provides that the provision of accommodation under section 4 will not give rise to an assured tenancy in Scotland and paragraph (f) makes similar provision in relation to England and Wales. These amendments broadly replicate the changes made to UK housing legislation, which made provisions in relation to accommodation provided under Part VI of the 1999 Act, as contained in Schedule 14 to that Act.

121. Subsection (7) amends section 4 of the 1999 Act by inserting a power enabling the Secretary of State to make regulations which permit him to provide services or facilities as prescribed to those who are provided with accommodation under that section. The regulations, which are subject to the negative resolution procedure, may permit provision to be made by vouchers exchangeable for goods or services, may restrict the value or extent of services or facilities that will be provided but may not permit a person to be provided with money.

Section 44: Failed asylum-seekers: withdrawal of support

122. Section 44 enables the Secretary of State to repeal by order paragraph 7A of Schedule 3 to the Nationality, Immigration and Asylum Act 2002 and certain other provisions of section 9 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 by which paragraph 7A was inserted. The order is subject to the negative resolution procedure.

Section 45: Integration loans

123. Section 13 of the Asylum & Immigration (Treatment of Claimants, etc.) Act 2004 as originally enacted enabled the Secretary of State to make regulations enabling him to make loans to those recorded as refugees and given indefinite leave to enter or remain in the United Kingdom. Section 45 amends that provision enabling loans to be made to refugees who have been given limited leave to enter or remain as well as such other classes of migrants as the Secretary of State prescribes in the regulations.

Section 46: Inspection of detention facilities

124. Section 46 amends section 5A(5A) of the Prison Act 1952 so as to regularise HM Chief Inspector of Prisons' (HMCIP) existing voluntary oversight of immigration short-term holding facilities (STHFs) and escort arrangements by placing it on a statutory footing. HMCIP's voluntary oversight of STHFs began in April 2004 and of escort arrangements in May 2005. The amendment brings the basis for the oversight of STHFs and escort arrangements in line with the position on immigration removal

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which received Royal Assent on 30 March 2006*

centres, which were made subject to statutory HMCIP oversight by section 152(5) of the Immigration and Asylum Act 1999.

Section 47: Removal: persons with statutorily extended leave

125. Section 47 creates a new power which enables to an appealable decision to remove a person from the United Kingdom to be made during the period in which he enjoys continuing leave. It provides that, while a person has continuing leave where an appeal can be brought against a decision to refuse to vary, to curtail or to revoke leave, during this period a decision may also be taken to remove him from the UK. By virtue of subsection (6) this removal decision is included within the list of immigration decision defined in section 82 of the Nationality, Immigration and Asylum Act 2002 and will therefore give rise to a right of appeal to the Asylum and Immigration Tribunal. Subsection (7) provides that an appeal against the new removal decision may be brought in the United Kingdom; this means that where an appeal is lodged against such a decision removal would not take place until the end of the appeal proceedings.. Subsection (8) includes the removal decision in the list of immigration decisions in relation to which the Secretary of State may certify clearly unfounded asylum or human rights claims.

Section 48: Removal: cancellation of leave

126. Section 48 amends section 10(8) of the Immigration and Asylum Act 1999, so that notification of a decision to remove in accordance with that section invalidates any leave to enter or remain in the United Kingdom which was previously given to the person. Prior to this amendment leave was invalidated only at the point at which removal directions were given under section 10.

127. Under the 1999 Act the giving of removal directions under section 10 could attract an in country right of appeal if the person concerned was appealing under section 65 of that Act on the basis that removal would breach his human rights. Directions would often be given at an early stage in the removal process in order to trigger a right of appeal under section 65. However, as removal directions often had to be cancelled and reset this often gave rise to further rights of appeal against the giving of the second, or subsequent, set of removal directions. This was rectified by section 82 of the Nationality, Immigration and Asylum Act 2002 which provides of a right of appeal against the principal decision to remove by way of directions as opposed to the subsidiary decision to give removal directions. Section 48 makes a corresponding amendment to section 10(8) of the 1999 Act so that the invalidation of leave reverts to the point at which a person is notified of the appealable decision to remove in accordance with section 10, rather than the later decision to give removal directions under that section.

