

# **Immigration, Asylum and Nationality Bill**

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Home Office, are published separately as HL Bill 43 – EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

The Lord Falconer of Thoroton has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Immigration, Asylum and Nationality Bill are compatible with the Convention rights.

# Immigration, Asylum and Nationality Bill

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**B I L L**

TO

Make provision about immigration, asylum and nationality; and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Appeals*

**1 Variation of leave to enter or remain**

- (1) Section 82(2) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (right of appeal: definition of immigration decision) shall be amended as follows. 5
- (2) Omit paragraph (d) (refusal to vary leave to enter or remain).
- (3) Omit paragraph (e) (variation of leave to enter or remain).
- (4) After paragraph (f) (revocation of indefinite leave to enter or remain) insert—
- “(fa) variation of, or refusal to vary, a person’s limited leave to enter or remain in the United Kingdom if— 10
- (i) the leave was granted to the person as a refugee within the meaning of the Refugee Convention, and
- (ii) the result of the variation, or refusal, taking effect is that the person has no leave to enter or remain,
- (fb) variation of, or refusal to vary, a person’s limited leave to enter or remain in the United Kingdom if— 15
- (i) the leave was granted, or the decision was taken, in circumstances of a kind specified for the purpose of this paragraph by order of the Secretary of State, and
- (ii) the result of the variation, or refusal, taking effect is that the person has no leave to enter or remain.” 20

- (5) After section 83 of that Act (right of appeal: asylum claim) insert –

**“83A Appeal: variation of limited leave**

- (1) This section applies where –
- (a) a person has made an asylum claim, 5
  - (b) he was granted limited leave to enter or remain in the United Kingdom as a refugee within the meaning of the Refugee Convention, 5
  - (c) a decision is made that he is not a refugee, and
  - (d) following the decision specified in paragraph (c) he has limited leave to enter or remain in the United Kingdom otherwise than as a refugee, as a result of which section 82(2)(fa) does not apply. 10
- (2) The person may appeal to the Tribunal against the decision to curtail or to refuse to extend his limited leave.”

**2 Removal 15**

In section 82(2)(g) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (right of appeal: removal) for “section 10(1)(a), (b) or (c)” substitute “section 10(1)(a), (b), (ba) or (c)”.

**3 Grounds of appeal**

- (1) Section 84 of the Nationality, Immigration and Asylum Act 2002 (grounds of appeal) shall be amended as follows. 20
- (2) After subsection (1) insert –
- “(1A) In the application of subsection (1)(a) to (g) to an appeal under section 82(2)(g) a reference to the decision against which an appeal is brought (“the appealable decision”) includes a reference to any other decision under or in accordance with the Immigration Acts, other than an immigration decision within the meaning given by section 82(2), which – 25
- (a) was made in respect of the appellant, and
  - (b) gave rise to or facilitated the making of the appealable decision.” 30
- (3) After subsection (3) add –
- “(4) An appeal under section 83A must be brought on the grounds that removal of the appellant from the United Kingdom would breach the United Kingdom’s obligations under the Refugee Convention.” 35

**4 Entry clearance**

- (1) For sections 88A, 90 and 91 of the Nationality, Immigration and Asylum Act 2002 (restricted right of appeal in relation to refusal of entry clearance for

