



Asylum and Immigration (Treatment of Claimants, etc.) Act 2004

2004 CHAPTER 19

Removal and detention

33 Removing asylum seeker to safe country

- (1) Schedule 3 (which concerns the removal of persons claiming asylum to countries known to protect refugees and to respect human rights) shall have effect.
- (2) Sections 11 and 12 of the Immigration and Asylum Act 1999 (c. 33) (removal of asylum claimant to country under standing or other arrangements) shall cease to have effect.
- (3) The following provisions of the Nationality, Immigration and Asylum Act 2002 (c. 41) shall cease to have effect—
 - (a) section 80 (new section 11 of 1999 Act), and
 - (b) section 93 (appeal from within United Kingdom: “third country” removal).

34 Detention pending deportation

- (1) In paragraph 2(1) of Schedule 3 to the Immigration Act 1971 (c. 77) (detention pending deportation on recommendation by court) for the words “and that person is neither detained in pursuance of the sentence or order of any court nor for the time being released on bail by any court having power so to release him” substitute “and that person is not detained in pursuance of the sentence or order of any court”.
- (2) In paragraph 2(2) of that Schedule (detention following notice of deportation) for the words “and he is neither detained in pursuance of the sentence or order of a court nor for the time being released on bail by a court having power so to release him” substitute “and he is not detained in pursuance of the sentence or order of a court”.

35 Deportation or removal: cooperation

- (1) The Secretary of State may require a person to take specified action if the Secretary of State thinks that—
- (a) the action will or may enable a travel document to be obtained by or for the person, and
 - (b) possession of the travel document will facilitate the person's deportation or removal from the United Kingdom.
- (2) In particular, the Secretary of State may require a person to—
- (a) provide information or documents to the Secretary of State or to any other person;
 - (b) obtain information or documents;
 - (c) provide fingerprints, submit to the taking of a photograph or provide information, or submit to a process for the recording of information, about external physical characteristics (including, in particular, features of the iris or any other part of the eye);
 - (d) make, or consent to or cooperate with the making of, an application to a person acting for the government of a State other than the United Kingdom;
 - (e) cooperate with a process designed to enable determination of an application;
 - (f) complete a form accurately and completely;
 - (g) attend an interview and answer questions accurately and completely;
 - (h) make an appointment.
- (3) A person commits an offence if he fails without reasonable excuse to comply with a requirement of the Secretary of State under subsection (1).
- (4) A person guilty of an offence under subsection (3) shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding twelve months, to a fine not exceeding the statutory maximum or to both.
- (5) If a constable or immigration officer reasonably suspects that a person has committed an offence under subsection (3) he may arrest the person without warrant.
- (6) An offence under subsection (3) shall be treated as—
- (a) a relevant offence for the purposes of sections 28B and 28D of the Immigration Act 1971 (c. 77) (search, entry and arrest), and
 - (b) an offence under Part III of that Act (criminal proceedings) for the purposes of sections 28(4), 28E, 28G and 28H (search after arrest, &c.) of that Act.
- (7) In subsection (1)—
- “travel document” means a passport or other document which is issued by or for Her Majesty's Government or the government of another State and which enables or facilitates travel from the United Kingdom to another State, and
- “removal from the United Kingdom” means removal under—
- (a) Schedule 2 to the Immigration Act 1971 (control on entry) (including a provision of that Schedule as applied by another provision of the Immigration Acts),

- (b) section 10 of the Immigration and Asylum Act 1999 (c. 33) (removal of person unlawfully in United Kingdom), or
 - (c) Schedule 3 to this Act.
- (8) While sections 11 and 12 of the Immigration and Asylum Act 1999 continue to have effect, the reference in subsection (7)(c) above to Schedule 3 to this Act shall be treated as including a reference to those sections.
- (9) In so far as subsection (3) extends to England and Wales, subsection (4)(b) shall, until the commencement of section 154 of the Criminal Justice Act 2003 (c. 44) (increased limit on magistrates' power of imprisonment), have effect as if the reference to twelve months were a reference to six months.
- (10) In so far as subsection (3) extends to Scotland, subsection (4)(b) shall have effect as if the reference to twelve months were a reference to six months.
- (11) In so far as subsection (3) extends to Northern Ireland, subsection (4)(b) shall have effect as if the reference to twelve months were a reference to six months.

