



# Immigration and Asylum Act 1999

## 1999 CHAPTER 33

### PART I

#### IMMIGRATION: GENERAL

##### *Leave to enter, or remain in, the United Kingdom*

#### **1 Leave to enter.**

In the 1971 Act, after section 3, insert—

##### **“3A Further provision as to leave to enter.**

- (1) The Secretary of State may by order make further provision with respect to the giving, refusing or varying of leave to enter the United Kingdom.
- (2) An order under subsection (1) may, in particular, provide for—
  - (a) leave to be given or refused before the person concerned arrives in the United Kingdom;
  - (b) the form or manner in which leave may be given, refused or varied;
  - (c) the imposition of conditions;
  - (d) a person’s leave to enter not to lapse on his leaving the common travel area.
- (3) The Secretary of State may by order provide that, in such circumstances as may be prescribed—
  - (a) an entry visa, or
  - (b) such other form of entry clearance as may be prescribed,is to have effect as leave to enter the United Kingdom.
- (4) An order under subsection (3) may, in particular—
  - (a) provide for a clearance to have effect as leave to enter—

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- (i) on a prescribed number of occasions during the period for which the clearance has effect;
  - (ii) on an unlimited number of occasions during that period;
  - (iii) subject to prescribed conditions; and
  - (b) provide for a clearance which has the effect referred to in paragraph (a) (i) or (ii) to be varied by the Secretary of State or an immigration officer so that it ceases to have that effect.
- (5) Only conditions of a kind that could be imposed on leave to enter given under section 3 may be prescribed.
- (6) In subsections (3), (4) and (5) “prescribed” means prescribed in an order made under subsection (3).
- (7) The Secretary of State may, in such circumstances as may be prescribed in an order made by him, give or refuse leave to enter the United Kingdom.
- (8) An order under subsection (7) may provide that, in such circumstances as may be prescribed by the order, paragraphs 2, 4, 6, 7, 8, 9 and 21 of Part I of Schedule 2 to this Act are to be read, in relation to the exercise by the Secretary of State of functions which he has as a result of the order, as if references to an immigration officer included references to the Secretary of State.
- (9) Subsection (8) is not to be read as affecting any power conferred by subsection (10).
- (10) An order under this section may—
- (a) contain such incidental, supplemental, consequential and transitional provision as the Secretary of State considers appropriate; and
  - (b) make different provision for different cases.
- (11) This Act and any provision made under it has effect subject to any order made under this section.
- (12) An order under this section must be made by statutory instrument.
- (13) But no such order is to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.”

## 2 Leave to remain.

In the 1971 Act, after section 3A, insert—

### “3B Further provision as to leave to remain.

- (1) The Secretary of State may by order make further provision with respect to the giving, refusing or varying of leave to remain in the United Kingdom.
- (2) An order under subsection (1) may, in particular, provide for—
  - (a) the form or manner in which leave may be given, refused or varied;
  - (b) the imposition of conditions;
  - (c) a person’s leave to remain in the United Kingdom not to lapse on his leaving the common travel area.
- (3) An order under this section may—

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- (a) contain such incidental, supplemental, consequential and transitional provision as the Secretary of State considers appropriate; and
  - (b) make different provision for different cases.
- (4) This Act and any provision made under it has effect subject to any order made under this section.
- (5) An order under this section must be made by statutory instrument.
- (6) But no such order is to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.”

### 3 Continuation of leave pending decision.

In the 1971 Act, after section 3B, insert—

#### “3C Continuation of leave pending decision.

- (1) This section applies if—
- (a) a person who has limited leave to enter or remain in the United Kingdom applies to the Secretary of State, before his leave expires, for it to be varied; and
  - (b) when it expires, no decision has been taken on the application.
- (2) His leave is to be treated as continuing until the end of the period allowed under rules made under paragraph 3 of Schedule 4 to the Immigration and Asylum Act 1999 for bringing an appeal against a decision on the application.
- (3) An application for variation of a person’s leave to enter or remain in the United Kingdom may not be made while that leave is treated as continuing as a result of this section.
- (4) But subsection (3) does not prevent the variation of an application mentioned in subsection (1).”

### 4 [F1 Accommodation]

[F2(1)] The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of persons—

- (a) temporarily admitted to the United Kingdom under paragraph 21 of Schedule 2 to the 1971 Act;
- (b) released from detention under that paragraph; or
- (c) released on bail from detention under any provision of the Immigration Acts.

[F3(2)] The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of a person if—

- (a) he was (but is no longer) an asylum-seeker, and
  - (b) his claim for asylum was rejected.
- (3) The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of a dependant of a person for whom facilities may be provided under subsection (2).

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- (4) The following expressions have the same meaning in this section as in Part VI of this Act (as defined in section 94)—
- (a) asylum-seeker,
  - (b) claim for asylum, and
  - (c) dependant.]
- [<sup>F4</sup>(5) The Secretary of State may make regulations specifying criteria to be used in determining—
- (a) whether or not to provide accommodation, or arrange for the provision of accommodation, for a person under this section;
  - (b) whether or not to continue to provide accommodation, or arrange for the provision of accommodation, for a person under this section.
- (6) The regulations may, in particular—
- (a) provide for the continuation of the provision of accommodation for a person to be conditional upon his performance of or participation in community activities in accordance with arrangements made by the Secretary of State;
  - (b) provide for the continuation of the provision of accommodation to be subject to other conditions;
  - (c) provide for the provision of accommodation (or the continuation of the provision of accommodation) to be a matter for the Secretary of State’s discretion to a specified extent or in a specified class of case.
- (7) For the purposes of subsection (6)(a)—
- (a) “community activities” means activities that appear to the Secretary of State to be beneficial to the public or a section of the public, and
  - (b) the Secretary of State may, in particular—
    - (i) appoint one person to supervise or manage the performance of or participation in activities by another person;
    - (ii) enter into a contract (with a local authority or any other person) for the provision of services by way of making arrangements for community activities in accordance with this section;
    - (iii) pay, or arrange for the payment of, allowances to a person performing or participating in community activities in accordance with arrangements under this section.
- (8) Regulations by virtue of subsection (6)(a) may, in particular, provide for a condition requiring the performance of or participation in community activities to apply to a person only if the Secretary of State has made arrangements for community activities in an area that includes the place where accommodation is provided for the person.
- (9) A local authority or other person may undertake to manage or participate in arrangements for community activities in accordance with this section.]

#### Textual Amendments

- F1** S. 4 heading substituted (7.11.2002) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), s. [49\(2\)](#) (with s. 159)
- F2** S. 4 renumbered (7.11.2002) as s. 4(1) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), s. [49\(2\)](#) (with s. 159)

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**F3** S. 4(2)-(4) added (7.11.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 49(1) (with s. 159)

**F4** S. 4(5)-(9) added (1.12.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 10(1), 48(3) (with s. 10(6)(7)); S.I. 2004/2999, art. 2, Sch.

#### Modifications etc. (not altering text)

**C1** S. 4 restricted (8.1.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 55 (with s. 159); S.I. 2002/2811, art. 2, Sch.

S. 4 restricted (prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 51, 162(1) (with s. 159)

## 5 Charges.

(1) The Secretary of State may, with the approval of the Treasury, make regulations prescribing fees to be paid in connection with applications for—

(a) leave to remain in the United Kingdom;

(b) the variation of leave to enter, or remain in, the United Kingdom;

[<sup>F5</sup>(c) the fixing of a limited leave stamp or indefinite leave stamp on a passport or other document issued to the applicant where the stamp was previously fixed on another passport or document issued to the applicant.]

(2) If a fee prescribed in connection with an application of a particular kind is payable, no such application is to be entertained by the Secretary of State unless the fee has been paid in accordance with the regulations.

(3) But—

(a) a fee prescribed in connection with such an application is not payable if the basis on which the application is made is that the applicant is—

(i) a person making a claim for asylum which claim either has not been determined or has been granted; or

(ii) a dependant of such a person; and

(b) the regulations may provide for no fee to be payable in prescribed circumstances.

(4) If no fee is payable in respect of some part of the application, the Secretary of State must entertain that part of the application.

[<sup>F6</sup>(5) In this section—

(a) “limited leave stamp” means a stamp, sticker or other attachment which indicates that a person has been granted limited leave to enter or remain in the United Kingdom, and

(b) “indefinite leave stamp” means a stamp, sticker or other attachment which indicates that a person has been granted indefinite leave to enter or remain in the United Kingdom.]

(6) “Claim for asylum” has the meaning given in subsection (1) of section 94; and subsection (3) of that section applies for the purposes of this section as it applies for the purposes of Part VI.

(7) “Dependant” has such meaning as may be prescribed.

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#### Textual Amendments

- F5** S. 5(1)(c) substituted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\), ss. 43\(2\), 48\(3\); S.I. 2004/2523, art. 2, Sch.](#)
- F6** S. 5(5) substituted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\), ss. 43\(3\), 48\(3\); S.I. 2004/2523, art. 2, Sch.](#)

#### Commencement Information

- I1** S. 5 in force at 1.4.2003 by [S.I. 2003/758, art. 2](#)

### *Exemption from immigration control*

#### **6 Members of missions other than diplomatic agents.**

In the 1971 Act, in section 8 (exceptions for certain categories of person), for subsection (3A) (members of diplomatic missions) substitute—

“(3A) For the purposes of subsection (3), a member of a mission other than a diplomatic agent (as defined by the 1964 Act) is not to count as a member of a mission unless—

- (a) he was resident outside the United Kingdom, and was not in the United Kingdom, when he was offered a post as such a member; and
- (b) he has not ceased to be such a member after having taken up the post.”

#### **7 Persons ceasing to be exempt.**

In the 1971 Act, after section 8, insert—

##### **“8A Persons ceasing to be exempt.**

- (1) A person is exempt for the purposes of this section if he is exempt from provisions of this Act as a result of section 8(2) or (3).
- (2) If a person who is exempt—
  - (a) ceases to be exempt, and
  - (b) requires leave to enter or remain in the United Kingdom as a result, he is to be treated as if he had been given leave to remain in the United Kingdom for a period of 90 days beginning on the day on which he ceased to be exempt.
- (3) If—
  - (a) a person who is exempt ceases to be exempt, and
  - (b) there is in force in respect of him leave for him to enter or remain in the United Kingdom which expires before the end of the period mentioned in subsection (2),
 his leave is to be treated as expiring at the end of that period.”

#### **8 Persons excluded from the United Kingdom under international obligations.**

In the 1971 Act, after section 8A, insert—

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### **“8B Persons excluded from the United Kingdom under international obligations.**

- (1) An excluded person must be refused—
  - (a) leave to enter the United Kingdom;
  - (b) leave to remain in the United Kingdom.
- (2) A person’s leave to enter or remain in the United Kingdom is cancelled on his becoming an excluded person.
- (3) A persons’s exemption from the provisions of this Act as a result of section 8(1), (2) or (3) ceases on his becoming an excluded person.
- (4) “Excluded person” means a person—
  - (a) named by or under, or
  - (b) of a description specified in,a designated instrument.
- (5) The Secretary of State may by order designate an instrument if it is a resolution of the Security Council of the United Nations or an instrument made by the Council of the European Union and it—
  - (a) requires that a person is not to be admitted to the United Kingdom (however that requirement is expressed); or
  - (b) recommends that a person should not be admitted to the United Kingdom (however that recommendation is expressed).
- (6) Subsections (1) to (3) are subject to such exceptions (if any) as may specified in the order designating the instrument in question.
- (7) An order under this section must be made by statutory instrument.
- (8) Such a statutory instrument shall be laid before Parliament without delay.”

### *Removal from the United Kingdom*

## **9 Treatment of certain overstayers.**

- (1) During the regularisation period overstayers may apply, in the prescribed manner, for leave to remain in the United Kingdom.
- (2) The regularisation period begins on the day prescribed for the purposes of this subsection and is not to be less than three months.
- (3) The regularisation period ends—
  - (a) on the day prescribed for the purposes of this subsection; or
  - (b) if later, on the day before that on which section 65 comes into force.
- (4) Section 10 and paragraph 12 of Schedule 15 come into force on the day after that on which the regularisation period ends
- (5) The Secretary of State must publicise the effect of this section in the way appearing to him to be best calculated to bring it to the attention of those affected.

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- (6) “Overstayer” means a person who, having only limited leave to enter or remain in the United Kingdom, remains beyond the time limited by the leave.

## 10 Removal of certain persons unlawfully in the United Kingdom.

- (1) A person who is not a British citizen may be removed from the United Kingdom, in accordance with directions given by an immigration officer, if—
- (a) having only a limited leave to enter or remain, he does not observe a condition attached to the leave or remains beyond the time limited by the leave;
  - [<sup>F7</sup>(b) he uses deception in seeking (whether successfully or not) leave to remain;]
  - [<sup>F8</sup>(ba) his indefinite leave to enter or remain has been revoked under section 76(3) of the Nationality, Immigration and Asylum Act 2002 (person ceasing to be refugee);]
  - (c) directions <sup>F9</sup>... have been given for the removal, under this section, of a person (“the other person”) to whose family he belongs.
- (2) Directions may not be given under subsection (1)(a) if the person concerned has made an application for leave to remain in accordance with regulations made under section 9.
- [<sup>F10</sup>(3) Directions for the removal of a person may not be given under subsection (1)(c) unless the Secretary of State has given the person written notice of the intention to remove him.
- (4) A notice under subsection (3) may not be given if—
- (a) the person whose removal under subsection (1)(a) or (b) is the cause of the proposed directions under subsection (1)(c) has left the United Kingdom, and
  - (b) more than eight weeks have elapsed since that person’s departure.
- (5) If a notice under subsection (3) is sent by first class post to a person’s last known address, that subsection shall be taken to be satisfied at the end of the second day after the day of posting.
- (5A) Directions for the removal of a person under subsection (1)(c) cease to have effect if he ceases to belong to the family of the person whose removal under subsection (1) (a) or (b) is the cause of the directions under subsection (1)(c).]
- (6) Directions under this section—
- (a) may be given only to persons falling within a prescribed class;
  - (b) may impose any requirements of a prescribed kind.
- (7) In relation to any such directions, paragraphs 10, 11, 16 to 18, 21 and 22 to 24 of Schedule 2 to the 1971 Act (administrative provisions as to control of entry), apply as they apply in relation to directions given under paragraph 8 of that Schedule.
- (8) Directions for the removal of a person given under this section invalidate any leave to enter or remain in the United Kingdom given to him before the directions are given or while they are in force.
- (9) The costs of complying with a direction given under this section (so far as reasonably incurred) must be met by the Secretary of State.
- [<sup>F11</sup>(10) A person shall not be liable to removal from the United Kingdom under this section at a time when section 7(1)(b) of the Immigration Act 1971 (Commonwealth and Irish



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citizens ordinarily resident in United Kingdom) would prevent a decision to deport him.]

#### Textual Amendments

- F7** S. 10(1)(b) substituted (10.2.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss. 74, 162\(1\)](#) (with s. 159); S.I. 2003/1, art. 2, Sch.
- F8** S. 10(1)(ba) inserted (10.2.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss. 76\(7\), 162\(1\)](#) (with s. 159); S.I. 2003/1, art. 2, Sch.
- F9** Words in s. 10(1)(c) repealed (10.2.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss. 73\(3\), 162\(1\)](#), [Sch. 9](#) (with s. 159); S.I. 2003/1, art. 2, Sch.
- F10** S. 10(3)-(5A) substituted for s. 10(3)-(5) (10.2.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss. 73\(4\), 162\(1\)](#) (with s. 159); S.I. 2003/1, art. 2, Sch.
- F11** S. 10(10) added (10.2.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss. 75\(4\), 162\(1\)](#) (with s. 159); S.I. 2003/1, art. 2, Sch.

#### Modifications etc. (not altering text)

- C2** S. 10 extended (14.12.2001) by [2001 c. 24](#), [ss. 22\(1\)\(2\)\(i\)\(3\)](#), 127(2)
- C3** S. 10 restricted (2.10.2000) by [S.I. 2000/2444](#), art. 3, [Sch. 2 para. 1\(2\)](#)  
S. 10 applied (2.10.2000) by [S.I. 2000/2326](#), [regs. 9, 26\(2\)](#)  
S. 10 restricted (2.10.2000) by [S.I. 2000/2326](#), [reg. 34\(2\)\(10\)](#) (with application as mentioned in regs. 9, 28 of the said S.I.)
- C4** [S. 10](#) excluded (14.3.2003) by [Nationality, Immigration and Asylum Act 2002 \(Commencement No.4\) Order 2003 \(S.I. 2003/754\)](#), [Sch. 2 para. 6\(2\)](#)
- C5** [S. 10](#) restricted by [S.I. 2000/2326](#), reg. 32(2) (as substituted (1.4.2003) by [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2003 \(S.I. 2003/549\)](#), regs. 1, [2\(8\)](#) (with reg. 3(1)))

#### Commencement Information

- I2** S. 10 wholly in force at 2.10.2000; s. 10 not in force at Royal Assent see s. 170(4); s. 10(6) in force at 22.5.2000 by [S.I. 2000/1282](#), art. 2, [Sch.](#); s. 10 in force so far as not already in force at 2.10.2000 by virtue of [S.I. 2000/265](#), [reg. 3](#) and [S.I. 2000/2444](#), art. 2, [Sch. 1](#) (subject to arts. 3,4, [Sch. 2](#))

### **<sup>F12</sup>11 Removal of asylum claimant under standing arrangement with member States**

#### Textual Amendments

- F12** S. 11 repealed (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), [ss. 33\(2\), 48\(3\)](#), [Sch. 4](#); S.I. 2004/2523, art. 2, Sch. (with art. 3)

### **<sup>F13</sup>12 Removal of asylum claimants in other circumstances.**

#### Textual Amendments

- F13** S. 12 repealed (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), [ss. 33\(2\), 48\(3\)](#), [Sch. 4](#); S.I. 2004/2523, art. 2, Sch. (with art. 3)

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### **13 Proof of identity of persons to be removed or deported.**

- (1) This section applies if a person—
  - (a) is to be removed from the United Kingdom to a country of which he is a national or citizen; but
  - (b) does not have a valid passport or other document establishing his identity and nationality or citizenship and permitting him to travel.
- (2) If the country to which the person is to be removed indicates that he will not be admitted to it unless identification data relating to him are provided by the Secretary of State, he may provide them with such data.
- (3) In providing identification data, the Secretary of State must not disclose whether the person concerned has made a claim for asylum.
- (4) For the purposes of paragraph 4(1) of Schedule 4 to the <sup>M1</sup>Data Protection Act 1998, the provision under this section of identification data is a transfer of personal data which is necessary for reasons of substantial public interest.
- (5) “Identification data” means—
  - (a) fingerprints taken under section 141; or
  - (b) data collected in accordance with regulations made under section 144.
- (6) “Removed” means removed as a result of directions given under section 10 or under Schedule 2 or 3 to the 1971 Act.

#### **Marginal Citations**

**M1** 1998 c.29.

### **14 Escorts for persons removed from the United Kingdom under directions.**

- (1) Directions for, or requiring arrangements to be made for, the removal of a person from the United Kingdom may include or be amended to include provision for the person who is to be removed to be accompanied by an escort consisting of one or more persons specified in the directions.
- (2) The Secretary of State may by regulations make further provision supplementing subsection (1).
- (3) The regulations may, in particular, include provision—
  - (a) requiring the person to whom the directions are given to provide for the return of the escort to the United Kingdom;
  - (b) requiring him to bear such costs in connection with the escort (including, in particular, remuneration) as may be prescribed;
  - (c) as to the cases in which the Secretary of State is to bear those costs;
  - (d) prescribing the kinds of expenditure which are to count in calculating the costs incurred in connection with escorts.

### **<sup>F14</sup>15 Protection of claimants from removal or deportation.**

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### Textual Amendments

- F14** S. 15 repealed (1.4.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 77(5), 162(1), [Sch. 9](#) (with s. 159); [S.I. 2003/754](#), art. 2(1), [Sch. 1](#) (with arts. 3, 4, [Sch. 2](#) paras. 1(2), 5)

PROSPECTIVE

### *Provision of financial security*

#### **16 Security on grant of entry clearance.**

- (1) In such circumstances as may be specified, the Secretary of State may require security to be given, with respect to a person applying for entry clearance, before clearance is given.
- (2) In such circumstances as may be specified—
  - (a) the Secretary of State may accept security with respect to a person who is applying for entry clearance but for whom security is not required; and
  - (b) in determining whether to give clearance, account may be taken of any security so provided.
- (3) “Security” means—
  - (a) the deposit of a sum of money by the applicant, his agent or any other person, or
  - (b) the provision by the applicant, his agent or any other person of a financial guarantee of a specified kind,with a view to securing that the applicant will, if given leave to enter the United Kingdom for a limited period, leave the United Kingdom at the end of that period.
- (4) Immigration rules must make provision as to the circumstances in which a security provided under this section—
  - (a) is to be repaid, released or otherwise cancelled; or
  - (b) is to be forfeited or otherwise realised by the Secretary of State.
- (5) No security provided under this section may be forfeited or otherwise realised unless the person providing it has been given an opportunity, in accordance with immigration rules, to make representations to the Secretary of State.
- (6) Immigration rules may, in particular—
  - (a) fix the maximum amount that may be required, or accepted, by way of security provided under this section;
  - (b) specify the form and manner in which such a security is to be given or may be accepted;
  - (c) make provision, where such a security has been forfeited or otherwise realised, for the person providing it to be reimbursed in such circumstances as may be specified;
  - (d) make different provision for different cases or descriptions of case.
- (7) “Specified” means specified by immigration rules.

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- (8) Any security forfeited or otherwise realised by the Secretary of State under this section must be paid into the Consolidated Fund.

## 17 Provision of further security on extension of leave.

- (1) This section applies if security has been provided under section 16(1) or (2) with respect to a person who, having entered the United Kingdom (with leave to do so), applies—
- (a) to extend his leave to enter the United Kingdom; or
  - (b) for leave to remain in the United Kingdom for a limited period.
- (2) The Secretary of State may refuse the application if security of such kind as the Secretary of State considers appropriate is not provided, or continued, with respect to the applicant.
- (3) Immigration rules must make provision as to the circumstances in which a security provided under this section—
- (a) is to be repaid, released or otherwise cancelled; or
  - (b) is to be forfeited or otherwise realised by the Secretary of State.
- (4) No security provided under this section may be forfeited or otherwise realised unless the person providing it has been given an opportunity, in accordance with immigration rules, to make representations to the Secretary of State.
- (5) Subsection (7) of section 16 applies in relation to this section as it applies in relation to that section.
- (6) Any security forfeited or otherwise realised by the Secretary of State under this section must be paid into the Consolidated Fund.

## Information

## 18 Passenger information.

In the 1971 Act, in Schedule 2, after paragraph 27, insert—

### Passenger information

- “27B (1) This paragraph applies to ships or aircraft—
- (a) which have arrived, or are expected to arrive, in the United Kingdom; or
  - (b) which have left, or are expected to leave, the United Kingdom.
- (2) If an immigration officer asks the owner or agent (“the carrier”) of a ship or aircraft for passenger information, the carrier must provide that information to the officer.
- (3) The officer may ask for passenger information relating to—
- (a) a particular ship or particular aircraft of the carrier;
  - (b) particular ships or aircraft (however described) of the carrier; or
  - (c) all of the carrier’s ships or aircraft.

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- (4) The officer may ask for—
  - (a) all passenger information in relation to the ship or aircraft concerned; or
  - (b) particular passenger information in relation to that ship or aircraft.
- (5) A request under sub-paragraph (2)—
  - (a) must be in writing;
  - (b) must state the date on which it ceases to have effect; and
  - (c) continues in force until that date, unless withdrawn earlier by written notice by an immigration officer.
- (6) The date may not be later than six months after the request is made.
- (7) The fact that a request under sub-paragraph (2) has ceased to have effect as a result of sub-paragraph (5) does not prevent the request from being renewed.
- (8) The information must be provided—
  - (a) in such form and manner as the Secretary of State may direct; and
  - (b) at such time as may be stated in the request.
- (9) “Passenger information” means such information relating to the passengers carried, or expected to be carried, by the ship or aircraft as may be specified.
- (10) “Specified” means specified in an order made by statutory instrument by the Secretary of State.
- (11) Such an instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

#### Commencement Information

**I3** S. 18 wholly in force; s. 18 not in force at Royal Assent see s. 170(4); s. 18 in force for certain purposes at 1.3.2000 and 3.4.2000 insofar as not already in force by S.I. 2000/464, art. 2, Sch.

## 19 Notification of non-EEA arrivals.

In the 1971 Act, in Schedule 2, after paragraph 27B, insert—

### Notification of non-EEA arrivals

- “27C (1) If a senior officer, or an immigration officer authorised by a senior officer, gives written notice to the owner or agent (“the carrier”) of a ship or aircraft, the carrier must inform a relevant officer of the expected arrival in the United Kingdom of any ship or aircraft—
- (a) of which he is the owner or agent; and
  - (b) which he expects to carry a person who is not an EEA national.
- (2) The notice may relate to—
- (a) a particular ship or particular aircraft of the carrier;
  - (b) particular ships or aircraft (however described) of the carrier; or
  - (c) all of the carrier’s ships or aircraft.

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- (3) The notice—
  - (a) must state the date on which it ceases to have effect; and
  - (b) continues in force until that date, unless withdrawn earlier by written notice given by a senior officer.
- (4) The date may not be later than six months after the notice is given.
- (5) The fact that a notice under sub-paragraph (1) has ceased to have effect as a result of sub-paragraph (3) does not prevent the notice from being renewed.
- (6) The information must be provided—
  - (a) in such form and manner as the notice may require; and
  - (b) before the ship or aircraft concerned departs for the United Kingdom.
- (7) If a ship or aircraft travelling to the United Kingdom stops at one or more places before arriving in the United Kingdom, it is to be treated as departing for the United Kingdom when it leaves the last of those places.
- (8) “Senior officer” means an immigration officer not below the rank of chief immigration officer.
- (9) “Relevant officer” means—
  - (a) the officer who gave the notice under sub-paragraph (1); or
  - (b) any immigration officer at the port at which the ship or aircraft concerned is expected to arrive.
- (10) “EEA national” means a national of a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as it has effect for the time being.”

## 20 Supply of information to Secretary of State.

- (1) This section applies to information held by—
  - (a) a chief officer of police;
  - (b) the Director General of the National Criminal Intelligence Service;
  - (c) the Director General of the National Crime Squad;
  - (d) the Commissioners of Customs and Excise, or a person providing services to them in connection with the provision of those services;
  - (e) a person with whom the Secretary of State has made a contract or other arrangements under section 95 or 98 or a sub-contractor of such a person; or
  - (f) any specified person, for purposes specified in relation to that person.

[<sup>F15</sup>(1A) This section also applies to a document or article which—

- (a) comes into the possession of a person listed in subsection (1) or someone acting on his behalf, or
- (b) is discovered by a person listed in subsection (1) or someone acting on his behalf.]

- (2) The information [<sup>F16</sup>, document or article] may be supplied to the Secretary of State for use for immigration purposes.

[<sup>F17</sup>(2A) The Secretary of State may—

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- (a) retain for immigration purposes a document or article supplied to him under subsection (2), and
  - (b) dispose of a document or article supplied to him under subsection (2) in such manner as he thinks appropriate (and the reference to use in subsection (2) includes a reference to disposal).]
- (3) “Immigration purposes” means any of the following—
- (a) the administration of immigration control under the Immigration Acts;
  - (b) the prevention, detection, investigation or prosecution of criminal offences under those Acts;
  - (c) the imposition of penalties or charges under Part II;
  - (d) the provision of support for asylum-seekers and their dependants under Part VI;
  - (e) such other purposes as may be specified.
- (4) “Chief officer of police” means—
- (a) the chief officer of police for a police area in England and Wales;
  - (b) the chief constable of a police force maintained under the <sup>M2</sup>Police (Scotland) Act 1967;
  - (c) the Chief Constable of the Royal Ulster Constabulary.
- (5) “Specified” means specified in an order made by the Secretary of State.
- (6) This section does not limit the circumstances in which information [<sup>F18</sup>, documents or articles] may be supplied apart from this section.

#### Textual Amendments

- F15** S. 20(1A) inserted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. **132(2)**, **162(1)** (with s. 159); S.I. 2003/1, art. 2, Sch.
- F16** Words in s. 20(2) inserted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. **132(3)**, **162(1)** (with s. 159); S.I. 2003/1, art. 2, Sch.
- F17** S. 20(2A) inserted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. **132(4)**, **162(1)** (with s. 159); S.I. 2003/1, art. 2, Sch.
- F18** Words in s. 20(6) inserted (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. **132(5)**, **162(1)** (with s. 159); S.I. 2003/1, art. 2, Sch.

#### Modifications etc. (not altering text)

- C6** S. 20 modified (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. **131**, **162(1)** (with s. 159); S.I. 2003/1, art. 2, Sch.
- C7** S. 20 restricted (7.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 2 para. 17** (with s. 22); S.I. 2005/1126, art. 2(1)

#### Marginal Citations

- M2** 1967 c. 77.

## 21 Supply of information by Secretary of State.

- (1) This section applies to information held by the Secretary of State in connection with the exercise of functions under any of the Immigration Acts.
- (2) The information may be supplied to—

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- (a) a chief officer of police, for use for police purposes;
  - (b) the Director General of the National Criminal Intelligence Service, for use for NCIS purposes;
  - (c) the Director General of the National Crime Squad, for use for NCS purposes;
  - (d) the Commissioners of Customs and Excise, or a person providing services to them, for use for customs purposes; or
  - (e) any specified person, for use for purposes specified in relation to that person.
- (3) “Police purposes” means any of the following—
- (a) the prevention, detection, investigation or prosecution of criminal offences;
  - (b) safeguarding national security;
  - (c) such other purposes as may be specified.
- (4) “NCIS purposes” means any of the functions of the National Criminal Intelligence Service mentioned in section 2 of the <sup>M3</sup>Police Act 1997.
- (5) “NCS purposes” means any of the functions of the National Crime Squad mentioned in section 48 of that Act.
- (6) “Customs purposes” means any of the Commissioners’ functions in relation to—
- (a) the prevention, detection, investigation or prosecution of criminal offences;
  - (b) the prevention, detection or investigation of conduct in respect of which penalties which are not criminal penalties are provided for by or under any enactment;
  - (c) the assessment or determination of penalties which are not criminal penalties;
  - (d) checking the accuracy of information relating to, or provided for purposes connected with, any matter under the care and management of the Commissioners or any assigned matter (as defined by section 1(1) of the <sup>M4</sup>Customs and Excise Management Act 1979);
  - (e) amending or supplementing any such information (where appropriate);
  - (f) legal or other proceedings relating to anything mentioned in paragraphs (a) to (e);
  - (g) safeguarding national security; and
  - (h) such other purposes as may be specified.
- (7) “Chief officer of police” and “specified” have the same meaning as in section 20.
- (8) This section does not limit the circumstances in which information may be supplied apart from this section.

#### Marginal Citations

**M3** 1997 c.50.

**M4** 1979 c. 2.

### *Employment: code of practice*

## 22 Restrictions on employment: code of practice.

In the <sup>M5</sup>Asylum and Immigration Act 1996, after section 8, insert—



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### **“8A Code of practice.**

- (1) The Secretary of State must issue a code of practice as to the measures which an employer is to be expected to take, or not to take, with a view to securing that, while avoiding the commission of an offence under section 8, he also avoids unlawful discrimination.
- (2) “Unlawful discrimination” means—
  - (a) discrimination in contravention of section 4(1) of the <sup>M6</sup>Race Relations Act 1976 (“the 1976 Act”); or
  - (b) in relation to Northern Ireland, discrimination in contravention of Article 6(1) of the <sup>M7</sup>Race Relations (Northern Ireland) Order 1997 (“the 1997 Order”).
- (3) Before issuing the code, the Secretary of State must—
  - (a) prepare and publish a draft of the proposed code; and
  - (b) consider any representations about it which are made to him.
- (4) In preparing the draft, the Secretary of State must consult—
  - (a) the Commission for Racial Equality;
  - (b) the Equality Commission for Northern Ireland; and
  - (c) such organisations and bodies (including organisations or associations of organisations representative of employers or of workers) as he considers appropriate.
- (5) If the Secretary of State decides to proceed with the code, he must lay a draft of the code before both Houses of Parliament.
- (6) The draft code may contain modifications to the original proposals made in the light of representations to the Secretary of State.
- (7) After laying the draft code before Parliament, the Secretary of State may bring the code into operation by an order made by statutory instrument.
- (8) An order under subsection (7)—
  - (a) shall be subject to annulment in pursuance of a resolution of either House of Parliament;
  - (b) may contain such transitional provisions or savings as appear to the Secretary of State to be necessary or expedient in connection with the code.
- (9) A failure on the part of any person to observe a provision of the code does not of itself make him liable to any proceedings.
- (10) But the code is admissible in evidence—
  - (a) in proceedings under the 1976 Act before an employment tribunal;
  - (b) in proceedings under the 1997 Order before an industrial tribunal.
- (11) If any provision of the code appears to the tribunal to be relevant to any question arising in such proceedings, that provision is to be taken into account in determining the question.

