



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

2004 CHAPTER 19

Offences

1 Assisting unlawful immigration

- (1) At the end of section 25 of the Immigration Act 1971 (c. 77) (offence of assisting unlawful immigration to member State) add—

“(7) In this section—

- (a) a reference to a member State includes a reference to a State on a list prescribed for the purposes of this section by order of the Secretary of State (to be known as the “Section 25 List of Schengen Acquis States”), and
- (b) a reference to a citizen of the European Union includes a reference to a person who is a national of a State on that list.

(8) An order under subsection (7)(a)—

- (a) may be made only if the Secretary of State thinks it necessary for the purpose of complying with the United Kingdom’s obligations under the [^FEU] Treaties,
- (b) may include transitional, consequential or incidental provision,
- (c) shall be made by statutory instrument, and
- (d) shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

- (2) In section 25C(9)(a) of that Act (forfeiture of vehicle, ship or aircraft) for “(within the meaning of section 25)” substitute “(for which purpose “member State

and >“immigration law have the meanings given by section 25(2) and (7))”.

Status: Point in time view as at 17/12/2016.

Changes to legislation: Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, Cross Heading: Offences is up to date with all changes known to be in force on or before 17 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)

Textual Amendments

- F1** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 6 (with art. 3(2)(3)4(2)6(4)(5))

Commencement Information

- I1** S. 1 in force at 1.10.2004 by [S.I. 2004/2523](#), art. 2, [Sch.](#)

2 Entering United Kingdom without passport, &c.

- (1) A person commits an offence if at a leave or asylum interview he does not have with him an immigration document which—
 - (a) is in force, and
 - (b) satisfactorily establishes his identity and nationality or citizenship.
- (2) A person commits an offence if at a leave or asylum interview he does not have with him, in respect of any dependent child with whom he claims to be travelling or living, an immigration document which—
 - (a) is in force, and
 - (b) satisfactorily establishes the child's identity and nationality or citizenship.
- (3) But a person does not commit an offence under subsection (1) or (2) if—
 - (a) the interview referred to in that subsection takes place after the person has entered the United Kingdom, and
 - (b) within the period of three days beginning with the date of the interview the person provides to an immigration officer or to the Secretary of State a document of the kind referred to in that subsection.
- (4) It is a defence for a person charged with an offence under subsection (1)—
 - (a) to prove that he is an EEA national,
 - (b) to prove that he is a member of the family of an EEA national and that he is exercising a right under the [F1EU] Treaties in respect of entry to or residence in the United Kingdom,
 - (c) to prove that he has a reasonable excuse for not being in possession of a document of the kind specified in subsection (1),
 - (d) to produce a false immigration document and to prove that he used that document as an immigration document for all purposes in connection with his journey to the United Kingdom, or
 - (e) to prove that he travelled to the United Kingdom without, at any stage since he set out on the journey, having possession of an immigration document.
- (5) It is a defence for a person charged with an offence under subsection (2) in respect of a child—
 - (a) to prove that the child is an EEA national,
 - (b) to prove that the child is a member of the family of an EEA national and that the child is exercising a right under the [F1EU] Treaties in respect of entry to or residence in the United Kingdom,
 - (c) to prove that the person has a reasonable excuse for not being in possession of a document of the kind specified in subsection (2),