visitor or student) substitute –

**“88A Entry clearance**

- (1) A person may not appeal under section 82(1) against refusal of an application for entry clearance unless the application was made for the purpose of – 5
- (a) visiting a person of a class or description prescribed by regulations for the purpose of this subsection, or
  - (b) entering as the dependant of a person in circumstances prescribed by regulations for the purpose of this subsection.
- (2) Regulations under subsection (1) may, in particular – 10
- (a) make provision by reference to whether the applicant is a member of the family (within such meaning as the regulations may assign) of the person he seeks to visit;
  - (b) provide for the determination of whether one person is dependent on another; 15
  - (c) make provision by reference to the circumstances of the applicant, of the person whom the applicant seeks to visit or on whom he depends, or of both (and the regulations may, in particular, include provision by reference to –
    - (i) whether or not a person is lawfully settled in the United Kingdom within such meaning as the regulations may assign; 20
    - (ii) the duration of two individuals’ residence together);
  - (d) make provision by reference to an applicant’s purpose in entering as a dependant; 25
  - (e) make provision by reference to immigration rules;
  - (f) confer a discretion.
- (3) Subsection (1) –
- (a) does not prevent the bringing of an appeal on either or both of the grounds referred to in section 84(1)(b) and (c), and 30
  - (b) is without prejudice to the effect of section 88 in relation to an appeal under section 82(1) against refusal of entry clearance.”
- (2) For section 23(1) of the Immigration and Asylum Act 1999 (c. 33) (monitoring refusals of entry clearance) substitute –
- “(1) The Secretary of State must appoint a person to monitor, in such manner as the Secretary of State may determine, refusals of entry clearance in cases where, as a result of section 88A of the Nationality, Immigration and Asylum Act 2002 (c. 41) (entry clearance: non-family visitors and students), an appeal under section 82(1) of that Act may be brought only on the grounds referred to in section 84(1)(b) and (c) of that Act (racial discrimination and human rights).” 35

**5 Failure to provide documents**

After section 88(2)(b) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (appeal: ineligibility) insert –

- “(ba) has failed to supply a medical report or a medical certificate in accordance with a requirement of immigration rules,”. 45

## 6 Refusal of leave to enter

For section 89 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (appeal against refusal of leave to enter: visitor or student without entry clearance) substitute—

### “89 Refusal of leave to enter

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(1) A person may not appeal under section 82(1) against refusal of leave to enter the United Kingdom unless—

(a) on his arrival in the United Kingdom he had entry clearance, and

(b) the purpose of entry specified in the entry clearance is the same as that specified in his application for leave to enter.

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(2) Subsection (1) does not prevent the bringing of an appeal on any or all of the grounds referred to in section 84(1)(b), (c) and (g).”

## 7 Deportation

(1) After section 97 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (appeals: national security) insert—

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### “97A National security: deportation

(1) This section applies where the Secretary of State certifies that the decision to make a deportation order in respect of a person was taken on the grounds that his removal from the United Kingdom would be in the interests of national security.

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(2) Where this section applies—

(a) section 79 shall not apply,

(b) the Secretary of State shall be taken to have certified the decision to make the deportation order under section 97, and

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(c) for the purposes of section 2(5) of the Special Immigration Appeals Commission Act 1997 (c. 68) (appeals from within United Kingdom) it shall be assumed that section 92 of this Act—

(i) would not apply to an appeal against the decision to make the deportation order by virtue of section 92(2) to (3D),

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(ii) would not apply to an appeal against that decision by virtue of section 92(4)(a) in respect of an asylum claim, and

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(iii) would be capable of applying to an appeal against that decision by virtue of section 92(4)(a) in respect of a human rights claim unless the Secretary of State certifies that the removal of the person from the United Kingdom would not breach the United Kingdom’s obligations under the Human Rights Convention.

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(3) A person in respect of whom a certificate is issued under subsection (2)(c)(iii) may appeal to the Special Immigration Appeals Commission against the issue of the certificate; and for that purpose the Special Immigration Appeals Commission Act 1997 shall apply as to an appeal against an immigration decision to which section 92 of this Act applies.

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- (4) The Secretary of State may repeal this section by order.”
- (2) In section 112 of that Act (regulations, &c.) after subsection (5A) insert—
- “(5B) An order under section 97A(4)—
- (a) must be made by statutory instrument,
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament, and
  - (c) may include transitional provision.”