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- (12) The Secretary of State may from time to time revise the whole or any part of the code and issue the code as revised.
- (13) The provisions of this section also apply (with appropriate modifications) to any revision, or proposed revision, of the code.”

#### Commencement Information

**I4** S. 22 wholly in force at 22.5.2001; s. 22 not in force at royal assent; S. 22 in force for certain purposes at 19.2.2001 by S.I. 2001/239, art. 2, Sch. and s. 22 in force so far as not already in force at 22.5.2001 by S.I. 2001/1394, art. 2, Sch.

#### Marginal Citations

**M5** 1996 c. 49.  
**M6** 1976 c. 74.  
**M7** S.I. 1997/869 (N.I. 6).

### *Monitoring entry clearance*

## 23 Monitoring refusals of entry clearance.

- (1) The Secretary of State must appoint a person to monitor, in such a manner as the Secretary of State may determine, refusals of entry clearance in cases where there is, as a result of [F19section 90 or 91 of the Nationality, Immigration and Asylum Act 2002], no right of appeal.
- (2) But the Secretary of State may not appoint a member of his staff.
- (3) The monitor must make an annual report on the discharge of his functions to the Secretary of State.
- (4) The Secretary of State must lay a copy of any report made to him under subsection (3) before each House of Parliament.
- (5) The Secretary of State may pay to the monitor such fees and allowances as he may determine.

#### Textual Amendments

**F19** Words in s. 23(1) substituted (1.4.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 162(1), Sch. 7 para. 27 (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1 (with arts. 3, 4, Sch. 2 para. 5)

### *Reporting suspicious marriages*

## 24 Duty to report suspicious marriages.

- (1) Subsection (3) applies if—
- (a) a superintendent registrar to whom a notice of marriage has been given under section 27 of the M8Marriage Act 1949,

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- (b) any other person who, under section 28(2) of that Act, has attested a declaration accompanying such a notice,
  - (c) a district registrar to whom a marriage notice or an approved certificate has been submitted under section 3 of the <sup>M9</sup>Marriage (Scotland) Act 1977, or
  - (d) a registrar or deputy registrar to whom notice has been given under section 13 of the <sup>M10</sup>Marriages (Ireland) Act 1844 or section 4 of the <sup>M11</sup>Marriage Law (Ireland) Amendment Act 1863,
- has reasonable grounds for suspecting that the marriage will be a sham marriage.
- (2) Subsection (3) also applies if—
- (a) a marriage is solemnized in the presence of a registrar of marriages or, in relation to Scotland, an authorised registrar (within the meaning of the Act of 1977); and
  - (b) before, during or immediately after solemnization of the marriage, the registrar has reasonable grounds for suspecting that the marriage will be, or is, a sham marriage.
- (3) The person concerned must report his suspicion to the Secretary of State without delay and in such form and manner as may be prescribed by regulations.
- (4) The regulations are to be made—
- (a) in relation to England and Wales, by the Registrar General for England and Wales with the approval of the Chancellor of the Exchequer;
  - (b) in relation to Scotland, by the Secretary of State after consulting the Registrar General of Births, Deaths and Marriages for Scotland;
  - (c) in relation to Northern Ireland, by the Secretary of State after consulting the Registrar General in Northern Ireland.
- (5) “Sham marriage” means a marriage (whether or not void)—
- (a) entered into between a person (“A”) who is neither a British citizen nor a national of an EEA State other than the United Kingdom and another person (whether or not such a citizen or such a national); and
  - (b) entered into by A for the purpose of avoiding the effect of one or more provisions of United Kingdom immigration law or the immigration rules.

#### Commencement Information

**I5** S. 24 wholly in force at 1.1.2001, see s. 170(4) and [S.I. 2000/2698, art. 2, Sch.](#) (as amended by [S.I. 2000/3099, art. 4](#)) subject to the transitional provision in art. 3 (as also inserted by art. 4 of the said [S.I. 2000/3099](#))

#### Marginal Citations

**M8** 1949 c. 76.

**M9** 1977 c. 15.

**M10** 1844 c. 81.

**M11** 1863 c. 27.

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### *Immigration control: facilities and charges*

#### **25 Provision of facilities for immigration control at ports.**

- (1) The person responsible for the management of a control port (“the manager”) must provide the Secretary of State free of charge with such facilities at the port as the Secretary of State may direct as being reasonably necessary for, or in connection with, the operation of immigration control there.
- (2) Before giving such a direction, the Secretary of State must consult such persons likely to be affected by it as he considers appropriate.
- (3) If the Secretary of State gives such a direction, he must send a copy of it to the person appearing to him to be the manager.
- (4) If the manager persistently fails to comply with the direction (or part of it), the Secretary of State may—
  - (a) in the case of a control port which is not a port of entry, revoke any approval in relation to the port given under paragraph 26(1) of Schedule 2 to the 1971 Act;
  - (b) in the case of a control port which is a port of entry, by order revoke its designation as a port of entry.
- (5) A direction under this section is enforceable, on the application of the Secretary of State—
  - (a) by injunction granted by a county court; or
  - (b) in Scotland, by an order under section 45 of the <sup>M12</sup>Court of Session Act 1988.
- (6) “Control port” means a port in which a control area is designated under paragraph 26(3) of Schedule 2 to the 1971 Act.
- (7) “Facilities” means accommodation, facilities, equipment and services of a class or description specified in an order made by the Secretary of State.

#### **Commencement Information**

**I6** S. 25 in force (17.2.2003 for specified purposes, 1.4.2003 in so far as not already in force) by [S.I. 2003/2](#), [art. 2](#), [Sch.](#)

#### **Marginal Citations**

**M12** 1988 c. 36.

#### **26 Charges: immigration control.**

- (1) The Secretary of State may, at the request of any person and in consideration of such charges as he may determine, make arrangements—
  - (a) for the provision at any control port of immigration officers or facilities in addition to those (if any) needed to provide a basic service at the port;
  - (b) for the provision of immigration officers or facilities for dealing with passengers of a particular description or in particular circumstances.
- (2) “Control port” has the same meaning as in section 25.
- (3) “Facilities” includes equipment.

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(4) “Basic service” has such meaning as may be prescribed.

#### Commencement Information

**I7** S. 26 in force at 5.6.2003 for specified purposes by S.I. 2003/1469, art. 2, Sch.; and 30.6.2003 in so far as not already in force by S.I. 2003/1469, art. 2, Sch.

#### *Charges: travel documents*

#### **27 Charges: travel documents.**

- (1) The Secretary of State may, with the approval of the Treasury, make regulations prescribing fees to be paid in connection with applications to him for travel documents.
- (2) If a fee is prescribed in connection with an application of a particular kind, no such application is to be entertained by the Secretary of State unless the fee has been paid in accordance with the regulations.
- (3) In respect of any period before the coming into force of this section, the Secretary of State is to be deemed always to have had power to impose charges in connection with—
  - (a) applications to him for travel documents; or
  - (b) the issue by him of travel documents.
- (4) “Travel document” does not include a passport.

#### *Offences*

#### **28 Deception.**

In the 1971 Act, after section 24, insert—

##### **“24A Deception.**

- (1) A person who is not a British citizen is guilty of an offence if, by means which include deception by him—
  - (a) he obtains or seeks to obtain leave to enter or remain in the United Kingdom; or
  - (b) he secures or seeks to secure the avoidance, postponement or revocation of enforcement action against him.
- (2) “Enforcement action”, in relation to a person, means—
  - (a) the giving of directions for his removal from the United Kingdom (“directions”) under Schedule 2 to this Act or section 10 of the Immigration and Asylum Act 1999;
  - (b) the making of a deportation order against him under section 5 of this Act; or
  - (c) his removal from the United Kingdom in consequence of directions or a deportation order.

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- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.
- (4) The extended time limit for prosecutions which is provided for by section 28 applies to an offence under this section.”

## 29 Facilitation of entry.

- (1) Section 25 of the 1971 Act (assisting illegal entry) is amended as follows.
- (2) In subsection (1), for “seven” substitute “ ten ”.
- (3) For subsection (1A) substitute—
- “(1A) Nothing in subsection (1)(b) applies to anything done in relation to a person who—
- (a) has been detained under paragraph 16 of Schedule 2 to this Act; or
  - (b) has been granted temporary admission under paragraph 21 of that Schedule.
- (1B) Nothing in subsection (1)(b) applies to anything done by a person otherwise than for gain.
- (1C) Nothing in subsection (1)(b) applies to anything done to assist an asylum claimant by a person in the course of his employment by a bona fide organisation, if the purposes of that organisation include assistance to persons in the position of the asylum claimant.
- (1D) “Asylum claimant” means a person who intends to make a claim that it would be contrary to the United Kingdom’s obligations under the Refugee Convention or the Human Rights Convention for him to be removed from, or required to leave, the United Kingdom.
- (1E) “Refugee Convention” and “Human Rights Convention” have the meaning given in the Immigration and Asylum Act 1999.”
- (4) In subsection (5), for “Subsection (1)(a)” substitute “ Paragraphs (a) and (b) of subsection (1) ”.

### Commencement Information

- 18** S. 29 wholly in force; s. 29 not in force at Royal Assent see s. 170(4); s. 29(2)(4) wholly in force and s. 29(1) in force for certain purposes at 14.2.2000 by S.I. 2000/168, art. 2, Sch. (with transitional provisions in art. 3); s. 29 in force so far as not already in force 2.10.2000 by S.I. 2000/2444, art. 2, Sch. 1 (subject to arts. 3, 4, Sch. 2)

## 30 False statements etc.

- (1) Section 26 of the 1971 Act (general offences in connection with administration of the Act) is amended as follows.

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(2) In subsection (1)(c), for “this Act” substitute “ a relevant enactment ”.

(3) After subsection (2), insert—

“(3) “Relevant enactment” means—

- (a) this Act;
- (b) the <sup>M13</sup>Immigration Act 1988;
- (c) the <sup>M14</sup>Asylum and Immigration Appeals Act 1993 (apart from section 4 or 5); or
- (d) the Immigration and Asylum Act 1999 (apart from Part VI).”

#### Marginal Citations

M13 1988 c. 14.

M14 1993 c. 23.

### 31 Defences based on Article 31(1) of the Refugee Convention.

- (1) It is a defence for a refugee charged with an offence to which this section applies to show that, having come to the United Kingdom directly from a country where his life or freedom was threatened (within the meaning of the Refugee Convention), he—
  - (a) presented himself to the authorities in the United Kingdom without delay;
  - (b) showed good cause for his illegal entry or presence; and
  - (c) made a claim for asylum as soon as was reasonably practicable after his arrival in the United Kingdom.
- (2) If, in coming from the country where his life or freedom was threatened, the refugee stopped in another country outside the United Kingdom, subsection (1) applies only if he shows that he could not reasonably have expected to be given protection under the Refugee Convention in that other country.
- (3) In England and Wales and Northern Ireland the offences to which this section applies are any offence, and any attempt to commit an offence, under—
  - (a) Part I of the <sup>M15</sup>Forgery and Counterfeiting Act 1981 (forgery and connected offences);
  - (b) section 24A of the 1971 Act (deception); or
  - (c) section 26(1)(d) of the 1971 Act (falsification of documents).
- (4) In Scotland, the offences to which this section applies are those—
  - (a) of fraud,
  - (b) of uttering a forged document,
  - (c) under section 24A of the 1971 Act (deception), or
  - (d) under section 26(1)(d) of the 1971 Act (falsification of documents),and any attempt to commit any of those offences.
- (5) A refugee who has made a claim for asylum is not entitled to the defence provided by subsection (1) in relation to any offence committed by him after making that claim.
- (6) “Refugee” has the same meaning as it has for the purposes of the Refugee Convention.

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- (7) If the Secretary of State has refused to grant a claim for asylum made by a person who claims that he has a defence under subsection (1), that person is to be taken not to be a refugee unless he shows that he is.
- (8) A person who—
- (a) was convicted in England and Wales or Northern Ireland of an offence to which this section applies before the commencement of this section, but
  - (b) at no time during the proceedings for that offence argued that he had a defence based on Article 31(1),
- may apply to the Criminal Cases Review Commission with a view to his case being referred to the Court of Appeal by the Commission on the ground that he would have had a defence under this section had it been in force at the material time.
- (9) A person who—
- (a) was convicted in Scotland of an offence to which this section applies before the commencement of this section, but
  - (b) at no time during the proceedings for that offence argued that he had a defence based on Article 31(1),
- may apply to the Scottish Criminal Cases Review Commission with a view to his case being referred to the High Court of Justiciary by the Commission on the ground that he would have had a defence under this section had it been in force at the material time.
- (10) The Secretary of State may by order amend—
- (a) subsection (3), or
  - (b) subsection (4),
- by adding offences to those for the time being listed there.
- (11) Before making an order under subsection (10)(b), the Secretary of State must consult the Scottish Ministers.

#### Marginal Citations

M15 1981 c. 45.

## PART II

### CARRIERS' LIABILITY

#### Modifications etc. (not altering text)

C8 Pt. II (ss. 32-43) modified (7.2.2001 for certain purposes and otherwise 1.3.2001) by S.I. 2001/280, arts. 1, 2 (with art. 5)

#### *Clandestine entrants*

### 32 Penalty for carrying clandestine entrants.

- (1) A person is a clandestine entrant if—



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- (a) he arrives in the United Kingdom concealed in a vehicle, ship or aircraft,
  - [<sup>F20</sup>(aa) he arrives in the United Kingdom concealed in a rail freight wagon,]
  - (b) he passes, or attempts to pass, through immigration control concealed in a vehicle, or
  - (c) he arrives in the United Kingdom on a ship or aircraft, having embarked—
    - (i) concealed in a vehicle; and
    - (ii) at a time when the ship or aircraft was outside the United Kingdom, and claims, or indicates that he intends to seek, asylum in the United Kingdom or evades, or attempts to evade, immigration control.
- [<sup>F21</sup>(2) The Secretary of State may require a person who is responsible for a clandestine entrant to pay—
- (a) a penalty in respect of the clandestine entrant;
  - (b) a penalty in respect of any person who was concealed with the clandestine entrant in the same transporter.
- (2A) In imposing a penalty under subsection (2) the Secretary of State—
- (a) must specify an amount which does not exceed the maximum prescribed for the purpose of this paragraph,
  - (b) may, in respect of a clandestine entrant or a concealed person, impose separate penalties on more than one of the persons responsible for the clandestine entrant, and
  - (c) may not impose penalties in respect of a clandestine entrant or a concealed person which amount in aggregate to more than the maximum prescribed for the purpose of this paragraph.]
- (3) A penalty imposed under this section must be paid to the Secretary of State before the end of the prescribed period.
- [<sup>F22</sup>(4) Where a penalty is imposed under subsection (2) on the driver of a vehicle who is an employee of the vehicle's owner or hirer—
- (a) the employee and the employer shall be jointly and severally liable for the penalty imposed on the driver (irrespective of whether a penalty is also imposed on the employer), and
  - (b) a provision of this Part about notification, objection or appeal shall have effect as if the penalty imposed on the driver were also imposed on the employer (irrespective of whether a penalty is also imposed on the employer in his capacity as the owner or hirer of the vehicle).
- (4A) In the case of a detached trailer, subsection (4) shall have effect as if a reference to the driver were a reference to the operator.]
- (5) In the case of a clandestine entrant to whom subsection (1)(a) applies, each of the following is a responsible person—
- (a) if the transporter is a ship or aircraft, the owner [<sup>F23</sup>and] captain;
  - (b) if it is a vehicle (but not a detached trailer), the owner, hirer [<sup>F24</sup>and] driver of the vehicle;
  - (c) if it is a detached trailer, the owner, hirer [<sup>F24</sup>and] operator of the trailer.
- [<sup>F25</sup>(5A) In the case of a clandestine entrant to whom subsection (1)(aa) applies, the responsible person is—

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- (a) where the entrant arrived concealed in a freight train, the train operator who, at the train’s last scheduled stop before arrival in the United Kingdom, was responsible for certifying it as fit to travel to the United Kingdom, or
  - (b) where the entrant arrived concealed in a freight shuttle wagon, the operator of the shuttle-train of which the wagon formed part.]
- (6) In the case of a clandestine entrant to whom subsection (1)(b) or (c) applies, each of the following is a responsible person—
- (a) if the transporter is a detached trailer, the owner, hirer [<sup>F26</sup>and] operator of the trailer;
  - (b) if it is not, the owner, hirer [<sup>F26</sup>and] driver of the vehicle.
- [<sup>F27</sup>(6A) Where a person falls within the definition of responsible person in more than one capacity, a separate penalty may be imposed on him under subsection (2) in respect of each capacity.]
- (7) Subject to any defence provided by section 34, it is immaterial whether a responsible person knew or suspected—
- (a) that the clandestine entrant was concealed in the transporter; or
  - (b) that there were one or more other persons concealed with the clandestine entrant in the same transporter.
- (8) Subsection (9) applies if a transporter (“the carried transporter”) is itself being carried in or on another transporter.
- (9) If a person is concealed in the carried transporter, the question whether any other person is concealed with that person in the same transporter is to be determined by reference to the carried transporter and not by reference to the transporter in or on which it is carried.
- (10) “Immigration control” means United Kingdom immigration control and includes any United Kingdom immigration control operated in a prescribed control zone outside the United Kingdom.

### Textual Amendments

- F20** S. 32(1)(aa) inserted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 2\(2\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4), S.I. 2012/1263, [art. 2](#)
- F21** S. 32(2)(2A) substituted for s. 32(2) (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 2\(3\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4), S.I. 2012/1263, [art. 2](#)
- F22** S. 32(4)(4A) substituted for s. 32(4) (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 2\(4\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4), S.I. 2012/1263, [art. 2](#)
- F23** Word in s. 32(5)(a) substituted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 2\(5\)\(a\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4), S.I. 2012/1263, [art. 2](#)
- F24** Words in s. 32(5)(b)(c) substituted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act](#)

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2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 2(5)(b)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4), S.I. 2012/1263, **art. 2**

**F25** S. 32(5A) inserted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by **Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), Sch. 8 para. 2(6)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4), S.I. 2012/1263, **art. 2**

**F26** Words in s. 32(6)(a)(b) substituted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by **Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), Sch. 8 para. 2(7)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4), S.I. 2012/1263, **art. 2**

**F27** S. 32(6A) inserted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by **Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), Sch. 8 para. 2(8)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4), S.I. 2012/1263, **art. 2**

#### Modifications etc. (not altering text)

**C9** S. 32(2)-(5)(7)(10) applied (with modifications) (7.2.2001 for certain purposes and otherwise 1.3.2001) by S.I. 2001/280, **arts. 1-4** (with art. 5)

#### Commencement Information

**I9** S. 32 partly in force; s. 32 not in force at Royal Assent, see s. 170(4); s. 32(2)(a)(3)(10) in force for certain purposes at 6.12.1999 by S.I. 1999/3190, **art. 2**, Sch.; s. 32 in force for certain purposes at: 3.4.2000 by S.I. 2000/464, **art. 2**, Sch.; 18.9.2000 by S.I. 2000/2444, **art. 2**, Sch. 1 (subject to **arts. 3, 4**, Sch. 2); 8.12.2002 by S.I. 2002/2815, **art. 2**, Sch.

### [<sup>F28</sup>32A Level of penalty: code of practice

- (1) The Secretary of State shall issue a code of practice specifying matters to be considered in determining the amount of a penalty under section 32.
- (2) The Secretary of State shall have regard to the code (in addition to any other matters he thinks relevant)—
  - (a) when imposing a penalty under section 32, and
  - (b) when considering a notice of objection under section 35(4).
- (3) Before issuing the code the Secretary of State shall lay a draft before Parliament.
- (4) After laying the draft code before Parliament the Secretary of State may bring the code into operation by order.
- (5) The Secretary of State may from time to time revise the whole or any part of the code and issue the code as revised.
- (6) Subsections (3) and (4) also apply to a revision or proposed revision of the code.]

#### Textual Amendments

**F28** S. 32A inserted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes and otherwise prosp.) by **Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), Sch. 8 para. 3** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)

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### 33 [F29] **Prevention of clandestine entrants: code of practice**

- (1) The Secretary of State must issue a code of practice to be followed by any person operating a system for preventing the carriage of clandestine entrants.
- (2) Before issuing the code, the Secretary of State must—
  - (a) consult such persons as he considers appropriate; and
  - (b) lay a draft before <sup>F30</sup> . . . Parliament.
- (3) The requirement of subsection (2)(a) may be satisfied by consultation before the passing of this Act.
- (4) After laying the draft code before Parliament, the Secretary of State may bring the code into operation by an order.
- (5) The Secretary of State may from time to time revise the whole or any part of the code and issue the code as revised.
- (6) Subsections (2) and (4) also apply to any revision, or proposed revision, of the code.

#### Textual Amendments

**F29** S. 33 heading substituted (8.12.2002 for certain purposes, otherwise prosp.) by *Nationality, Immigration and Asylum Act 2002* (c. 41), ss. 125, 162(1), **Sch. 8 para. 4** (with s. 159, Sch. 8 para. 17); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)

**F30** Words in s. 33(2)(b) repealed (8.12.2002 for certain purposes, 11.5.2012 in so far as not already in force) by *Nationality, Immigration and Asylum Act 2002* (c. 41), ss. 125, 161, 162(1), **Sch. 8 para. 5**, **Sch. 9** (with s. 159, Sch. 8 para. 17); S.I. 2002/2811, **art. 2**, Sch. (with art. 4), S.I. 2012/1263, **art. 2**

#### Modifications etc. (not altering text)

**C10** S. 33 applied (with modifications) (7.2.2001 for certain purposes and otherwise 1.3.2001) by S.I. 2001/208, **arts. 1(2), 3, 4** (with art. 5)

### 34 **Defences to claim that penalty is due under section 32.**

[<sup>F31</sup>(1) A person (“the carrier”) shall not be liable to the imposition of a penalty under section 32(2) if he has a defence under this section.]

- (2) It is a defence for the carrier to show that he, or an employee of his who was directly responsible for allowing the clandestine entrant to be concealed, was acting under duress.
- (3) It is also a defence for the carrier to show that—
  - (a) he did not know, and had no reasonable grounds for suspecting, that a clandestine entrant was, or might be, concealed in the transporter;
  - (b) an effective system for preventing the carriage of clandestine entrants was in operation in relation to the transporter; and
  - (c) <sup>F32</sup> . . . on the occasion in question the person or persons responsible for operating that system did so properly.

[<sup>F33</sup>(3A) It is also a defence for the carrier to show that—

- (a) he knew or suspected that a clandestine entrant was or might be concealed in a rail freight wagon, having boarded after the wagon began its journey to the United Kingdom;

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- (b) he could not stop the train or shuttle-train of which the wagon formed part without endangering safety;
  - (c) an effective system for preventing the carriage of clandestine entrants was in operation in relation to the train or shuttle-train; and
  - (d) on the occasion in question the person or persons responsible for operating the system did so properly.]
- (4) In determining, for the purposes of this section, whether a particular system is effective, regard is to be had to the code of practice issued by the Secretary of State under section 33.
- (5) <sup>F34</sup> .....
- [<sup>F35</sup>(6) Where a person has a defence under subsection (2) in respect of a clandestine entrant, every other responsible person in respect of the clandestine entrant is also entitled to the benefit of the defence.]

#### Textual Amendments

- F31** S. 34(1) substituted (8.12.2002 for certain purposes, otherwise prosp.) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 6\(2\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), [Sch.](#) (with art. 4)
- F32** Word in s. 34(3)(c) repealed (8.12.2002) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 161, 162(1), [Sch. 8 para. 6\(3\)](#), [Sch. 9](#) (with s. 159); S.I. 2002/2811, [art. 2](#), [Sch.](#) (with art. 4)
- F33** S. 34(3A) inserted (8.12.2002 for certain purposes, otherwise prosp.) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 6\(4\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), [Sch.](#) (with art. 4)
- F34** S. 34(5) repealed (8.12.2002) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 161, 162(1), [Sch. 8 para. 6\(5\)](#), [Sch. 9](#) (with s. 159); S.I. 2002/2811, [art. 2](#), [Sch.](#) (with art. 4)
- F35** S. 34(6) substituted (8.12.2002 for certain purposes, otherwise prosp.) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 6\(6\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), [Sch.](#) (with art. 4)

#### Modifications etc. (not altering text)

- C11** S. 34 applied (with modifications) (7.2.2001 for certain purposes and otherwise 1.3.2001) by S.I. 2001/280, [arts. 1-4](#) (with art. 5)

#### Commencement Information

- I10** S. 34 partly in force; s. 34 not in force at Royal Assent, see s. 170(4); s. 34 in force for certain purposes at: 3.4.2000 by S.I. 2000/464, [art. 2](#), [Sch.](#); 18.9.2000 by S.I. 2000/2444, [art. 2](#), [Sch. 1](#) (subject to [arts. 3, 4](#), [Sch. 2](#)); 8.12.2002 by S.I. 2002/2815, [art. 2](#), [Sch.](#)

### 35 Procedure.

- (1) If the Secretary of State decides that a person (“P”) is liable to one or more penalties under section 32, he must notify P of his decision.
- (2) A notice under subsection (1) (a “penalty notice”) must—
- (a) state the Secretary of State’s reasons for deciding that P is liable to the penalty (or penalties);
  - (b) state the amount of the penalty (or penalties) to which P is liable;

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- (c) specify the date before which, and the manner in which, the penalty (or penalties) must be paid; and
  - (d) include an explanation of the steps—
    - (i) that P [<sup>F36</sup>may] take if he objects to the penalty;
    - (ii) that the Secretary of State may take under this Part to recover any unpaid penalty.
- [<sup>F37</sup>(3) Subsection (4) applies where a person to whom a penalty notice is issued objects on the ground that—
- (a) he is not liable to the imposition of a penalty, or
  - (b) the amount of the penalty is too high.
- (4) The person may give a notice of objection to the Secretary of State.
- (5) A notice of objection must—
- (a) be in writing,
  - (b) give the objector's reasons, and
  - (c) be given before the end of such period as may be prescribed.
- (6) Where the Secretary of State receives a notice of objection to a penalty in accordance with this section he shall consider it and—
- (a) cancel the penalty,
  - (b) reduce the penalty,
  - (c) increase the penalty, or
  - (d) determine to take no action under paragraphs (a) to (c).
- (7) Where the Secretary of State considers a notice of objection under subsection (6) he shall—
- (a) inform the objector of his decision before the end of such period as may be prescribed or such longer period as he may agree with the objector,
  - (b) if he increases the penalty, issue a new penalty notice under subsection (1), and
  - (c) if he reduces the penalty, notify the objector of the reduced amount.]
- (9) The Secretary of State may by regulations provide, in relation to detached trailers, for a penalty notice which is [<sup>F38</sup>issued] in such manner as may be prescribed to have effect as a penalty notice properly [<sup>F39</sup>issued to] the responsible person or persons concerned under this section.
- (10) Any sum payable to the Secretary of State as a penalty under section 32 may be recovered by the Secretary of State as a debt due to him.
- [<sup>F40</sup>(11) In proceedings for enforcement of a penalty under subsection (10) no question may be raised as to—
- (a) liability to the imposition of the penalty, or
  - (b) its amount.
- (12) A document which is to be issued to or served on a person outside the United Kingdom for the purpose of subsection (1) or (7) or in the course of proceedings under subsection (10) may be issued or served—
- (a) in person,
  - (b) by post,
  - (c) by facsimile transmission, or

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(d) in another prescribed manner.

- (13) The Secretary of State may by regulations provide that a document issued or served in a manner listed in subsection (12) in accordance with the regulations is to be taken to have been received at a time specified by or determined in accordance with the regulations.]

#### Textual Amendments

- F36** Word in s. 35(2)(d)(i) substituted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 7\(2\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4), S.I. 2012/1263, art. 2
- F37** S. 35(3)-(7) substituted for s. 35(3)-(8) (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 7\(3\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4), S.I. 2012/1263, art. 2
- F38** Word in s. 35(9) substituted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 7\(4\)\(a\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4), S.I. 2012/1263, art. 2
- F39** Words in s. 35(9) substituted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 7\(4\)\(b\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4), S.I. 2012/1263, art. 2
- F40** S. 35(11)-(13) added (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 7\(5\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4), S.I. 2012/1263, art. 2

#### Modifications etc. (not altering text)

- C12** S. 35(1)(2)(6)-(8)(10) applied (with modifications) (7.2.2001 for certain purposes and otherwise 1.3.2001) by S.I. 2001/280, [arts. 1-4](#) (with art. 5)

#### Commencement Information

- I11** S. 35 partly in force; s. 35 not in force at Royal Assent, see s. 170(4); s. 35(7)-(9) in force for certain purposes at 6.12.1999 by S.I. 1999/3190, [art. 2](#), Sch.; s. 35 in force for certain purposes at: 3.4.2000 by S.I. 2000/464, [art. 2](#), Sch.; 18.9.2000 by S.I. 2000/2444, [art. 2](#), Sch. 1 (subject to [arts. 3, 4](#), Sch. 2); 8.12.2002 by S.I. 2002/2815, [art. 2](#), Sch.

VALID FROM 11/05/2012

#### [<sup>F41</sup>35A Appeal

- (1) A person may appeal to the court against a penalty imposed on him under section 32 on the ground that—
- he is not liable to the imposition of a penalty, or
  - the amount of the penalty is too high.
- (2) On an appeal under this section the court may—
- allow the appeal and cancel the penalty,

**Status:** Point in time view as at 07/04/2005. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Immigration and Asylum Act 1999 is up to date with all changes known to be in force on or before 25 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (b) allow the appeal and reduce the penalty, or
  - (c) dismiss the appeal.
- (3) An appeal under this section shall be a re-hearing of the Secretary of State's decision to impose a penalty and shall be determined having regard to—
- (a) any code of practice under section 32A which has effect at the time of the appeal,
  - (b) the code of practice under section 33 which had effect at the time of the events to which the penalty relates, and
  - (c) any other matters which the court thinks relevant (which may include matters of which the Secretary of State was unaware).
- (4) Subsection (3) has effect despite any provision of Civil Procedure Rules.
- (5) An appeal may be brought by a person under this section against a penalty whether or not—
- (a) he has given notice of objection under section 35(4);
  - (b) the penalty has been increased or reduced under section 35(6).]

#### Textual Amendments

- F41** S. 35A inserted (8.12.2002 for certain purposes, otherwise prosp.) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 8](#) (with s. 159); [S.I. 2002/2811](#), [art. 2](#), [Sch.](#) (with [art. 4](#))

### 36 Power to detain vehicles etc. in connection with penalties under section 32.

- (1) If a penalty notice has been [<sup>F42</sup>issued] under section 35, a senior officer may detain any relevant—
- (a) vehicle,
  - (b) small ship, <sup>F43</sup> . . .
  - (c) small aircraft, [<sup>F44</sup> or
  - (d) rail freight wagon,]

until all penalties to which the notice relates, and any expenses reasonably incurred by the Secretary of State in connection with the detention, have been paid.

- (2) That power—
- (a) may be exercised only if, in the opinion of the senior officer concerned, there is a significant risk that the penalty (or one or more of the penalties) will not be paid before the end of the prescribed period if the transporter is not detained; and
  - (b) may not be exercised if alternative security which the Secretary of State considers is satisfactory, has been given.

[<sup>F45</sup>(2A) A vehicle may be detained under subsection (1) only if—

- (a) the driver of the vehicle is an employee of its owner or hirer,
- (b) the driver of the vehicle is its owner or hirer, or
- (c) a penalty notice is issued to the owner or hirer of the vehicle.



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- (2B) A senior officer may detain a relevant vehicle, small ship, small aircraft or rail freight wagon pending—
- (a) a decision whether to issue a penalty notice,
  - (b) the issue of a penalty notice, or
  - (c) a decision whether to detain under subsection (1).
- (2C) That power may not be exercised in any case—
- (a) for longer than is necessary in the circumstances of the case, or
  - (b) after the expiry of the period of 24 hours beginning with the conclusion of the first search of the vehicle, ship, aircraft or wagon by an immigration officer after it arrived in the United Kingdom.]
- (3) If a transporter is detained under this section, the owner, consignor or any other person who has an interest in any freight or other thing carried in or on the transporter may remove it, or arrange for it to be removed, at such time and in such way as is reasonable.
- (4) The detention of a transporter under this section is lawful even though it is subsequently established that the penalty notice on which the detention was based was ill-founded in respect of all or any of the penalties to which it related.
- (5) But subsection (4) does not apply if the Secretary of State was acting unreasonably in issuing the penalty notice.

#### Textual Amendments

- F42** Word in s. 36(1) substituted (8.12.2002 for certain purposes, otherwise prosp.) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 9\(2\)\(a\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4)
- F43** Word after s. 36(1)(b) repealed (8.12.2002) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 161, 162(1), [Sch. 8 para. 9\(2\)\(b\)](#), [Sch. 9](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4)
- F44** S. 36(1)(d) and preceding word inserted (8.12.2002 for certain purposes, otherwise prosp.) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 9\(2\)\(c\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4)
- F45** S. 36(2A)-(2C) inserted (8.12.2002 for certain purposes, otherwise prosp.) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 9\(3\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4)

#### Modifications etc. (not altering text)

- C13** S. 36 applied (with modifications) (7.2.2001 for certain purposes and otherwise 1.3.2001) by S.I. 2001/280, [arts. 1-4](#) (with art. 5)

#### Commencement Information

- I12** S. 36 partly in force; s. 36 not in force at Royal Assent, see s. 170(4); s. 36(2)(a) in force for certain purposes at 6.12.1999 by S.I. 1999/3190, [art. 2](#), Sch.; s. 36 in force for certain purposes at: 3.4.2000 by S.I. 2000/464, [art. 2](#), Sch.; 18.9.2000 by S.I. 2000/2444, [art. 2](#), Sch. 1 (subject to [arts. 3, 4](#), [Sch. 2](#)); 8.12.2002 by S.I. 2002/2815, [art. 2](#), Sch.