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- (d) to produce a false immigration document and to prove that it was used as an immigration document for all purposes in connection with the child's journey to the United Kingdom, or
 - (e) to prove that he travelled to the United Kingdom with the child without, at any stage since he set out on the journey, having possession of an immigration document in respect of the child.
- (6) Where the charge for an offence under subsection (1) or (2) relates to an interview which takes place after the defendant has entered the United Kingdom—
- (a) subsections (4)(c) and (5)(c) shall not apply, but
 - (b) it is a defence for the defendant to prove that he has a reasonable excuse for not providing a document in accordance with subsection (3).
- (7) For the purposes of subsections (4) to (6)—
- (a) the fact that a document was deliberately destroyed or disposed of is not a reasonable excuse for not being in possession of it or for not providing it in accordance with subsection (3), unless it is shown that the destruction or disposal was—
 - (i) for a reasonable cause, or
 - (ii) beyond the control of the person charged with the offence, and
 - (b) in paragraph (a)(i) “reasonable cause” does not include the purpose of—
 - (i) delaying the handling or resolution of a claim or application or the taking of a decision,
 - (ii) increasing the chances of success of a claim or application, or
 - (iii) complying with instructions or advice given by a person who offers advice about, or facilitates, immigration into the United Kingdom, unless in the circumstances of the case it is unreasonable to expect non-compliance with the instructions or advice.
- (8) A person shall be presumed for the purposes of this section not to have a document with him if he fails to produce it to an immigration officer or official of the Secretary of State on request.
- (9) A person 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 twelve months, to a fine not exceeding the statutory maximum or to both.
- (10) If [^{F2}[^{F3}a constable or]] [^{F3}[^{F2}an]] immigration officer reasonably suspects that a person has committed an offence under this section he may arrest the person without warrant.
- (11) An offence under this section shall be treated as—
- (a) a relevant offence for the purposes of sections 28B and 28D of the Immigration Act 1971 (c. 77) (search, entry and arrest), and
 - (b) an offence under Part III of that Act (criminal proceedings) for the purposes of sections 28(4), 28E, 28G and 28H (search after arrest, &c.) of that Act.
- (12) In this section—
- “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 from time to time),

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“immigration document” means—

- (a) a passport, and
- (b) a document which relates to a national of a State other than the United Kingdom and which is designed to serve the same purpose as a passport, and

“leave or asylum interview” means an interview with an immigration officer or an official of the Secretary of State at which a person—

- (a) seeks leave to enter or remain in the United Kingdom, or
- (b) claims that to remove him from or require him to leave the United Kingdom would breach the United Kingdom’s obligations under the Refugee Convention or would be unlawful under section 6 of the Human Rights Act 1998 (c. 42) as being incompatible with his Convention rights.

(13) For the purposes of this section—

- (a) a document which purports to be, or is designed to look like, an immigration document, is a false immigration document, and
- (b) an immigration document is a false immigration document if and in so far as it is used—
 - (i) outside the period for which it is expressed to be valid,
 - (ii) contrary to provision for its use made by the person issuing it, or
 - (iii) by or in respect of a person other than the person to or for whom it was issued.

(14) Section 11 of the Immigration Act 1971 (c. 77) shall have effect for the purpose of the construction of a reference in this section to entering the United Kingdom.

(15) In so far as this section extends to England and Wales, subsection (9)(b) shall, until the commencement of section 154 of the Criminal Justice Act 2003 (c. 44) (increased limit on magistrates’ power of imprisonment), have effect as if the reference to twelve months were a reference to six months.

(16) In so far as this section extends to Scotland, subsection (9)(b) shall have effect as if the reference to twelve months were a reference to six months.

(17) In so far as this section extends to Northern Ireland, subsection (9)(b) shall have effect as if the reference to twelve months were a reference to six months.

Textual Amendments

- F1** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 6 (with art. 3(2)(3)4(2)6(4)(5))
- F2** Word in s. 2(10) substituted (E.W.) (1.1.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), s. 178(8), [Sch. 7 para. 63\(a\)](#); S.I. 2005/3495, art. 2(1)(m)
- F3** Word in s. 2(10) substituted (N.I.) (1.3.2007) by [The Police and Criminal Evidence \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/288\)](#), art. 1(2), [Sch. 1 para. 39\(1\)](#)

^{F4}3 Immigration documents: forgery

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Textual Amendments

- F4** S. 3 repealed (7.6.2006) by [Identity Cards Act 2006 \(c. 15\)](#), s. 44(3), [Sch. 2](#); S.I. 2006/1439, art. 2(e)
[Editorial Note: The repealing Sch. 2 is induced by s. 44(2) of the 2006 Act and that section is in force at 30.3.2006 by virtue of s. 44(3) of that Act. However, Sch. 2 itself is expressly brought into force at 7.6.2006 by [S.I. 2006/1439](#), art. 2(e)]

Commencement Information

- I2** S. 3 in force at 1.10.2004 by [S.I. 2004/2523](#), art. 2, [Sch.](#)

