

2003 No. 1016

IMMIGRATION

**The Nationality, Immigration and Asylum Act 2002
(Consequential and Incidental Provisions) Order 2003**

Made - - - - - 3rd April 2003

Coming into force in accordance with article 2

Whereas a draft of this Order has been laid before Parliament and approved by each House of Parliament in pursuance of section 157(4) of the Nationality, Immigration and Asylum Act 2002(a);

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by section 157(1) of that Act, hereby makes the following Order:

Citation

1. This Order may be cited as the Nationality, Immigration and Asylum Act 2002 (Consequential and Incidental Provisions) Order 2003.

Commencement provisions

2.—(1) Paragraphs 3, 4(b) and (c), 8(b) and (c), and 9(b) and (c) of the Schedule shall come into force on the day on which section 3 of and Schedule 1 to the Nationality, Immigration and Asylum Act 2002 come into force for all purposes.

(2) The remainder of this Order shall come into force on 4th April 2003.

Consequential and incidental provisions

3. The enactments in the Schedule are amended as specified.

Home Office
3rd April 2003

Bob Ainsworth
Parliamentary Under-Secretary of State

(a) 2000 c. 41.

Immigration Act 1971

1. In section 11(1) of the Immigration Act 1971(a) (construction of references to entry, and other phrases relating to travel), at the end there shall be inserted “or by section 68 of the Nationality, Immigration and Asylum Act 2002”.

Race Relations Act 1976

2. In section 19C(4) and (5) of the Race Relations Act 1976(b) (exceptions from section 19B for judicial and legislative acts etc) for the words “immigration and nationality functions” there shall be substituted, in each place, “immigration functions”.

British Nationality (Falkland Islands) Act 1983

3. In section 4(2) of the British Nationality (Falkland Islands) Act 1983(c) (supplementary provisions) for paragraph (b) there shall be substituted—

“(b) sections 42, 42A and 42B (registration and naturalisation: formalities, fee and timing), so far as they relate to registration;”.

British Nationality (Hong Kong) Act 1990

4. In section 2(3) of the British Nationality (Hong Kong) Act 1990(d) (consequential nationality provisions)—

- (a) “section 40 (deprivation of citizenship)” shall be omitted;
- (b) for “section 42 (general provisions about registration etc)” there shall be substituted “section 42 (registration and naturalisation: citizenship ceremony, oath and pledge)”; and
- (c) after “section 42 (general provisions about registration etc)” there shall be inserted—
“section 42A (registration and naturalisation: fee)
section 42B (registration and naturalisation: timing)”.

Water Industry Act 1991

5. In paragraph 13(3) of Schedule 4A to the Water Industry Act 1991(e) (disconnection) for “Asylum and Immigration Appeals Act 1993” there shall be substituted “Nationality, Immigration and Asylum Act 2002”.

Asylum and Immigration Appeals Act 1993

6. Section 9A of the Asylum and Immigration Appeals Act 1993(f) (bail pending appeal from Immigration Appeal Tribunal) shall be amended as follows—

- (a) in subsection (1)(a) for “Part IV of the Immigration and Asylum Act 1999” there shall be substituted “Part 5 of the Nationality, Immigration and Asylum Act 2002”; and
- (b) for subsection (6) there shall be substituted—

“(6) In this section ‘the appropriate appeal court’ means—

- (a) if the appeal is from the determination of an adjudicator made in Scotland, the Court of Session; and
- (b) in any other case, the Court of Appeal.”.

7. Paragraph 6 above shall not have effect in relation to an appeal under Part IV of the immigration and Asylum Act 1999 which is pending by reason of an appeal, or an application for leave to appeal.

(a) 1971 c. 77.

(b) 1976 c. 74, as amended by the Race Relations Amendment Act 2000, section 1 (c. 34).

(c) 1983 c. 6.

(d) 1990 c. 34.

(e) 1991 c. 56, as amended by the Water Industry Act 1999 (c. 9), section 1(2) and Schedule 1.

(f) 1993 c. 23, as amended by the Asylum and Immigration Act 1996, section 12(2) and Schedule 3, paragraph 3 (c. 49), and by the Immigration and Asylum Act 1999, section 169(1) and Schedule 14, paragraphs 99, 105 and 106 (c. 33).

Hong Kong (War Wives and Widows) Act 1996

8. In section 2(2) of the Hong Kong (War Wives and Widows) Act 1996(a) (consequential nationality provisions)—

- (a) “section 40 (deprivation of citizenship);” shall be omitted;
- (b) for “section 42 (general provisions about registration etc)” there be substituted “section 42 (registration and naturalisation: citizenship ceremony, oath and pledge)”;
- (c) after “section 42 (general provisions about registration etc)” there shall be inserted—
“section 42A (registration and naturalisation: fee)
section 42B (registration and naturalisation: timing)”;
- (d) after “section 44(1)” the words “and (2)” shall be omitted.

British Nationality (Hong Kong) Act 1997

9. In section 2(3) of the British Nationality (Hong Kong) Act 1997(b) (supplementary)—

- (a) “section 40 (deprivation of citizenship);” shall be omitted;
- (b) for “section 42 (general provisions about registration etc) there shall be substituted “section 42 (registration and naturalisation: citizenship ceremony, oath and pledge)”;
- (c) after “section 42 (general provisions about registration etc);” there shall be inserted—
“section 42A (registration and naturalisation: fee);
section 42B (registration and naturalisation: timing);”.

Special Immigration Appeals Commission Act 1997

10. In section 3(2) of the Special Immigration Appeals Commission Act 1997(c) after “Immigration Act 1971” there shall be inserted “or the Nationality, Immigration and Asylum Act 2002”.