## 8 Legal aid

- (1) Section 103D of the Nationality, Immigration and Asylum Act 2002 (c. 41) (reconsideration: legal aid) shall be amended as follows. 10
- (2) In subsection (2) for the words “where the Tribunal has decided an appeal following reconsideration pursuant to an order made” substitute “where an order for reconsideration is made”.
- (3) For subsection (3) substitute—
- “(3) The Tribunal may order payment out of that Fund of the appellant’s costs—
- (a) in respect of the application for reconsideration;
  - (b) in respect of preparation for reconsideration;
  - (c) in respect of the reconsideration.”

## 9 Abandonment of appeal 20

For section 104(4) of the Nationality, Immigration and Asylum Act 2002 (pending appeal: deemed abandonment) substitute—

- “(4) An appeal under section 82(1) brought by a person while he is in the United Kingdom shall be treated as abandoned if the appellant leaves the United Kingdom. 25
- (4A) An appeal under section 82(1) brought by a person while he is in the United Kingdom shall be treated as abandoned if the appellant is granted leave to enter or remain in the United Kingdom (subject to subsections (4B) and (4C)).
- (4B) Subsection (4A) shall not apply to an appeal in so far as it is brought on the ground relating to the Refugee Convention specified in section 84(1)(g) where the appellant— 30
- (a) is granted leave to enter or remain in the United Kingdom for a period exceeding 12 months, and
  - (b) gives notice, in accordance with any relevant procedural rules (which may include provision about timing), that he wishes to pursue the appeal in so far as it is brought on that ground. 35
- (4C) Subsection (4A) shall not apply to an appeal in so far as it is brought on the ground specified in section 84(1)(b) where the appellant gives notice, in accordance with any relevant procedural rules (which may include provision about timing), that he wishes to pursue the appeal in so far as it is brought on that ground.” 40

**10 Grants**

Section 110 (grants to advisory organisations) of the Nationality, Immigration and Asylum Act 2002 (c. 41) shall cease to have effect.

**11 Continuation of leave**

- (1) Section 3C of the Immigration Act 1971 (c. 77) (continuation of leave to enter or remain pending variation decision) shall be amended as follows. 5
- (2) Omit subsection (2)(b) and (c) (continuation pending appeal).
- (3) For subsection (6) (decision) substitute –
- “(6) The Secretary of State may make regulations determining when an application is decided for the purposes of this section; and the regulations – 10
- (a) may make provision by reference to receipt of a notice,
- (b) may provide for a notice to be treated as having been received in specified circumstances,
- (c) may make different provision for different purposes or circumstances, 15
- (d) shall be made by statutory instrument, and
- (e) shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

**12 Asylum and human rights claims: definition 20**

- (1) Section 113(1) of the Nationality, Immigration and Asylum Act 2002 (appeals: interpretation) shall be amended as follows.
- (2) For the definition of “asylum claim” substitute –
- ““asylum claim” –
- (a) means a claim made by a person that to remove him from or require him to leave the United Kingdom would breach the United Kingdom’s obligations under the Refugee Convention, but 25
- (b) does not include a claim which, having regard to a former claim, falls to be disregarded for the purposes of this Part in accordance with immigration rules,”. 30
- (3) For the definition of “human rights claim” substitute –
- ““human rights claim” –
- (a) means a claim made by a person that to remove him from or require him to leave the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998 (c. 42) (public authority not to act contrary to Convention) as being incompatible with his Convention rights, but 35
- (b) does not include a claim which, having regard to a former claim, falls to be disregarded for the purposes of this Part in accordance with immigration rules,”. 40

**13 Over-staying leave pending appeal**

- (1) A person does not commit an offence under section 24(1)(b)(i) of the Immigration Act 1971 (c. 77) (over-staying leave to enter or remain) by virtue only of remaining in the United Kingdom at a time when the conditions in this section are satisfied. 5
- (2) Condition 1 is that—
  - (a) the person's leave has been curtailed, or
  - (b) his application for variation of leave has been refused.
- (3) Condition 2 is that a decision has been made to remove the person from the United Kingdom. 10
- (4) Condition 3 is that—
  - (a) the person could bring an appeal against that decision while in the United Kingdom by virtue of sections 82(2)(g) and 92(4) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (appeals) (ignoring any possibility of an appeal out of time with permission), or 15
  - (b) the person has brought an appeal against that decision while in the United Kingdom by virtue of those sections and the appeal is pending.
- (5) In subsection (4)(b) "pending" has the meaning given by section 104 of the Nationality, Immigration and Asylum Act 2002.