^{F5F6F7} 4 Trafficking people for exploitation

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Textual Amendments

- F5** S. 4 repealed (N.I.) (14.1.2015) by [Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\) 2015 \(c. 2\)](#), s. 28(2), [Sch. 5](#)
- F6** S. 4 omitted (E.W.) (31.7.2015) by virtue of [Modern Slavery Act 2015 \(c. 30\)](#), s. 61(1), [Sch. 5 para. 6\(2\)](#); S.I. 2015/1476, reg. 2(j) (with regs. 3, 6-8)
- F7** S. 4 repealed (S.) (17.12.2016) by [Human Trafficking and Exploitation \(Scotland\) Act 2015 \(asp 12\)](#), s. 45(2), [sch. para. 4](#) (with s. 44); S.S.I. 2016/385, [reg. 2](#) (with reg. 3)

^{F8} Section 4: supplemental

^{F9}(1)

^{F10}(2) This subsection applies to—

- ^{F14}(g) a person who at the time of the offence was habitually resident in Scotland, and
- (h) a body incorporated under the law of a part of the United Kingdom.]

^{F15}(2A) A person may be prosecuted, tried and punished for any offence to which section 4 applies—

(a) in any sheriff court district in which the person is apprehended or is in custody, or

(b) in such sheriff court district as the Lord Advocate may determine,

as if the offence had been committed in that district (and the offence is, for all purposes incidental to or consequential on the trial or punishment, to be deemed to have been committed in that district).

(2B) In subsection (2A), “sheriff court district” is to be construed in accordance with section 307(1) of the Criminal Procedure (Scotland) Act 1995 (c.46) (interpretation).]

^{F16}^{F17}(3) [^{F18}In section 4(4)(a)] [^{F18}In section 4— “country” includes any territory or other part of the world,]

^{F19}“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.]

^{F20}“UK national” means—

- (a) a British citizen,

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- (b) a person who is a British subject by virtue of Part 4 of the British Nationality Act 1981 and who has the right of abode in the United Kingdom, or
- (c) a person who is a British overseas territories citizen by virtue of a connection with Gibraltar.]]]
- [^{F16}[^{F17}(4) 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 4 of this Act as they apply in relation to an offence under section 25 of that Act.]]]
- [^{F16}[^{F17}(5) At the end of section 25C(9)(b), (10)(b) and (11) of that Act add “or section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation).”]]]
- [^{F17}(6) After paragraph 2(n) of Schedule 4 to the Criminal Justice and Court Services Act 2000 (c. 43) (offence against child) insert—
- “(o) an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation). ”]
- [^{F17}(7) At the end of paragraph 4 of Schedule 2 to the Proceeds of Crime Act 2002 (c. 29) (lifestyle offences: England and Wales: people trafficking) add—
- “(3) An offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (exploitation). ”]
- (8) At the end of paragraph 4 of Schedule 4 to the Proceeds of Crime Act 2002 (lifestyle offences: Scotland: people trafficking) add “or under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (exploitation)”.
- ^{F21}(9)
- ^{F21}(10)
- [^{F22}(11) [^{F23}In so far as section 4 extends to England and Wales,] subsection (5)(b) shall, until the commencement of section 154 of the Criminal Justice Act 2003 (c. 44) (increased limit on magistrates' power of imprisonment), have effect as if the reference to twelve months were a reference to six months.]
- [^{F24}(12) In so far as section 4 extends to Scotland, subsection (5)(b) shall have effect as if the reference to twelve months were a reference to six months.]
- [^{F25}[^{F24}(13) In so far as section 4 extends to Northern Ireland, subsection (5)(b) shall have effect as if the reference to twelve months were a reference to six months.]]]]]

Textual Amendments

- F8** S. 5 repealed (S.) (17.12.2016) by [Human Trafficking and Exploitation \(Scotland\) Act 2015 \(asp 12\)](#), s. 45(2), [sch. para. 4](#) (with s. 44); S.S.I. 2016/385, reg. 2
- F9** S. 5(1) repealed (N.I.) (26.4.2013) by [Criminal Justice Act \(Northern Ireland\) 2013 \(c. 7\)](#), s. 15(1), [Sch. 4 Pt. 2](#)
- F10** S. 5(1) substituted for s. 5(1)(2) (E.W.N.I.) (31.1.2008) by [UK Borders Act 2007 \(c. 30\)](#), [ss. 31\(2\)](#), 59(2); S.I. 2008/99, art. 2(1)
- F11** Words in s. 5(1) substituted (S.) (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 46\(3\)\(a\)](#), 206(1); S.S.I. 2011/178, art. 2, sch.