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### [<sup>F46</sup>36A Detention in default of payment

- (1) This section applies where a person to whom a penalty notice has been issued under section 35 fails to pay the penalty before the date specified in accordance with section 35(2)(c).
- (2) The Secretary of State may make arrangements for the detention of any vehicle, small ship, small aircraft or rail freight wagon which the person to whom the penalty notice was issued uses in the course of a business.
- (3) A vehicle, ship, aircraft or wagon may be detained under subsection (2) whether or not the person to whom the penalty notice was issued owns it.
- (4) But a vehicle may be detained under subsection (2) only if the person to whom the penalty notice was issued—
  - (a) is the owner or hirer of the vehicle, or
  - (b) was an employee of the owner or hirer of the vehicle when the penalty notice was issued.
- (5) The power under subsection (2) may not be exercised while an appeal against the penalty under section 35A is pending or could be brought (ignoring the possibility of an appeal out of time with permission).
- (6) The Secretary of State shall arrange for the release of a vehicle, ship, aircraft or wagon detained under this section if the person to whom the penalty notice was issued pays—
  - (a) the penalty, and
  - (b) expenses reasonably incurred in connection with the detention.]

#### Textual Amendments

**F46** S. 36A inserted (8.12.2002 for certain purposes, otherwise prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), Sch. 8 para. 10 (with s. 159); S.I. 2002/2811, art. 2, Sch. (with art. 4)

### 37 Effect of detention.

- (1) This section applies if a transporter is detained under [<sup>F47</sup>section 36(1)].
  - (2) The person to whom the penalty notice was addressed, or the owner or any other person [<sup>F48</sup>whose interests may be affected by detention of the transporter,] may apply to the court for the transporter to be released.
  - (3) The court may release the transporter if it considers that—
    - (a) satisfactory security has been tendered in place of the transporter for the payment of the penalty alleged to be due and connected expenses;
    - (b) there is no significant risk that the penalty (or one or more of the penalties) and any connected expenses will not be paid; or
    - (c) there is a significant doubt as to whether the penalty is payable <sup>F49</sup> . . .
- [<sup>F50</sup>(3A) The court may also release the transporter on the application of the owner of the transporter under subsection (2) if—
- (a) a penalty notice was not issued to the owner or an employee of his, and
  - (b) the court considers it right to release the transporter.

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- (3B) In determining whether to release a transporter under subsection (3A) the court shall consider—
- (a) the extent of any hardship caused by detention,
  - (b) the extent (if any) to which the owner is responsible for the matters in respect of which the penalty notice was issued, and
  - (c) any other matter which appears to the court to be relevant (whether specific to the circumstances of the case or of a general nature).]
- (4) If the court has not ordered the release of the transporter, the Secretary of State may sell it if the penalty in question and connected expenses are not paid before the end of the period of 84 days beginning with the date on which the detention began.
- (5) “Connected expenses” means expenses reasonably incurred by the Secretary of State in connection with the detention.
- [<sup>F51</sup>(5A) The power of sale under subsection (4) may be exercised only when no appeal against the imposition of the penalty is pending or can be brought (ignoring the possibility of an appeal out of time with permission).
- (5B) The power of sale under subsection (4) shall lapse if not exercised within a prescribed period.]
- (6) Schedule 1 applies to the sale of transporters under this section.
- [<sup>F52</sup>(7) This section applies to a transporter detained under section 36A as it applies to a transporter detained under section 36(1); but for that purpose—
- (a) the court may release the transporter only if the court considers that the detention was unlawful or under subsection (3A)(and subsection (3) shall not apply), and
  - (b) the reference in subsection (4) to the period of 84 days shall be taken as a reference to a period prescribed for the purpose of this paragraph.]

#### Textual Amendments

- F47** Words in s. 37(1) substituted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes and otherwise prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 11(2)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)
- F48** Words in s. 37(2) substituted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes and otherwise prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 11(3)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)
- F49** Words in s. 37(3)(c) repealed (14.11.2002 for certain purposes and otherwise 8.12.2002) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 161, 162(2), **Sch. 8 para. 11(4)**, **Sch. 9** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)
- F50** S. 37(3A)(3B) inserted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes and otherwise prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 11(5)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)
- F51** S. 37(5A)(5B) inserted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes and otherwise prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 11(6)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)
- F52** S. 37(7) added (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes and otherwise prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 11(7)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4)

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#### Modifications etc. (not altering text)

**C14** S. 37 (and Sch. 1) applied (with modifications) (7.2.2001 for certain purposes and otherwise 1.3.2001) by S.I. 2001/280, **arts. 1-4** (with **art. 5**)

#### Commencement Information

**I13** S. 37 partly in force; s. 37 not in force at Royal Assent, see s. 170(4); s. 37(6) in force for certain purposes at 6.12.1999 by S.I. 1999/3190, **art. 2, Sch.**; s. 37 in force for certain purposes at: 3.4.2000 by S.I. 2000/464, **art. 2, Sch.**; 18.9.2000 by S.I. 2000/2444, **art. 2, Sch. 1** (subject to **arts. 3, 4, Sch. 2**); 8.12.2002 by S.I. 2002/2815, **art. 2, Sch.**

### 38 Assisting illegal entry and harbouring.

(1) In section 25 of the 1971 Act (assisting illegal entry and harbouring), at the end of paragraph (c) of subsection (6), insert—

“or

(d) the driver of any such vehicle;”.

(2) After section 25, insert—

#### “25A Detention of ships, aircraft and vehicles in connection with offences under section 25(1).

(1) If a person has been arrested for an offence under section 25(1)(a) or (b), a senior officer or a constable may detain a relevant ship, aircraft or vehicle—

(a) until a decision is taken as to whether or not to charge the arrested person with that offence; or

(b) if the arrested person has been charged—

(i) until he is acquitted, the charge against him is dismissed or the proceedings are discontinued; or

(ii) if he has been convicted, until the court decides whether or not to order forfeiture of the ship, aircraft or vehicle.

(2) A ship, aircraft or vehicle is a relevant ship, aircraft or vehicle, in relation to an arrested person, if it is one which the officer or constable concerned has reasonable grounds for believing could, on conviction of the arrested person for the offence for which he was arrested, be the subject of an order for forfeiture made under section 25(6).

(3) A person (other than the arrested person) who claims to be the owner of a ship, aircraft or vehicle which has been detained under this section may apply to the court for its release.

(4) The court to which an application is made under subsection (3) may, on such security or surety being tendered as it considers satisfactory, release the ship, aircraft or vehicle on condition that it is made available to the court if—

(a) the arrested person is convicted; and

(b) an order for its forfeiture is made under section 25(6).

(5) In the application to Scotland of subsection (1), for paragraphs (a) and (b) substitute—

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- (“ until a decision is taken as to whether or not to institute criminal proceedings against the arrested person for that offence; or
- (b) if criminal proceedings have been instituted against the arrested person—
  - (i) until he is acquitted or, under section 65 or 147 of the <sup>M16</sup>Criminal Procedure (Scotland) Act 1995, discharged or liberated or the trial diet is deserted *simpliciter*;
  - (ii) if he has been convicted, until the court decides whether or not to order forfeiture of the ship, aircraft or vehicle,and for the purposes of this subsection, criminal proceedings are instituted against a person at whichever is the earliest of his first appearance before the sheriff on petition, or the service on him of an indictment or complaint. ”
- (6) “Court” means—
  - (a) in England and Wales—
    - (i) if the arrested person has not been charged, the magistrates’ court for the petty sessions area in which he was arrested;
    - (ii) if he has been charged but proceedings for the offence have not begun to be heard, the magistrates’ court for the petty sessions area in which he was charged;
    - (iii) if he has been charged and proceedings for the offence are being heard, the court hearing the proceedings;
  - (b) in Scotland, the sheriff; and
  - (c) in Northern Ireland—
    - (i) if the arrested person has not been charged, the magistrates’ court for the county court division in which he was arrested;
    - (ii) if he has been charged but proceedings for the offence have not begun to be heard, the magistrates’ court for the county court division in which he was charged;
    - (iii) if he has been charged and proceedings for the offence are being heard, the court hearing the proceedings.
- (7) “Owner” has the same meaning as it has in section 25(6).
- (8) “Senior officer” means an immigration officer not below the rank of chief immigration officer.”
- (3) Subsection (1) has effect in relation to offences committed after the coming into force of that subsection.
- (4) Subsection (2) has effect in relation to persons arrested for offences alleged to have been committed after the coming into force of that subsection.

**Marginal Citations**

M16 1995 c. 46.

**39 Rail freight.**

F53

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### Textual Amendments

- F53** S. 39 repealed (8.12.2002) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 161, 162(1), Sch. 8 para. 12, [Sch. 9](#) (with s. 159); S.I. 2002/2811, art. 2, [Sch.](#) (with art. 4)

### *Passengers without proper documents*

#### [<sup>F54</sup>40] **Charge in respect of passenger without proper documents**

- (1) This section applies if an individual requiring leave to enter the United Kingdom arrives in the United Kingdom by ship or aircraft and, on being required to do so by an immigration officer, fails to produce—
  - (a) an immigration document which is in force and which satisfactorily establishes his identity and his nationality or citizenship, and
  - (b) if the individual requires a visa, a visa of the required kind.
- (2) The Secretary of State may charge the owner of the ship or aircraft, in respect of the individual, the sum of £2,000.
- (3) The charge shall be payable to the Secretary of State on demand.
- (4) No charge shall be payable in respect of any individual who is shown by the owner to have produced the required document or documents to the owner or his employee or agent when embarking on the ship or aircraft for the voyage or flight to the United Kingdom.
- (5) For the purpose of subsection (4) an owner shall be entitled to regard a document as—
  - (a) being what it purports to be unless its falsity is reasonably apparent, and
  - (b) relating to the individual producing it unless it is reasonably apparent that it does not relate to him.
- (6) For the purposes of this section an individual requires a visa if—
  - (a) under the immigration rules he requires a visa for entry into the United Kingdom, or
  - (b) as a result of section 41 he requires a visa for passing through the United Kingdom.
- (7) The Secretary of State may by order amend this section for the purpose of applying it in relation to an individual who—
  - (a) requires leave to enter the United Kingdom, and
  - (b) arrives in the United Kingdom by train.
- (8) An order under subsection (7) may provide for the application of this section—
  - (a) except in cases of a specified kind;
  - (b) subject to a specified defence.
- (9) In this section “immigration document” means—
  - (a) a passport, and
  - (b) a document which relates to a national of a country other than the United Kingdom and which is designed to serve the same purpose as a passport.
- (10) The Secretary of State may by order substitute a sum for the sum in subsection (2).]

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### Textual Amendments

**F54** Ss. 40-40B substituted (14.11.2002 for certain purposes and otherwise 8.12.2002) for s. 40 by [Nationality, Immigration and Asylum Act 2002 \(c. 41\), s. 125, Sch. 8 para. 13](#) (with s. 159); [S.I. 2002/2811, art. 2, Sch.](#)

### Modifications etc. (not altering text)

**C15** [Ss. 40-43](#): power to apply (with modifications) or amend conferred (prosp.) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\), ss. 124\(6\)\(7\), 162\(1\)](#) (with s. 159)

## [<sup>F55</sup> 40A Notification and objection

- (1) If the Secretary of State decides to charge a person under section 40, the Secretary of State must notify the person of his decision.
- (2) A notice under subsection (1)(a “charge notice”) must—
  - (a) state the Secretary of State’s reasons for deciding to charge the person,
  - (b) state the amount of the charge,
  - (c) specify the date before which, and the manner in which, the charge must be paid,
  - (d) include an explanation of the steps that the person may take if he objects to the charge, and
  - (e) include an explanation of the steps that the Secretary of State may take under this Part to recover any unpaid charge.
- (3) Where a person on whom a charge notice is served objects to the imposition of the charge on him, he may give a notice of objection to the Secretary of State.
- (4) A notice of objection must—
  - (a) be in writing,
  - (b) give the objector’s reasons, and
  - (c) be given before the end of such period as may be prescribed.
- (5) Where the Secretary of State receives a notice of objection to a charge in accordance with this section, he shall—
  - (a) consider it, and
  - (b) determine whether or not to cancel the charge.
- (6) Where the Secretary of State considers a notice of objection, he shall inform the objector of his decision before the end of—
  - (a) such period as may be prescribed, or
  - (b) such longer period as he may agree with the objector.
- (7) Any sum payable to the Secretary of State as a charge under section 40 may be recovered by the Secretary of State as a debt due to him.
- (8) In proceedings for enforcement of a charge under subsection (7) no question may be raised as to the validity of the charge.
- (9) Subsections (12) and (13) of section 35 shall have effect for the purpose of this section as they have effect for the purpose of section 35(1), (7) and (10).]

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#### Textual Amendments

**F55** Ss. 40-40B substituted (14.11.2002 for certain purposes and otherwise 8.12.2002) for s. 40 by [Nationality, Immigration and Asylum Act 2002 \(c. 41\), s. 125, Sch. 8 para. 13](#) (with s. 159); [S.I. 2002/2811, art. 2, Sch.](#)

#### Modifications etc. (not altering text)

**C16** Ss. 40-43: power to apply (with modifications) or amend conferred (prosp.) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\), ss. 124\(6\)\(7\), 162\(1\)](#) (with s. 159)

### [<sup>F56</sup> 40B Appeal

- (1) A person may appeal to the court against a decision to charge him under section 40.
- (2) On an appeal under this section the court may—
  - (a) allow the appeal and cancel the charge, or
  - (b) dismiss the appeal.
- (3) An appeal under this section—
  - (a) shall be a re-hearing of the Secretary of State's decision to impose a charge, and
  - (b) may be determined having regard to matters of which the Secretary of State was unaware.
- (4) Subsection (3)(a) has effect despite any provision of Civil Procedure Rules.
- (5) An appeal may be brought by a person under this section against a decision to charge him whether or not he has given notice of objection under section 40A(3).]

#### Textual Amendments

**F56** Ss. 40-40B substituted (14.11.2002 for certain purposes and otherwise 8.12.2002) for s. 40 by [Nationality, Immigration and Asylum Act 2002 \(c. 41\), s. 125, Sch. 8 para. 13](#) (with s. 159); [S.I. 2002/2811, art. 2, Sch.](#)

#### Modifications etc. (not altering text)

**C17** Ss. 40-43: power to apply (with modifications) or amend conferred (prosp.) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\), ss. 124\(6\)\(7\), 162\(1\)](#) (with s. 159)

### 41 Visas for transit passengers.

- (1) The Secretary of State may by order require transit passengers to hold a transit visa.
- (2) "Transit passengers" means persons of any description specified in the order who on arrival in the United Kingdom pass through to another country without entering the United Kingdom; and "transit visa" means a visa for that purpose.
- (3) The order—
  - (a) may specify a description of persons by reference to nationality, citizenship, origin or other connection with any particular country but not by reference to race, colour or religion;



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- (b) may not provide for the requirement imposed by the order to apply to any person who under the 1971 Act has the right of abode in the United Kingdom;
- (c) may provide for any category of persons of a description specified in the order to be exempt from the requirement imposed by the order;
- (d) may make provision about the method of application for visas required by the order.

**Modifications etc. (not altering text)**

**C18** Ss. 40-43: power to apply (with modifications) or amend conferred (prosp.) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss. 124\(6\)\(7\), 162\(1\)](#) (with s. 159)

**42 Power to detain vehicles etc. in connection with charges under section 40.**

<sup>F57</sup> .....

**Textual Amendments**

**F57** S. 42 repealed (8.12.2002) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss. 125, 161](#), [Sch. 8 para. 13, Sch. 9](#) (with s. 159); S.I. 2002/2811, [art. 2](#), [Sch.](#)

*Interpretation*

**43 Interpretation of Part II.**

[<sup>F58</sup>(1)] In this Part—

“aircraft” includes hovercraft;

“captain” means the master of a ship or commander of an aircraft;

“concealed” includes being concealed in any freight, stores or other thing carried in or on the vehicle, ship [<sup>F59</sup>, aircraft or rail freight wagon] concerned;

<sup>F60</sup> .....

“detached trailer” means a trailer, semi-trailer, caravan or any other thing which is designed or adapted for towing by a vehicle but which has been detached for transport—

(a) in or on the vehicle concerned; or

(b) in the ship or aircraft concerned (whether separately or in or on a vehicle);

“equipment”, in relation to an aircraft, includes—

(a) any certificate of registration, maintenance or airworthiness of the aircraft;

(b) any log book relating to the use of the aircraft; and

(c) any similar document;

[<sup>F61</sup>“freight shuttle wagon” means a wagon which—

(a) forms part of a shuttle-train, and

(b) is designed to carry commercial goods vehicles;

“freight train” means any train other than—

(a) a train engaged on a service for the carriage of passengers, or

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(b) a shuttle-train;]

“hirer”, in relation to a vehicle, means any person who has hired the vehicle from another person;

“operating weight”, in relation to an aircraft, means the maximum total weight of the aircraft and its contents at which the aircraft may take off anywhere in the world, in the most favourable circumstances, in accordance with the certificate of airworthiness in force in respect of the aircraft;

“owner” includes—

(a) in relation to a ship or aircraft, the agent or operator of the ship or aircraft;

(b) <sup>F62</sup> . . . . .

in relation to a transporter which is the subject of a hire-purchase agreement, includes the person in possession of it under that agreement;

“penalty notice” has the meaning given in section 35(2);

[<sup>F63</sup>“rail freight wagon” means—

(a) any rolling stock, other than a locomotive, which forms part of a freight train, or

(b) a freight shuttle wagon,

and for the purpose of this definition, “rolling stock” and “locomotive” have the meanings given by section 83 of the Railways Act 1993 (c.43);]

“senior officer” means an immigration officer not below the rank of chief immigration officer;

“ship” includes every description of vessel used in navigation;

[<sup>F64</sup>“shuttle-train” has the meaning given by section 1(9) of the Channel Tunnel Act 1987 (c. 53);]

“small aircraft” means an aircraft which has an operating weight of less than 5,700 kilogrammes;

“small ship” means a ship which has a gross tonnage of less than 500 tonnes;

“train” means a train which—

(a) is engaged on an international service as defined by section 13(6) of the <sup>M17</sup>Channel Tunnel Act 1987; but

(b) is not a shuttle train as defined by section 1(9) of that Act;

“train operator”, in relation to a person arriving in the United Kingdom on a train, means the operator of trains who embarked that person on that train for the journey to the United Kingdom;

“transporter” means a vehicle, ship [<sup>F65</sup>, aircraft or rail freight wagon] together with—

(a) its equipment; and

(b) any stores for use in connection with its operation;

“vehicle” includes a trailer, semi-trailer, caravan or other thing which is designed or adapted to be towed by another vehicle.

[<sup>F66</sup>(2) A reference in this Part to “the court” is a reference—

(a) in England and Wales, to a county court,

(b) in Scotland, to the sheriff, and

(c) in Northern Ireland, to a county court.

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(3) But—

- (a) a county court may transfer proceedings under this Part to the High Court, and
- (b) the sheriff may transfer proceedings under this Part to the Court of Session.]

#### Textual Amendments

- F58** S. 43 renumbered (8.12.2002) as s. 43(1) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), s. 125, [Sch. 8 para. 15](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch.
- F59** S. 43(1): words in definition of "concealed" substituted (8.12.2002) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), s. 125, [Sch. 8 para. 15\(a\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch.
- F60** S. 43(1): definition of "court" omitted (8.12.2002) by virtue of [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), s. 125, [Sch. 8 para. 15\(b\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch.
- F61** S. 43(1): definitions of "freight shuttle wagon" and "freight train" inserted (8.12.2002) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), s. 125, [Sch. 8 para. 15\(c\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch.
- F62** S. 43(1): in definition of "owner" paragraph (b) and preceding word repealed (8.12.2002) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 161, [Sch. 8 para. 15\(d\)](#), [Sch. 9](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch.
- F63** S. 43(1): definition of "rail freight wagon" substituted (8.12.2002) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), s. 125, [Sch. 8 para. 15\(e\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch.
- F64** S. 43(1): definition of "shuttle-train" inserted (8.12.2002) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), s. 125, [Sch. 8 para. 15\(f\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch.
- F65** S. 43(1): words in definition of "transporter" substituted (8.12.2002) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), s. 125, [Sch. 8 para. 15\(g\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch.
- F66** S. 43(2)(3) inserted (8.12.2002) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), s. 125, [Sch. 8 para. 15\(h\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch.

#### Modifications etc. (not altering text)

- C19** S. 43 applied (with modifications) (7.2.2001 for certain purposes and otherwise 1.3.2001) by S.I. 2001/280, [arts. 1-4](#) (with [art. 5](#))
- C20** Ss. 40-43: power to apply (with modifications) or amend conferred (prosp.) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss. 124\(6\)\(7\)](#), [162\(1\)](#) (with s. 159)

#### Marginal Citations

- M17** 1987 c. 53.

## PART III

### BAIL

PROSPECTIVE

#### *Routine bail hearings*

- F67** 44 **Bail hearings for detained persons.**
- .....

**Status:** Point in time view as at 07/04/2005. This version of this Act contains provisions that are not valid for this point in time.

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### Textual Amendments

**F67** Ss. 44-52 repealed (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 68(6)(a), 162(1), **Sch. 9** (with s. 159); S.I. 2003/1, art. 2, Sch.

### <sup>F67</sup> 45 Location of bail hearings.

.....

### Textual Amendments

**F67** Ss. 44-52 repealed (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 68(6)(a), 162(1), **Sch. 9** (with s. 159); S.I. 2003/1, art. 2, Sch.

### <sup>F67</sup> 46 General right to be released on bail.

.....

### Textual Amendments

**F67** Ss. 44-52 repealed (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 68(6)(a), 162(1), **Sch. 9** (with s. 159); S.I. 2003/1, art. 2, Sch.

### <sup>F67</sup> 47 Powers exercisable on granting bail.

.....

### Textual Amendments

**F67** Ss. 44-52 repealed (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 68(6)(a), 162(1), **Sch. 9** (with s. 159); S.I. 2003/1, art. 2, Sch.

### <sup>F67</sup> 48 Forfeiture.

.....

### Textual Amendments

**F67** Ss. 44-52 repealed (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 68(6)(a), 162(1), **Sch. 9** (with s. 159); S.I. 2003/1, art. 2, Sch.

### <sup>F67</sup> 49 Forfeiture of securities.

.....

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**Textual Amendments**

**F67** Ss. 44-52 repealed (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 68(6)(a), 162(1), **Sch. 9** (with s. 159); S.I. 2003/1, art. 2, Sch.

**F67** **50 Power of arrest.**

.....

**Textual Amendments**

**F67** Ss. 44-52 repealed (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 68(6)(a), 162(1), **Sch. 9** (with s. 159); S.I. 2003/1, art. 2, Sch.

PROSPECTIVE

*Procedure*

**F67** **51 Procedure.**

.....

**Textual Amendments**

**F67** Ss. 44-52 repealed (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 68(6)(a), 162(1), **Sch. 9** (with s. 159); S.I. 2003/1, art. 2, Sch.

**F67** **52 Use of live television links at bail hearings.**

.....

**Textual Amendments**

**F67** Ss. 44-52 repealed (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 68(6)(a), 162(1), **Sch. 9** (with s. 159); S.I. 2003/1, art. 2, Sch.

*Bail hearings under other enactments*

**53 Applications for bail in immigration cases.**

- (1) The Secretary of State may by regulations make new provision in relation to applications for bail by persons detained under the 1971 Act [<sup>F68</sup>or under section 62 of the Nationality, Immigration and Asylum Act 2002].
- (2) The regulations may confer a right to be released on bail in prescribed circumstances.

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- (3) The regulations may, in particular, make provision—
- (a) creating or transferring jurisdiction to hear an application for bail by a person detained under the 1971 Act [<sup>F69</sup>or under section 62 of the Nationality, Immigration and Asylum Act 2002];
  - (b) as to the places in which such an application may be held;
  - (c) as to the procedure to be followed on, or in connection with, such an application;
  - (d) as to circumstances in which, and conditions (including financial conditions) on which, an applicant may be released on bail;
  - (e) amending or repealing any enactment so far as it relates to such an application.
- (4) The regulations must include provision for securing that an application for bail made by a person who has brought an appeal under any provision of [<sup>F70</sup>the Nationality, Immigration and Asylum Act 2002] or the <sup>M18</sup>Special Immigration Appeals Commission Act 1997 is heard by the appellate authority hearing that appeal.
- <sup>F71</sup>(5) .....
- (6) Regulations under this section require the approval of the Lord Chancellor.
- (7) In so far as regulations under this section relate to the sheriff or the Court of Session, the Lord Chancellor must obtain the consent of the Scottish Ministers before giving his approval.

#### Textual Amendments

- F68** Words in s. 53(1) added (10.2.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. [62\(13\)\(a\)](#), [162\(1\)](#) (with s. 159); S.I. 2003/1, art. 2, Sch.
- F69** Words in s. 53(3)(a) added (10.2.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. [62\(13\)\(b\)](#), [162\(1\)](#) (with s. 159); S.I. 2003/1, art. 2, Sch.
- F70** Words in s. 53(4) substituted (1.4.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), s. [162\(1\)](#), [Sch. 7 para. 28](#) (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1 (with arts. 3, 4, Sch. 2 para. 5)
- F71** S. 53(5) repealed (10.2.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. [68\(6\)\(b\)](#), [162\(1\)](#), [Sch. 9](#) (with s. 159); S.I. 2003/1, art. 2, Sch.

#### Commencement Information

- I14** S. 53(1)-(4)(6)(7) in force at 10.2.2003 by S.I. 2003/2, art. 2, Sch.

#### Marginal Citations

- M18** 1997 c. 68.

## 54 Extension of right to apply for bail in deportation cases.

- (1) Paragraph 2 of Schedule 3 to the 1971 Act (detention or control pending deportation) is amended as follows.
- (2) In sub-paragraph (1), at the end insert “ or he is released on bail ”.
- (3) In sub-paragraph (3), after “unless” insert “ he is released on bail or ”.
- (4) After sub-paragraph (4) insert—

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“(4A) Paragraphs 22 to 25 of Schedule 2 to this Act apply in relation to a person detained under sub-paragraph (1), (2) or (3) as they apply in relation to a person detained under paragraph 16 of that Schedule.”

**Commencement Information**

**I15** S. 54 in force at 10.2.2003 by S.I. 2003/2, art. 2, Sch.

PROSPECTIVE

*Grants*

**F72** **55 Grants to voluntary organisations.**

**Textual Amendments**

**F72** S. 55 repealed (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 68(6)(c), 162(1), Sch. 9 (with s. 159); S.I. 2003/1, art. 2, Sch.

**F73** **PART IV**

**APPEALS**

**Textual Amendments**

**F73** Pt. IV repealed (1.4.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 114(1), 162(1), Sch. 9 (with s. 159, Sch. 6 and (7.3.2005) S.I. 2005/565, arts. 1(2), 9 (with arts. 3-9)); S.I. 2003/754, art. 2(1), Sch. 1 (with arts. 3, 4, Sch. 2 para. 6)

*The appellate authorities*

*Appeals*

*Leave to enter*

*Variation of limited leave to enter or remain*

*Status:* Point in time view as at 07/04/2005. This version of this Act contains provisions that are not valid for this point in time.

*Changes to legislation:* Immigration and Asylum Act 1999 is up to date with all changes known to be in force on or before 25 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

*Deportation*

.....

*Human rights*

.....

*Directions for removal*

.....

*Objection to destination*

.....

*Asylum*

.....

*Removal to safe countries*

.....

*Miscellaneous*

.....

*“One-stop procedure”*

.....

PROSPECTIVE

*F73 Appeals without merit*

**F73 79 Penalty on continuing an appeal without merit.**

.....

*European Economic Area EEA nationals*

.....

*Grants*

.....



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## PART V

### IMMIGRATION ADVISERS AND IMMIGRATION SERVICE PROVIDERS

#### *Interpretation*

#### **82 Interpretation of Part V.**

(1) In this Part—

“claim for asylum” means a claim that it would be contrary to the United Kingdom’s obligations under—

- (a) the Refugee Convention, or
- (b) Article 3 of the Human Rights Convention,

for the claimant to be removed from, or required to leave, the United Kingdom;

“the Commissioner” means the Immigration Services Commissioner;

“the complaints scheme” means the scheme established under paragraph 5(1) of Schedule 5;

“designated judge” has the same meaning as in section 119(1) of the <sup>M19</sup>Courts and Legal Services Act 1990;

“designated professional body” has the meaning given by section 86;

“immigration advice” means advice which—

- (a) relates to a particular individual;
- (b) is given in connection with one or more relevant matters;
- (c) is given by a person who knows that he is giving it in relation to a particular individual and in connection with one or more relevant matters; and
- (d) is not given in connection with representing an individual before a court in criminal proceedings or matters ancillary to criminal proceedings;

“immigration services” means the making of representations on behalf of a particular individual—

- (a) in civil proceedings before a court, tribunal or adjudicator in the United Kingdom, or
- (b) in correspondence with a Minister of the Crown or government department,

in connection with one or more relevant matters;

“Minister of the Crown” has the same meaning as in the Ministers of the <sup>M20</sup>Crown Act 1975;

“qualified person” means a person who is qualified for the purposes of section 84;

“registered person” means a person who is registered with the Commissioner under section 85;

“relevant matters” means any of the following—

- (a) a claim for asylum;
- (b) an application for, or for the variation of, entry clearance or leave to enter or remain in the United Kingdom;
- (ba) [<sup>F74</sup> an application for an immigration employment document;]

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- (c) unlawful entry into the United Kingdom;
- (d) nationality and citizenship under the law of the United Kingdom;
- (e) citizenship of the European Union;
- (f) admission to Member States under Community law;
- (g) residence in a Member State in accordance with rights conferred by or under Community law;
- (h) removal or deportation from the United Kingdom;
- (i) an application for bail under the Immigration Acts or under the <sup>M21</sup>Special Immigration Appeals Commission Act 1997;
- (j) an appeal against, or an application for judicial review in relation to, any decision taken in connection with a matter referred to in paragraphs (a) to (i); and

“the Tribunal” means the Immigration Services Tribunal.

- (2) In this Part, references to the provision of immigration advice or immigration services are to the provision of such advice or services by a person—
- (a) in the United Kingdom (regardless of whether the persons to whom they are provided are in the United Kingdom or elsewhere); and
  - (b) in the course of a business carried on (whether or not for profit) by him or by another person.
- [<sup>F75</sup>(3) In the definition of “relevant matters” in subsection (1) “immigration employment document” means—
- (a) a work permit (within the meaning of section 33(1) of the Immigration Act 1971 (interpretation)), and
  - (b) any other document which relates to employment and is issued for a purpose of immigration rules or in connection with leave to enter or remain in the United Kingdom.]

#### Textual Amendments

**F74** Words in s. 82(1) inserted (1.4.2004) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\), ss. 123\(2\), 162\(1\)](#) (with s. 159); [S.I. 2003/754, art. 2\(1\), Sch. 1](#) (with arts. 3, 4, Sch. 2 para. 5) (as amended (21.5.2003) by [S.I. 2003/1339, art. 3](#) and (19.11.2003) by [S.I. 2003/2993, art. 3](#))

**F75** S. 82(3) added (1.4.2004) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\), ss. 123\(3\), 162\(1\)](#) (with s. 159); [S.I. 2003/754, art. 2\(1\), Sch. 1](#) (with arts. 3, 4, Sch. 2 para. 5) (as amended (21.5.2003) by [S.I. 2003/1339, art. 3](#) and (19.11.2003) by [S.I. 2003/2993, art. 3](#))

#### Marginal Citations

**M19** 1990 c. 41.

**M20** 1975 c. 26.

**M21** 1997 c. 68.

*The Immigration Services Commissioner*

## 83 The Commissioner.

- (1) There is to be an Immigration Services Commissioner (referred to in this Part as “the Commissioner”).

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- (2) The Commissioner is to be appointed by the Secretary of State after consulting the Lord Chancellor and the Scottish Ministers.
- (3) It is to be the general duty of the Commissioner to promote good practice by those who provide immigration advice or immigration services.
- (4) In addition to any other functions conferred on him by this Part, the Commissioner is to have the regulatory functions set out in Part I of Schedule 5.
- (5) The Commissioner must exercise his functions so as to secure, so far as is reasonably practicable, that those who provide immigration advice or immigration services—
  - (a) are fit and competent to do so;
  - (b) act in the best interests of their clients;
  - (c) do not knowingly mislead any court, tribunal or adjudicator in the United Kingdom;
  - (d) do not seek to abuse any procedure operating in the United Kingdom in connection with immigration or asylum (including any appellate or other judicial procedure);
  - (e) do not advise any person to do something which would amount to such an abuse.
- (6) The Commissioner—
  - (a) must arrange for the publication, in such form and manner and to such extent as he considers appropriate, of information about his functions and about matters falling within the scope of his functions; and
  - (b) may give advice about his functions and about such matters.
- (7) Part II of Schedule 5 makes further provision with respect to the Commissioner.