Immigration and Asylum Act 1999

11. Section 12 of the Immigration and Asylum Act 1999(d) (removal of asylum claimant other than under standing arrangements with member States) shall be amended as follows—

- (a) in subsection (2)—
 - (i) for “section 15” there shall be substituted “section 77 of the Nationality, Immigration and Asylum Act 2002”, and
 - (ii) paragraph (b) shall be omitted,
- (b) subsection (3) shall be omitted,
- (c) in subsection (5)—
 - (i) for “section 15” there shall be substituted “section 77 of that Act”, and
 - (ii) paragraphs (b) and (c) shall be omitted,
- (d) subsection (6) shall be omitted,
- (e) after subsection (7) there shall be inserted—

“(7A) Subsection (7B) applies where a person who is the subject of a certificate under subsection (2) or (5)—

- (a) has instituted or could institute an appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 (immigration appeal), and
- (b) has made a human rights claim (within the meaning of section 113 of that Act).

(7B) The person may not be removed from the United Kingdom in reliance upon this section unless—

- (a) the appeal is finally determined, withdrawn or abandoned (within the meaning of section 104 of that Act) or can no longer be brought (ignoring any possibility of an appeal out of time with permission), or
- (b) the Secretary of State has issued a certificate in relation to the human rights claim under section 93(2)(b) of that Act (clearly unfounded claim).”.

(a) 1996 c. 41.
(b) 1997 c. 20.
(c) 1997 c. 68.
(d) 1999 c. 33.

International Criminal Court Act 2001

12. The International Criminal Court Act 2001(a) (transfer of prisoner to give evidence or assist in investigation) shall be amended as follows.

13.—(1) In section 32(6)(d)(iv), after “Immigration Act 1971 (c. 77)” there shall be inserted “or the Nationality, Immigration and Asylum Act 2002”.

(2) In section 32(7)—

- (a) for “of the Immigration and Asylum Act 1999” there shall be substituted “given by section 158 of the Nationality, Immigration and Asylum Act 2002”; and
- (b) after “Immigration Act 1971” there shall be inserted “or the Nationality, Immigration and Asylum Act 2002”.

Anti-terrorism, Crime and Security Act 2001

14. The Anti-terrorism, Crime and Security Act 2001(b) shall be amended as follows.

15.—(1) In section 22(2) (deportation, removal, etc), in paragraph (h) for “10” there shall be substituted “10A”(c).

(2) In section 22(2), in paragraph (j), for “paragraph 1 of Schedule 4 to that Act” there shall be substituted “section 105 of the Nationality, Immigration and Asylum Act 2002”.

16.—(1) In section 33 (certificate that Convention does not apply), in subsection (2), for “a claim for asylum (within the meaning given by section 167(1) of the Immigration and Asylum Act 1999 (c. 33))” there shall be substituted “an asylum claim (within the meaning given by section 113(1) of the Nationality, Immigration and Asylum Act 2002)”.

(2) In section 33, in subsection (4), for “a claim for asylum” there shall be substituted “an asylum claim”.

(3) In section 33, in subsection (6)(b), for “the claim for asylum made in the course of the asylum appeal shall be treated for the purposes of section 15 of the Immigration and Asylum Act 1999 (interim protection from removal) as undecided” there shall be substituted “the asylum claim made in the course of the asylum appeal shall be treated for the purposes of section 77 of the Nationality, Immigration and Asylum Act 2002 (no removal while claim for asylum pending) as pending”.

(4) In section 33, in subsection (8)(b), for “a claim for asylum (within the meaning given by section 167(1) of the Immigration and Asylum Act 1999)” there shall be substituted “an asylum claim (within the meaning given by section 113(1) of the Nationality, Immigration and Asylum Act 2002)”.

(a) 2001 c. 17.

(b) 2001 c. 24.

(c) Paragraph 10A of Schedule 2 to the Immigration Act 1971 was inserted by section 73(1) of the Nationality, Immigration and Asylum Act 2002.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes consequential and incidental provision in relation to previous statutes affected by the coming into force of various provisions of the 2002 Act.

Paragraph 11 of the Schedule amends section 12 of the Immigration and Asylum Act 1999 (“the 1999 Act”) so as to reflect its legal effect within the new appeals framework at Part 5 of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”), which also includes new provision on certification of clearly unfounded claims by the Secretary of State at section 93(2)(b). This replaces the certification provision at section 73(2)(a) of the 1999 Act, which ceases to have effect on the date when Part 5 comes into force, which is also the commencement date for this paragraph.

Paragraphs 2, 3, 4, 8 and 9 of the Schedule make consequential amendments reflecting nationality provisions at Part 1 of the 2002 Act. Amendments to nationality legislation are made by paragraph 3 and sub-paragraphs (b) and (c) of each of paragraphs 4, 8 and 9 to refer to the new provisions on registration and naturalisation at section 3 of and Schedule 1 to the 2002 Act, and by paragraphs 4(a), 8(a) and 9(a) to refer to amendments to the deprivation of citizenship provisions in the British Nationality Act 1981 (c. 61) (effected by section 4 of the 2002 Act). Paragraph 2 amends the Race Relations Act 1976 to reflect an identical amendment (already in force) by virtue of section 6(2) of the 2002 Act. Paragraph 8(d) removes the reference to the repealed section 44(2) of the British Nationality Act 1981 (effected by section 7(1) of the 2002 Act) from the Hong Kong (War Wives and Widows) Act 1996.

The remaining paragraphs make other miscellaneous amendments relating to definitions and other provisions affected by the 2002 Act.

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