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- F12** S. 5(1) repealed (E.W.) (6.4.2013) by Protection of Freedoms Act 2012 (c. 9), ss. 110(5), 120, **Sch. 10 Pt. 9** (with s. 97); S.I. 2013/470, art. 2(b) (with arts. 3(a)4-8)
- F13** Word in s. 5(2) repealed (S.) (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 46(3)(b)(i)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F14** S. 5(2)(g)(h) inserted (S.) (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 46(3)(b)(ii)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F15** S. 5(2A)(2B) inserted (S) (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 46(3)(c)**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F16** S. 5(3)-(5) repealed (N.I.) (14.1.2015) by Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2), s. 28(2), **Sch. 5**
- F17** S. 5(3)-(7) omitted (E.W.) (31.7.2015) by virtue of Modern Slavery Act 2015 (c. 30), s. 61(1), **Sch. 5 para. 6(3)**; S.I. 2015/1476, reg. 2(j) (with reg. 3)
- F18** Words in s. 5(3) substituted (E.W.) (6.4.2013) by Protection of Freedoms Act 2012 (c. 9), **ss. 110(6)(a)**, 120 (with s. 97); S.I. 2013/470, art. 2(b) (with arts. 3(a)4-8)
- F19** S. 5(3) text amended (E.W.) (6.4.2013) by Protection of Freedoms Act 2012 (c. 9), **ss. 110(6)(b)**, 120 (with s. 97); S.I. 2013/470, art. 2(b) (with arts. 3(a)4-8)
- F20** Words in s. 5(3) inserted (E.W.) (6.4.2013) by Protection of Freedoms Act 2012 (c. 9), **ss. 110(6)(c)**, 120 (with s. 97); S.I. 2013/470, art. 2(b) (with arts. 3(a)4-8)
- F21** S. 5(9)(10) repealed (N.I.) (14.1.2015) by Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2), s. 28(2), **Sch. 5**
- F22** S. 5(11) omitted (E.W.) (31.7.2015) by virtue of Modern Slavery Act 2015 (c. 30), s. 61(1), **Sch. 5 para. 6(3)**; S.I. 2015/1476, **reg. 2(j)** (with reg. 3)
- F23** Words in s. 5(11) repealed (E.W.) (6.4.2013) by Protection of Freedoms Act 2012 (c. 9), s. 120, Sch. 9 para. 141(2)(a), **Sch. 10 Pt. 9** (with s. 97); S.I. 2013/470, **art. 2(d)(f)** (with arts. 5-8)
- F24** S. 5(12)(13) repealed (E.W.) (6.4.2013) by Protection of Freedoms Act 2012 (c. 9), s. 120, Sch. 9 para. 141(2)(b), **Sch. 10 Pt. 9** (with s. 97); S.I. 2013/470, **art. 2(d)(f)** (with arts. 5-8)
- F25** S. 5(13) repealed (N.I.) (26.4.2013) by Criminal Justice Act (Northern Ireland) 2013 (c. 7), s. 15(1), **Sch. 4 Pt. 2**

Commencement Information

- I3** S. 5 in force at 1.12.2004 for E.W.N.I. by S.I. 2004/2999, art. 2, **Sch.**
- I4** S. 5 in force at 1.12.2004 for S. by S.S.I. 2004/494, unnumbered provision

6 Employment

- (1) For section 8(4) of the Asylum and Immigration Act 1996 (c. 49) (employment: penalty) substitute—

“(4) A person guilty of an offence under this section shall be liable—

(a) on conviction on indictment, to a fine, or

(b) on summary conviction, to a fine not exceeding the statutory maximum.”

- (2) Section 8(9) of that Act (extension of time limit for prosecution) shall cease to have effect.

Commencement Information

- I5** S. 6 in force at 1.10.2004 by S.I. 2004/2523, art. 2, **Sch.**

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7 Advice of Director of Public Prosecutions

In section 3(2) of the Prosecution of Offences Act 1985 (c. 23) (functions of Director of Public Prosecutions) after paragraph (eb) insert—

“(ec) to give, to such extent as he considers appropriate, advice to immigration officers on matters relating to criminal offences;”.

Commencement Information

I6 S. 7 in force at 1.12.2004 by S.I. 2004/2999, art. 2, Sch.

Status:

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Changes to legislation:

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