128. Invalidation of the person's leave also has the effect of stopping access to any benefits, financial or otherwise, which may have been conditional on the leave.

Section 49: Capacity to make nationality application

129. Section 49 amends the British Nationality Act 1981 in regard to the requirement under that Act to be "of full capacity". The requirement applies where the applicant is seeking to be naturalised, to renounce citizenship or to resume citizenship

*These notes refer to the Immigration, Asylum and Nationality Act 2006 (c.13)
which received Royal Assent on 30 March 2006*

following a previous renunciation. The effect of the amendment is to confer on the Secretary of State a discretion to waive the requirement to be of full capacity if, in the circumstances of a particular case, he considers it in the applicant's best interests to do so.

Section 50: Procedure

130. Section 50 (1) enables the Secretary of State to prescribe, in the immigration rules, forms to be used and procedures to be followed when making an immigration-related application. Subsection (2) enables the Secretary of State to prescribe, by administrative means, what information and documents are required to support an application. The section also allows the Secretary of State to set out in the Immigration Rules consequences for failing to comply with any of the prescribed forms and procedures.

Section 51: Fees

131. Section 51 gives the Secretary of State power to designate, in secondary legislation, any immigration and nationality-related applications and claims, services, processes, advice, and information for which a fee may be charged. The level of fees payable, the consequences of failure to pay a prescribed fee, and any exemptions should be set out in Regulations.

Section 52: Fees: supplemental

132. Section 52(1) preserves the existing arrangement whereby fees for “consular functions” (as defined in the Consular Relations Act 1968) are set under the powers in the Consular Fees Act 1980.

133. Subsection (2) ensures that any orders already made under section 102 of the Finance (No. 2) Act 1987, with reference to the powers to charge fees for immigration and nationality applications which are repealed in Schedule 2, shall be read as if they referred to the charging powers in section 51.

MISCELLANEOUS

Section 53: Arrest pending deportation

134. Section 53 amends paragraph 2(4) of schedule 3 to the Immigration Act 1971 in order to clarify the circumstances in which the powers of arrest under paragraph 17 of Schedule 2 to the 1971 Act arise in deportation cases. The amendment makes clear that the powers of arrest – with and without warrant – under paragraph 17 may be exercised in deportation cases when the notice of intention to deport is ready but has not yet been given to the prospective deportee. In particular, it ensures that immigration officers and constables can continue to seek a warrant in such circumstances under paragraph 17(2) to enter named premises in order to give the notice of intention to deport to the prospective deportee and arrest him.

Section 54: Refugee Convention: Construction

135. Section 54 provides an interpretation of Article 1F (c) in the 1951

*These notes refer to the Immigration, Asylum and Nationality Act 2006 (c.13)
which received Royal Assent on 30 March 2006*

Geneva Convention relating to the Status of Refugees. It specifies that “acts contrary to the purposes and principles of the United Nations” which will result in exclusion from asylum include acts of committing, preparing or instigating terrorism and acts of encouraging or inducing others to commit, prepare or instigate terrorism .

Section 55: Refugee Convention: certification

136. Section 55 allows the Secretary of State to issue a certificate that an appellant is not entitled to the protection of Article 33 (1) of the Refugee Convention because Article 1F applies or Article 33 (2) applies on national security grounds. It requires the Asylum and Immigration Tribunal (AIT) or the Special Immigration Appeals Commission (SIAC) to begin substantive consideration on the asylum appeal by considering the statements in the certificate. If SIAC or the AIT agrees with the statements in the certificate, then it must dismiss the appeal insofar as it relies on the Refugee Convention.

Section 56: Deprivation of Citizenship

137. Section 56 will replace an existing criterion for deprivation of British nationality that the person concerned had done something which was “seriously prejudicial to the vital interests of the United Kingdom or a British overseas territory” with the criterion that it is conducive to the public good to deprive a person of his or her British nationality. The current limitation that a deprivation order may not be made on this basis if it would make a person stateless would continue to apply.

138. Subsection (2) will enable the Asylum and Immigration Tribunal, on an appeal against deprivation of nationality under section 40A of the British Nationality Act 1981, to receive in private evidence about forged documents.

