



# Nationality, Immigration and Asylum Act 2002

## 2002 CHAPTER 41

### PART 7

#### OFFENCES

VALID FROM 10/02/2003

#### *Substance*

#### **143 Assisting unlawful immigration, &c.**

The following shall be substituted for section 25 of the Immigration Act 1971 (c. 77) (assisting illegal entry)—

#### **“25 Assisting unlawful immigration to member State**

- (1) A person commits an offence if he—
  - (a) does an act which facilitates the commission of a breach of immigration law by an individual who is not a citizen of the European Union,
  - (b) knows or has reasonable cause for believing that the act facilitates the commission of a breach of immigration law by the individual, and
  - (c) knows or has reasonable cause for believing that the individual is not a citizen of the European Union.
- (2) In subsection (1) “immigration law” means a law which has effect in a member State and which controls, in respect of some or all persons who are not nationals of the State, entitlement to—

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- (a) enter the State,
  - (b) transit across the State, or
  - (c) be in the State.
- (3) A document issued by the government of a member State certifying a matter of law in that State—
- (a) shall be admissible in proceedings for an offence under this section, and
  - (b) shall be conclusive as to the matter certified.
- (4) Subsection (1) applies to anything done—
- (a) in the United Kingdom,
  - (b) outside the United Kingdom by an individual to whom subsection (5) applies, or
  - (c) outside the United Kingdom by a body incorporated under the law of a part of the United Kingdom.
- (5) This subsection applies to—
- (a) a British citizen,
  - (b) a British overseas territories citizen,
  - (c) a British National (Overseas),
  - (d) a British Overseas citizen,
  - (e) a person who is a British subject under the British Nationality Act 1981 (c. 61), and
  - (f) a British protected person within the meaning of that Act.
- (6) A person guilty of an offence under this section shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years, to a fine or to both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.

### **25A Helping asylum-seeker to enter United Kingdom**

- (1) A person commits an offence if—
- (a) he knowingly and for gain facilitates the arrival in the United Kingdom of an individual, and
  - (b) he knows or has reasonable cause to believe that the individual is an asylum-seeker.
- (2) In this section “asylum-seeker” means a person who intends to claim that to remove him from or require him to leave the United Kingdom would be contrary to the United Kingdom’s obligations under—
- (a) the Refugee Convention (within the meaning given by section 167(1) of the Immigration and Asylum Act 1999 (c. 33) (interpretation)), or
  - (b) the Human Rights Convention (within the meaning given by that section).

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- (3) Subsection (1) does not apply to anything done by a person acting on behalf of an organisation which—
  - (a) aims to assist asylum-seekers, and
  - (b) does not charge for its services.
- (4) Subsections (4) to (6) of section 25 apply for the purpose of the offence in subsection (1) of this section as they apply for the purpose of the offence in subsection (1) of that section.

### **25B Assisting entry to United Kingdom in breach of deportation or exclusion order**

- (1) A person commits an offence if he—
  - (a) does an act which facilitates a breach of a deportation order in force against an individual who is a citizen of the European Union, and
  - (b) knows or has reasonable cause for believing that the act facilitates a breach of the deportation order.
- (2) Subsection (3) applies where the Secretary of State personally directs that the exclusion from the United Kingdom of an individual who is a citizen of the European Union is conducive to the public good.
- (3) A person commits an offence if he—
  - (a) does an act which assists the individual to arrive in, enter or remain in the United Kingdom,
  - (b) knows or has reasonable cause for believing that the act assists the individual to arrive in, enter or remain in the United Kingdom, and
  - (c) knows or has reasonable cause for believing that the Secretary of State has personally directed that the individual's exclusion from the United Kingdom is conducive to the public good.
- (4) Subsections (4) to (6) of section 25 apply for the purpose of an offence under this section as they apply for the purpose of an offence under that section.

### **25C Forfeiture of vehicle, ship or aircraft**

- (1) This section applies where a person is convicted on indictment of an offence under section 25, 25A or 25B.
- (2) The court may order the forfeiture of a vehicle used or intended to be used in connection with the offence if the convicted person—
  - (a) owned the vehicle at the time the offence was committed,
  - (b) was at that time a director, secretary or manager of a company which owned the vehicle,
  - (c) was at that time in possession of the vehicle under a hire-purchase agreement,
  - (d) was at that time a director, secretary or manager of a company which was in possession of the vehicle under a hire-purchase agreement, or
  - (e) was driving the vehicle in the course of the commission of the offence.

