

# IMMIGRATION AND ASYLUM ACT 1999

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Schedule 14: Consequential amendments*

#### *Section 31: Defences based on Article 31(1) of the Refugee Convention*

113. **Section 31** creates a defence against charges for certain offences (specified in subsections (3) and (4)) where the person concerned is a refugee and can show that he presented himself to the authorities in the United Kingdom without delay, claimed asylum as soon as reasonably practicable after his arrival in the United Kingdom and showed good cause for his illegal entry or presence. This defence, which is modelled on Article 31(1) of the Refugee Convention, does not apply if the refugee stopped in a third country outside the United Kingdom unless he can show that he could not reasonably have been expected to be given protection under the Convention in that country. It does not apply either in respect of any offences committed after the person concerned has made a claim for asylum. The defence is only available to someone who is a refugee within the meaning of the Convention and where the Secretary of State has refused to grant a claim for asylum that person is taken not to be a refugee unless he can show that he is, eg by means of other legal proceedings, including an appeal to the Immigration Appellate Authority.
114. The defence is intended to supplement the administrative arrangements introduced in mid-1999 which are intended to identify at an early stage those cases where Article 31(1) may be relevant. In addition, because the provision applies retrospectively, any refugee who has been convicted of a specified offence before the Act comes into force and who had not argued a defence based on Article 31(1) during those proceedings, can apply to the relevant Criminal Cases Review Commission with a view to the case being referred to the Court of Appeal or High Court of Justiciary on the grounds that he would have had a defence under this section if it had been in force at the time.
115. The Secretary of State may add to the list of offences to which this defence can apply.