#### Commencement Information

**I16** S. 83 wholly in force at 30.10.2000; s. 83 not in force at Royal Assent see s. 170(4); s. 83(1)-(3)(6) (7) wholly in force and s. 83(4)(5) in force for certain purposes at 22.5.2000 by S.I. 2000/1282, art. 2, Sch.; s. 83(4)(5) in force at 30.10.2000 insofar as not already in force by S.I. 2000/1985, art. 2, Sch. (with transitional provisions in art. 3)

#### *The general prohibition*

### **84 Provision of immigration services.**

- (1) No person may provide immigration advice or immigration services unless he is a qualified person.
- [<sup>F76</sup>(2) A person is a qualified person if he is—
  - (a) a registered person,
  - (b) authorised by a designated professional body to practise as a member of the profession whose members the body regulates,
  - (c) the equivalent in an EEA State of—
    - (i) a registered person, or
    - (ii) a person within paragraph (b),

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- (d) a person permitted, by virtue of exemption from a prohibition, to provide in an EEA State advice or services equivalent to immigration advice or services, or
  - (e) acting on behalf of, and under the supervision of, a person within any of paragraphs (a) to (d) (whether or not under a contract of employment).]
- [<sup>F76</sup>(3) Subsection (2)(a) and (e) are subject to any limitation on the effect of a person’s registration imposed under paragraph 2(2) of Schedule 6.]
- (4) Subsection (1) does not apply to a person who—
    - (a) is certified by the Commissioner as exempt (“an exempt person”);
    - (b) is employed by an exempt person;
    - (c) works under the supervision of an exempt person or an employee of an exempt person; or
    - (d) who falls within a category of person specified in an order made by the Secretary of State for the purposes of this subsection.
  - (5) A certificate under subsection (4)(a) may relate only to a specified description of immigration advice or immigration services.
  - (6) Subsection (1) does not apply to a person—
    - (a) holding an office under the Crown, when acting in that capacity;
    - (b) employed by, or for the purposes of, a government department, when acting in that capacity;
    - (c) acting under the control of a government department; or
    - (d) otherwise exercising functions on behalf of the Crown.
  - (7) An exemption given under subsection (4) may be withdrawn by the Commissioner.

#### Textual Amendments

**F76** S. 84(2)(3) substituted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), **ss. 37(1)**, 48(3); S.I. 2004/2523, art. 2, Sch.

#### Modifications etc. (not altering text)

**C21** S. 84(1) excluded (temp. from 30.4.2001 to the end of January 2002) by S.I. 2001/1393, **arts. 1, 3, 4**  
 S. 84(1) excluded (30.4.2001) by S.I. 2001/1403, **arts. 2-4, Schs. 1-3**

S. 84(1) excluded (temp. from 1.2.2002 to 31.12.2002) by [The Immigration and Asylum Act 1999 \(Part V Exemption: Relevant Employers\) Order 2002 \(S.I. 2002/9\)](#), **arts. 1, 3**

S. 84(1) excluded (temp. from 1.1.2003 to 31.12.2003) by [The Immigration and Asylum Act 1999 \(Part V Exemption: Relevant Employers\) Order 2002 \(S.I. 2002/3025\)](#), **arts. 1, 3**

**C22** S. 84(4)(d) extended (1.1.2004) by [Immigration and Asylum Act 1999 \(Part V Exemption; Relevant Employers\) Order 2003 \(S.I. 2003/3214\)](#), **arts. 1, 3**

#### Commencement Information

**I17** S. 84 wholly in force at 30.4.2001; s. 84 not in force at Royal Assent see s. 170(4); s. 84(5)(7) wholly in force and s. 84(2)(a)(b)(4)(a)(d) in force for certain purposes at 30.10.2000 by S.I. 2000/1985, **art. 2, Sch.** (with transitional provisions in **art. 3**); s. 84 in force so far as not already in force at 30.4.2001 by S.I. 2001/1394, **art. 2, Sch.**

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## 85 Registration and exemption by the Commissioner.

- (1) The Commissioner must prepare and maintain a register for the purposes of section 84(2)(a)<sup>F77</sup> ....
- (2) The Commissioner must keep a record of the persons to whom he has issued a certificate of exemption under section 84(4)(a).
- (3) Schedule 6 makes further provision with respect to registration.

### Textual Amendments

**F77** Words in s. 85(1) repealed (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), ss. 37(2), 48(3), [Sch. 4](#); S.I. 2004/2523, art. 2, Sch.

### Commencement Information

**I18** S. 85 wholly in force at 30.10.2000; s. 85 not in force at Royal Assent see s. 170(4); s. 85(3) in force for certain purposes at 1.8.2000 and s. 85 in force at 30.10.2000 insofar as not already in force by [S.I. 2000/1985](#), art. 2, [Sch.](#) (with transitional provisions in [art. 3](#))

## 86 Designated professional bodies.

- (1) “Designated professional body” means—
  - (a) The Law Society;
  - (b) The Law Society of Scotland;
  - (c) The Law Society of Northern Ireland;
  - (d) The Institute of Legal Executives;
  - (e) The General Council of the Bar;
  - (f) The Faculty of Advocates; or
  - (g) The General Council of the Bar of Northern Ireland.
- [<sup>F78</sup>(2) The Secretary of State may by order remove a body from the list in subsection (1) if he considers that the body—
  - (a) has failed to provide effective regulation of its members in their provision of immigration advice or immigration services, or
  - (b) has failed to comply with a request of the Commissioner for the provision of information (whether general or in relation to a particular case or matter).]
  - (3) If a designated professional body asks the Secretary of State to amend subsection (1) so as to remove its name, the Secretary of State may by order do so.
  - (4) If the Secretary of State is proposing to act under subsection (2) he must, before doing so—
    - (a) consult the Commissioner;
    - (b) consult the Legal Services Ombudsman, if the proposed order would affect a designated professional body in England and Wales;
    - (c) consult the Scottish Legal Services Ombudsman, if the proposed order would affect a designated professional body in Scotland;
    - (d) consult the lay observers appointed under Article 42 of the <sup>M22</sup>Solicitors (Northern Ireland) Order 1976, if the proposed order would affect a designated professional body in Northern Ireland;

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- (e) notify the body concerned of his proposal and give it a reasonable period within which to make representations; and
  - (f) consider any representations so made.
- (5) An order under subsection (2) requires the approval of—
- (a) the Lord Chancellor, if it affects a designated professional body in England and Wales or Northern Ireland;
  - (b) the Scottish Ministers, if it affects a designated professional body in Scotland.
- (6) Before deciding whether or not to give his approval under subsection (5)(a), the Lord Chancellor must consult—
- (a) the designated judges, if the order affects a designated professional body in England and Wales;
  - (b) the Lord Chief Justice of Northern Ireland, if it affects a designated professional body in Northern Ireland.
- (7) Before deciding whether or not to give their approval under subsection (5)(b), the Scottish Ministers must consult the Lord President of the Court of Session.
- (8) If the Secretary of State considers that a body which—
- (a) is concerned (whether wholly or in part) with regulating the legal profession, or a branch of it, in an EEA State,
  - (b) is not a designated professional body, and
  - (c) is capable of providing effective regulation of its members in their provision of immigration advice or immigration services,
- ought to be designated, he may by order amend subsection (1) to include the name of that body.
- (9) The Commissioner must—
- (a) keep under review the list of designated professional bodies set out in subsection (1); and
  - [<sup>F79</sup>(b) report to the Secretary of State if the Commissioner considers that a designated professional body—
    - (i) is failing to provide effective regulation of its members in their provision of immigration advice or immigration services, or
    - (ii) has failed to comply with a request of the Commissioner for the provision of information (whether general or in relation to a particular case or matter).]
- [<sup>F80</sup>(9A) A designated professional body shall comply with a request of the Commissioner for the provision of information (whether general or in relation to a specified case or matter).]
- (10) For the purpose of meeting the costs incurred by the Commissioner in discharging his functions under this Part, each designated professional body must pay to the Commissioner, in each year and on such date as may be specified, such fee as may be specified.
- (11) Any unpaid fee for which a designated professional body is liable under subsection (10) may be recovered from that body as a debt due to the Commissioner.
- (12) “Specified” means specified by an order made by the Secretary of State.

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#### Textual Amendments

- F78** S. 86(2) substituted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 41(2), 48(3); S.I. 2004/2523, art. 2, Sch.
- F79** S. 86(9)(b) substituted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 41(3), 48(3); S.I. 2004/2523, art. 2, Sch.
- F80** S. 86(9A) inserted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 41(4), 48(3); S.I. 2004/2523, art. 2, Sch.

#### Commencement Information

- I19** S. 86 wholly in force at 30.4.2001; s. 86 not in force at Royal Assent see s. 170(4); s. 86(1)-(9) in force at 22.5.2000 by S.I. 2000/1282, art. 2, Sch.; s. 86(10)-(12) in force for certain purposes at 30.10.2000 by S.I. 2000/1985, art. 2, Sch. (with transitional provisions in art. 3); S. 86 in force so far as not already in force at 30.4.2001 by S.I. 2001/1394, art. 2, Sch.

#### Marginal Citations

- M22** S.I. 1976/582 (N.I. 12).

### *The Immigration Services Tribunal*

#### 87 The Tribunal.

- (1) There is to be a tribunal known as the Immigration Services Tribunal (referred to in this Part as “the Tribunal”).
- (2) Any person aggrieved by a relevant decision of the Commissioner may appeal to the Tribunal against the decision.
- (3) “Relevant decision” means a decision—
  - (a) to refuse an application for registration made under paragraph 1 of Schedule 6;
  - (b) to withdraw an exemption given under section 84(4)(a);
  - (c) under paragraph 2(2) of that Schedule to register with limited effect;
  - (d) to refuse an application for continued registration made under paragraph 3 of that Schedule;
  - (e) to vary a registration on an application under paragraph 3 of that Schedule;
  - [<sup>F81</sup>(ea) to vary a registration under paragraph 3A of that Schedule;] or
  - <sup>F82</sup>(f) .....
- (4) The Tribunal is also to have the function of hearing disciplinary charges laid by the Commissioner under paragraph 9(1)(e) of Schedule 5.
- (5) Schedule 7 makes further provision with respect to the Tribunal and its constitution and functions.

#### Textual Amendments

- F81** S. 87(3)(ea) inserted (8.1.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 140(3) (with s. 159); S.I. 2002/2811, art. 2, Sch. (with art. 5)
- F82** S. 87(3)(f) repealed (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 40, 48(3), Sch. 4; S.I. 2004/2523, art. 2, Sch.

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### Commencement Information

**I20** S. 87 wholly in force at 30.10.2000; s. 87 not in force at Royal Assent see s. 170(4); s. 87(5) in force for certain purposes at 1.8.2000 and s. 87 in force at 30.10.2000 insofar as not already in force by [S.I. 2000/1985](#), [art. 2](#), [Sch.](#) (with transitional provisions in [art. 3](#))

## 88 Appeal upheld by the Tribunal.

- (1) This section applies if the Tribunal allows an appeal under section 87.
- (2) If the Tribunal considers it appropriate, it may direct the Commissioner—
  - (a) to register the applicant or to continue the applicant’s registration;
  - (b) to make or vary the applicant’s registration so as to have limited effect in any of the ways mentioned in paragraph 2(2) of Schedule 6;
  - (c) to restore an exemption granted under section 84(4)(a); or
  - (d) to quash a decision recorded under paragraph 9(1)(a) of Schedule 5 and the record of that decision.

## 89 Disciplinary charge upheld by the Tribunal.

- (1) This section applies if the Tribunal upholds a disciplinary charge laid by the Commissioner under paragraph 9(1)(e) of Schedule 5 against a person (“the person charged”).
- <sup>[F83]</sup>(2) If the person charged is a registered person or acts on behalf of a registered person, the Tribunal may—
  - (a) direct the Commissioner to record the charge and the Tribunal’s decision for consideration in connection with the registered person’s next application for continued registration;
  - (b) direct the registered person to apply for continued registration as soon as is reasonably practicable.]
- (4) If the person charged is certified by the Commissioner as exempt under section 84(4)(a), the Tribunal may direct the Commissioner to consider whether to withdraw his exemption.
- (5) If the person charged is found to have charged unreasonable fees for immigration advice or immigration services, the Tribunal may direct him to repay to the clients concerned such portion of those fees as it may determine.
- (6) The Tribunal may direct the person charged to pay a penalty to the Commissioner of such sum as it considers appropriate.
- (7) A direction given by the Tribunal under subsection (5) (or under subsection (6)) may be enforced by the clients concerned (or by the Commissioner)—
  - (a) as if it were an order of a county court; or
  - (b) in Scotland, as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (8) The Tribunal may direct that the person charged or any person <sup>[F84]</sup>acting on his behalf or] under his supervision is to be—
  - (a) subject to such restrictions on the provision of immigration advice or immigration services as the Tribunal considers appropriate;



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- (b) suspended from providing immigration advice or immigration services for such period as the Tribunal may determine; or
  - (c) prohibited from providing immigration advice or immigration services indefinitely.
- (9) The Commissioner must keep a record of the persons against whom there is in force a direction given by the Tribunal under subsection (8).

#### Textual Amendments

- F83** S. 89(2) substituted for s. 89(2)(3) (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), **ss. 37(3)(a)**, 48(3); S.I. 2004/2523, art. 2, Sch.
- F84** Words in s. 89(8) substituted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), **ss. 37(3)(b)**, 48(3); S.I. 2004/2523, art. 2, Sch.

## 90 Orders by disciplinary bodies.

- (1) A disciplinary body may make an order directing that a person subject to its jurisdiction is to be—
- (a) subject to such restrictions on the provision of immigration advice or immigration services as the body considers appropriate;
  - (b) suspended from providing immigration advice or immigration services for such period as the body may determine; or
  - (c) prohibited from providing immigration advice or immigration services indefinitely.
- (2) “Disciplinary body” means any body—
- (a) appearing to the Secretary of State to be established for the purpose of hearing disciplinary charges against members of a designated professional body; and
  - (b) specified in an order made by the Secretary of State.
- (3) The Secretary of State must consult the designated professional body concerned before making an order under subsection (2)(b).
- (4) For the purposes of this section, a person is subject to the jurisdiction of a disciplinary body if he is an authorised person or [<sup>F85</sup>is acting on behalf of] an authorised person.
- (5) “Authorised person” means a person who is authorised by the designated professional body concerned to practise as a member of the profession whose members are regulated by that body.

#### Textual Amendments

- F85** Words in s. 90(4) substituted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), **ss. 37(4)**, 48(3); S.I. 2004/2523, art. 2, Sch.

#### Commencement Information

- I21** S. 90 wholly in force at 30.4.2001; s. 90 not in force at Royal Assent see s. 170(4); s. 90 in force for certain purposes at 1.8.2000 by [S.I. 2000/1985](#), art. 2, **Sch.** (with transitional provisions in art. 3); S. 90 in force so far as not already in force at 30.4.2001 by [S.I. 2001/1394](#), art. 2, **Sch.**

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## *Enforcement*

### **91 Offences.**

- (1) A person who provides immigration advice or immigration services in contravention of section 84 or of a restraining order is guilty of an offence and liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.
- (2) “Restraining order” means—
  - (a) a direction given by the Tribunal under section 89(8) or paragraph 9(3) of Schedule 5; or
  - (b) an order made by a disciplinary body under section 90(1).
- (3) If an offence under this section committed by a body corporate is proved—
  - (a) to have been committed with the consent or connivance of an officer, or
  - (b) to be attributable to neglect on his part,
 the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (4) “Officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in such a capacity.
- (5) If the affairs of a body corporate are managed by its members, subsection (3) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (6) If an offence under this section committed by a partnership in Scotland is proved—
  - (a) to have been committed with the consent or connivance of a partner, or
  - (b) to be attributable to neglect on his part,
 the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.
- (7) “Partner” includes a person purporting to act as a partner.

### **92 Enforcement.**

- (1) If it appears to the Commissioner that a person—
  - (a) is providing immigration advice or immigration services in contravention of section 84 or of a restraining order, and
  - (b) is likely to continue to do so unless restrained,
 the Commissioner may apply to a county court for an injunction, or to the sheriff for an interdict, restraining him from doing so.
- (2) If the court is satisfied that the application is well-founded, it may grant the injunction or interdict in the terms applied for or in more limited terms.
- (3) “Restraining order” has the meaning given by section 91.

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## [<sup>F86</sup>92A Investigation of offence: power of entry

- (1) On an application made by the Commissioner a justice of the peace may issue a warrant authorising the Commissioner to enter and search premises.
- (2) A justice of the peace may issue a warrant in respect of premises only if satisfied that there are reasonable grounds for believing that—
  - (a) an offence under section 91 has been committed,
  - (b) there is material on the premises which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence, and
  - (c) any of the conditions specified in subsection (3) is satisfied.
- (3) Those conditions are—
  - (a) that it is not practicable to communicate with a person entitled to grant entry to the premises,
  - (b) that it is not practicable to communicate with a person entitled to grant access to the evidence,
  - (c) that entry to the premises will be prevented unless a warrant is produced, and
  - (d) that the purpose of a search may be frustrated or seriously prejudiced unless the Commissioner can secure immediate entry on arrival at the premises.
- (4) The Commissioner may seize and retain anything for which a search is authorised under this section.
- (5) A person commits an offence if without reasonable excuse he obstructs the Commissioner in the exercise of a power by virtue of this section.
- (6) A person guilty of an offence under subsection (5) shall be liable on summary conviction to—
  - (a) imprisonment for a term not exceeding six months,
  - (b) a fine not exceeding level 5 on the standard scale, or
  - (c) both.
- (7) In this section—
  - (a) a reference to the Commissioner includes a reference to a member of his staff authorised in writing by him,
  - (b) a reference to premises includes a reference to premises used wholly or partly as a dwelling, and
  - (c) a reference to material—
    - (i) includes material subject to legal privilege within the meaning of the Police and Criminal Evidence Act 1984 (c. 60),
    - (ii) does not include excluded material or special procedure material within the meaning of that Act, and
    - (iii) includes material whether or not it would be admissible in evidence at a trial.
- (8) In the application of this section to Scotland—
  - (a) a reference to a justice of the peace shall be taken as a reference to the sheriff,
  - (b) for sub-paragraph (i) of subsection (7)(c) there is substituted—

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“(i) includes material comprising items subject to legal privilege (as defined by section 412 of the Proceeds of Crime Act 2002 (c. 29)),” and

(c) sub-paragraph (ii) of subsection (7)(c) shall be ignored.

(9) In the application of this section to Northern Ireland the reference to the Police and Criminal Evidence Act 1984 shall be taken as a reference to the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).]

#### Textual Amendments

**F86** S. 92A inserted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), [ss. 38\(1\)](#), [48\(3\)](#); [S.I. 2004/2523](#), [art. 2](#), [Sch.](#)

#### [<sup>F87</sup> 92B Advertising

- (1) A person commits an offence if—
  - (a) he offers to provide immigration advice or immigration services, and
  - (b) provision by him of the advice or services would constitute an offence under section 91.
- (2) For the purpose of subsection (1) a person offers to provide advice or services if he—
  - (a) makes an offer to a particular person or class of person,
  - (b) makes arrangements for an advertisement in which he offers to provide advice or services, or
  - (c) makes arrangements for an advertisement in which he is described or presented as competent to provide advice or services.
- (3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) Subsections (3) to (7) of section 91 shall have effect for the purposes of this section as they have effect for the purposes of that section.
- (5) An information relating to an offence under this section may in England and Wales be tried by a magistrates' court if—
  - (a) it is laid within the period of six months beginning with the date (or first date) on which the offence is alleged to have been committed, or
  - (b) it is laid—
    - (i) within the period of two years beginning with that date, and
    - (ii) within the period of six months beginning with a date certified by the Immigration Services Commissioner as the date on which the commission of the offence came to his notice.
- (6) In Scotland, proceedings for an offence under this section may be commenced—
  - (a) at any time within the period of six months beginning with the date (or first date) on which the offence is alleged to have been committed, or
  - (b) at any time within both—
    - (i) the period of two years beginning with that date, and
    - (ii) the period of six months beginning with a date specified, in a certificate signed by or on behalf of the procurator fiscal, as the

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- date on which evidence sufficient in his opinion to warrant such proceedings came to his knowledge,  
and any such certificate purporting to be so signed shall be deemed so signed unless the contrary is proved and be conclusive as to the facts stated in it.
- (7) Subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995 (c. 46) (date on which proceedings are deemed commenced) has effect to the purposes of subsection (6) as it has effect for the purposes of that section.
- (8) A complaint charging the commission of an offence under this section may in Northern Ireland be heard and determined by a magistrates' court if—
- (a) it is made within the period of six months beginning with the date (or first date) on which the offence is alleged to have been committed, or
  - (b) it is made—
    - (i) within the period of two years beginning with that date, and
    - (ii) within the period of six months beginning with a date certified by the Immigration Services Commissioner as the date on which the commission of the offence came to his notice.]

#### Textual Amendments

**F87** S. 92B inserted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#) (c. 19), [ss. 39, 48\(3\)](#); S.I. 2004/2523, art. 2, Sch.

#### Miscellaneous

### 93 Information.

- (1) No enactment or rule of law prohibiting or restricting the disclosure of information prevents a person from—
- (a) giving the Commissioner information which is necessary for the discharge of his functions; or
  - (b) giving the Tribunal information which is necessary for the discharge of its functions.
- (2) No relevant person may at any time disclose information which—
- (a) has been obtained by, or given to, the Commissioner under or for purposes of this Act,
  - (b) relates to an identified or identifiable individual or business, and
  - (c) is not at that time, and has not previously been, available to the public from other sources,
- unless the disclosure is made with lawful authority.
- (3) For the purposes of subsection (2), a disclosure is made with lawful authority only if, and to the extent that—
- (a) it is made with the consent of the individual or of the person for the time being carrying on the business;
  - (b) it is made for the purposes of, and is necessary for, the discharge of any of the Commissioner's functions under this Act or any Community obligation of the Commissioner;

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- (c) it is made for the purposes of any civil or criminal proceedings arising under or by virtue of this Part, or otherwise; or
  - (d) having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest.
- (4) A person who knowingly or recklessly discloses information in contravention of subsection (2) is guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment, to a fine.
- (5) “Relevant person” means a person who is or has been—
- (a) the Commissioner;
  - (b) a member of the Commissioner’s staff; or
  - (c) an agent of the Commissioner.

## PART VI

### SUPPORT FOR ASYLUM-SEEKERS

#### *Interpretation*

#### 94 Interpretation of Part VI.

(1) In this Part—

“adjudicator” has the meaning given in section 102(2);

“asylum-seeker” means a person who is not under 18 and has made a claim for asylum which has been recorded by the Secretary of State but which has not been determined;

“claim for asylum” means a claim that it would be contrary to the United Kingdom’s obligations under the Refugee Convention, or under Article 3 of the Human Rights Convention, for the claimant to be removed from, or required to leave, the United Kingdom;

“the Department” means the Department of Health and Social Services for Northern Ireland;

“dependant”, in relation to an asylum-seeker or a supported person, means a person in the United Kingdom who—

- (a) is his spouse;
- (b) is a child of his, or of his spouse, who is under 18 and dependent on him; or

(c) falls within such additional category, if any, as may be prescribed;

“the Executive” means the Northern Ireland Housing Executive;

“housing accommodation” includes flats, lodging houses and hostels;

“local authority” means—

- (a) in England and Wales, a county council, a county borough council, a district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;

(b) in Scotland, a council constituted under section 2 of the <sup>M23</sup>Local Government etc. (Scotland) Act 1994;

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[<sup>F88</sup>“Northern Ireland authority” has the meaning given by section 110(9).]  
“supported person” means—

- (a) an asylum-seeker, or
- (b) a dependant of an asylum-seeker,

who has applied for support and for whom support is provided under section 95.

- (2) References in this Part to support provided under section 95 include references to support which is provided under arrangements made by the Secretary of State under that section.
- (3) For the purposes of this Part, a claim for asylum is determined at the end of such period beginning—
  - (a) on the day on which the Secretary of State notifies the claimant of his decision on the claim, or
  - (b) if the claimant has appealed against the Secretary of State’s decision, on the day on which the appeal is disposed of,as may be prescribed.
- (4) An appeal is disposed of when it is no longer pending for the purposes of the Immigration Acts or the <sup>M24</sup>Special Immigration Appeals Commission Act 1997.
- (5) If an asylum-seeker’s household includes a child who is under 18 and a dependant of his, he is to be treated (for the purposes of this Part) as continuing to be an asylum-seeker while—
  - (a) the child is under 18; and
  - (b) he and the child remain in the United Kingdom.
- (6) Subsection (5) does not apply if, on or after the determination of his claim for asylum, the asylum-seeker is granted leave to enter or remain in the United Kingdom (whether or not as a result of that claim).
- (7) For the purposes of this Part, the Secretary of State may inquire into, and decide, the age of any person.
- (8) A notice under subsection (3) must be given in writing.
- (9) If such a notice is sent by the Secretary of State by first class post, addressed—
  - (a) to the asylum-seeker’s representative, or
  - (b) to the asylum-seeker’s last known address,it is to be taken to have been received by the asylum-seeker on the second day after the day on which it was posted.

#### Textual Amendments

**F88** Definition in s. 94(1) inserted (10.2.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss. 60\(2\), 162\(1\)](#) (with s. 159); S.I. 2003/1, art. 2, Sch.

#### Marginal Citations

**M23** 1994 c. 39.

**M24** 1997 c. 68.

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### *Provision of support*

#### **95 Persons for whom support may be provided.**

- (1) The Secretary of State may provide, or arrange for the provision of, support for—
    - (a) asylum-seekers, or
    - (b) dependants of asylum-seekers,
 who appear to the Secretary of State to be destitute or to be likely to become destitute within such period as may be prescribed.
  - (2) In prescribed circumstances, a person who would otherwise fall within subsection (1) is excluded.
  - (3) For the purposes of this section, a person is destitute if—
    - (a) he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or
    - (b) he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs.
  - (4) If a person has dependants, subsection (3) is to be read as if the references to him were references to him and his dependants taken together.
  - (5) In determining, for the purposes of this section, whether a person's accommodation is adequate, the Secretary of State—
    - (a) must have regard to such matters as may be prescribed for the purposes of this paragraph; but
    - (b) may not have regard to such matters as may be prescribed for the purposes of this paragraph or to any of the matters mentioned in subsection (6).
  - (6) Those matters are—
    - (a) the fact that the person concerned has no enforceable right to occupy the accommodation;
    - (b) the fact that he shares the accommodation, or any part of the accommodation, with one or more other persons;
    - (c) the fact that the accommodation is temporary;
    - (d) the location of the accommodation.
  - (7) In determining, for the purposes of this section, whether a person's other essential living needs are met, the Secretary of State—
    - (a) must have regard to such matters as may be prescribed for the purposes of this paragraph; but
    - (b) may not have regard to such matters as may be prescribed for the purposes of this paragraph.
  - (8) The Secretary of State may by regulations provide that items or expenses of such a description as may be prescribed are, or are not, to be treated as being an essential living need of a person for the purposes of this Part.
  - (9) Support may be provided subject to conditions.
- [<sup>F89</sup>9A) A condition imposed under subsection (9) may, in particular, relate to—
- (a) any matter relating to the use of the support provided, or



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- (b) compliance with a restriction imposed under paragraph 21 of Schedule 2 to the 1971 Act (temporary admission or release from detention) or paragraph 2 or 5 of Schedule 3 to that Act (restriction pending deportation).]
- (10) The conditions must be set out in writing.
- (11) A copy of the conditions must be given to the supported person.
- (12) Schedule 8 gives the Secretary of State power to make regulations supplementing this section.
- (13) Schedule 9 makes temporary provision for support in the period before the coming into force of this section.

#### Textual Amendments

**F89** S. 95(9A) inserted (7.11.2002) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\), s. 50\(1\)](#) (with s. 159)

#### Modifications etc. (not altering text)

- C23** S. 95 restricted (8.1.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\), s. 55](#) (with s. 159); [S.I. 2002/2811, art. 2, Sch.](#)  
S. 95 restricted (prosp.) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\), ss. 51, 162\(1\)](#) (with s. 159)
- C24** S. 95 modified (prosp.) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\), ss. 22, 162\(1\)](#) (with s. 159)
- C25** S. 95(3)(5)-(8) applied (with modifications) (6.12.1999) by [1948 c. 29, s. 21\(1B\)](#) (as inserted by [1999 c. 33, ss. 116, 169\(2\), Sch. 15 para. 5](#); [S.I. 1999/3190, art. 2, Sch.](#))  
S. 95(3)(5)-(8) applied (with modifications) (6.12.1999) by [1968 c. 46, s. 45\(4B\)](#) (as inserted by [1999 c. 33, ss. 117\(1\), 169\(2\), Sch. 15 para. 6](#); [S.I. 1999/3190, art. 2, Sch.](#))  
S. 95(3)(5)-(8) applied (with modifications) (6.12.1999) by [1977 c. 49, Sch. 8 para 2 \(2B\)](#) (as inserted by [1999 c. 33, ss. 117\(2\), 169\(2\), Sch. 15 para. 9](#); [S.I. 1999/3190, art. 2, Sch.](#))  
S. 95(3)(5)-(8) applied (with modifications) (1.3.2000 for specified purposes and otherwise 3.4.2000) by [1968 c. 49, ss. 12\(2B\), 13A\(5\), 13B\(4\)](#) (as inserted by [1999 c. 33, ss. 120\(1\)-\(3\), 169\(2\), 170\(4\), Sch. 15 para. 7](#))  
S. 95(3)(5)-(8) applied (with modifications) (1.3.2000 for specified purposes and otherwise 3.4.2000) by [1984 c. 36, ss. 7\(4\), 8\(5\)](#) (as inserted by [1999 c. 33, ss. 120\(4\)\(5\), 169\(2\), 170\(4\), Sch. 15 para. 10](#))

#### Commencement Information

**I22** S. 95 wholly in force at 3.4.2000; s. 95(13) in force at Royal Assent see s. 170(3)(g); s. 95(3)-(8) in force for certain purposes at 6.12.1999 and s. 95 in force for certain purposes at 1.1.2000 insofar as not already in force by [S.I. 1999/3190, art. 2, Sch.](#); s. 95 in force at 3.4.2000 insofar as not already in force by [S.I. 2000/464, art. 2, Sch.](#)

## 96 Ways in which support may be provided.

- (1) Support may be provided under section 95—
- (a) by providing accommodation appearing to the Secretary of State to be adequate for the needs of the supported person and his dependants (if any);
- (b) by providing what appear to the Secretary of State to be essential living needs of the supported person and his dependants (if any);

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- (c) to enable the supported person (if he is the asylum-seeker) to meet what appear to the Secretary of State to be expenses (other than legal expenses or other expenses of a prescribed description) incurred in connection with his claim for asylum;
  - (d) to enable the asylum-seeker and his dependants to attend bail proceedings in connection with his detention under any provision of the Immigration Acts; or
  - (e) to enable the asylum-seeker and his dependants to attend bail proceedings in connection with the detention of a dependant of his under any such provision.
- (2) If the Secretary of State considers that the circumstances of a particular case are exceptional, he may provide support under section 95 in such other ways as he considers necessary to enable the supported person and his dependants (if any) to be supported.
- (3) <sup>F90</sup> .....
- (4) [<sup>F91</sup>But the Secretary of State may by order provide for subsection (3) not to apply—
- (a) in all cases, for such period as may be specified;
  - (b) in such circumstances as may be specified;
  - (c) in relation to specified categories of person; or
  - (d) in relation to persons whose accommodation is in a specified locality.]
- (5) [<sup>F91</sup>The Secretary of State may by order repeal subsection (3).]
- (6) [<sup>F91</sup>“Specified” means specified in an order made under subsection (4).]