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- (3) The court may order the forfeiture of a ship or aircraft used or intended to be used in connection with the offence if the convicted person—
  - (a) owned the ship or aircraft at the time the offence was committed,
  - (b) was at that time a director, secretary or manager of a company which owned the ship or aircraft,
  - (c) was at that time in possession of the ship or aircraft under a hire-purchase agreement,
  - (d) was at that time a director, secretary or manager of a company which was in possession of the ship or aircraft under a hire-purchase agreement,
  - (e) was at that time a charterer of the ship or aircraft, or
  - (f) committed the offence while acting as captain of the ship or aircraft.
- (4) But in a case to which subsection (3)(a) or (b) does not apply, forfeiture may be ordered only—
  - (a) in the case of a ship, if subsection (5) or (6) applies;
  - (b) in the case of an aircraft, if subsection (5) or (7) applies.
- (5) This subsection applies where—
  - (a) in the course of the commission of the offence, the ship or aircraft carried more than 20 illegal entrants, and
  - (b) a person who, at the time the offence was committed, owned the ship or aircraft or was a director, secretary or manager of a company which owned it, knew or ought to have known of the intention to use it in the course of the commission of an offence under section 25, 25A or 25B.
- (6) This subsection applies where a ship's gross tonnage is less than 500 tons.
- (7) This subsection applies where the maximum weight at which an aircraft (which is not a hovercraft) may take off in accordance with its certificate of airworthiness is less than 5,700 kilogrammes.
- (8) Where a person who claims to have an interest in a vehicle, ship or aircraft applies to a court to make representations on the question of forfeiture, the court may not make an order under this section in respect of the ship, aircraft or vehicle unless the person has been given an opportunity to make representations.
- (9) In the case of an offence under section 25, the reference in subsection (5)(a) to an illegal entrant shall be taken to include a reference to—
  - (a) an individual who seeks to enter a member State in breach of immigration law (within the meaning of section 25), and
  - (b) an individual who is a passenger for the purpose of section 145 of the Nationality, Immigration and Asylum Act 2002 (traffic in prostitution).
- (10) In the case of an offence under section 25A, the reference in subsection (5)
  - (a) to an illegal entrant shall be taken to include a reference to—
    - (a) an asylum-seeker (within the meaning of that section), and
    - (b) an individual who is a passenger for the purpose of section 145(1) of the Nationality, Immigration and Asylum Act 2002.

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- (11) In the case of an offence under section 25B, the reference in subsection (5) (a) to an illegal entrant shall be taken to include a reference to an individual who is a passenger for the purpose of section 145(1) of the Nationality, Immigration and Asylum Act 2002.”

#### **144 Section 143: consequential amendments**

- (1) The Immigration Act 1971 (c. 77) shall be amended as follows.
- (2) Section 25A (detention of ship, aircraft or vehicle) shall be renumbered as section 25D (and its title becomes “Detention of ship, aircraft or vehicle”) and—
- (a) in subsection (1) for “section 25(1)(a) or (b)” substitute “ section 25, 25A or 25B ”,
  - (b) in subsections (2) and (4) for “section 25(6)” substitute “ section 25C ”,
  - (c) for subsection (3) substitute—  

“(3) A person (other than the arrested person) may apply to the court for the release of a ship, aircraft or vehicle on the grounds that—

    - (a) he owns the ship, aircraft or vehicle,
    - (b) he was, immediately before the detention of the ship, aircraft or vehicle, in possession of it under a hire-purchase agreement, or
    - (c) he is a charterer of the ship or aircraft.”,

and

    - (d) omit subsection (7).
- (3) In section 28A (arrest without warrant)—
- (a) in subsection (3)(a) for “section 25(1)” substitute “ section 25, 25A or 25B ”,
  - (b) omit subsection (4),
  - (c) in subsection (10) omit “, (4)(b)”, and
  - (d) in subsection (11) omit “, (4)”.
- (4) In section 28B(5) (search and arrest by warrant) for “, section 24A or section 25(2)” substitute “, 24A ”.
- (5) In section 28C(1) (search and arrest without warrant) for “section 25(1)” substitute “ section 25, 25A or 25B ”.
- (6) In section 28D(4) (entry and search of premises) for “section 24A or section 25” substitute “ 24A, 25, 25A, 25B ”.
- (7) In section 28F (the title to which becomes “Entry and search of premises following arrest under section 25, 25A or 25B”) in subsection (1) for “section 25(1)” substitute “ section 25, 25A, 25B ”.
- (8) After section 33(1) (interpretation) insert—
- “(1A) A reference to being an owner of a vehicle, ship or aircraft includes a reference to being any of a number of persons who jointly own it.”