**14 Consequential amendments** 20

Schedule 1 (which makes amendments consequential on the preceding provisions of this Act) shall have effect.

*Employment***15 Penalty**

- (1) It is contrary to this section to employ an adult subject to immigration control if—
  - (a) he has not been granted leave to enter or remain in the United Kingdom, or
  - (b) his leave to enter or remain in the United Kingdom—
    - (i) is invalid, 30
    - (ii) has expired, or
    - (iii) is subject to a condition preventing him from accepting the employment.
- (2) The Secretary of State may give an employer who acts contrary to this section a notice requiring him to pay a penalty of a specified amount not exceeding the prescribed maximum. 35
- (3) An employer is excused from paying a penalty if he shows that he complied with any prescribed requirements in relation to the employment.
- (4) But the excuse in subsection (3) shall not apply to an employer who knew, at any time during the period of the employment, that it was contrary to this section. 40

- (5) The Secretary of State may give a penalty notice without having established whether subsection (3) applies.
- (6) A penalty notice must –
- (a) state why the Secretary of State thinks the employer is liable to the penalty, 5
  - (b) state the amount of the penalty,
  - (c) specify a date, at least 28 days after the date specified in the notice as the date on which it is given, before which the penalty must be paid,
  - (d) specify how the penalty must be paid,
  - (e) explain how the employer may object to the penalty, and 10
  - (f) explain how the Secretary of State may enforce the penalty.
- (7) An order prescribing requirements for the purposes of subsection (3) may, in particular –
- (a) require the production to an employer of a document of a specified description; 15
  - (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 verify, retain, copy or record the content of a document produced to him in accordance with the order; 20
  - (d) require action to be taken before employment begins;
  - (e) require action to be taken at specified intervals or on specified occasions during the course of employment.

## 16 Objection

- (1) This section applies where an employer to whom a penalty notice is given objects on the ground that – 25
- (a) he is not liable to the imposition of a penalty,
  - (b) he is excused payment by virtue of section 15(3), or
  - (c) the amount of the penalty is too high.
- (2) The employer may give a notice of objection to the Secretary of State. 30
- (3) A notice of objection must –
- (a) be in writing,
  - (b) give the objector's reasons,
  - (c) be given in the prescribed manner, and
  - (d) be given before the end of the prescribed period. 35
- (4) Where the Secretary of State receives a notice of objection to a penalty he shall consider it and –
- (a) cancel the penalty,
  - (b) reduce the penalty,
  - (c) increase the penalty, or 40
  - (d) determine to take no action.
- (5) Where the Secretary of State considers a notice of objection he shall –
- (a) have regard to the code of practice under section 19 (in so far as the objection relates to the amount of the penalty),

- (b) inform the objector of his decision before the end of the prescribed period or such longer period as he may agree with the objector,
- (c) if he increases the penalty, issue a new penalty notice under section 15, and
- (d) if he reduces the penalty, notify the objector of the reduced amount. 5