**Textual Amendments**

**F90** S. 96(3) repealed (8.4.2002) by [The Asylum Support \(Repeal\) Order 2002 \(S.I. 2002/782\)](#), **art. 2**

**F91** S. 96(4)-(6) cease to have effect (7.11.2002) and repealed (prosp.) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), **ss. 61(a), 161, Sch. 9** (with s. 159)

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**Modifications etc. (not altering text)**

**C26** S. 96(1)(b): power to restrict conferred (7.11.2002) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), **s. 43** (with s. 159)

**97 Supplemental.**

- (1) When exercising his power under section 95 to provide accommodation, the Secretary of State must have regard to—
- (a) the fact that the accommodation is to be temporary pending determination of the asylum-seeker’s claim;
  - (b) the desirability, in general, of providing accommodation in areas in which there is a ready supply of accommodation; and
  - (c) such other matters (if any) as may be prescribed.
- (2) But he may not have regard to—
- (a) any preference that the supported person or his dependants (if any) may have as to the locality in which the accommodation is to be provided; or
  - (b) such other matters (if any) as may be prescribed.
- (3) The Secretary of State may by order repeal all or any of the following—

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- (a) subsection (1)(a);
  - (b) subsection (1)(b);
  - (c) subsection (2)(a).
- (4) When exercising his power under section 95 to provide essential living needs, the Secretary of State—
- (a) must have regard to such matters as may be prescribed for the purposes of this paragraph; but
  - (b) may not have regard to such other matters as may be prescribed for the purposes of this paragraph.
- (5) In addition, when exercising his power under section 95 to provide essential living needs, the Secretary of State may limit the overall amount of the expenditure which he incurs in connection with a particular supported person—
- (a) to such portion of the income support applicable amount provided under section 124 of the <sup>M25</sup>Social Security Contributions and Benefits Act 1992, or
  - (b) to such portion of any components of that amount,
- as he considers appropriate having regard to the temporary nature of the support that he is providing.
- (6) For the purposes of subsection (5), any support of a kind falling within section 96(1)(c) is to be treated as if it were the provision of essential living needs.
- (7) In determining how to provide, or arrange for the provision of, support under section 95, the Secretary of State may disregard any preference which the supported person or his dependants (if any) may have as to the way in which the support is to be given.

#### Commencement Information

**I23** S. 97 wholly in force at 3.4.2000; s. 97 not in force at Royal Assent see s. 170(4); s. 97 in force for certain purposes at 1.1.2000 by S.I. 1999/3190, art. 2, Sch.; s. 97 in force at 3.4.2000 insofar as not already in force by S.I. 2000/464, art. 2, Sch.

#### Marginal Citations

**M25** 1992 c. 4.

## 98 Temporary support.

- (1) The Secretary of State may provide, or arrange for the provision of, support for—
- (a) asylum-seekers, or
  - (b) dependants of asylum-seekers,
- who it appears to the Secretary of State may be destitute.
- (2) Support may be provided under this section only until the Secretary of State is able to determine whether support may be provided under section 95.
- (3) Subsections (2) to (11) of section 95 apply for the purposes of this section as they apply for the purposes of that section.

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#### **Modifications etc. (not altering text)**

- C27** S. 98 restricted (8.1.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [s. 55](#) (with [s. 159](#)); [S.I. 2002/2811](#), [art. 2](#), [Sch.](#)  
 S. 98 restricted (prosp.) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss. 51](#), [162\(1\)](#) (with [s. 159](#))

#### **Commencement Information**

- I24** S. 98 partly in force; [s. 98](#) not in force at Royal Assent see [s. 170\(4\)](#); [s. 98\(3\)](#) in force for certain purposes at 1.3.2000 by [S.I. 2000/464](#), [art. 2](#), [Sch.](#)

### *Support and assistance by local authorities etc.*

## **99 Provision of support by local authorities.**

- (1) A local authority [<sup>F92</sup>or Northern Ireland authority] may provide support for asylum-seekers and their dependants (if any) in accordance with arrangements made by the Secretary of State under section 95 [<sup>F93</sup>or 98].
- [<sup>F94</sup>(2) Support may be provided by an authority in accordance with arrangements made with the authority or with another person.
- (3) Support may be provided by an authority in accordance with arrangements made under section 95 only in one or more of the ways mentioned in section 96(1) and (2).]
- (4) [<sup>F95</sup>An authority] may incur reasonable expenditure in connection with the preparation of proposals for entering into arrangements under section 95 [<sup>F96</sup>or 98].
- (5) The powers conferred on [<sup>F97</sup>an authority] by this section include power to—
- (a) provide services outside their area;
  - (b) provide services jointly with one or more [<sup>F98</sup>other bodies];
  - (c) form a company for the purpose of providing services;
  - (d) tender for contracts (whether alone or with any other person).

#### **Textual Amendments**

- F92** Words in [s. 99\(1\)](#) inserted (7.11.2002) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss. 56\(2\)\(a\)](#), [162\(2\)](#) (with [s. 159](#))
- F93** Words in [s. 99\(1\)](#) added (7.11.2002) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss. 56\(2\)\(b\)](#), [162\(2\)](#) (with [s. 159](#))
- F94** [S. 99\(2\)\(3\)](#) substituted (7.11.2002) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss. 56\(3\)](#), [162\(2\)](#) (with [s. 159](#))
- F95** Words in [s. 99\(4\)](#) substituted (7.11.2002) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss. 56\(4\)\(a\)](#), [162\(2\)](#) (with [s. 159](#))
- F96** Words in [s. 99\(4\)](#) added (7.11.2002) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss. 56\(4\)\(b\)](#), [162\(2\)](#) (with [s. 159](#))
- F97** Words in [s. 99\(5\)](#) substituted (7.11.2002) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss. 56\(5\)\(a\)](#), [162\(2\)](#) (with [s. 159](#))
- F98** Words in [s. 99\(5\)\(b\)](#) substituted (7.11.2002) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss. 56\(5\)\(b\)](#), [162\(2\)](#) (with [s. 159](#))

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#### Commencement Information

**I25** S. 99 wholly in force at 3.4.2000; s. 99(4)(5) in force at Royal Assent see s. 170(3)(h); S. 99 in force at 3.4.2000 insofar as not already in force by S.I. 2000/464, art. 2, Sch.

### 100 Local authority and other assistance for Secretary of State.

- (1) This section applies if the Secretary of State asks—
  - (a) a local authority,
  - (b) a registered social landlord,
  - (c) a registered housing association in Scotland or Northern Ireland, or
  - (d) the Executive,to assist him to exercise his power under section 95 to provide accommodation.
- (2) The person to whom the request is made must co-operate in giving the Secretary of State such assistance in the exercise of that power as is reasonable in the circumstances.
- (3) Subsection (2) does not require a registered social landlord to act beyond its powers.
- (4) A local authority must supply to the Secretary of State such information about their housing accommodation (whether or not occupied) as he may from time to time request.
- (5) The information must be provided in such form and manner as the Secretary of State may direct.
- (6) “Registered social landlord” has the same meaning as in Part I of the <sup>M26</sup>Housing Act 1996.
- (7) “Registered housing association” has the same meaning—
  - (a) in relation to Scotland, as in the <sup>M27</sup>Housing Associations Act 1985; and
  - (b) in relation to Northern Ireland, as in Part II of the <sup>M28</sup>Housing (Northern Ireland) Order 1992.

#### Marginal Citations

**M26** 1996 c. 52.

**M27** 1985 c. 69.

**M28** S.I. 1992/1725 (N.I. 15).

### 101 Reception zones.

- (1) The Secretary of State may by order designate as reception zones—
  - (a) areas in England and Wales consisting of the areas of one or more local authorities;
  - (b) areas in Scotland consisting of the areas of one or more local authorities;
  - (c) Northern Ireland.
- (2) Subsection (3) applies if the Secretary of State considers that—
  - (a) a local authority whose area is within a reception zone has suitable housing accommodation within that zone; or
  - (b) the Executive has suitable housing accommodation.

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- (3) The Secretary of State may direct the local authority or the Executive to make available such of the accommodation as may be specified in the direction for a period so specified—
- (a) to him for the purpose of providing support under section 95; or
  - (b) to a person with whom the Secretary of State has made arrangements under section 95.
- (4) A period specified in a direction under subsection (3)—
- (a) begins on a date so specified; and
  - (b) must not exceed five years.
- (5) A direction under subsection (3) is enforceable, on an application made on behalf of the Secretary of State, by injunction or in Scotland an order under section 45(b) of the <sup>M29</sup>Court of Session Act 1988.
- (6) The Secretary of State’s power to give a direction under subsection (3) in respect of a particular reception zone must be exercised by reference to criteria specified for the purposes of this subsection in the order designating that zone.
- (7) The Secretary of State may not give a direction under subsection (3) in respect of a local authority in Scotland unless the Scottish Ministers have confirmed to him that the criteria specified in the designation order concerned are in their opinion met in relation to that authority.
- (8) Housing accommodation is suitable for the purposes of subsection (2) if it—
- (a) is unoccupied;
  - (b) would be likely to remain unoccupied for the foreseeable future if not made available; and
  - (c) is appropriate for the accommodation of persons supported under this Part or capable of being made so with minor work.
- (9) If housing accommodation for which a direction under this section is, for the time being, in force—
- (a) is not appropriate for the accommodation of persons supported under this Part, but
  - (b) is capable of being made so with minor work,
- the direction may require the body to whom it is given to secure that that work is done without delay.
- (10) The Secretary of State must make regulations with respect to the general management of any housing accommodation for which a direction under subsection (3) is, for the time being, in force.
- (11) Regulations under subsection (10) must include provision—
- (a) as to the method to be used in determining the amount of rent or other charges to be payable in relation to the accommodation;
  - (b) as to the times at which payments of rent or other charges are to be made;
  - (c) as to the responsibility for maintenance of, and repairs to, the accommodation;
  - (d) enabling the accommodation to be inspected, in such circumstances as may be prescribed, by the body to which the direction was given;
  - (e) with respect to the condition in which the accommodation is to be returned when the direction ceases to have effect.

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- (12) Regulations under subsection (10) may, in particular, include provision—
- (a) for the cost, or part of the cost, of minor work required by a direction under this section to be met by the Secretary of State in prescribed circumstances;
  - (b) as to the maximum amount of expenditure which a body may be required to incur as a result of a direction under this section.
- (13) The Secretary of State must by regulations make provision (“the dispute resolution procedure”) for resolving disputes arising in connection with the operation of any regulations made under subsection (10).
- (14) Regulations under subsection (13) must include provision—
- (a) requiring a dispute to be resolved in accordance with the dispute resolution procedure;
  - (b) requiring the parties to a dispute to comply with obligations imposed on them by the procedure; and
  - (c) for the decision of the person resolving a dispute in accordance with the procedure to be final and binding on the parties.
- (15) Before—
- (a) designating a reception zone in Great Britain,
  - (b) determining the criteria to be included in the order designating the zone, or
  - (c) making regulations under subsection (13),
- the Secretary of State must consult such local authorities, local authority associations and other persons as he thinks appropriate.
- (16) Before—
- (a) designating Northern Ireland as a reception zone, or
  - (b) determining the criteria to be included in the order designating Northern Ireland,
- the Secretary of State must consult the Executive and such other persons as he thinks appropriate.
- (17) Before making regulations under subsection (10) which extend only to Northern Ireland, the Secretary of State must consult the Executive and such other persons as he thinks appropriate.
- (18) Before making any other regulations under subsection (10), the Secretary of State must consult—
- (a) such local authorities, local authority associations and other persons as he thinks appropriate; and
  - (b) if the regulations extend to Northern Ireland, the Executive.

**Marginal Citations**

M29 1988 c. 36.

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## *Appeals*

### **102 Asylum Support Adjudicators.**

- (1) There are to be adjudicators to hear appeals under this Part.
- (2) A person appointed as an adjudicator under this Part is to be known as an Asylum Support Adjudicator (but is referred to in this Part as “an adjudicator”).
- (3) Schedule 10 makes further provision with respect to adjudicators.

### **103 Appeals.**

- (1) If, on an application for support under section 95, the Secretary of State decides that the applicant does not qualify for support under that section, the applicant may appeal to an adjudicator.
- (2) If the Secretary of State decides to stop providing support for a person under section 95 before that support would otherwise have come to an end, that person may appeal to an adjudicator.
- [<sup>F99</sup>(2A) If the Secretary of State decides not to provide accommodation for a person under section 4, or not to continue to provide accommodation for a person under section 4, the person may appeal to an adjudicator.]
- (3) On an appeal under this section, the adjudicator may—
  - (a) require the Secretary of State to reconsider the matter;
  - (b) substitute his decision for the decision appealed against; or
  - (c) dismiss the appeal.
- (4) The adjudicator must give his reasons in writing.
- (5) The decision of the adjudicator is final.
- (6) If an appeal is dismissed, no further application by the appellant for support under [<sup>F100</sup>section 4 or 95] is to be entertained unless the Secretary of State is satisfied that there has been a material change in the circumstances.
- (7) The Secretary of State may by regulations provide for decisions as to where support provided under [<sup>F101</sup>section 4 or 95] is to be provided to be appealable to an adjudicator under this Part.
- (8) Regulations under subsection (7) may provide for any provision of this section to have effect, in relation to an appeal brought by virtue of the regulations, subject to such modifications as may be prescribed.
- (9) The Secretary of State may pay any reasonable travelling expenses incurred by an appellant in connection with attendance at any place for the purposes of an appeal under this section.

#### **Textual Amendments**

**F99** S. 103(2A) inserted (31.3.2005) by *Asylum and Immigration (Treatment of Claimants, etc.) Act 2004* (c. 19), **ss. 10(3)(a)**, 48(3) (with s. 10(6)); S.I. 2005/372, art. 2



**Status:** Point in time view as at 07/04/2005. This version of this Act contains provisions that are not valid for this point in time.

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**F100** Words in s. 103(6) substituted (31.3.2005) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 10(3)(b), 48(3) (with s. 10(6)); S.I. 2005/372, art. 2

**F101** Words in s. 103(7) substituted (31.3.2005) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 10(3)(b), 48(3) (with s. 10(6)); S.I. 2005/372, art. 2

**Modifications etc. (not altering text)**

**C28** S. 103 excluded (8.1.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), s. 55(10) (with s. 159); S.I. 2002/2811, art. 2, Sch.

**104 Secretary of State's rules.**

- (1) The Secretary of State may make rules regulating—
  - (a) the bringing of appeals under this Part; and
  - (b) the practice and procedure of the adjudicators.
- (2) The rules may, in particular, make provision—
  - (a) for the period within which an appeal must be brought;
  - (b) as to the burden of proof on an appeal;
  - (c) as to the giving and admissibility of evidence;
  - (d) for summoning witnesses;
  - (e) for an appeal to be heard in the absence of the appellant;
  - (f) for determining an appeal without a hearing;
  - (g) requiring reports of decisions of adjudicators to be published;
  - (h) conferring such ancillary powers on adjudicators as the Secretary of State considers necessary for the proper discharge of their functions.
- (3) In making the rules, the Secretary of State must have regard to the desirability of securing, so far as is reasonably practicable, that appeals are brought and disposed of with the minimum of delay.

*Offences*

**105 False representations.**

- (1) A person is guilty of an offence if, with a view to obtaining support for himself or any other person under any provision made by or under this Part, he—
  - (a) makes a statement or representation which he knows is false in a material particular;
  - (b) produces or gives to a person exercising functions under this Part, or knowingly causes or allows to be produced or given to such a person, any document or information which he knows is false in a material particular;
  - (c) fails, without reasonable excuse, to notify a change of circumstances when required to do so in accordance with any provision made by or under this Part; or
  - (d) without reasonable excuse, knowingly causes another person to fail to notify a change of circumstances which that other person was required to notify in accordance with any provision made by or under this Part.

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- (2) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale, or to both.

**Modifications etc. (not altering text)**

**C29** S. 105 applied (prosp.) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), **ss. 35(1)(a)**, 162(1) (with s. 159)

**106 Dishonest representations.**

- (1) A person is guilty of an offence if, with a view to obtaining any benefit or other payment or advantage under this Part for himself or any other person, he dishonestly—
- (a) makes a statement or representation which is false in a material particular;
  - (b) produces or gives to a person exercising functions under this Part, or causes or allows to be produced or given to such a person, any document or information which is false in a material particular;
  - (c) fails to notify a change of circumstances when required to do so in accordance with any provision made by or under this Part; or
  - (d) causes another person to fail to notify a change of circumstances which that other person was required to notify in accordance with any provision made by or under this Part.
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine, or to both.
- (3) In the application of this section to Scotland, in subsection (1) for “dishonestly” substitute “knowingly”.

**Modifications etc. (not altering text)**

**C30** S. 106 applied (prosp.) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), **ss. 35(1)(b)**, 162(1) (with s. 159)

**107 Delay or obstruction.**

- (1) A person is guilty of an offence if, without reasonable excuse, he—
- (a) intentionally delays or obstructs a person exercising functions conferred by or under this Part; or
  - (b) refuses or neglects to answer a question, give any information or produce a document when required to do so in accordance with any provision made by or under this Part.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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**Modifications etc. (not altering text)**

C31 S. 107 applied (prosp.) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss. 35\(1\)\(c\)](#), [162\(1\)](#) (with s. 159)

**108 Failure of sponsor to maintain.**

- (1) A person is guilty of an offence if, during any period in respect of which he has given a written undertaking in pursuance of the immigration rules to be responsible for the maintenance and accommodation of another person—
  - (a) he persistently refuses or neglects, without reasonable excuse, to maintain that person in accordance with the undertaking; and
  - (b) in consequence of his refusal or neglect, support under any provision made by or under this Part is provided for or in respect of that person.
- (2) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 4 on the standard scale, or to both.
- (3) For the purposes of this section, a person is not to be taken to have refused or neglected to maintain another person by reason only of anything done or omitted in furtherance of a trade dispute.

**Modifications etc. (not altering text)**

C32 S. 108 applied (prosp.) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss. 35\(1\)\(d\)](#), [162\(1\)](#) (with s. 159)

**109 Supplemental.**

- (1) If an offence under section 105, 106, 107 or 108 committed by a body corporate is proved—
  - (a) to have been committed with the consent or connivance of an officer, or
  - (b) to be attributable to neglect on his part,the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) “Officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in such a capacity.
- (3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (4) If an offence under section 105, 106, 107 or 108 committed by a partnership in Scotland is proved—
  - (a) to have been committed with the consent or connivance of a partner, or
  - (b) to be attributable to neglect on his part,the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

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(5) “Partner” includes a person purporting to act as a partner.

**Modifications etc. (not altering text)**

**C33** S. 109 applied (prosp.) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss. 35\(1\)\(e\)](#), [162\(1\)](#) (with [s. 159](#))

*Expenditure*

**110 Payments to local authorities.**

- (1) The Secretary of State may from time to time pay to any local authority or Northern Ireland authority such sums as he considers appropriate in respect of expenditure incurred, or to be incurred, by the authority in connection with—
  - (a) persons who are, or have been, asylum-seekers; and
  - (b) their dependants.
- (2) The Secretary of State may from time to time pay to any—
  - (a) local authority,
  - (b) local authority association, or
  - (c) Northern Ireland authority,
 such sums as he considers appropriate in respect of services provided by the authority or association in connection with the discharge of functions under this Part.
- (3) The Secretary of State may make payments to any local authority towards the discharge of any liability of supported persons or their dependants in respect of council tax payable to that authority.
- (4) The Secretary of State must pay to a body to which a direction under section 101(3) is given such sums as he considers represent the reasonable costs to that body of complying with the direction.
- (5) The Secretary of State must pay to a directed body sums determined to be payable in relation to accommodation made available by that body under section 101(3)(a).
- (6) The Secretary of State may pay to a directed body sums determined to be payable in relation to accommodation made available by that body under section 101(3)(b).
- (7) In subsections (5) and (6)—
 

“determined” means determined in accordance with regulations made by virtue of subsection (11)(a) of section 101, and

“directed body” means a body to which a direction under subsection (3) of section 101 is given.
- (8) Payments under subsection (1), (2) or (3) may be made on such terms, and subject to such conditions, as the Secretary of State may determine.
- (9) “Northern Ireland authority” means—
  - (a) the Executive; or
  - (b) a Health and Social Services Board established under Article 16 of the <sup>M30</sup>Health and Personal Social Services (Northern Ireland) Order 1972 [<sup>F102</sup>; or

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- (c) a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1)).

#### Textual Amendments

**F102** S. 110(9)(c) and word added (10.2.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), **ss. 60(1), 162(1)** (with s. 159); S.I. 2003/1, art. 2, Sch.

#### Modifications etc. (not altering text)

**C34** S. 110 modified (7.11.2002) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), **s. 48** (with s. 159)

#### Commencement Information

**I26** S. 110 wholly in force at 3.4.2000; s. 110(1)(2) (and (8) so far as relating thereto) in force at Royal Assent, see s. 170(3)(j); s. 110(9) in force at 6.12.1999 by [S.I. 1999/3190](#), art. 2, Sch.; s. 110 in force at 3.4.2000 insofar as not already in force by [S.I. 2000/464](#), art. 2, Sch.

#### Marginal Citations

**M30** [S.I. 1972/1265 \(N.I. 14\)](#).

### 111 Grants to voluntary organisations.

- (1) The Secretary of State may make grants of such amounts as he thinks appropriate to voluntary organisations in connection with—
- (a) the provision by them of support (of whatever nature) to persons who are, or have been, asylum-seekers and to their dependants; and
  - (b) connected matters.
- (2) Grants may be made on such terms, and subject to such conditions, as the Secretary of State may determine.

#### Modifications etc. (not altering text)

**C35** S. 111 modified (7.11.2002) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), **s. 48** (with s. 159)

### 112 Recovery of expenditure on support: misrepresentation etc.

- (1) This section applies if, on an application made by the Secretary of State, the court determines that—
- (a) a person (“A”) has misrepresented or failed to disclose a material fact (whether fraudulently or otherwise); and
  - (b) as a consequence of the misrepresentation or failure, support has been provided under section 95 or 98 (whether or not to A).
- (2) If the support was provided by the Secretary of State, the court may order A to pay to the Secretary of State an amount representing the monetary value of the support which would not have been provided but for A’s misrepresentation or failure.
- (3) If the support was provided by another person (“B”) in accordance with arrangements made with the Secretary of State under section 95 or 98, the court may order A to pay

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to the Secretary of State an amount representing the payment to B which would not have been made but for A's misrepresentation or failure.

(4) "Court" means a county court or, in Scotland, the sheriff.

**Modifications etc. (not altering text)**

**C36** S. 112 applied (with modifications) (prosp.) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. [35\(1\)\(f\)\(2\)](#), [162\(1\)](#) (with s. 159)

**113 Recovery of expenditure on support from sponsor.**

- (1) This section applies if—
  - (a) a person ("the sponsor") has given a written undertaking in pursuance of the immigration rules to be responsible for the maintenance and accommodation of another person; and
  - (b) during any period in relation to which the undertaking applies, support under section 95 is provided to or in respect of that other person.
- (2) The Secretary of State may make a complaint against the sponsor to a magistrates' court for an order under this section.
- (3) The court—
  - (a) must have regard to all the circumstances (and in particular to the sponsor's income); and
  - (b) may order him to pay to the Secretary of State such sum (weekly or otherwise) as it considers appropriate.
- (4) But such a sum is not to include any amount attributable otherwise than to support provided under section 95.
- (5) In determining—
  - (a) whether to order any payments to be made in respect of support provided under section 95 for any period before the complaint was made, or
  - (b) the amount of any such payments,
 the court must disregard any amount by which the sponsor's current income exceeds his income during that period.
- (6) An order under this section is enforceable as a magistrates' court maintenance order within the meaning of section 150(1) of the <sup>M31</sup>Magistrates' Courts Act 1980.
- (7) In the application of this section to Scotland—
  - (a) omit subsection (6);
  - (b) for references to a complaint substitute references to an application; and
  - (c) for references to a magistrates' court substitute references to the sheriff.
- (8) In the application of this section to Northern Ireland, for references to a magistrates' court substitute references to a court of summary jurisdiction and for subsection (6) substitute—
 

"(6) An order under this section is an order to which Article 98(11) of the <sup>M32</sup>Magistrates' Courts (Northern Ireland) Order 1981 applies."

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**Modifications etc. (not altering text)**

**C37** S. 113 applied (with modifications) (prosp.) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss. 35\(1\)\(g\)\(2\), 162\(1\)](#) (with s. 159)

**Marginal Citations**

**M31** 1980 c. 43.

**M32** S.I. 1981/1675 (N.I. 26).

**114 Overpayments.**

- (1) Subsection (2) applies if, as a result of an error on the part of the Secretary of State, support has been provided to a person under section 95 or 98.
- (2) The Secretary of State may recover from a person who is, or has been, a supported person an amount representing the monetary value of support provided to him as a result of the error.
- (3) An amount recoverable under subsection (2) may be recovered as if it were a debt due to the Secretary of State.
- (4) The Secretary of State may by regulations make provision for other methods of recovery, including deductions from support provided under section 95.

**Commencement Information**

**I27** S. 114 wholly in force at 3.4.2000; s. 114 not in force at Royal Assent see s. 170(4); s. 114 in force for certain purposes at 1.1.2000 by [S.I. 1999/3190, art. 2, Sch.](#); s. 114 in force at 3.4.2000 insofar as not already in force by [S.I. 2000/464, art. 2, Sch.](#)

*Exclusions*

**115 Exclusion from benefits.**

- (1) No person is entitled to income-based jobseeker's allowance under the <sup>M33</sup>Jobseekers Act 1995 [<sup>F103</sup>or to state pension credit under the State Pension Credit Act 2002] or to—
  - (a) attendance allowance,
  - (b) severe disablement allowance,
  - (c) [<sup>F104</sup>carer's allowance],
  - (d) disability living allowance,
  - (e) income support,
  - <sup>F105</sup>(f) .....
  - <sup>F105</sup>(g) .....
  - (h) a social fund payment,
  - (i) child benefit,
  - (j) housing benefit, or
  - (k) council tax benefit,

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- under the <sup>M34</sup>Social Security Contributions and Benefits Act 1992 while he is a person to whom this section applies.
- (2) No person in Northern Ireland is entitled to [<sup>F106</sup>state pension credit under the State Pension Credit Act (Northern Ireland) 2002, or to]—
- (a) income-based jobseeker’s allowance under the <sup>M35</sup>Jobseekers (Northern Ireland) Order 1995, or
  - (b) any of the benefits mentioned in paragraphs (a) to (j) of subsection (1), under the <sup>M36</sup>Social Security Contributions and Benefits (Northern Ireland) Act 1992 while he is a person to whom this section applies.
- (3) This section applies to a person subject to immigration control unless he falls within such category or description, or satisfies such conditions, as may be prescribed.
- (4) Regulations under subsection (3) may provide for a person to be treated for prescribed purposes only as not being a person to whom this section applies.
- (5) In relation to [<sup>F107</sup>child benefit], “prescribed” means prescribed by regulations made by the Treasury.
- (6) In relation to the matters mentioned in subsection (2) (except so far as it relates to [<sup>F107</sup>child benefit]), “prescribed” means prescribed by regulations made by the Department.
- (7) Section 175(3) to (5) of the Social Security Contributions and Benefits Act 1992 (supplemental powers in relation to regulations) applies to regulations made by the Secretary of State or the Treasury under subsection (3) as it applies to regulations made under that Act.
- (8) Sections 133(2), 171(2) and 172(4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 apply to regulations made by the Department under subsection (3) as they apply to regulations made by the Department under that Act.
- (9) “A person subject to immigration control” means a person who is not a national of an EEA State and who—
- (a) requires leave to enter or remain in the United Kingdom but does not have it;
  - (b) has leave to enter or remain in the United Kingdom which is subject to a condition that he does not have recourse to public funds;
  - (c) has leave to enter or remain in the United Kingdom given as a result of a maintenance undertaking; or
  - (d) has leave to enter or remain in the United Kingdom only as a result of paragraph 17 of Schedule 4.
- (10) “Maintenance undertaking”, in relation to any person, means a written undertaking given by another person in pursuance of the immigration rules to be responsible for that person’s maintenance and accommodation.

#### Textual Amendments

**F103** Words in s. 115(1) inserted (2.7.2002 for certain purposes, 6.10.2003 in so far as not already in force) by [State Pension Credit Act 2002 \(c. 16\), ss. 4\(2\), 22\(3\)](#); [S.I. 2002/1691, art. 2\(d\)](#); [S.I. 2003/1766, art. 2\(a\)](#)



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- F104** Words in s. 115(1)(c) substituted (1.9.2002 for certain purposes, otherwise 1.4.2003) by [The Regulatory Reform \(Carer's Allowance\) Order 2002 \(S.I. 2002/1457\)](#), arts. 1(b), 2(2), [Sch. paras. 1, 3\(c\)](#)
- F105** S. 115(1)(f)(g) repealed (8.4.2003) by [Tax Credits Act 2002 \(c. 21\)](#), s. 61, [Sch. 6](#); [S.I. 2003/962](#), art. 2(4)(e), [Sch. 2](#)
- F106** Words in s. 115(2) inserted (N.I.) (2.12.2002 for certain purposes, 6.10.2003 in so far as not already in force) by [State Pension Credit Act \(Northern Ireland\) 2002 \(c. 14 \(N.I.\)\)](#), [ss. 4\(2\), 21\(2\)](#); [S.R. 2002/366](#), [art. 2\(1\)\(d\)](#); [S.R. 2003/373](#), art. 2
- F107** Words in s. 115(5)(6) substituted (26.2.2003 for specified purposes, 1.4.2003 for specified purposes, 7.4.2003 in so far as not already in force) by [Tax Credits Act 2002 \(c. 21\)](#), s. 61, [Sch. 4 para. 21](#); [S.I. 2003/392](#), art. 2

#### Modifications etc. (not altering text)

- C38** S. 115(9) applied (E.W.S.) (8.7.2004) by [Age-Related Payments Act 2004 \(c. 10\)](#), s. 4(2)(c)

#### Commencement Information

- I28** S. 115 wholly in force at 3.4.2000; s. 115 not in force at Royal Assent see s. 170(2)(4); s. 115 in force for certain purposes at 1.1.2000 by [S.I. 1999/3190](#), [art. 2](#), [Sch.](#); s. 115(1)(2) in force at 3.4.2000 by virtue of [S.I. 2000/704](#) (see s. 170(2)); s. 115 in force at 3.4.2000 insofar as not already in force by [S.I. 2000/464](#), art. 2, [Sch.](#)

#### Marginal Citations

- M33** 1995 c. 18.  
**M34** 1992 c. 4.  
**M35** [S.I. 1995/2705 \(N.I. 15\)](#).  
**M36** 1992 c. 7.

## 116 Amendment of section 21 of the National Assistance Act 1948.

In section 21 of the <sup>M37</sup>National Assistance Act 1948 (duty of local authorities to provide accommodation), after subsection (1), insert—

“(1A) A person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies may not be provided with residential accommodation under subsection (1)(a) if his need for care and attention has arisen solely—

- (a) because he is destitute; or
- (b) because of the physical effects, or anticipated physical effects, of his being destitute.

(1B) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of subsection (1A) as they apply for the purposes of that section, but for the references in subsections (5) and (7) of that section and in that paragraph to the Secretary of State substitute references to a local authority.”

#### Marginal Citations

- M37** 1948 c. 29.

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## 117 Other restrictions on assistance: England and Wales.

- (1) In section 45 of the <sup>M38</sup>Health Services and Public Health Act 1968 (promotion by local authorities of the welfare of old people), after subsection (4), insert—

“(4A) No arrangements under this section may be given effect to in relation to a person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies solely—

- (a) because he is destitute; or
- (b) because of the physical effects, or anticipated physical effects, of his being destitute.

(4B) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of subsection (4A) as they apply for the purposes of that section, but for the references in subsections (5) and (7) of that section and in that paragraph to the Secretary of State substitute references to a local authority.”

- (2) In paragraph 2 of Schedule 8 to the <sup>M39</sup>National Health Service Act 1977 (arrangements by local authorities for the prevention of illness and for care and after-care), after subparagraph (2), insert—

“(2A) No arrangements under this paragraph may be given effect to in relation to a person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies solely—

- (a) because he is destitute; or
- (b) because of the physical effects, or anticipated physical effects, of his being destitute.

(2B) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of subsection (2A) as they apply for the purposes of that section, but for the references in subsections (5) and (7) of that section and in that paragraph to the Secretary of State substitute references to a local social services authority.”

- (3) [<sup>F108</sup>In section 161 of the <sup>M40</sup>Housing Act 1996 (allocation of housing accommodation only to qualifying persons), after subsection (2), insert—

“(2A) Regulations may not be made under subsection (2) so as to include in a prescribed class any person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies.”]

- (4) [<sup>F109</sup>In section 185 of the 1996 Act (persons from abroad not eligible for housing assistance), after subsection (2), insert—

“(2A) Regulations may not be made under subsection (2) so as to include in a prescribed class any person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies.”]

- (5) In the 1996 Act, omit section 186 (asylum-seekers and their dependants).

- (6) In section 187(1) of the 1996 Act (provision of information by Secretary of State), in paragraph (a), for “or has become an asylum-seeker, or a dependant of an asylum-seeker” substitute “a person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies”.