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## **145 Traffic in prostitution**

- (1) A person commits an offence if he arranges or facilitates the arrival in the United Kingdom of an individual (the “passenger”) and—
  - (a) he intends to exercise control over prostitution by the passenger in the United Kingdom or elsewhere, or
  - (b) he believes that another person is likely to exercise control over prostitution by the passenger in the United Kingdom or elsewhere.
- (2) A person commits an offence if he arranges or facilitates travel within the United Kingdom by an individual (the “passenger”) in respect of whom he believes that an offence under subsection (1) may have been committed and—
  - (a) he intends to exercise control over prostitution by the passenger in the United Kingdom or elsewhere, or
  - (b) he believes that another person is likely to exercise control over prostitution by the passenger in the United Kingdom or elsewhere.
- (3) A person commits an offence if he arranges or facilitates the departure from the United Kingdom of an individual (the “passenger”) and—
  - (a) he intends to exercise control over prostitution by the passenger outside the United Kingdom, or
  - (b) he believes that another person is likely to exercise control over prostitution by the passenger outside the United Kingdom.
- (4) For the purposes of subsections (1) to (3) a person exercises control over prostitution by another if for purposes of gain he exercises control, direction or influence over the prostitute’s movements in a way which shows that he is aiding, abetting or compelling the prostitution.
- (5) A person guilty of an offence under this section shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years, to a fine or to both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.

## **146 Section 145: supplementary**

- (1) Subsections (1) to (3) of section 145 apply to anything done—
  - (a) in the United Kingdom,
  - (b) outside the United Kingdom by an individual to whom subsection (2) applies, or
  - (c) outside the United Kingdom by a body incorporated under the law of a part of the United Kingdom.
- (2) This subsection applies to—
  - (a) a British citizen,
  - (b) a British overseas territories citizen,
  - (c) a British National (Overseas),
  - (d) a British Overseas citizen,
  - (e) a person who is a British subject under the British Nationality Act 1981 (c. 61), and
  - (f) a British protected person within the meaning of that Act.

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- (3) Sections 25C and 25D of the Immigration Act 1971 (c.77) (forfeiture or detention of vehicle, &c.) shall apply in relation to an offence under section 145 of this Act as they apply in relation to an offence under section 25 of that Act.
- (4) The following shall be inserted after paragraph 2(m) of Schedule 4 to the Criminal Justice and Court Services Act 2000 (c. 43) (offence against child)—
- “(n) an offence under section 145 of the Nationality, Immigration and Asylum Act 2002 (traffic in prostitution).”

VALID FROM 01/04/2003

## 147 Employment

- (1) Section 8 of the Asylum and Immigration Act 1996 (c. 49) (employment: offence) shall be amended as follows.
- (2) For subsection (2) (defence) substitute—
- “(2) It is a defence for a person charged with an offence under this section to prove that before the employment began any relevant requirement of an order of the Secretary of State under subsection (2A) was complied with.
- (2A) An order under this subsection may—
- (a) require the production to an employer of a document of a specified description;
- (b) require the production to an employer of one document of each of a number of specified descriptions;
- (c) require an employer to take specified steps to retain, copy or record the content of a document produced to him in accordance with the order;
- (d) make provision which applies generally or only in specified circumstances;
- (e) make different provision for different circumstances.”
- (3) After subsection (6) insert—
- “(6A) Where an offence under this section is committed by a partnership (other than a limited partnership) each partner shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (6B) Subsection (5) shall have effect in relation to a limited partnership as if—
- (a) a reference to a body corporate were a reference to a limited partnership, and
- (b) a reference to an officer of the body were a reference to a partner.”
- (4) At the end of the section add—
- “(9) Section 28(1) of the Immigration Act 1971 (c. 77) (extended time limit for prosecution) shall apply in relation to an offence under this section.
- (10) An offence under this section shall be treated as—
- (a) a relevant offence for the purpose of sections 28B and 28D of that Act (search, entry and arrest), and

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- (b) an offence under Part III of that Act (criminal proceedings) for the purposes of sections 28E, 28G and 28H (search after arrest).”