## 17 Appeal

- (1) An employer to whom a penalty notice is given may appeal to the court on the ground that—
  - (a) he is not liable to the imposition of a penalty,
  - (b) he is excused payment by virtue of section 15(3), or 10
  - (c) the amount of the penalty is too high.
- (2) The court may—
  - (a) allow the appeal and cancel the penalty,
  - (b) allow the appeal and reduce the penalty, or
  - (c) dismiss the appeal. 15
- (3) An appeal shall be a re-hearing of the Secretary of State's decision to impose a penalty and shall be determined having regard to—
  - (a) the code of practice under section 19 that has effect at the time of the appeal (in so far as the appeal relates to the amount of the penalty), and
  - (b) any other matters which the court thinks relevant (which may include matters of which the Secretary of State was unaware); 20
 and this subsection has effect despite any provision of rules of court.
- (4) An appeal must be brought within the period of 28 days beginning with—
  - (a) the date specified in the penalty notice as the date upon which it is given, or 25
  - (b) if the employer gives a notice of objection and the Secretary of State reduces the penalty, the date specified in the notice of reduction as the date upon which it is given, or
  - (c) if the employer gives a notice of objection and the Secretary of State determines to take no action, the date specified in the notice of that determination as the date upon which it is given. 30
- (5) An appeal may be brought by an employer whether or not—
  - (a) he has given a notice of objection under section 16;
  - (b) the penalty has been increased or reduced under that section.
- (6) In this section "the court" means— 35
  - (a) where the employer has his principal place of business in England and Wales, a county court,
  - (b) where the employer has his principal place of business in Scotland, the sheriff, and
  - (c) where the employer has his principal place of business in Northern Ireland, a county court. 40

## 18 Enforcement

- (1) A sum payable to the Secretary of State as a penalty under section 15 may be recovered by the Secretary of State as a debt due to him.

- (2) In proceedings for the enforcement of a penalty no question may be raised as to –
- (a) liability to the imposition of the penalty,
  - (b) the application of the excuse in section 15(3), or
  - (c) the amount of the penalty. 5
- (3) Money paid to the Secretary of State by way of penalty shall be paid into the Consolidated Fund.

## 19 Code of practice

- (1) The Secretary of State shall issue a code of practice specifying factors to be considered by him in determining the amount of a penalty imposed under section 15. 10
- (2) The code –
- (a) shall not be issued unless a draft has been laid before Parliament, and
  - (b) shall come into force in accordance with provision made by order of the Secretary of State. 15
- (3) The Secretary of State shall from time to time review the code and may revise and re-issue it following a review; and a reference in this section to the code includes a reference to the code as revised.

## 20 Orders

- An order of the Secretary of State under section 15, 16 or 19 – 20
- (a) may make provision which applies generally or only in specified circumstances,
  - (b) may make different provision for different circumstances,
  - (c) may include transitional or incidental provision,
  - (d) shall be made by statutory instrument, and 25
  - (e) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## 21 Offence

- (1) A person commits an offence if he employs another (“the employee”) knowing that the employee is an adult subject to immigration control and that – 30
- (a) he has not been granted leave to enter or remain in the United Kingdom, or
  - (b) his leave to enter or remain in the United Kingdom – 35
    - (i) is invalid,
    - (ii) has expired, or
    - (iii) is subject to a condition preventing him from accepting the employment.
- (2) A person guilty of an offence under this section shall be liable –
- (a) on conviction on indictment – 40
    - (i) to imprisonment for a term not exceeding two years,
    - (ii) to a fine, or
    - (iii) to both, or
  - (b) on summary conviction –