36 Electronic monitoring

- (1) In this section—
- (a) “residence restriction” means a restriction as to residence imposed under—
 - (i) paragraph 21 of Schedule 2 to the Immigration Act 1971 (c. 77) (control on entry) (including that paragraph as applied by another provision of the Immigration Acts), or
 - (ii) Schedule 3 to that Act (deportation),
 - (b) “reporting restriction” means a requirement to report to a specified person imposed under any of those provisions,
 - (c) “employment restriction” means a restriction as to employment or occupation imposed under any of those provisions, and
 - (d) “immigration bail” means—
 - (i) release under a provision of the Immigration Acts on entry into a recognizance or bail bond,
 - (ii) bail granted in accordance with a provision of the Immigration Acts by a court, a justice of the peace, the sheriff, the Asylum and Immigration Tribunal, the Secretary of State or an immigration officer (but not by a police officer), and
 - (iii) bail granted by the Special Immigration Appeals Commission.
- (2) Where a residence restriction is imposed on an adult—
- (a) he may be required to cooperate with electronic monitoring, and
 - (b) failure to comply with a requirement under paragraph (a) shall be treated for all purposes of the Immigration Acts as failure to observe the residence restriction.
- (3) Where a reporting restriction could be imposed on an adult—
- (a) he may instead be required to cooperate with electronic monitoring, and
 - (b) the requirement shall be treated for all purposes of the Immigration Acts as a reporting restriction.

- (4) Immigration bail may be granted to an adult subject to a requirement that he cooperate with electronic monitoring; and the requirement may (but need not) be imposed as a condition of a recognizance or bail bond.
- (5) In this section a reference to requiring an adult to cooperate with electronic monitoring is a reference to requiring him to cooperate with such arrangements as the person imposing the requirement may specify for detecting and recording by electronic means the location of the adult, or his presence in or absence from a location—
- (a) at specified times,
 - (b) during specified periods of time, or
 - (c) throughout the currency of the arrangements.
- (6) In particular, arrangements for the electronic monitoring of an adult—
- (a) may require him to wear a device;
 - (b) may require him to make specified use of a device;
 - (c) may prohibit him from causing or permitting damage of or interference with a device;
 - (d) may prohibit him from taking or permitting action that would or might prevent the effective operation of a device;
 - (e) may require him to communicate in a specified manner and at specified times or during specified periods of time;
 - (f) may involve the performance of functions by persons other than the person imposing the requirement to cooperate with electronic monitoring (and those functions may relate to any aspect or condition of a residence restriction, of a reporting restriction, of an employment restriction, of a requirement under this section or of immigration bail).
- (7) In this section “adult” means an individual who is at least 18 years old.
- (8) The Secretary of State—
- (a) may make rules about arrangements for electronic monitoring for the purposes of this section, and
 - (b) when he thinks that satisfactory arrangements for electronic monitoring are available in respect of an area, shall notify persons likely to be in a position to exercise power under this section in respect of the area.
- (9) Rules under subsection (8)(a) may, in particular, require that arrangements for electronic monitoring impose on a person of a specified description responsibility for specified aspects of the operation of the arrangements.
- (10) A requirement to cooperate with electronic monitoring—
- (a) shall comply with rules under subsection (8)(a), and
 - (b) may not be imposed in respect of an adult who is or is expected to be in an area unless the person imposing the requirement has received a notification from the Secretary of State under subsection (8)(b) in respect of that area.
- (11) Rules under subsection (8)(a)—
- (a) may include incidental, consequential or transitional provision,
 - (b) may make provision generally or only in relation to specified cases, circumstances or areas,
 - (c) shall be made by statutory instrument, and

- (d) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) Before the commencement of section 26 a reference in this section to the Asylum and Immigration Tribunal shall be treated as a reference to—
- (a) a person appointed, or treated as if appointed, as an adjudicator under section 81 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (appeals), and
 - (b) the Immigration Appeal Tribunal.