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### Textual Amendments

**F108** S. 117(3) repealed (E.W.) (31.7.2002 for E., 27.1.2003 for W.) by [Homelessness Act 2002 \(c. 7\)](#), s. 18, [Sch. 2](#) (with s. 20(4)); S.I. 2002/1799, [art. 2](#); S.I. 2002/1736, [art. 2\(2\)](#), Sch. Pt. 2

**F109** S. 117(4) repealed (E.W.) (31.7.2002 for E., 30.9.2002 for W.) by [Homelessness Act 2002 \(c. 7\)](#), s. 18, [Sch. 2](#) (with s. 20(4)); S.I. 2002/1799, [art. 2](#); S.I. 2002/1736, [art. 2\(1\)](#), Sch. Pt. 1

### Commencement Information

**I29** S. 117 partly in force; s. 117 not in force at Royal Assent see [s. 170\(4\)](#); [s. 117\(1\)\(2\)](#) in force at 6.12.1999 by S.I. 1999/3190, [art. 2](#), [Sch.](#); [s. 117\(1\)-\(4\)\(6\)](#) in force at 3.4.2000 insofar as not already in force by S.I. 2000/464, [art. 2](#), [Sch.](#)

### Marginal Citations

**M38** 1968 c. 46.

**M39** 1977 c. 49.

**M40** 1996 c. 52.

## 118 Housing authority accommodation.

- (1) Each housing authority must secure that, so far as practicable, a tenancy of, or licence to occupy, housing accommodation provided under the accommodation provisions is not granted to a person subject to immigration control unless—
  - (a) he is of a class specified in an order made by the Secretary of State; or
  - (b) the tenancy of, or licence to occupy, such accommodation is granted in accordance with arrangements made under section 95.
- (2) “Housing authority” means—
  - (a) in relation to England and Wales, a local housing authority within the meaning of the <sup>M41</sup>Housing Act 1985;
  - (b) in relation to Scotland, a local authority within the meaning of the <sup>M42</sup>Housing (Scotland) Act 1987; and
  - (c) in relation to Northern Ireland, the Executive.
- (3) “Accommodation provisions” means—
  - (a) in relation to England and Wales, Part II of the Housing Act 1985;
  - (b) in relation to Scotland, Part I of the Housing (Scotland) Act 1987;
  - (c) in relation to Northern Ireland, Part II of the <sup>M43</sup>Housing (Northern Ireland) Order 1981.
- (4) “Licence to occupy”, in relation to Scotland, means a permission or right to occupy.
- (5) “Tenancy”, in relation to England and Wales, has the same meaning as in the <sup>M44</sup>Housing Act 1985.
- (6) “Person subject to immigration control” means a person who under the 1971 Act requires leave to enter or remain in the United Kingdom (whether or not such leave has been given).
- (7) This section does not apply in relation to any allocation of housing to which Part VI of the <sup>M45</sup>Housing Act 1996 (allocation of housing accommodation) applies.

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**Changes to legislation:** Immigration and Asylum Act 1999 is up to date with all changes known to be in force on or before 25 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

#### Commencement Information

**I30** S. 118 wholly in force at 1.3.2000; s. 118 not in force at Royal Assent see s. 170(4); s. 118 in force for certain purposes at 1.1.2000 by S.I. 1999/3190, art. 2, **Sch.**; s. 118 in force at 1.3.2000 insofar as not already in force by S.I. 2000/464, art. 2, **Sch.**

#### Marginal Citations

**M41** 1985 c. 68.

**M42** 1987 c. 26.

**M43** S.I. 1981/156 (N.I. 3).

**M44** 1985 c. 68.

**M45** 1996 c. 52.

### 119 Homelessness: Scotland and Northern Ireland.

- (1) A person subject to immigration control—
  - (a) is not eligible for accommodation or assistance under the homelessness provisions, and
  - (b) is to be disregarded in determining for the purposes of those provisions, whether another person—
    - (i) is homeless or is threatened with homelessness, or
    - (ii) has a priority need for accommodation,
 unless he is of a class specified in an order made by the Secretary of State.
- (2) An order under subsection (1) may not be made so as to include in a specified class any person to whom section 115 applies.
- (3) “The homelessness provisions” means—
  - (a) in relation to Scotland, Part II of the <sup>M46</sup>Housing (Scotland) Act 1987; and
  - (b) in relation to Northern Ireland, Part II of the <sup>M47</sup>Housing (Northern Ireland) Order 1988.
- (4) “Person subject to immigration control” has the same meaning as in section 118.

#### Commencement Information

**I31** S. 119 wholly in force at 1.3.2000; s. 119 not in force at Royal Assent see s. 170(4); s. 119 in force for certain purposes at 1.1.2000 by S.I. 1999/3190, art. 2, **Sch.**; s. 119 in force at 1.3.2000 insofar as not already in force by S.I. 2000/464, art. 2, **Sch.**

#### Marginal Citations

**M46** 1987 c. 26.

**M47** S.I. 1988/1990 (N.I. 13).

### 120 Other restrictions on assistance: Scotland.

- (1) In section 12 of the <sup>M48</sup>Social Work (Scotland) Act 1968 (general social welfare services of local authorities), after subsection (2) insert—

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“(2A) A person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies is not to receive assistance under subsection (1) of this section (whether by way of residential accommodation or otherwise) if his need for assistance has arisen solely—

- (a) because he is destitute; or
- (b) because of the physical effects, or anticipated physical effects, of his being destitute.

(2B) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of subsection (2A) as they apply for the purposes of that section, but for the references in subsections (5) and (7) of that section and in that paragraph to the Secretary of State substitute references to a local authority.”

(2) In section 13A of that Act (provision of residential accommodation with nursing), after subsection (3) insert—

“(4) No arrangements under subsection (1) above may be given effect to in relation to a person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies solely—

- (a) because he is destitute; or
- (b) because of the physical effects, or anticipated physical effects, of his being destitute.

(5) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of subsection (4) above as they apply for the purposes of that section, but for the references in subsections (5) and (7) of that section and in that paragraph to the Secretary of State substitute references to a local authority.”

(3) In section 13B of that Act (provision of care and after-care), after subsection (2) insert—

“(3) No arrangements under subsection (1) above may be given effect to in relation to a person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies solely—

- (a) because he is destitute; or
- (b) because of the physical effects, or anticipated physical effects, of his being destitute.

(4) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of subsection (3) above as they apply for the purposes of that section, but for the references in subsections (5) and (7) of that section and in that paragraph to the Secretary of State substitute references to a local authority.”

(4) In section 7 of the <sup>M49</sup>Mental Health (Scotland) Act 1984 (functions of local authorities), after subsection (2) insert—

“(3) No arrangements under paragraph (a) or (c) of subsection (1) above may be given effect to in relation to a person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies solely—

- (a) because he is destitute; or

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- (b) because of the physical effects, or anticipated physical effects, of his being destitute.
- (4) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of subsection (3) above as they apply for the purposes of that section, but for the references in subsection (5) and (7) of that section and in that paragraph to the Secretary of State substitute references to a local authority.”
- (5) In section 8 of that Act (provision of after-care services), after subsection (3) insert—
- “(4) After care services may not be provided under subsection (1) above in respect of any person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies solely—
- (a) because he is destitute; or
- (b) because of the physical effects, or anticipated physical effects, of his being destitute.
- (5) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of subsection (4) above as they apply for the purposes of that section, but for the references in subsection (5) and (7) of that section and in that paragraph to the Secretary of State substitute references to a local authority.”
- (6) In the <sup>M50</sup>Asylum and Immigration Appeals Act 1993, omit sections 4 and 5 and Schedule 1 (provisions relating to housing of asylum-seekers).

#### Commencement Information

**I32** S. 120 wholly in force at 3.4.2000; s. 120 not in force at Royal Assent see s. 170(4); s. 120 in force for certain purposes at 1.3.2000 by S.I. 2000/464, art. 2, Sch.; s. 120 in force at 3.4.2000 insofar as not already in force by S.I. 2000/464, art. 2, Sch.

#### Marginal Citations

**M48** 1968 c. 49.

**M49** 1984 c. 36.

**M50** 1993 c. 23.

## 121 Other restrictions on assistance: Northern Ireland.

- (1) In Article 7 of the <sup>M51</sup>Health and Personal Social Services (Northern Ireland) Order 1972 (prevention of illness, care and after-care), after paragraph (2) insert—
- “(3) No arrangements made under paragraph (1) may be given effect to in relation to a person to whom section 115 of the Immigration and Asylum Act 1999 applies solely—
- (a) because he is destitute; or
- (b) because of the physical effects, or anticipated physical effects, of his being destitute.
- (3A) Subsections (3) and (5) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of paragraph (3) as they apply for the purposes of that section, but for the

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references in subsections (5) and (7) of that section and in paragraph 2 of that Schedule to the Secretary of State substitute references to the Department.”

(2) In Article 15 of that Order (general social welfare), after paragraph (5) insert—

“(6) Assistance may not be provided under paragraph (1) in respect of any person to whom section 115 of the Immigration and Asylum Act 1999 applies if his need for assistance has arisen solely—

- (a) because he is destitute, or
- (b) because of the physical effects, or anticipated physical effects, of his being destitute.

(7) Subsections (3) to (8) of section 95 of the Immigration and Asylum Act 1999, and paragraph 2 of Schedule 8 to that Act, apply for the purposes of paragraph (6) as they apply for the purposes of that section, but for references to the Secretary of State in subsections (5) and (7) of that section and in paragraph 2 of that Schedule substitute references to the Department.”

(3) In the Asylum and Immigration Appeals Act 1993, omit sections 4 and 5 and Schedule 1 (provisions relating to housing of asylum-seekers).

#### Commencement Information

**I33** S. 121 wholly in force at 3.4.2000; s. 121 not in force at Royal Assent see s. 170(4); s. 121 in force for certain purposes at 1.3.2000 by S.I. 2000/464, art. 2, Sch.; s. 121 in force at 3.4.2000 insofar as not already in force by S.I. 2000/464, art. 2, Sch.

#### Marginal Citations

**M51** S.I. 1972/1265 (N.I. 14).

## 122 Support for children.

- (1) In this section “eligible person” means a person who appears to the Secretary of State to be a person for whom support may be provided under section 95.
- (2) Subsections (3) and (4) apply if an application for support under section 95 has been made by an eligible person whose household includes a dependant under the age of 18 (“the child”).
- (3) If it appears to the Secretary of State that adequate accommodation is not being provided for the child, he must exercise his powers under section 95 by offering, and if his offer is accepted by providing or arranging for the provision of, adequate accommodation for the child as part of the eligible person’s household.
- (4) If it appears to the Secretary of State that essential living needs of the child are not being met, he must exercise his powers under section 95 by offering, and if his offer is accepted by providing or arranging for the provision of, essential living needs for the child as part of the eligible person’s household.
- (5) No local authority may provide assistance under any of the child welfare provisions in respect of a dependant under the age of 18, or any member of his family, at any time when—
  - (a) the Secretary of State is complying with this section in relation to him; or
  - (b) there are reasonable grounds for believing that—

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- (i) the person concerned is a person for whom support may be provided under section 95; and
  - (ii) the Secretary of State would be required to comply with this section if that person had made an application under section 95.
- (6) “Assistance” means the provision of accommodation or of any essential living needs.
- (7) “The child welfare provisions” means—
- (a) section 17 of the <sup>M52</sup>Children Act 1989 (local authority support for children and their families);
  - (b) section 22 of the <sup>M53</sup>Children (Scotland) Act 1995 (equivalent provision for Scotland); and
  - (c) Article 18 of the <sup>M54</sup>Children (Northern Ireland) Order 1995 (equivalent provision for Northern Ireland).
- (8) Subsection (9) applies if accommodation provided in the discharge of the duty imposed by subsection (3) has been withdrawn.
- (9) Only the relevant authority may provide assistance under any of the child welfare provisions in respect of the child concerned.
- (10) “Relevant authority” means—
- (a) in relation to Northern Ireland, the authority within whose area the withdrawn accommodation was provided;
  - (b) in any other case, the local authority within whose area the withdrawn accommodation was provided.
- (11) In such circumstances as may be prescribed, subsection (5) does not apply.

#### **Commencement Information**

**I34** S. 122 wholly in force at 3.4.2000; s. 122 not in force at Royal Assent see s. 170(4); s. 122 in force for certain purposes at 1.3.2000 by [S.I. 2000/464, art. 2, Sch.](#); s. 122 in force at 3.4.2000 insofar as not already in force by [S.I. 2000/464, art. 2, Sch.](#)

#### **Marginal Citations**

**M52** 1989 c. 41.

**M53** 1995 c. 36.

**M54** [S.I. 1995/775 \(N.I. 2\)](#).

### **123 Back-dating of benefits where person recorded as refugee.**

- (1) This section applies if—
- (a) a person is recorded by the Secretary of State as a refugee within the meaning of the Refugee Convention; and
  - (b) before the refugee was so recorded, he or his dependant was a person to whom section 115 applied.
- (2) Regulations may provide that a person mentioned in subsection (1)(b) may, within a prescribed period, claim the whole, or any prescribed proportion, of any benefit to which he would have been entitled had the refugee been so recorded when he made his claim for asylum.



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- (3) Subsections (5) and (6) apply if the refugee has resided in the areas of two or more local authorities and he or his dependant makes a claim under the regulations in relation to housing benefit.
- (4) Subsections (5) and (6) also apply if the refugee has resided in the areas of two or more local authorities in Great Britain and he or his dependant makes a claim under the regulations in relation to council tax benefit.
- (5) The claim must be investigated and determined, and any benefit awarded must be paid or allowed, by such one of those authorities as may be prescribed by the regulations (“the prescribed authority”).
- (6) The regulations may make provision requiring a local authority who are not the prescribed authority to supply that authority with such information as they may reasonably require in connection with the exercise of their functions under the regulations.
- (7) The regulations may make provision in relation to a person who has received support under this Part or who is a dependant of such a person—
  - (a) for the determination, or for criteria for the calculation, of the value of that support; and
  - (b) for the sum which he would be entitled to claim under the regulations to be reduced by the whole, or any prescribed proportion, of that valuation.
- (8) The reductions permitted by subsection (7) must not exceed the amount of the valuation.
- (9) “Regulations” means—
  - (a) in relation to jobseeker’s allowance under the <sup>M55</sup>Jobseekers Act 1995, regulations made by the Secretary of State under that Act or the <sup>M56</sup>Social Security Administration Act 1992;
  - (b) in relation to jobseeker’s allowance under the <sup>M57</sup>Jobseekers (Northern Ireland) Order 1995, regulations made by the Department under that Order or the <sup>M58</sup>Social Security Administration (Northern Ireland) Act 1992;
  - <sup>F110</sup>(ba) in relation to child benefit (and guardian’s allowance), regulations made by the Treasury;
  - (c) in relation to a benefit [<sup>F111</sup>(apart from child benefit and guardian’s allowance)] under the <sup>M59</sup>Social Security Contributions and Benefits Act 1992 [<sup>F112</sup>or state pension credit], regulations made by the Secretary of State under that Act [<sup>F113</sup>, the Social Security Administration Act 1992 (c. 5) or the State Pension Credit Act 2002];
  - (d) in relation to a benefit [<sup>F111</sup>(apart from child benefit and guardian’s allowance)] under the <sup>M60</sup>Social Security Contributions and Benefits (Northern Ireland) Act 1992 [<sup>F114</sup>or state pension credit], regulations made by the Department under that Act [<sup>F115</sup>, the Social Administration (Northern Ireland) Act 1992 or the State Pension Credit Act (Northern Ireland) 2002].

#### Textual Amendments

**F110** S. 123(9)(ba) inserted (26.2.2003 for specified purposes, 1.4.2003 for specified purposes, 7.4.2003 in so far as not already in force) by [Tax Credits Act 2002 \(c. 21\), s. 61, Sch. 4 para. 22\(2\)](#); [S.I. 2003/392, art. 2](#)

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- F111** Words in s. 123(9)(c)(d) inserted (26.2.2003 for specified purposes, 1.4.2003 for specified purposes, 7.4.2003 in so far as not already in force) by **Tax Credits Act 2002 (c. 21), s. 61, Sch. 4 para. 22(3); S.I. 2003/392, art. 2**
- F112** Words in s. 123(9)(c) inserted (2.7.2002 for certain purposes, 6.10.2003 in so far as not already in force) by **State Pension Credit Act 2002 (c. 16), ss. 11, 22(3), Sch. 2 Pt. 3 para. 42(a); S.I. 2002/1691, art. 2(I); S.I. 2003/1766, art. 2(a)**
- F113** Words in s. 123(9)(c) substituted (2.7.2002 for certain purposes, 6.10.2003 in so far as not already in force) by **State Pension Credit Act 2002 (c. 16), ss. 11, 22(3), Sch. 2 Pt. 3 para. 42(b); S.I. 2002/1691, art. 2(I); S.I. 2003/1766, art. 2(a)**
- F114** Words in s. 123(9)(d) inserted (N.I.) (2.12.2002 for certain purposes, 6.10.2003 in so far as not already in force) by **State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.)), ss. 14, 21(2), Sch. 2 Pt. III para. 31(a); S.R. 2002/366, art. 2(1)(I); S.R. 2003/373, art. 2**
- F115** Words in s. 123(9)(d) substituted (N.I.) (2.12.2002 for certain purposes, 6.10.2003 in so far as not already in force) by **State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.)), ss. 14, 21(2), Sch. 2 Pt. III para. 31(b); S.R. 2002/366, art. 2(1)(I); S.R. 2003/373, art. 2**

#### Commencement Information

- I35** S. 123 wholly in force at 3.4.2000; s. 123 not in force at Royal Assent see s. 170(4); s. 123 in force for certain purposes at 1.1.2000 by **S.I. 1999/3190, art. 2, Sch.**; s. 123 in force at 3.4.2000 insofar as not already in force by **S.I. 2000/464, art. 2, Sch.**

#### Marginal Citations

- M55** 1995 c. 18.  
**M56** 1992 c. 5.  
**M57** S.I. 1995/2705 (N.I. 15).  
**M58** 1992 c. 8.  
**M59** 1992 c. 4.  
**M60** 1992 c. 7.

### Miscellaneous

#### 124 Secretary of State to be corporation sole for purposes of Part VI.

- (1) For the purpose of exercising his functions under this Part, the Secretary of State is a corporation sole.
- (2) Any instrument in connection with the acquisition, management or disposal of property, real or personal, heritable or moveable, by the Secretary of State under this Part may be executed on his behalf by a person authorised by him for that purpose.
- (3) Any instrument purporting to have been so executed on behalf of the Secretary of State is to be treated, until the contrary is proved, to have been so executed on his behalf.

#### Modifications etc. (not altering text)

- C39** S. 124 applied (7.11.2002) by **Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 35(1)(h), 162(2)** (with s. 159)

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## **125 Entry of premises.**

- (1) This section applies in relation to premises in which accommodation has been provided under section 95 or 98 for a supported person.
- (2) If, on an application made by a person authorised in writing by the Secretary of State, a justice of the peace is satisfied that there is reason to believe that—
  - (a) the supported person or any dependants of his for whom the accommodation is provided is not resident in it,
  - (b) the accommodation is being used for any purpose other than the accommodation of the asylum-seeker or any dependant of his, or
  - (c) any person other than the supported person and his dependants (if any) is residing in the accommodation,he may grant a warrant to enter the premises to the person making the application.
- (3) A warrant granted under subsection (2) may be executed—
  - (a) at any reasonable time;
  - (b) using reasonable force.
- (4) In the application of subsection (2) to Scotland, read the reference to a justice of the peace as a reference to the sheriff or a justice of the peace.

## **126 Information from property owners.**

- (1) The power conferred by this section is to be exercised with a view to obtaining information about premises in which accommodation is or has been provided for supported persons.
- (2) The Secretary of State may require any person appearing to him—
  - (a) to have any interest in, or
  - (b) to be involved in any way in the management or control of,such premises, or any building which includes such premises, to provide him with such information with respect to the premises and the persons occupying them as he may specify.
- (3) A person who is required to provide information under this section must do so in accordance with such requirements as may be prescribed.
- (4) Information provided to the Secretary of State under this section may be used by him only in the exercise of his functions under this Part.

## **127 Requirement to supply information about redirection of post.**

- (1) The Secretary of State may require any person conveying postal packets to supply redirection information to the Secretary of State—
  - (a) for use in the prevention, detection, investigation or prosecution of criminal offences under this Part;
  - (b) for use in checking the accuracy of information relating to support provided under this Part; or
  - (c) for any other purpose relating to the provision of support to asylum-seekers.
- (2) The information must be supplied in such manner and form, and in accordance with such requirements, as may be prescribed.

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- (3) The Secretary of State must make payments of such amount as he considers reasonable in respect of the supply of information under this section.
- (4) “Postal packet” has the same meaning as in the [<sup>F116</sup>Postal Services Act 2000].
- (5) “Redirection information” means information relating to arrangements made with any person conveying postal packets for the delivery of postal packets to addresses other than those indicated by senders on the packets.

#### Textual Amendments

**F116** Words in s. 127(4) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 124**

#### Modifications etc. (not altering text)

**C40** S. 127 applied (prosp.) by **Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 35(1)(i), 162(1)** (with s. 159)

## PART VII

### POWER TO ARREST, SEARCH AND FINGERPRINT

#### *Power to arrest*

#### **128 Arrest without warrant.**

In the 1971 Act, after section 28, insert—

##### **“28A Arrest without warrant.**

- (1) A constable or immigration officer may arrest without warrant a person—
  - (a) who has committed or attempted to commit an offence under section 24 or 24A; or
  - (b) whom he has reasonable grounds for suspecting has committed or attempted to commit such an offence.
- (2) But subsection (1) does not apply in relation to an offence under section 24(1)(d).
- (3) An immigration officer may arrest without warrant a person—
  - (a) who has committed an offence under section 25(1); or
  - (b) whom he has reasonable grounds for suspecting has committed that offence.
- (4) An immigration officer may arrest without warrant a person—
  - (a) who has committed or attempted to commit an offence under section 25(2); or
  - (b) whom he has reasonable grounds for suspecting has committed or attempted to commit that offence.

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- (5) An immigration officer may arrest without warrant a person (“the suspect”) who, or whom he has reasonable grounds for suspecting—
  - (a) has committed or attempted to commit an offence under section 26(1)(g); or
  - (b) is committing or attempting to commit that offence.
- (6) The power conferred by subsection (5) is exercisable only if either the first or the second condition is satisfied.
- (7) The first condition is that it appears to the officer that service of a summons (or, in Scotland, a copy complaint) is impracticable or inappropriate because—
  - (a) he does not know, and cannot readily discover, the suspect’s name;
  - (b) he has reasonable grounds for doubting whether a name given by the suspect as his name is his real name;
  - (c) the suspect has failed to give him a satisfactory address for service; or
  - (d) he has reasonable grounds for doubting whether an address given by the suspect is a satisfactory address for service.
- (8) The second condition is that the officer has reasonable grounds for believing that arrest is necessary to prevent the suspect—
  - (a) causing physical injury to himself or another person;
  - (b) suffering physical injury; or
  - (c) causing loss of or damage to property.
- (9) For the purposes of subsection (7), an address is a satisfactory address for service if it appears to the officer—
  - (a) that the suspect will be at that address for a sufficiently long period for it to be possible to serve him with a summons (or copy complaint); or
  - (b) that some other person specified by the suspect will accept service of a summons (or copy complaint) for the suspect at that address.
- (10) In relation to the exercise of the powers conferred by subsections (3)(b), (4)(b) and (5), it is immaterial that no offence has been committed.
- (11) In Scotland the powers conferred by subsections (3), (4) and (5) may also be exercised by a constable.”

#### *Power to search and arrest*

### **129 Search and arrest by warrant.**

In the 1971 Act, after section 28A, insert—

#### **“28B Search and arrest by warrant.**

- (1) Subsection (2) applies if a justice of the peace is, by written information on oath, satisfied that there are reasonable grounds for suspecting that a person (“the suspect”) who is liable to be arrested for a relevant offence is to be found on any premises.

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- (2) The justice may grant a warrant authorising any immigration officer or constable to enter, if need be by force, the premises named in the warrant for the purpose of searching for and arresting the suspect.
- (3) Subsection (4) applies if in Scotland the sheriff or a justice of the peace is by evidence on oath satisfied as mentioned in subsection (1).
- (4) The sheriff or justice may grant a warrant authorising any immigration officer or constable to enter, if need be by force, the premises named in the warrant for the purpose of searching for and arresting the suspect.
- (5) “Relevant offence” means an offence under section 24(1)(a), (b), (c), (d), (e) or (f), section 24A or section 25(2).”

### **130 Search and arrest without warrant.**

In the 1971 Act, after section 28B, insert—

#### **“28C Search and arrest without warrant.**

- (1) An immigration officer may enter and search any premises for the purpose of arresting a person for an offence under section 25(1).
- (2) The power may be exercised—
  - (a) only to the extent that it is reasonably required for that purpose; and
  - (b) only if the officer has reasonable grounds for believing that the person whom he is seeking is on the premises.
- (3) In relation to premises consisting of two or more separate dwellings, the power is limited to entering and searching—
  - (a) any parts of the premises which the occupiers of any dwelling comprised in the premises use in common with the occupiers of any such other dwelling; and
  - (b) any such dwelling in which the officer has reasonable grounds for believing that the person whom he is seeking may be.
- (4) The power may be exercised only if the officer produces identification showing that he is an immigration officer (whether or not he is asked to do so).”

#### *Power to enter and search premises*

### **131 Entry and search of premises.**

In the 1971 Act, after section 28C, insert—

#### **“28D Entry and search of premises.**

- (1) If, on an application made by an immigration officer, a justice of the peace is satisfied that there are reasonable grounds for believing that—
  - (a) a relevant offence has been committed,

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- (b) there is material on premises specified in the application which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence,
  - (c) the material is likely to be relevant evidence,
  - (d) the material does not consist of or include items subject to legal privilege, excluded material or special procedure material, and
  - (e) any of the conditions specified in subsection (2) applies,
- he may issue a warrant authorising an immigration officer to enter and search the premises.
- (2) The conditions are that—
    - (a) it is not practicable to communicate with any person entitled to grant entry to the premises;
    - (b) it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the evidence;
    - (c) entry to the premises will not be granted unless a warrant is produced;
    - (d) the purpose of a search may be frustrated or seriously prejudiced unless an immigration officer arriving at the premises can secure immediate entry to them.
  - (3) An immigration officer may seize and retain anything for which a search has been authorised under subsection (1).
  - (4) “Relevant offence” means an offence under section 24(1)(a), (b), (c), (d), (e) or (f), section 24A or section 25.
  - (5) In relation to England and Wales, expressions which are given a meaning by the <sup>M61</sup>Police and Criminal Evidence Act 1984 have the same meaning when used in this section.
  - (6) In relation to Northern Ireland, expressions which are given a meaning by the <sup>M62</sup>Police and Criminal Evidence (Northern Ireland) Order 1989 have the same meaning when used in this section.
  - (7) In the application of subsection (1) to Scotland—
    - (a) read the reference to a justice of the peace as a reference to the sheriff or a justice of the peace; and
    - (b) in paragraph (d), omit the reference to excluded material and special procedure material.”

#### Marginal Citations

**M61** 1984 c. 60.

**M62** S.I. 1989/1341 (N.I. 12).

## 132 Entry and search of premises following arrest.

- (1) In the 1971 Act, after section 28D, insert—

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**“28E Entry and search of premises following arrest.**

- (1) This section applies if a person is arrested for an offence under this Part at a place other than a police station.
  - (2) An immigration officer may enter and search any premises—
    - (a) in which the person was when arrested, or
    - (b) in which he was immediately before he was arrested,
 for evidence relating to the offence for which the arrest was made (“relevant evidence”).
  - (3) The power may be exercised—
    - (a) only if the officer has reasonable grounds for believing that there is relevant evidence on the premises; and
    - (b) only to the extent that it is reasonably required for the purpose of discovering relevant evidence.
  - (4) In relation to premises consisting of two or more separate dwellings, the power is limited to entering and searching—
    - (a) any dwelling in which the arrest took place or in which the arrested person was immediately before his arrest; and
    - (b) any parts of the premises which the occupier of any such dwelling uses in common with the occupiers of any other dwellings comprised in the premises.
  - (5) An officer searching premises under subsection (2) may seize and retain anything he finds which he has reasonable grounds for believing is relevant evidence.
  - (6) Subsection (5) does not apply to items which the officer has reasonable grounds for believing are items subject to legal privilege.”
- (2) In the 1971 Act, in Schedule 2 after paragraph 25, insert—

**Entry and search of premises**

- “25A (1) This paragraph applies if—
- (a) a person is arrested under this Schedule; or
  - (b) a person who was arrested by a constable (other than under this Schedule) is detained by an immigration officer under this Schedule.
- (2) An immigration officer may enter and search any premises—
- (a) occupied or controlled by the arrested person, or
  - (b) in which that person was when he was arrested, or immediately before he was arrested,
- for relevant documents.
- (3) The power may be exercised—
- (a) only if the officer has reasonable grounds for believing that there are relevant documents on the premises;



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- (b) only to the extent that it is reasonably required for the purpose of discovering relevant documents; and
  - (c) subject to sub-paragraph (4), only if a senior officer has authorised its exercise in writing.
- (4) An immigration officer may conduct a search under sub-paragraph (2)—
  - (a) before taking the arrested person to a place where he is to be detained; and
  - (b) without obtaining an authorisation under sub-paragraph (3)(c), if the presence of that person at a place other than one where he is to be detained is necessary to make an effective search for any relevant documents.
- (5) An officer who has conducted a search under sub-paragraph (4) must inform a senior officer as soon as is practicable.
- (6) The officer authorising a search, or who is informed of one under sub-paragraph (5), must make a record in writing of—
  - (a) the grounds for the search; and
  - (b) the nature of the documents that were sought.
- (7) An officer searching premises under sub-paragraph (2)—
  - (a) may seize and retain any documents he finds which he has reasonable grounds for believing are relevant documents; but
  - (b) may not retain any such document for longer than is necessary in view of the purpose for which the person was arrested.
- (8) But sub-paragraph (7)(a) does not apply to documents which the officer has reasonable grounds for believing are items subject to legal privilege.
- (9) “Relevant documents” means any documents which might—
  - (a) establish the arrested person’s identity, nationality or citizenship; or
  - (b) indicate the place from which he has travelled to the United Kingdom or to which he is proposing to go.
- (10) “Senior officer” means an immigration officer not below the rank of chief immigration officer.”

**133 Entry and search of premises following arrest under section 25(1) of the 1971 Act.**

In the 1971 Act, after section 28E, insert—

**“28F Entry and search of premises following arrest under section 25(1).**

- (1) An immigration officer may enter and search any premises occupied or controlled by a person arrested for an offence under section 25(1).
- (2) The power may be exercised—
  - (a) only if the officer has reasonable grounds for suspecting that there is relevant evidence on the premises;

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- (b) only to the extent that it is reasonably required for the purpose of discovering relevant evidence; and
  - (c) subject to subsection (3), only if a senior officer has authorised it in writing.
- (3) The power may be exercised—
- (a) before taking the arrested person to a place where he is to be detained; and
  - (b) without obtaining an authorisation under subsection (2)(c),
- if the presence of that person at a place other than one where he is to be detained is necessary for the effective investigation of the offence.
- (4) An officer who has relied on subsection (3) must inform a senior officer as soon as is practicable.
- (5) The officer authorising a search, or who is informed of one under subsection (4), must make a record in writing of—
- (a) the grounds for the search; and
  - (b) the nature of the evidence that was sought.
- (6) An officer searching premises under this section may seize and retain anything he finds which he has reasonable grounds for suspecting is relevant evidence.
- (7) “Relevant evidence” means evidence, other than items subject to legal privilege, that relates to the offence in question.
- (8) “Senior officer” means an immigration officer not below the rank of chief immigration officer.”

*Power to search persons*

**134 Searching arrested persons.**

- (1) In the 1971 Act, after section 28F, insert—

**“28G Searching arrested persons.**

- (1) This section applies if a person is arrested for an offence under this Part at a place other than a police station.
- (2) An immigration officer may search the arrested person if he has reasonable grounds for believing that the arrested person may present a danger to himself or others.
- (3) The officer may search the arrested person for—
  - (a) anything which he might use to assist his escape from lawful custody; or
  - (b) anything which might be evidence relating to the offence for which he has been arrested.
- (4) The power conferred by subsection (3) may be exercised—

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- (a) only if the officer has reasonable grounds for believing that the arrested person may have concealed on him anything of a kind mentioned in that subsection; and
  - (b) only to the extent that it is reasonably required for the purpose of discovering any such thing.
- (5) A power conferred by this section to search a person is not to be read as authorising an officer to require a person to remove any of his clothing in public other than an outer coat, jacket or glove; but it does authorise the search of a person's mouth.
- (6) An officer searching a person under subsection (2) may seize and retain anything he finds, if he has reasonable grounds for believing that that person might use it to cause physical injury to himself or to another person.
- (7) An officer searching a person under subsection (3) may seize and retain anything he finds, if he has reasonable grounds for believing—
- (a) that that person might use it to assist his escape from lawful custody; or
  - (b) that it is evidence which relates to the offence in question.
- (8) Subsection (7)(b) does not apply to an item subject to legal privilege.”
- (2) In the 1971 Act, in Schedule 2 after paragraph 25A, insert—

### **Searching persons arrested by immigration officers**

- “25B (1) This paragraph applies if a person is arrested under this Schedule.
- (2) An immigration officer may search the arrested person if he has reasonable grounds for believing that the arrested person may present a danger to himself or others.
- (3) The officer may search the arrested person for—
- (a) anything which he might use to assist his escape from lawful custody; or
  - (b) any document which might—
    - (i) establish his identity, nationality or citizenship; or
    - (ii) indicate the place from which he has travelled to the United Kingdom or to which he is proposing to go.
- (4) The power conferred by sub-paragraph (3) may be exercised—
- (a) only if the officer has reasonable grounds for believing that the arrested person may have concealed on him anything of a kind mentioned in that sub-paragraph; and
  - (b) only to the extent that it is reasonably required for the purpose of discovering any such thing.
- (5) A power conferred by this paragraph to search a person is not to be read as authorising an officer to require a person to remove any of his clothing in public other than an outer coat, jacket or glove; but it does authorise the search of a person's mouth.

