



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

## 2004 CHAPTER 19

### *Offences*

#### **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 Community 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 Community 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),
  - (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 a constable or 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),
  - “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.