#### Commencement Information

- II** S. 147 wholly in force at 1.5.2004; s. 147 not in force at Royal Assent see s. 162(2); s. 147(1)(3)(4) in force and s. 147(2) in force for certain purposes at 1.4.2003 by [S.I. 2003/754](#), [art. 2](#), [Sch. 1](#); s. 147 in force at 1.5.2004 in so far as not already in force by [S.I. 2004/1201](#), [art. 2](#)

### 148 Registration card

The following shall be inserted after section 26 of the Immigration Act 1971 (general offences)—

#### “26A Registration card

- (1) In this section “registration card” means a document which—
- (a) carries information about a person (whether or not wholly or partly electronically), and
  - (b) is issued by the Secretary of State to the person wholly or partly in connection with a claim for asylum (whether or not made by that person).
- (2) In subsection (1) “claim for asylum” has the meaning given by section 18 of the Nationality, Immigration and Asylum Act 2002.
- (3) A person commits an offence if he—
- (a) makes a false registration card,
  - (b) alters a registration card with intent to deceive or to enable another to deceive,
  - (c) has a false or altered registration card in his possession without reasonable excuse,
  - (d) uses or attempts to use a false registration card for a purpose for which a registration card is issued,
  - (e) uses or attempts to use an altered registration card with intent to deceive,
  - (f) makes an article designed to be used in making a false registration card,
  - (g) makes an article designed to be used in altering a registration card with intent to deceive or to enable another to deceive, or
  - (h) has an article within paragraph (f) or (g) in his possession without reasonable excuse.
- (4) In subsection (3) “false registration card” means a document which is designed to appear to be a registration card.
- (5) A person who is guilty of an offence under subsection (3)(a), (b), (d), (e), (f) or (g) shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding ten years, to a fine or to both, or



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- (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.
- (6) A person who is guilty of an offence under subsection (3)(c) or (h) shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.
- (7) The Secretary of State may by order—
  - (a) amend the definition of “registration card” in subsection (1);
  - (b) make consequential amendment of this section.
- (8) An order under subsection (7)—
  - (a) must be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.”

#### **149 Immigration stamp**

The following shall be inserted after section 26A of the Immigration Act 1971 (c. 77) (registration card: falsification, &c.) (inserted by section 148 above)—

##### **“26B Possession of immigration stamp**

- (1) A person commits an offence if he has an immigration stamp in his possession without reasonable excuse.
- (2) A person commits an offence if he has a replica immigration stamp in his possession without reasonable excuse.
- (3) In this section—
  - (a) “immigration stamp” means a device which is designed for the purpose of stamping documents in the exercise of an immigration function,
  - (b) “replica immigration stamp” means a device which is designed for the purpose of stamping a document so that it appears to have been stamped in the exercise of an immigration function, and
  - (c) “immigration function” means a function of an immigration officer or the Secretary of State under the Immigration Acts.
- (4) A person who is guilty of an offence under this section shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.”

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## **150 Sections 148 and 149: consequential amendments**

- (1) The following shall be inserted after section 28A(9) of the Immigration Act 1971 (arrest without warrant)—

“(9A) A constable or immigration officer may arrest without warrant a person—

- (a) who has committed an offence under section 26A or 26B; or
- (b) whom he has reasonable grounds for suspecting has committed an offence under section 26A or 26B.”

- (2) In section 28B(5) of that Act (search and arrest by warrant) after “, 24A” there shall be inserted “, 26A or 26B.”

- (3) In section 28D(4) of that Act (search of premises) after “, 25B” there shall be inserted “, 26A or 26B”.

## **151 False information**

In section 26(3) of the Immigration Act 1971 (general offences: “relevant enactment”)—

- (a) the word “or” after paragraph (c) shall cease to have effect, and
- (b) after paragraph (d) there shall be inserted—

“; or

- (e) the Nationality, Immigration and Asylum Act 2002 (apart from Part 5).”

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**Changes to legislation:**

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