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- (6) An officer searching a person under sub-paragraph (2) may seize and retain anything he finds, if he has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or to another person.
- (7) An officer searching a person under sub-paragraph (3)(a) may seize and retain anything he finds, if he has reasonable grounds for believing that he might use it to assist his escape from lawful custody.
- (8) An officer searching a person under sub-paragraph (3)(b) may seize and retain anything he finds, other than an item subject to legal privilege, if he has reasonable grounds for believing that it might be a document falling within that sub-paragraph.
- (9) Nothing seized under sub-paragraph (6) or (7) may be retained when the person from whom it was seized—
  - (a) is no longer in custody, or
  - (b) is in the custody of a court but has been released on bail.”

### **135 Searching persons in police custody.**

- (1) In the 1971 Act, after section 28G, insert—

#### **“28H Searching persons in police custody.**

- (1) This section applies if a person—
  - (a) has been arrested for an offence under this Part; and
  - (b) is in custody at a police station or in police detention at a place other than a police station.
- (2) An immigration officer may, at any time, search the arrested person in order to see whether he has with him anything—
  - (a) which he might use to—
    - (i) cause physical injury to himself or others;
    - (ii) damage property;
    - (iii) interfere with evidence; or
    - (iv) assist his escape; or
  - (b) which the officer has reasonable grounds for believing is evidence relating to the offence in question.
- (3) The power may be exercised only to the extent that the custody officer concerned considers it to be necessary for the purpose of discovering anything of a kind mentioned in subsection (2).
- (4) An officer searching a person under this section may seize anything he finds, if he has reasonable grounds for believing that—
  - (a) that person might use it for one or more of the purposes mentioned in subsection (2)(a); or
  - (b) it is evidence relating to the offence in question.
- (5) Anything seized under subsection (4)(a) may be retained by the police.

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- (6) Anything seized under subsection (4)(b) may be retained by an immigration officer.
  - (7) The person from whom something is seized must be told the reason for the seizure unless he is—
    - (a) violent or appears likely to become violent; or
    - (b) incapable of understanding what is said to him.
  - (8) An intimate search may not be conducted under this section.
  - (9) The person carrying out a search under this section must be of the same sex as the person searched.
  - (10) “Custody officer”—
    - (a) in relation to England and Wales, has the same meaning as in the <sup>M63</sup>Police and Criminal Evidence Act 1984;
    - (b) in relation to Scotland, means the officer in charge of a police station; and
    - (c) in relation to Northern Ireland, has the same meaning as in the <sup>M64</sup>Police and Criminal Evidence (Northern Ireland) Order 1989.
  - (11) “Intimate search”—
    - (a) in relation to England and Wales, has the meaning given by section 65 of the Act of 1984;
    - (b) in relation to Scotland, means a search which consists of the physical examination of a person’s body orifices other than the mouth; and
    - (c) in relation to Northern Ireland, has the same meaning as in the 1989 Order.
  - (12) “Police detention”—
    - (a) in relation to England and Wales, has the meaning given by section 118(2) of the 1984 Act; and
    - (b) in relation to Northern Ireland, has the meaning given by Article 2 of the 1989 Order.
  - (13) In relation to Scotland, a person is in police detention if—
    - (a) he has been taken to a police station after being arrested for an offence; or
    - (b) he is arrested at a police station after attending voluntarily at the station, accompanying a constable to it or being detained under section 14 of the <sup>M65</sup>Criminal Procedure (Scotland) Act 1995, and is detained there or is detained elsewhere in the charge of a constable, but is not in police detention if he is in court after being charged.”
- (2) In the 1971 Act, in Schedule 2 after paragraph 25B, insert—

### Searching persons in police custody

- “25C (1) This paragraph applies if a person—
- (a) has been arrested under this Schedule; and
  - (b) is in custody at a police station.

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- (2) An immigration officer may, at any time, search the arrested person in order to ascertain whether he has with him—
  - (a) anything which he might use to—
    - (i) cause physical injury to himself or others;
    - (ii) damage property;
    - (iii) interfere with evidence; or
    - (iv) assist his escape; or
  - (b) any document which might—
    - (i) establish his identity, nationality or citizenship; or
    - (ii) indicate the place from which he has travelled to the United Kingdom or to which he is proposing to go.
- (3) The power may be exercised only to the extent that the officer considers it to be necessary for the purpose of discovering anything of a kind mentioned in sub-paragraph (2).
- (4) An officer searching a person under this paragraph may seize and retain anything he finds, if he has reasonable grounds for believing that—
  - (a) that person might use it for one or more of the purposes mentioned in sub-paragraph (2)(a); or
  - (b) it might be a document falling within sub-paragraph (2)(b).
- (5) But the officer may not retain anything seized under sub-paragraph (2)
  - (a)—
    - (a) for longer than is necessary in view of the purpose for which the search was carried out; or
    - (b) when the person from whom it was seized is no longer in custody or is in the custody of a court but has been released on bail.
- (6) The person from whom something is seized must be told the reason for the seizure unless he is—
  - (a) violent or appears likely to become violent; or
  - (b) incapable of understanding what is said to him.
- (7) An intimate search may not be conducted under this paragraph.
- (8) The person carrying out a search under this paragraph must be of the same sex as the person searched.
- (9) “Intimate search” has the same meaning as in section 28H(11).”

#### **Marginal Citations**

**M63** 1984 c. 60.

**M64** S.I. 1989/1341 (N.I. 12).

**M65** 1995 c. 43.

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*Seized material: access and copying*

**136 Access and copying.**

(1) In the 1971 Act, after section 28H, insert—

**“28I Seized material: access and copying.**

- (1) If a person showing himself—
  - (a) to be the occupier of the premises on which seized material was seized, or
  - (b) to have had custody or control of the material immediately before it was seized,asks the immigration officer who seized the material for a record of what he seized, the officer must provide the record to that person within a reasonable time.
- (2) If a relevant person asks an immigration officer for permission to be granted access to seized material, the officer must arrange for him to have access to the material under the supervision—
  - (a) in the case of seized material within subsection (8)(a), of an immigration officer;
  - (b) in the case of seized material within subsection (8)(b), of a constable.
- (3) An immigration officer may photograph or copy, or have photographed or copied, seized material.
- (4) If a relevant person asks an immigration officer for a photograph or copy of seized material, the officer must arrange for—
  - (a) that person to have access to the material for the purpose of photographing or copying it under the supervision—
    - (i) in the case of seized material within subsection (8)(a), of an immigration officer;
    - (ii) in the case of seized material within subsection (8)(b), of a constable; or
  - (b) the material to be photographed or copied.
- (5) A photograph or copy made under subsection (4)(b) must be supplied within a reasonable time.
- (6) There is no duty under this section to arrange for access to, or the supply of a photograph or copy of, any material if there are reasonable grounds for believing that to do so would prejudice—
  - (a) the exercise of any functions in connection with which the material was seized; or
  - (b) an investigation which is being conducted under this Act, or any criminal proceedings which may be brought as a result.
- (7) “Relevant person” means—
  - (a) a person who had custody or control of seized material immediately before it was seized, or
  - (b) someone acting on behalf of such a person.

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- (8) “Seized material” means anything—
- (a) seized and retained by an immigration officer, or
  - (b) seized by an immigration officer and retained by the police, under this Part.”

- (2) In the 1971 Act, in Schedule 2 after paragraph 25C, insert—

**Access and copying**

“25D (1) If a person showing himself—

- (a) to be the occupier of the premises on which seized material was seized, or
- (b) to have had custody or control of the material immediately before it was seized,

asks the immigration officer who seized the material for a record of what he seized, the officer must provide the record to that person within a reasonable time.

- (2) If a relevant person asks an immigration officer for permission to be granted access to seized material, the officer must arrange for that person to have access to the material under the supervision of an immigration officer.
- (3) An immigration officer may photograph or copy, or have photographed or copied, seized material.
- (4) If a relevant person asks an immigration officer for a photograph or copy of seized material, the officer must arrange for—
  - (a) that person to have access to the material under the supervision of an immigration officer for the purpose of photographing or copying it; or
  - (b) the material to be photographed or copied.
- (5) A photograph or copy made under sub-paragraph (4)(b) must be supplied within a reasonable time.
- (6) There is no duty under this paragraph to arrange for access to, or the supply of a photograph or copy of, any material if there are reasonable grounds for believing that to do so would prejudice—
  - (a) the exercise of any functions in connection with which the material was seized; or
  - (b) an investigation which is being conducted under this Act, or any criminal proceedings which may be brought as a result.
- (7) “Relevant person” means—
  - (a) a person who had custody or control of seized material immediately before it was seized, or
  - (b) someone acting on behalf of such a person.
- (8) “Seized material” means anything which has been seized and retained under this Schedule.”



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### *Search warrants*

#### **137 Search warrants: safeguards.**

In the 1971 Act, after section 28I, insert—

##### **“28J Search warrants: safeguards.**

- (1) The entry or search of premises under a warrant is unlawful unless it complies with this section and section 28K.
- (2) If an immigration officer applies for a warrant, he must—
  - (a) state the ground on which he makes the application and the provision of this Act under which the warrant would be issued;
  - (b) specify the premises which it is desired to enter and search; and
  - (c) identify, so far as is practicable, the persons or articles to be sought.
- (3) In Northern Ireland, an application for a warrant is to be supported by a complaint in writing and substantiated on oath.
- (4) Otherwise, an application for a warrant is to be made ex parte and supported by an information in writing or, in Scotland, evidence on oath.
- (5) The officer must answer on oath any question that the justice of the peace or sheriff hearing the application asks him.
- (6) A warrant shall authorise an entry on one occasion only.
- (7) A warrant must specify—
  - (a) the name of the person applying for it;
  - (b) the date on which it is issued;
  - (c) the premises to be searched; and
  - (d) the provision of this Act under which it is issued.
- (8) A warrant must identify, so far as is practicable, the persons or articles to be sought.
- (9) Two copies of a warrant must be made.
- (10) The copies must be clearly certified as copies.
- (11) “Warrant” means a warrant to enter and search premises issued to an immigration officer under this Part or under paragraph 17(2) of Schedule 2.”

#### **138 Execution of warrants.**

In the 1971 Act, after section 28J, insert—

##### **“28K Execution of warrants.**

- (1) A warrant may be executed by any immigration officer.
- (2) A warrant may authorise persons to accompany the officer executing it.
- (3) Entry and search under a warrant must be—

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- (a) within one month from the date of its issue; and
  - (b) at a reasonable hour, unless it appears to the officer executing it that the purpose of a search might be frustrated.
- (4) If the occupier of premises which are to be entered and searched is present at the time when an immigration officer seeks to execute a warrant, the officer must—
- (a) identify himself to the occupier and produce identification showing that he is an immigration officer;
  - (b) show the occupier the warrant; and
  - (c) supply him with a copy of it.
- (5) If—
- (a) the occupier is not present, but
  - (b) some other person who appears to the officer to be in charge of the premises is present,
- subsection (4) has effect as if each reference to the occupier were a reference to that other person.
- (6) If there is no person present who appears to the officer to be in charge of the premises, the officer must leave a copy of the warrant in a prominent place on the premises.
- (7) A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued.
- (8) An officer executing a warrant must make an endorsement on it stating—
- (a) whether the persons or articles sought were found; and
  - (b) whether any articles, other than articles which were sought, were seized.
- (9) A warrant which has been executed, or has not been executed within the time authorised for its execution, must be returned—
- (a) if issued by a justice of the peace in England and Wales, to the justices' chief executive appointed by the magistrates' court committee whose area includes the petty sessions area for which the justice acts;
  - (b) if issued by a justice of the peace in Northern Ireland, to the clerk of petty sessions for the petty sessions district in which the premises are situated;
  - (c) if issued by a justice of the peace in Scotland, to the clerk of the district court for the commission area for which the justice of the peace was appointed;
  - (d) if issued by the sheriff, to the sheriff clerk.
- (10) A warrant returned under subsection (9)(a) must be retained for 12 months by the justices' chief executive.
- (11) A warrant issued under subsection (9)(b) or (c) must be retained for 12 months by the clerk.
- (12) A warrant returned under subsection (9)(d) must be retained for 12 months by the sheriff clerk.
- (13) If during that 12 month period the occupier of the premises to which it relates asks to inspect it, he must be allowed to do so.

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(14) “Warrant” means a warrant to enter and search premises issued to an immigration officer under this Part or under paragraph 17(2) of Schedule 2.”

### 139 Interpretation.

(1) In the 1971 Act, after section 28K, insert—

#### “28L Interpretation of Part III.

In this Part, “premises” and “items subject to legal privilege” have the same meaning—

- (a) in relation to England and Wales, as in the <sup>M66</sup>Police and Criminal Evidence Act 1984;
- (b) in relation to Northern Ireland, as in the <sup>M67</sup>Police and Criminal Evidence (Northern Ireland) Order 1989; and
- (c) in relation to Scotland, as in section 33 of the <sup>M68</sup>Criminal Law (Consolidation) (Scotland) Act 1995.”

(2) In the 1971 Act, in Schedule 2, after paragraph 25D insert—

“25E Section 28L applies for the purposes of this Schedule as it applies for the purposes of Part III.”

#### Marginal Citations

**M66** 1984 c. 60.

**M67** S.I. 1989/1341 (N.I. 12).

**M68** 1995 c. 39.

### *Detention*

### 140 Detention of persons liable to examination or removal.

(1) In paragraph 16 of Schedule 2 to the 1971 Act, for sub-paragraph (2) substitute—

“(2) If there are reasonable grounds for suspecting that a person is someone in respect of whom directions may be given under any of paragraphs 8 to 10 or 12 to 14, that person may be detained under the authority of an immigration officer pending—

- (a) a decision whether or not to give such directions;
- (b) his removal in pursuance of such directions.”

(2) In paragraph 17(2) of that Schedule (power to grant constable a warrant to search and arrest), for the words from “authorising any constable” to “if need be” substitute “authorising any immigration officer or constable to enter, if need be”.

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## *Fingerprinting*

### **141 Fingerprinting.**

- (1) Fingerprints may be taken by an authorised person from a person to whom this section applies.
- (2) Fingerprints may be taken under this section only during the relevant period.
- (3) Fingerprints may not be taken under this section from a person under the age of sixteen (“the child”) except in the presence of a person of full age who is—
  - (a) the child’s parent or guardian; or
  - (b) a person who for the time being takes responsibility for the child.
- (4) The person mentioned in subsection (3)(b) may not be—
  - (a) an officer of the Secretary of State who is not an authorised person;
  - (b) an authorised person.
- (5) “Authorised person” means—
  - (a) a constable;
  - (b) an immigration officer;
  - (c) a prison officer;
  - (d) an officer of the Secretary of State authorised for the purpose; or
  - (e) a person who is employed by a contractor in connection with the discharge of the contractor’s duties under a [F117removal centre] contract.
- (6) In subsection (5)(e) “contractor” and “[F118removal centre] contract” have the same meaning as in Part VIII.
- (7) This section applies to—
  - (a) any person (“A”) who, on being required to do so by an immigration officer on his arrival in the United Kingdom, fails to produce a valid passport with photograph or some other document satisfactorily establishing his identity and nationality or citizenship;
  - (b) any person (“B”) who has been refused leave to enter the United Kingdom but has been temporarily admitted under paragraph 21 of Schedule 2 to the 1971 Act if an immigration officer reasonably suspects that B might break any condition imposed on him relating to residence or as to reporting to the police or an immigration officer;
  - [F119](c) any person (“C”) in respect of whom a relevant immigration decision has been made;]
  - (d) any person (“D”) who has been arrested under paragraph 17 of Schedule 2 to the 1971 Act;
  - (e) any person (“E”) who has made a claim for asylum;
  - (f) any person (“F”) who is a dependant of any of those persons.
- (8) “The relevant period” begins—
  - (a) for A, on his failure to produce the passport or other document;
  - (b) for B, on the decision to admit him temporarily;
  - [F120](c) for C, on the service on him of notice of the relevant immigration decision by virtue of section 105 of the Nationality, Immigration and Asylum Act 2002 (c. 41);]

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- (d) for D, on his arrest;
  - (e) for E, on the making of his claim for asylum; and
  - (f) for F, at the same time as for the person whose dependant he is.
- (9) “The relevant period” ends on the earliest of the following—
- (a) the grant of leave to enter or remain in the United Kingdom;
  - (b) for A, B, C or D, his removal or deportation from the United Kingdom;
  - [<sup>F121</sup>(c) for C—
    - (i) the time when the relevant immigration decision ceases to have effect, whether as a result of an appeal or otherwise, or
    - (ii) if a deportation order has been made against him, its revocation or its otherwise ceasing to have effect;]
  - (d) for D, his release if he is no longer liable to be detained under paragraph 16 of Schedule 2 to the 1971 Act;
  - (e) for E, the final determination or abandonment of his claim for asylum; and
  - (f) for F, at the same time as for the person whose dependant he is.
- (10) No fingerprints may be taken from A if the immigration officer considers that A has a reasonable excuse for the failure concerned.
- (11) No fingerprints may be taken from B unless the decision to take them has been confirmed by a chief immigration officer.
- (12) An authorised person may not take fingerprints from a person under the age of sixteen unless his decision to take them has been confirmed—
- (a) if he is a constable, by a person designated for the purpose by the chief constable of his police force;
  - (b) if he is a person mentioned in subsection (5)(b) or (e), by a chief immigration officer;
  - (c) if he is a prison officer, by a person designated for the purpose by the governor of the prison;
  - (d) if he is an officer of the Secretary of State, by a person designated for the purpose by the Secretary of State.
- (13) Neither subsection (3) nor subsection (12) prevents an authorised person from taking fingerprints if he reasonably believes that the person from whom they are to be taken is aged sixteen or over.
- (14) For the purposes of subsection (7)(f), a person is a dependant of another person if—
- (a) he is that person’s spouse or child under the age of eighteen; and
  - (b) he does not have a right of abode in the United Kingdom or indefinite leave to enter or remain in the United Kingdom.
- (15) “Claim for asylum” has the same meaning as in Part VI.
- [<sup>F122</sup>(16) “Relevant immigration decision” means a decision of the kind mentioned in section 82(2)(g), (h), (i), (j) or (k) of the Nationality, Immigration and Asylum Act 2002 (c. 41).]

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**Textual Amendments**

- F117** Words in s. 141(5)(e) substituted (10.2.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\), ss.66\(2\)\(3\)\(n\), 162\(1\)](#), (with s. 159); S.I. 2003/1, art. 2, Sch.
- F118** Words in s. 141(6) substituted (10.2.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\), ss.66\(2\)\(3\)\(n\), 162\(1\)](#) (with s. 159); S.I. 2003/1, art. 2, Sch.
- F119** S. 141(7)(c) substituted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\), ss. 15\(2\), 48\(3\)](#); S.I. 2004/2523, art. 2, Sch.
- F120** S. 141(8)(c) substituted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\), ss. 15\(3\), 48\(3\)](#); S.I. 2004/2523, art. 2, Sch.
- F121** S. 141(9)(c) substituted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\), ss. 15\(4\), 48\(3\)](#); S.I. 2004/2523, art. 2, Sch.
- F122** S. 141(16) added (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\), ss. 15\(5\), 48\(3\)](#); S.I. 2004/2523, art. 2, Sch.

**142 Attendance for fingerprinting.**

- (1) The Secretary of State may, by notice in writing, require a person to whom section 141 applies to attend at a specified place for fingerprinting.
- (2) The notice—
  - (a) must give the person concerned a period of at least seven days within which to attend, beginning not earlier than seven days after the date of the notice; and
  - (b) may require him to attend at a specified time of day or during specified hours.
- (3) A constable or immigration officer may arrest without warrant a person who has failed to comply with a requirement imposed on him under this section (unless the requirement has ceased to have effect).
- (4) Before a person arrested under subsection (3) is released—
  - (a) he may be removed to a place where his fingerprints may conveniently be taken; and
  - (b) his fingerprints may be taken (whether or not he is so removed).
- (5) A requirement imposed under subsection (1) ceases to have effect at the end of the relevant period (as defined by section 141).

**143 Destruction of fingerprints.**

- (1) If they have not already been destroyed, fingerprints must be destroyed before the end of the specified period beginning with the day on which they were taken.
- (2) If a person from whom fingerprints were taken proves that he is—
  - (a) a British citizen, or
  - (b) a Commonwealth citizen who has a right of abode in the United Kingdom as a result of section 2(1)(b) of the 1971 Act,
 the fingerprints must be destroyed as soon as reasonably practicable.

- <sup>F123</sup>(3) .....
- <sup>F123</sup>(4) .....
- <sup>F123</sup>(5) .....

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- F<sup>123</sup>(6) .....
- F<sup>123</sup>(7) .....
- F<sup>123</sup>(8) .....
- (9) Fingerprints taken from F [F<sup>124</sup>(within the meaning of section 141(7))] must be destroyed when fingerprints taken from the person whose dependant he is have to be destroyed.
- (10) The obligation to destroy fingerprints under this section applies also to copies of fingerprints.
- (11) The Secretary of State must take all reasonably practicable steps to secure—
- (a) that data which are held in electronic form and which relate to fingerprints which have to be destroyed as a result of this section are destroyed or erased; or
  - (b) that access to such data is blocked.
- (12) The person to whom the data relate is entitled, on request, to a certificate issued by the Secretary of State to the effect that he has taken the steps required by subsection (11).
- (13) A certificate under subsection (12) must be issued within three months of the date of the request for it.
- F<sup>125</sup>(14) .....
- (15) “Specified period” means—
- (a) such period as the Secretary of State may specify by order;
  - (b) if no period is so specified, ten years.

#### Textual Amendments

**F123** S. 143(3)-(8) repealed (14.12.2001) by 2001 c. 24, ss. 36(1)(a)(2), 125, Sch. 8 Pt. 3

**F124** Words in S. 143(9) inserted (14.12.2001) by 2001 c. 24, s. 36(1)(b)(2), 127(2)

**F125** S. 143(14) repealed (14.12.2001) by 2001 c. 24, ss. 36(1)(c)(2), 127(2), Sch. 8 Pt. 3

#### 144 Other methods of collecting data about physical characteristics.

[F<sup>126</sup>(1) The Secretary of State may make regulations containing provisions equivalent to sections 141, 142 and 143 in relation to such other methods of collecting data about external physical characteristics as may be prescribed.]

[F<sup>127</sup>(2) In subsection (1) “external physical characteristics” includes, in particular, features of the iris or any other part of the eye.]

#### Textual Amendments

**F126** S. 144 renumbered as s. 144(1) (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 128(1), 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

**F127** S. 144(2) added (10.2.2003) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 128(1), 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

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### *Codes of practice*

#### **145 Codes of practice.**

- (1) An immigration officer exercising any specified power to—
  - (a) arrest, question, search or take fingerprints from a person,
  - (b) enter and search premises, or
  - (c) seize property found on persons or premises,
 must have regard to such provisions of a code as may be specified.
- (2) Subsection (1) also applies to an authorised person exercising the power to take fingerprints conferred by section 141.
- [<sup>F128</sup>(2A) A person exercising a power under regulations made by virtue of section 144 must have regard to such provisions of a code as may be specified.]
- (3) Any specified provision of a code may have effect for the purposes of this section subject to such modifications as may be specified.
- (4) “Specified” means specified in a direction given by the Secretary of State.
- (5) “Authorised person” has the same meaning as in section 141.
- (6) “Code” means—
  - (a) in relation to England and Wales, any code of practice for the time being in force under the <sup>M69</sup>Police and Criminal Evidence Act 1984;
  - (b) in relation to Northern Ireland, any code of practice for the time being in force under the <sup>M70</sup>Police and Criminal Evidence (Northern Ireland) Order 1989.
- (7) This section does not apply to any person exercising powers in Scotland.

#### **Textual Amendments**

**F128** S. 145(2A) inserted (10.2.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. **128(2)**, **162(1)** (with s. 159); S.I. 2003/1, art. 2, Sch.

#### **Marginal Citations**

**M69** 1984 c. 60.

**M70** S.I. 1989/1341 (N.I. 12).

### *Use of force*

#### **146 Use of force.**

- (1) An immigration officer exercising any power conferred on him by the 1971 Act or this Act may, if necessary, use reasonable force.
- [<sup>F129</sup>(2) A person exercising a power under any of the following may if necessary use reasonable force—
  - (a) section 28CA, 28FA or 28FB of the 1971 Act (business premises: entry to arrest or search),
  - (b) section 141 or 142 of this Act, and



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(c) regulations under section 144 of this Act.]

#### Textual Amendments

**F129** S. 146(2) substituted (8.1.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\), s. 153\(2\)](#) (with s. 159); [S.I. 2002/2811, art. 2, Sch.](#)

#### Commencement Information

**I36** S. 146 partly in force; s. 146(1) in force at Royal Assent, see s. 170(3)(o)

## PART VIII

### DETENTION CENTRES AND DETAINED PERSONS

#### *Interpretation*

#### 147 Interpretation of Part VIII.

In this Part—

“certificate of authorisation” means a certificate issued by the Secretary of State under section 154;

“certified prisoner custody officer” means a prisoner custody officer certified under section 89 of the <sup>M71</sup>Criminal Justice Act 1991, or section 114 of the <sup>M72</sup>Criminal Justice and Public Order Act 1994, to perform custodial duties;

“contract monitor” means a person appointed by the Secretary of State under section 149(4);

“contracted out [<sup>F130</sup>removal centre]” means a [<sup>F130</sup>removal centre] in relation to which a [<sup>F130</sup>removal centre] contract is in force;

“contractor”, in relation to a [<sup>F130</sup>removal centre] which is being run in accordance with a [<sup>F130</sup>removal centre] contract, means the person who has contracted to run it;

“custodial functions” means custodial functions at a [<sup>F130</sup>removal centre] ;

“detained persons” means persons detained or required to be detained under the 1971 Act [<sup>F131</sup>or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State);]

“detainee custody officer” means a person in respect of whom a certificate of authorisation is in force;

<sup>F132</sup>  
...

“[<sup>F130</sup>removal centre] contract” means a contract entered into by the Secretary of State under section 149;

“[<sup>F130</sup>removal centre] rules” means rules made by the Secretary of State under section 153;

“directly managed [<sup>F130</sup>removal centre]” means a [<sup>F130</sup>removal centre] which is not a contracted out [<sup>F130</sup>removal centre];

“escort arrangements” means arrangements made by the Secretary of State under section 156;

“escort functions” means functions under escort arrangements;

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“escort monitor” means a person appointed under paragraph 1 of Schedule 13;

“prisoner custody officer”—

- (a) in relation to England and Wales, has the same meaning as in the <sup>M73</sup>Criminal Justice Act 1991;
- (b) in relation to Scotland, has the meaning given in section 114(1) of the <sup>M74</sup>Criminal Justice and Public Order Act 1994;
- (c) in relation to Northern Ireland, has the meaning given in section 122(1) of that Act of 1994;

[<sup>F133</sup>“removal centre” means a place which is used solely for the detention of detained persons but which is not a short-term holding facility, a prison or part of a prison;]

“short-term holding facility” means a place used solely for the detention of detained persons for a period of not more than seven days or for such other period as may be prescribed.

#### Textual Amendments

- F130** Words in s. 147 substituted (10.2.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss.66\(2\)\(3\)\(a\), 162\(1\)](#) (with s. 159); S.I. 2003/1, art. 2, Sch.
- F131** Words in s. 147 inserted (10.2.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss. 62\(14\), 162\(1\)](#) (with s. 159); S.I. 2003/1, art. 2, Sch.
- F132** Definition in s. 147 repealed (10.2.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss. 66\(1\)\(a\), 162\(1\)](#), [Sch. 9](#) (with s. 159); S.I. 2003/1, art. 2, Sch.
- F133** Definition in s. 147 inserted (10.2.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss. 66\(1\)\(b\), 162\(1\)](#) (with s. 159); S.I. 2003/1, art. 2, Sch.

#### Modifications etc. (not altering text)

- C41** S. 147 extended (coming into force in accordance with art. 1(2) of the extending S.I.) by [Nationality, Immigration and Asylum Act 2002 \(Juxtaposed Controls\) Order 2003 \(S.I. 2003/2818\)](#), [art. 11\(2\)](#)

#### Marginal Citations

- M71** 1991 c. 53.
- M72** 1994 c. 33.
- M73** 1991 c. 53.
- M74** 1994 c. 33.

### *Detention centres*

#### 148 Management of [<sup>F134</sup>removal centres].

- (1) A manager must be appointed for every [<sup>F134</sup>removal centre].
- (2) In the case of a contracted out [<sup>F134</sup>removal centre], the person appointed as manager must be a detainee custody officer whose appointment is approved by the Secretary of State.
- (3) The manager of a [<sup>F134</sup>removal centre] is to have such functions as are conferred on him by [<sup>F134</sup>removal centre] rules.
- (4) The manager of a contracted out [<sup>F134</sup>removal centre] may not—

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- (a) enquire into a disciplinary charge laid against a detained person;
  - (b) conduct the hearing of such a charge; or
  - (c) make, remit or mitigate an award in respect of such a charge.
- (5) The manager of a contracted out [<sup>F134</sup>removal centre] may not, except in cases of urgency, order—
- (a) the removal of a detained person from association with other detained persons;
  - (b) the temporary confinement of a detained person in special accommodation; or
  - (c) the application to a detained person of any other special control or restraint (other than handcuffs).

#### Textual Amendments

**F134** Words in s. 148 substituted (10.2.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)ss.66\(2\)\(3\)\(b\), 162\(1\)](#) (with s. 159); S.I. 2003/1, art. 2, Sch.

#### Commencement Information

**I37** S. 148 wholly in force at 2.4.2001; s. 148 not in force at Royal Assent; s. 148(3) in force at 1.8.2000 for certain purposes by [S.I. 2000/1985, art. 2, Sch.](#); s. 148 in force so far as not already in force at 2.4.2001 by [S.I. 2001/239, art. 2, Sch.](#)

### 149 Contracting out of certain [<sup>F135</sup>removal centres].

- (1) The Secretary of State may enter into a contract with another person for the provision or running (or the provision and running) by him, or (if the contract so provides) for the running by sub-contractors of his, of any [<sup>F135</sup>removal centre] or part of a [<sup>F135</sup>removal centre].
- (2) While a [<sup>F135</sup>removal centre] contract for the running of a [<sup>F135</sup>removal centre] or part of a [<sup>F135</sup>removal centre] is in force—
- (a) the [<sup>F135</sup>removal centre] or part is to be run subject to and in accordance with the provisions of or made under this Part; and
  - (b) in the case of a part, that part and the remaining part are to be treated for the purposes of those provisions as if they were separate [<sup>F135</sup>removal centres].
- (3) If the Secretary of State grants a lease or tenancy of land for the purposes of a [<sup>F135</sup>removal centre] contract, none of the following enactments applies to the lease or tenancy—
- (a) Part II of the <sup>M75</sup>Landlord and Tenant Act 1954 (security of tenure);
  - (b) section 146 of the <sup>M76</sup>Law of Property Act 1925 (restrictions on and relief against forfeiture);
  - (c) section 19(1), (2) and (3) of the <sup>M77</sup>Landlord and Tenant Act 1927 and the <sup>M78</sup>Landlord and Tenant Act 1988 (covenants not to assign etc.);
  - (d) the <sup>M79</sup>Agricultural Holdings Act 1986;
  - (e) sections 4 to 7 of the <sup>M80</sup>Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (irritancy clauses);
  - (f) the <sup>M81</sup>Agricultural Holdings (Scotland) Act 1991 [<sup>F136</sup>and the Agricultural Holdings (Scotland) Act 2003 (asp 11)];
  - (g) section 14 of the <sup>M82</sup>Conveyancing Act 1881;
  - (h) the <sup>M83</sup>Conveyancing and Law of Property Act 1892;

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- (i) the <sup>M84</sup>Business Tenancies (Northern Ireland) Order 1996.
- (4) The Secretary of State must appoint a contract monitor for every contracted out [<sup>F135</sup>removal centre].
- (5) A person may be appointed as the contract monitor for more than one [<sup>F135</sup>removal centre].
- (6) The contract monitor is to have—
- (a) such functions as may be conferred on him by [<sup>F135</sup>removal centre] rules;
  - (b) the status of a Crown servant.
- (7) The contract monitor must—
- (a) keep under review, and report to the Secretary of State on, the running of a [<sup>F135</sup>removal centre] for which he is appointed; and
  - (b) investigate, and report to the Secretary of State on, any allegations made against any person performing custodial functions at that centre.
- (8) The contractor, and any sub-contractor of his, must do all that he reasonably can (whether by giving directions to the officers of the [<sup>F135</sup>removal centre] or otherwise) to facilitate the exercise by the contract monitor of his functions.
- (9) “Lease or tenancy” includes an underlease, sublease or sub-tenancy.
- (10) In relation to a [<sup>F135</sup>removal centre] contract entered into by the Secretary of State before the commencement of this section, this section is to be treated as having been in force at that time.

