



Immigration and Asylum Act 1999

1999 CHAPTER 33

PART V

IMMIGRATION ADVISERS AND IMMIGRATION SERVICE PROVIDERS

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.

Status: Point in time view as at 03/11/2008.

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- (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.

[^{F1}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—

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- (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—
 - “(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

- F1** 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.

[^{F2}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.

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- (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 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

F2 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.](#)

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