Section 57: Deprivation of right of abode

139. Section 57 will confer on the Secretary of State a power to remove a right of abode in the United Kingdom where such a right derived from possession of citizenship of another Commonwealth country and it is conducive to the public good to remove or exclude the person from the United Kingdom.

140. Subsection (2) provides a right of appeal against a decision to deprive a person of their right of abode, either to the Asylum and Immigration Tribunal or to the Special Immigration Appeals Commission.

Section 58: Acquisition of British nationality, &c.

141. Section 58 would require most applicants for British nationality *by registration* to satisfy the Secretary of State that they were “of good character” before nationality could be granted. At present such a requirement applies only to those seeking to acquire British nationality *by naturalisation*. Exceptions will continue to be made where the applicant has an entitlement to registration deriving from the 1961 UN Convention on the Reduction of Statelessness *or* is entitled to registration as a British citizen under section 4B of the British Nationality Act 1981 (certain British Overseas citizens, British subjects and British protected persons without other citizenship) *or* is aged below 10 on

*These notes refer to the Immigration, Asylum and Nationality Act 2006 (c.13)
which received Royal Assent on 30 March 2006*

the date of the application.

Section 59: Detained persons: national minimum wage

142. Section 59 exempts immigration detainees from the national minimum wage in respect of work done in a removal centre. Exemption will allow detainees to be provided with opportunities to engage in paid activity.

GENERAL

143. Section 62 contains provisions relating to the coming into force of the Act on such dates as the Secretary of State appoints.

TERRITORIAL EXTENT

144. Section 63: the Immigration, Asylum and Nationality Act applies to the whole of the United Kingdom, with two exceptions:

145. Amendments to other Acts have the same extent as the amended Act (or the amended part thereof).

146. Provisions relating to nationality have the same extent as the British Nationality Act 1981, disregarding the provisions referred to in section 53(7) of that Act.

147. Her Majesty may by order in Council direct that a provision of the Act shall extend, with or without modification to any of the Channel Islands and the Isle of Man.

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HANSARD REFERENCES

148. The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Commons		
Introduction	22 June 2005	Vol. 435 Col 815
Second Reading	5 July 2005	Vol 436 Col 188 – 275
Standing Committee	8 sittings between 18 and 27 October 2005	Vol 437 & Vol 438
	Tuesday 18 October	1 st Sitting Cols 1 – 40
	Wednesday 19 October	2 nd Sitting Cols 41 – 80
	Thursday 20 October, 9 – 11:25am	3 rd Sitting Cols 81 – 106
	Thursday 20 October, 1 – 5:37pm	4 th Sitting Cols 107 – 166
	Tuesday 25 October, 10:30am – 1pm	5 th Sitting Cols 167 – 204
	Tuesday 25 October, 4 – 6:56pm	6 th Sitting Cols 205 – 250
	Thursday 27 October, 9 – 10:25am	7 th Sitting Cols 251 – 274
Thursday 27 October, 1 – 3:16pm	8 th Sitting Cols 275 – 316	
Report Stage and Third Reading	16 November 2005	Vol 439 Cols 974 – 1072
House of Lords		
Introduction	17 November 2005	Vol 675 Col 1189

*These notes refer to the Immigration, Asylum and Nationality Act 2006 (c.13)
which received Royal Assent on 30 March 2006*

Second Reading	6 December 2005	Vol 676 Cols 515 – 528 and 541 – 586
Grand Committee	4 sittings between 9 and 19 January 2006	Vol 677
	Monday 9 January	Cols GC1 – GC68
	Wednesday 11 January	Cols GC69 – GC136
	Tuesday 17 January	Cols GC193 – GC252
	Thursday 19 January	Cols GC253 – GC290
Report Stage	7 February 2006	Vol 678 Cols 517 – 589 and Cols 605 – 648
Third Reading	14 March 2006	Vol 679 Cols 1152 – 1207
House of Commons		
Commons Consideration of Lords Amendments	29 March 2006	Vol 444 Cols 896 – 934
Royal Assent	30 March 2006	Commons Vol 444 Cols 1061 Lords Vol 680 Col 861