#### Textual Amendments

**F135** Words in ss. 149, 150 substituted (10.2.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss.66\(2\)\(3\)\(c\)](#), [162\(1\)](#) (with s. 159); S.I. 2003/1, art. 2, Sch.

**F136** Words in s. 149(3)(f) inserted (S.) (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [sch. para. 52](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with sch.)

#### Modifications etc. (not altering text)

**C42** S. 149 extended (4.11.2002) by [The Immigration \(Short-term Holding Facilities\) Regulations 2002 \(S.I. 2002/2538\)](#), [art. 2](#)

#### Commencement Information

**I38** S. 149 wholly in force at 2.4.2001; S. 149 not in force at Royal Assent; s. 149(1)(3)(6)(a)(9) in force at 1.8.2000 by [S.I. 2000/1985](#), [art. 2](#), [Sch.](#); s. 149 in force so far as not already in force at 2.4.2001 by [S.I. 2001/239](#), [art. 2](#), [Sch.](#)

#### Marginal Citations

**M75** 1954 c. 56.

**M76** 1925 c. 20.

**M77** 1927 c. 36

**M78** 1988 c.26.

**M79** 1986 c. 5.

**M80** 1985 c. 73.

**M81** 1991 c. 55.

**M82** 1881 c. 41.

**M83** 1892 c. 13.

**Status:** Point in time view as at 07/04/2005. This version of this Act contains provisions that are not valid for this point in time.

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**M84** S.I. 1996/725 (N.I. 5).

## 150 Contracted out functions at directly managed [<sup>F135</sup>removal centres].

- (1) The Secretary of State may enter into a contract with another person—
  - (a) for functions at, or connected with, a directly managed [<sup>F135</sup>removal centre] to be performed by detainee custody officers provided by that person; or
  - (b) for such functions to be performed by certified prisoner custody officers who are provided by that person.
- (2) For the purposes of this section “[<sup>F135</sup>removal centre]” includes a short-term holding facility.

### Textual Amendments

**F135** Words in ss. 149, 150 substituted (10.2.2003) by [Nationality, Immigration and Asylum Act 2002](#) (c. 41), [ss.66\(2\)\(3\)\(c\)](#), [162\(1\)](#) (with s. 159); S.I. 2003/1, art. 2, Sch.

## 151 Intervention by Secretary of State.

- (1) The Secretary of State may exercise the powers conferred by this section if it appears to him that—
  - (a) the manager of a contracted out [<sup>F137</sup>removal centre] has lost, or is likely to lose, effective control of the centre or of any part of it; or
  - (b) it is necessary to do so in the interests of preserving the safety of any person, or of preventing serious damage to any property.
- (2) The Secretary of State may appoint a person (to be known as the Controller) to act as manager of the [<sup>F137</sup>removal centre] for the period—
  - (a) beginning with the time specified in the appointment; and
  - (b) ending with the time specified in the notice of termination under subsection (5).
- (3) During that period—
  - (a) all the functions which would otherwise be exercisable by the manager or the contract monitor are to be exercisable by the Controller;
  - (b) the contractor and any sub-contractor of his must do all that he reasonably can to facilitate the exercise by the Controller of his functions; and
  - (c) the staff of the [<sup>F137</sup>removal centre] must comply with any directions given by the Controller in the exercise of his functions.
- (4) The Controller is to have the status of a Crown servant.
- (5) If the Secretary of State is satisfied that a Controller is no longer needed for a particular [<sup>F137</sup>removal centre], he must (by giving notice to the Controller) terminate his appointment at a time specified in the notice.
- (6) As soon as practicable after making an appointment under this section, the Secretary of State must give notice of the appointment to those entitled to notice.

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- (7) As soon as practicable after terminating an appointment under this section, the Secretary of State must give a copy of the notice of termination to those entitled to notice.
- (8) Those entitled to notice are the contractor, the manager, the contract monitor and the Controller.

#### Textual Amendments

**F137** Words in s. 151 substituted (10.2.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss.66(2)(3)(d), 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

## 152 Visiting Committees and inspections.

- (1) The Secretary of State must appoint a committee (to be known as the Visiting Committee) for each [<sup>F138</sup>removal centre].
- (2) The functions of the Visiting Committee for a [<sup>F138</sup>removal centre] are to be such as may be prescribed by the [<sup>F138</sup>removal centre] rules.
- (3) Those rules must include provision—
  - (a) as to the making of visits to the centre by members of the Visiting Committee;
  - (b) for the hearing of complaints made by persons detained in the centre;
  - (c) requiring the making of reports by the Visiting Committee to the Secretary of State.
- (4) Every member of the Visiting Committee for a [<sup>F138</sup>removal centre] may at any time enter the centre and have free access to every part of it and to every person detained there.
- (5) In section 5A of the <sup>M85</sup>Prison Act 1952 (which deals with the appointment and functions of Her Majesty’s Chief Inspector of Prisons), after subsection (5), insert—
 

“(5A) Subsections (2) to (5) apply to [<sup>F138</sup>removal centres] (as defined by section 147 of the Immigration and Asylum Act 1999 and including any in Scotland) and persons detained in such [<sup>F138</sup>removal centres] as they apply to prisons and prisoners.”

#### Textual Amendments

**F138** Words in s. 152 substituted (10.2.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss.66(2)(3)(e), 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

#### Commencement Information

**I39** S. 152 wholly in force at 2.4.2001; s. 152 not in force at Royal Assent; s.152(2)(3) in force at 1.8.2000 for certain purposes by [S.I. 2000/1985](#), art. 2, [Sch.](#); s. 152 in force so far as not already in force at 2.4.2001 by [S.I. 2001/239](#), art. 2, [Sch.](#)

#### Marginal Citations

**M85** 1952 c. 52.

**Status:** Point in time view as at 07/04/2005. This version of this Act contains provisions that are not valid for this point in time.

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### 153 [F139] Removal centre] rules.

- (1) The Secretary of State must make rules for the regulation and management of [F139]removal centres].
- (2) [F139]Removal centre] rules may, among other things, make provision with respect to the safety, care, activities, discipline and control of detained persons.

#### Textual Amendments

**F139** Words in s. 153 substituted (10.2.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss.66\(2\)\(3\)\(f\), 162\(1\)](#) (with s. 159); [S.I. 2003/1](#), [art. 2](#), [Sch.](#)

#### Commencement Information

**I40** S. 153 wholly in force at 2.4.2001; S. 153 not in force at Royal Assent; s. 153 in force for certain purposes at 1.8.2000 by [S.I. 2000/1985](#), [art. 2](#), [Sch.](#); S. 153 in force so far as not already in force at 2.4.2001 by [S.I. 2001/239](#), [art. 2](#), [Sch.](#)

### *Custody and movement of detained persons*

### 154 Detainee custody officers.

- (1) On an application made to him under this section, the Secretary of State may certify that the applicant—
  - (a) is authorised to perform escort functions; or
  - (b) is authorised to perform both escort functions and custodial functions.
- (2) The Secretary of State may not issue a certificate of authorisation unless he is satisfied that the applicant—
  - (a) is a fit and proper person to perform the functions to be authorised; and
  - (b) has received training to such standard as the Secretary of State considers appropriate for the performance of those functions.
- (3) A certificate of authorisation continues in force until such date, or the occurrence of such event, as may be specified in the certificate but may be suspended or revoked under paragraph 7 of Schedule 11.
- (4) A certificate which authorises the performance of both escort functions and custodial functions may specify one date or event for one of those functions and a different date or event for the other.
- [F140](5) The Secretary of State may confer functions of detainee custody officers on prison officers or prisoner custody officers.]
- (6) A prison officer acting under arrangements made under subsection (5) has all the powers, authority, protection and privileges of a constable.
- (7) Schedule 11 makes further provision about detainee custody officers.

#### Textual Amendments

**F140** S. 154(5) substituted (10.2.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss. 65\(1\), 162\(1\)](#) (with s. 159); [S.I. 2003/1](#), [art. 2](#), [Sch.](#)

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#### Commencement Information

**I41** S. 154 wholly in force at 2.4.2001; s. 154 not in force at Royal Assent; s. 154(1)-(6) fully in force and s. 154(7) in force for certain purposes at 3.4.2000 and s. 154(7) in force for certain purposes at 1.8.2000 by [S.I. 2000/1985, art. 2, Sch.](#); s. 154 in force so far as not already in force at 2.4.2001 by [S.I. 2001/239, art. 2, Sch.](#)

### 155 Custodial functions and discipline etc. at <sup>F141</sup>removal centres .

- (1) Custodial functions may be discharged at a <sup>F141</sup>removal centre] only by—
- (a) a detainee custody officer authorised, in accordance with section 154(1), to perform such functions; or
  - (b) a prison officer, or a certified prisoner custody officer, exercising functions in relation to the <sup>F141</sup>removal centre]—
    - (i) in accordance with arrangements made under section 154(5); or
    - (ii) as a result of a contract entered into under section 150(1)(b).
- (2) Schedule 12 makes provision with respect to discipline and other matters at <sup>F141</sup>removal centres] and short-term holding facilities.

#### Textual Amendments

**F141** Words in s. 155 substituted (10.2.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\), ss.66\(2\)\(3\)\(g\), 162\(1\)](#) (with s. 159); [S.I. 2003/1, art. 2, Sch.](#)

#### Commencement Information

**I42** S. 155 wholly in force at 2.4.2001; s. 155 not in force at Royal Assent; S. 155(2) in force at 1.8.2000 for certain purposes by [S.I. 2000/1985, art. 2, Sch.](#); s. 155 in force so far as not already in force at 2.4.2001 by [S.I. 2001/239, art. 2, Sch.](#)

### 156 Arrangements for the provision of escorts and custody.

- (1) The Secretary of State may make arrangements for—
- (a) the delivery of detained persons to premises in which they may lawfully be detained;
  - (b) the delivery of persons from any such premises for the purposes of their removal from the United Kingdom in accordance with directions given under the 1971 Act or this Act;
  - (c) the custody of detained persons who are temporarily outside such premises;
  - (d) the custody of detained persons held on the premises of any court.
- (2) Escort arrangements may provide for functions under the arrangements to be performed, in such cases as may be determined by or under the arrangements, by detainee custody officers.
- (3) “Court” includes—
- <sup>F142</sup>(a) the Asylum and Immigration Tribunal;]
  - (c) the Commission.
- (4) Escort arrangements may include entering into contracts with other persons for the provision by them of—



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- (a) detainee custody officers; or
  - (b) prisoner custody officers who are certified under section 89 of the Criminal Justice Act 1991, or section 114 or 122 of the <sup>M86</sup>Criminal Justice and Public Order Act 1994, to perform escort functions.
- (5) Schedule 13 makes further provision about escort arrangements.
- (6) A person responsible for performing a function of a kind mentioned in subsection (1), in accordance with a transfer direction, complies with the direction if he does all that he reasonably can to secure that the function is performed by a person acting in accordance with escort arrangements.
- (7) “Transfer direction” means a transfer direction given under—
- (a) section 48 of the <sup>M87</sup>Mental Health Act 1983 or section 71 of the <sup>M88</sup>Mental Health (Scotland) Act 1984 (removal to hospital of, among others, persons detained under the 1971 Act); or
  - (b) in Northern Ireland, article 54 of the <sup>M89</sup>Mental Health (Northern Ireland) Order 1986 (provision corresponding to section 48 of the 1983 Act).

#### Textual Amendments

**F142** S. 156(3)(a) substituted for s. 156(3)(a)(b) (4.4.2005) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), s. 48(3), **Sch. 2 para. 15**; S.I. 2005/565, art. 2(d) (with arts. 3-9)

#### Commencement Information

**I43** S. 156 wholly in force at 2.4.2001; s. 156 not in force at Royal Assent; s. 156(5) in force at 1.8.2000 for certain purposes by [S.I. 2000/1985](#), art. 2, **Sch.**; s. 156 in force so far as not already in force at 2.4.2001 by [S.I. 2001/239](#), art. 2, **Sch.**

#### Marginal Citations

**M86** 1994 c. 33.

**M87** 1983 c. 20.

**M88** 1984 c. 36.

**M89** S.I. 1986/595 (N.I. 4).

### 157 Short-term holding facilities.

- (1) The Secretary of State may by regulations extend any provision made by or under this Part in relation to [<sup>F143</sup>removal centres] (other than one mentioned in subsection (2)) to short-term holding facilities.
- (2) Subsection (1) does not apply to section 150.
- (3) The Secretary of State may make rules for the regulation and management of short-term holding facilities.

#### Textual Amendments

**F143** Words in s. 157 substituted (10.2.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss.66(2)(3)(h), 162(1) (with s. 159); S.I. 2003/1, art. 2, **Sch.**

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#### Commencement Information

- I44** S. 157 wholly in force at 2.4.2001; s. 157 not in force at Royal assent, see s. 170(4); s. 157 in force at 1.8.2000 for certain purposes by S.I. 2000/1985, art. 2, Sch.; s. 157 in force so far as not already in force 2.4.2001 by S.I. 2001/239, art. 2, Sch.

#### *Miscellaneous*

### 158 Wrongful disclosure of information.

- (1) A person who is or has been employed (whether as a detainee custody officer, prisoner custody officer or otherwise)—
- (a) in accordance with escort arrangements,
  - (b) at a contracted out [<sup>F144</sup>removal centre], or
  - (c) to perform contracted out functions at a directly managed [<sup>F144</sup>removal centre],
- is guilty of an offence if he discloses, otherwise than in the course of his duty or as authorised by the Secretary of State, any information which he acquired in the course of his employment and which relates to a particular detained person.
- (2) A person guilty of such an offence is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
- (3) “Contracted out functions” means functions which, as the result of a contract entered into under section 150, fall to be performed by detainee custody officers or certified prisoner custody officers.

#### Textual Amendments

- F144** Words in s. 158 substituted (10.2.2003) by *Nationality, Immigration and Asylum Act 2002 (c. 41)*, ss.66(2)(3)(i), 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

### 159 Power of constable to act outside his jurisdiction.

- (1) For the purpose of taking a person to or from a [<sup>F145</sup>removal centre] under the order of any authority competent to give the order, a constable may act outside the area of his jurisdiction.
- (2) When acting under this section, the constable concerned retains all the powers, authority, protection and privileges of his office.

#### Textual Amendments

- F145** Words in s. 159 substituted (10.2.2003) by *Nationality, Immigration and Asylum Act 2002 (c. 41)*, ss.66(2)(3)(j), 162(1) (with s. 159); S.I. 2003/1, art. 2, Sch.

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## PART IX

### REGISTRAR’S CERTIFICATES: PROCEDURE

#### 160 Abolition of certificate by licence.

- (1) In the <sup>M90</sup>Marriage Act 1949, in section 26, omit subsection (2) (marriage under superintendent registrar’s certificate to be by licence issued by the registrar or without licence).
- (2) In section 27 of the 1949 Act—
  - (a) in subsection (1), omit “without licence”;
  - (b) omit subsection (2);
  - (c) in subsection (3), in paragraph (a), omit “in the case of a marriage intended to be solemnized without licence,”;
  - (d) in subsection (3), omit paragraph (b).
- (3) Section 32 of the 1949 Act (marriage under certificate by licence) shall cease to have effect.
- (4) In section 31 of the 1949 Act (marriage under certificate without licence requiring 21 days’ notice)—
  - (a) in subsection (1), omit “without licence” and for “twenty-one” substitute “15”;
  - (b) in subsection (2), for “twenty-one” substitute “15”;
  - (c) in subsection (4), omit “without licence” and for “said period of twenty-one days” substitute “waiting period in relation to each notice of marriage”.
- (5) In section 31 of the 1949 Act, after subsection (4) insert—

“(4A) “The waiting period”, in relation to a notice of marriage, means—

  - (a) the period of 15 days, or
  - (b) such shorter period as may be determined by the Registrar General under subsection (5A) or by a superintendent registrar under any provision of regulations made under subsection (5D),

after the day on which the notice of marriage was entered in the marriage notice book.”
- (6) In section 31 of the 1949 Act, insert at the end—
  - “(5A) If, on an application made to the Registrar General, he is satisfied that there are compelling reasons for reducing the 15 day period because of the exceptional circumstances of the case, he may reduce that period to such shorter period as he considers appropriate.
  - (5B) “The 15 day period” means the period of 15 days mentioned in subsections (1) and (2).
  - (5C) If the Registrar General reduces the 15 day period in a particular case, the reference to 15 days in section 75(3)(a) is to be treated, in relation to that case, as a reference to the reduced period.
  - (5D) The Registrar General may by regulations make provision with respect to the making, and granting, of applications under subsection (5A).

**Status:** Point in time view as at 07/04/2005. This version of this Act contains provisions that are not valid for this point in time.

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(5E) The regulations—

- (a) may provide for the power conferred by subsection (5A) to be exercised by a superintendent registrar on behalf of the Registrar General in cases falling within a category prescribed in the regulations;
- (b) may provide for the making of an appeal to the Registrar General against a decision taken by a superintendent registrar in accordance with regulations made by virtue of paragraph (a);
- (c) may make different provision in relation to different cases;
- (d) require the approval of the Chancellor of the Exchequer.

(5F) The Chancellor of the Exchequer may by order provide for a fee, of such an amount as may be specified in the order, to be payable on an application under subsection (5A).

(5G) The order may make different provision in relation to different cases.

(5H) The power to make regulations under subsection (5D) or an order under subsection (5F) is exercisable by statutory instrument.

(5I) Any statutory instrument made under subsection (5F) shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

**Commencement Information**

**I45** S. 160 wholly in force at 1.1.2001, see s. 170(4) and S.I. 2000/2698, art. 2, Sch. (as amended by S.I. 2000/3099, art. 4) subject to the transitional provision in art. 3 (as inserted by art. 4 of the said S.I. 2000/3099)

**Marginal Citations**

**M90** 1949 c. 76.

**161 Notice of marriage.**

(1) In the <sup>M91</sup>Marriage Act 1949, in section 27(1) (persons by whom notice of marriage must be given)—

- (a) in paragraph (a), for “either” substitute “each”;
- (b) in paragraph (b), for “either” substitute “each” and for “each registration district in which one of them has resided” substitute “the registration district in which he or she has resided”.

(2) In section 27 of the 1949 Act, in subsection (3) (matters to be stated in notice of marriage), for “and place of residence” substitute “, place of residence and nationality”.

(3) In the 1949 Act, in section 26(1) (marriages which may be solemnized on authority of a certificate of a superintendent registrar), for “a certificate” substitute “two certificates”.

<sup>F146</sup>(4) .....

**Status:** Point in time view as at 07/04/2005. This version of this Act contains provisions that are not valid for this point in time.  
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**Textual Amendments**

**F146** S. 161(4) repealed (N.I.) (1.1.2004) by [The Marriage \(Northern Ireland\) Order 2003 \(S.I. 2003/413\)](#), art. 1(2), [Sch.](#); [S.R. 2003/466](#), art. 2(b)

**Commencement Information**

**I46** S. 161 wholly in force at 1.1.2001, see s. 170(4) and [S.I. 2000/2698](#), [art. 2](#), [Sch.](#) (as amended by [S.I. 2000/3099](#), [art. 4](#)) subject to the transitional provision in art. 3 (as inserted by art. 4 of the said [S.I. 2000/3099](#))

**Marginal Citations**

**M91** [1949 c. 76](#).

**162 Power to require evidence.**

(1) In the Marriage Act 1949, after section 28, insert—

**“28A Power to require evidence.**

- (1) A superintendent registrar to whom a notice of marriage is given under section 27, or any other person attesting a declaration accompanying such a notice, may require the person giving the notice to provide him with specified evidence—
- (a) relating to that person; or
  - (b) if the superintendent registrar considers that the circumstances are exceptional, relating to each of the persons to be married.
- (2) Such a requirement may be imposed at any time—
- (a) on or after the giving of the notice of marriage; but
  - (b) before the superintendent registrar issues his certificate under section 31.
- (3) “Specified evidence”, in relation to a person, means such evidence of that person’s—
- (a) name and surname,
  - (b) age,
  - (c) marital status, and
  - (d) nationality,
- as may be specified in guidance issued by the Registrar General.”

<sup>F147</sup>(2) .....

**Textual Amendments**

**F147** S. 162(2) repealed (N.I.) (1.1.2004) by [The Marriage \(Northern Ireland\) Order 2003 \(S.I. 2003/413\)](#), art. 1(2), [Sch.](#); [S.R. 2003/466](#), art. 2(b)

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**Commencement Information**

**I47** S. 162 wholly in force at 1.1.2001, see s. 170(4) and [S.I. 2000/2698, art. 2, Sch.](#) (as amended by [S.I. 2000/3099, art. 4](#)) subject to the transitional provision in art. 3 (as inserted by art. 4 of the said [S.I. 2000/3099](#))

**163 Refusal to issue certificate.**

(1) In the <sup>M92</sup>Marriage Act 1949, in section 31(2) (issue of marriage certificate), for paragraph (a) substitute—

“(a) the superintendent registrar is not satisfied that there is no lawful impediment to the issue of the certificate; or”.

(2) In the 1949 Act, after section 31, insert—

**“31A Appeal on refusal under section 31(2)(a).**

(1) If, relying on section 31(2)(a), a superintendent registrar refuses to issue a certificate, the person applying for it may appeal to the Registrar General.

(2) On such an appeal, the Registrar General must—

- (a) confirm the refusal; or
- (b) direct that a certificate be issued.

(3) If—

- (a) relying on section 31(2)(a), a superintendent registrar refuses to issue a certificate as a result of a representation made to him, and
- (b) on an appeal against the refusal, the Registrar General declares the representation to have been frivolous and to be such that it ought not to obstruct the issue of a certificate,

the person making the representation is liable for the costs of the proceedings before the Registrar General and for damages recoverable by the applicant for the certificate.

(4) For the purpose of enabling a person to recover any such costs and damages, a copy of the declaration of the Registrar General purporting to be sealed with the seal of the General Register Office is evidence that the Registrar General has declared the representation to have been frivolous and to be such that it ought not to obstruct the issue of a certificate.”

<sup>F148</sup>(3) . . . . .

<sup>F148</sup>(4) . . . . .

**Textual Amendments**

**F148** [S. 163\(3\)\(4\)](#) repealed (N.I.) (1.1.2004) by [The Marriage \(Northern Ireland\) Order 2003 \(S.I. 2003/413\)](#), art. 1(2), [Sch.](#); [S.R. 2003/466](#), art. 2(b)

**Commencement Information**

**I48** S. 163 wholly in force at 1.1.2001, see s. 170(4) and [S.I. 2000/2698, art. 2, Sch.](#) (as amended by [S.I. 2000/3099, art. 4](#)) subject to the transitional provision in art. 3 (as inserted by art. 4 of the said [S.I. 2000/3099](#))

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#### Marginal Citations

**M92** 1949 c. 76.

## PART X

### MISCELLANEOUS AND SUPPLEMENTAL

#### 164 Institution of proceedings.

In section 3(2) of the <sup>M93</sup>Prosecution of Offences Act 1985 (proceedings which must be conducted by the Director of Public Prosecutions), after paragraph (a) insert—

“(aa) to take over the conduct of any criminal proceedings instituted by an immigration officer (as defined for the purposes of the <sup>M94</sup>Immigration Act 1971) acting in his capacity as such an officer;”.

#### Commencement Information

**I49** S. 164 in force at 1.12.2004 by S.I. 2004/2997, art. 2

#### Marginal Citations

**M93** 1985 c. 23.

**M94** 1971 c. 77.

#### 165 Procedural requirements as to applications.

In the 1971 Act, after section 31, insert—

##### “31A Procedural requirements as to applications.

- (1) If a form is prescribed for a particular kind of application under this Act, any application of that kind must be made in the prescribed form.
- (2) If procedural or other steps are prescribed in relation to a particular kind of application under this Act, those steps must be taken in respect of any application of that kind.
- (3) “Prescribed” means prescribed in regulations made by the Secretary of State.
- (4) The power to make regulations under this section is exercisable by statutory instrument.
- (5) Any such statutory instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

#### Commencement Information

**I50** S. 165 partly in force; s. 165 not in force at Royal Assent see s. 170(4); s. 165 in force for certain purposes at 22.5.2000 by S.I. 2000/1282, art. 2, Sch.

**I51** S. 165 in force at 1.8.2003 in so far as not already in force by S.I. 2003/1862, art. 2

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## 166 Regulations and orders.

- (1) Any power to make rules, regulations or orders conferred by this Act is exercisable by statutory instrument.
- (2) But subsection (1) does not apply in relation to [<sup>F149</sup>orders made under section 90(1),] rules made under paragraph 1 of Schedule 5 or immigration rules.
- (3) Any statutory instrument made as a result of subsection (1) may—
- contain such incidental, supplemental, consequential and transitional provision as the person making it considers appropriate;
  - make different provision for different cases or descriptions of case; and
  - make different provision for different areas.
- (4) No order is to be made under—
- section 20,
  - section 21,
  - section 31(10),
  - section 86(2),
  - [<sup>F150</sup>section 96(5),]
  - section 97(3),
  - section 143(15), or
  - paragraph 4 of Schedule 5,
- unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (5) No regulations are to be made under—
- [<sup>F151</sup>(za) section 4(5),]
- section 9,
  - section 46(8);
  - section 53, or
  - section 144,
- unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House.
- (6) Any statutory instrument made under this Act, apart from one made—
- under any of the provisions mentioned in subsection (4) or (5), or
  - under section 24(3) or 170(4) or (7),
- shall be subject to annulment by a resolution of either House of Parliament.

### Textual Amendments

**F149** Words in s. 166(2) inserted (1.10.2004) by *Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)*, **ss. 41(5)**, 48(3); S.I. 2004/2523, art. 2, Sch.

**F150** S. 166(4)(e) ceased to have effect (7.11.2002) and repealed (prosp.) by *Nationality, Immigration and Asylum Act 2002 (c. 41)*, **ss. 61(b)**, 161, 162(1)(2), **Sch. 9** (with s. 159)

**F151** S. 166(5)(za) inserted (1.12.2004) by *Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)*, **ss. 10(2)**, 48(3) (with s. 10(6)); S.I. 2004/2999, art. 2, Sch.



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## 167 Interpretation.

### (1) In this Act—

“the 1971 Act” means the <sup>M95</sup>Immigration Act 1971;

“adjudicator” (except in Part VI) means an adjudicator appointed under section 57;

“Chief Adjudicator” means the person appointed as Chief Adjudicator under section 57(2);

“claim for asylum” (except in Parts V and VI and section 141) means a claim that it would be contrary to the United Kingdom’s obligations under the Refugee Convention for the claimant to be removed from, or required to leave, the United Kingdom;

“the Commission” means the Special Immigration Appeals Commission;

“country” includes any territory;

“EEA State” means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as it has effect for the time being;

“the Human Rights Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950 as it has effect for the time being in relation to the United Kingdom;

[<sup>F152</sup>“the Immigration Acts” has the meaning given by <sup>F153</sup>section 44 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004].]

“prescribed” means prescribed by regulations made by the Secretary of State;

“the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and the Protocol to the Convention;

“voluntary organisations” means bodies (other than public or local authorities) whose activities are not carried on for profit.

### (2) The following expressions have the same meaning as in the 1971 Act—

“certificate of entitlement”;

“entry clearance”;

“illegal entrant”;

“immigration officer”;

“immigration rules”;

“port”;

“United Kingdom passport”;

“work permit”.

#### Textual Amendments

**F152** Definition in s. 167(1) substituted (10.2.2003) by [Nationality, Immigration and Asylum Act 2002](#) (c. 41), [ss. 158\(4\), 162\(1\)](#) (with s. 159); S.I. 2003/1, art. 2, Sch.

**F153** Words in s. 167(1) substituted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#) (c. 19), [ss. 44\(4\)\(b\), 48\(3\)](#); S.I. 2004/2523, art. 2, Sch.

#### Marginal Citations

**M95** 1971 c. 77.

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## 168 Expenditure and receipts.

- (1) There is to be paid out of money provided by Parliament—
  - (a) any expenditure incurred by the Secretary of State or the Lord Chancellor in consequence of this Act; and
  - (b) any increase attributable to this Act in the sums so payable by virtue of any other Act.
- (2) Sums received by the Secretary of State under section 5, 32, 40, 112 or 113 or by the Lord Chancellor under section 48(4) or 49(4) must be paid into the Consolidated Fund.

## 169 Minor and consequential amendments, transitional provisions and repeals.

- (1) Schedule 14 makes minor and consequential amendments.
- (2) Schedule 15 contains transitional provisions and savings.
- (3) The enactments set out in Schedule 16 are repealed.

### Commencement Information

- I52** S. 169 partly in force; s. 169 not in force at Royal Assent see s. 170(4); s. 169(1)(2) in force for certain purposes at 6.12.1999 by S.I. 1999/3190, art. 2, Sch.; s. 169 in force for certain purposes at 14.2.2000 by S.I. 2000/168, art. 2, Sch. (with transitional provisions in art. 3); s. 169(1)(3) in force for certain purposes at 1.3.2000 and for certain further purposes at 3.4.2000 by S.I. 2000/464, art. 2, Sch.; s. 169(1) in force for certain purposes at 1.8.2000 by S.I. 2000/1985, art. 2, Sch.; s. 169 in force for certain purposes at 2.10.2000 by S.I. 2000/2444, art. 2, Sch. 1 (subject to arts. 3, 4, Sch. 2); s. 169(1)(3) in force for certain purposes at 1.1.2001 by S.I. 2000/2698, art. 2, Sch. (as amended by S.I. 2000/3099, art. 4) subject to the transitional provision in art. 3 (as inserted by art. 4 of the said S.I. 2000/3099); s. 169(1)(3) in force for certain purposes at 11.12.2000 by S.I. 2000/3099, art. 2, Sch.
- I53** S. 169(1)(3) in force at 30.6.2003 for specified purposes by S.I. 2003/1469, art. 2, Sch.

## 170 Short title, commencement and extent.

- (1) This Act may be cited as the Immigration and Asylum Act 1999.
- (2) Subsections (1) and (2) of section 115 come into force on the day on which the first regulations made under Schedule 8 come into force.
- (3) The following provisions come into force on the passing of this Act—
  - (a) section 4;
  - (b) section 9;
  - (c) section 15;
  - (d) section 27;
  - (e) section 31;
  - (f) section 94;
  - (g) section 95(13);
  - (h) section 99(4) and (5);
  - (i) sections 105 to 109;
  - (j) section 110(1), (2) and (8) (so far as relating to subsections (1) and (2));
  - (k) section 111;

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- (l) section 124;
  - (m) section 140;
  - (n) section 145;
  - (o) section 146(1);
  - (p) sections 166 to 168;
  - (q) this section;
  - (r) Schedule 9;
  - (s) paragraphs 62(2), 73, 78, 79, 81, 82, 87, 88 and 102 of Schedule 14;
  - (t) paragraphs 2 and 13 of Schedule 15.
- (4) The other provisions of this Act, except section 10 and paragraph 12 of Schedule 15 (which come into force in accordance with section 9), come into force on such day as the Secretary of State may by order appoint.
- (5) Different days may be appointed for different purposes.
- (6) This Act extends to Northern Ireland.
- (7) Her Majesty may by Order in Council direct that any of the provisions of this Act are to extend, with such modifications (if any) as appear to Her Majesty to be appropriate, to any of the Channel Islands or the Isle of Man.

#### Subordinate Legislation Made

- P1** S. 170(4) power partly exercised: different dates appointed for specified provisions by [S.I. 1999/3190](#), [art. 2](#), [Sch.](#)
- S. 170(4) power partly exercised: different dates appointed for specified provisions by [S.I. 2000/168](#), [art. 2](#), [Sch.](#) (with [art. 3](#))
- S. 170(4) power partly exercised: different dates appointed for specified provisions by [S.I. 2000/464](#), [art. 2](#), [Sch.](#)
- S. 170(4) power partly exercised: 22.5.2000 appointed for specified provisions by [S.I. 2000/1282](#), [art. 2](#), [Sch.](#)
- S. 170(4) power partly exercised: 1.8.2000 and 30.10.2000 appointed for specified provisions by [S.I. 2000/1985](#), [art. 2](#), [Sch.](#) (with [art. 3](#))
- S. 170(4) power partly exercised: different dates appointed for specified provisions by [S.I. 2000/2444](#), [art. 2](#), [Sch. 1](#) (subject to [arts. 3, 4](#), [Sch. 2](#)) (as amended by [S.I. 2000/3099](#), [art. 5](#))
- S. 170(4) power partly exercised: 1.1.2001 appointed for specified provisions by [S.I. 2000/2698](#), [art. 2](#), [Sch.](#) (subject to [art. 3](#)) (as amended by [S.I. 2000/3099](#), [art. 4](#))
- S. 170(4) power partly exercised: 11.12.2000 appointed for specified provisions by [S.I. 2000/3099](#), [art. 3](#), [Sch.](#)
- S. 170(4) power partly exercised: different dates appointed for specified provisions by [S.I. 2001/239](#), [art. 2](#), [Sch.](#)
- S. 170(4) power partly exercised: different dates appointed for specified provisions by [S.I. 2001/1394](#), [art. 2](#), [Sch.](#)
- S. 170(4) power partly exercised: 8.12.2002 appointed for specified provisions by [S.I. 2002/2815](#), [art. 2](#), [Sch.](#)

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