- (i) to imprisonment for a term not exceeding 12 months in England and Wales or 6 months in Scotland or Northern Ireland,
    - (ii) to a fine not exceeding the statutory maximum, or
    - (iii) to both.
  - (3) An offence under this section shall be treated as – 5
    - (a) a relevant offence for the purpose 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 28E, 28G and 28H (search after arrest).
  - (4) In relation to a conviction occurring before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44) (general limit on magistrates' powers to imprison) the reference to 12 months in subsection (2)(b)(i) shall be taken as a reference to 6 months. 10
- 22 Offence: bodies corporate, &c.**
- (1) For the purposes of section 21(1) a body (whether corporate or not) shall be treated as knowing a fact about an employee if a person who has responsibility within the body for an aspect of the employment knows the fact. 15
  - (2) If an offence under section 21(1) is committed by a body corporate with the consent or connivance of an officer of the body, the officer, as well as the body, shall be treated as having committed the offence. 20
  - (3) In subsection (2) a reference to an officer of a body includes a reference to –
    - (a) a director, manager or secretary,
    - (b) a person purporting to act as a director, manager or secretary, and
    - (c) if the affairs of the body are managed by its members, a member.
  - (4) Where an offence under section 21(1) is committed by a partnership (whether or not a limited partnership) subsection (2) above shall have effect, but as if a reference to an officer of the body were a reference to –
    - (a) a partner, and
    - (b) a person purporting to act as a partner.25
- 23 Discrimination: code of practice** 30
- (1) The Secretary of State shall issue a code of practice specifying what an employer should or should not do in order to ensure that, while avoiding liability to a penalty under section 15 and while avoiding the commission of an offence under section 21, he also avoids contravening –
    - (a) the Race Relations Act 1976 (c. 74), or 35
    - (b) the Race Relations (Northern Ireland) Order 1997 (S.I. 869 (N.I. 6)).
  - (2) Before issuing the code the Secretary of State shall –
    - (a) consult –
      - (i) the Commission for Racial Equality,
      - (ii) the Equality Commission for Northern Ireland, 40
      - (iii) such bodies representing employers as he thinks appropriate, and
      - (iv) such bodies representing workers as he thinks appropriate,
    - (b) publish a draft code (after that consultation),

- (c) consider any representations made about the published draft, and  
 (d) lay a draft code before Parliament (after considering representations under paragraph (c) and with or without modifications to reflect the representations).
- (3) The code shall come into force in accordance with provision made by order of the Secretary of State; and an order – 5  
 (a) may include transitional provision,  
 (b) shall be made by statutory instrument, and  
 (c) shall be subject to annulment in pursuance of a resolution of either House of Parliament. 10
- (4) A breach of the code –  
 (a) shall not make a person liable to civil or criminal proceedings, but  
 (b) may be taken into account by a court or tribunal.
- (5) The Secretary of State shall from time to time review the code and may revise and re-issue it following a review; and a reference in this section to the code includes a reference to the code as revised. 15
- 24 Temporary admission, &c.**
- Where a person is at large in the United Kingdom by virtue of paragraph 21(1) of Schedule 2 to the Immigration Act 1971 (c. 77) (temporary admission or release from detention) – 20  
 (a) he shall be treated for the purposes of sections 15(1) and 21(1) as if he had been granted leave to enter the United Kingdom, and  
 (b) any restriction as to employment imposed under paragraph 21(2) shall be treated for those purposes as a condition of leave.
- 25 Interpretation** 25
- In sections 15 to 24 –  
 (a) “adult” means a person who has attained the age of 16,  
 (b) a reference to employment is to employment under a contract of service or apprenticeship, whether express or implied and whether oral or written, 30  
 (c) a person is subject to immigration control if under the Immigration Act 1971 he requires leave to enter or remain in the United Kingdom, and  
 (d) “prescribed” means prescribed by order of the Secretary of State.
- 26 Repeal**
- Sections 8 and 8A of the Asylum and Immigration Act 1996 (c. 49) (restrictions on employment) shall cease to have effect. 35

*Information*

**27 Documents produced or found**

- (1) For paragraph 4(4) of Schedule 2 to the Immigration Act 1971 (control on entry:

documents) substitute –

“(4) Where a passport or other document is produced or found in accordance with this paragraph an immigration officer may examine it and detain it –

- (a) for the purpose of examining it, for a period not exceeding 7 days; 5
- (b) for any purpose, until the person to whom the document relates is given leave to enter the United Kingdom or is about to depart or be removed following refusal of leave or until it is decided that the person does not require leave to enter; 10
- (c) after a time described in paragraph (b), while the immigration officer thinks that the document may be required in connection with proceedings in respect of an appeal under the Immigration Acts or in respect of an offence. 15

(5) For the purpose of ascertaining that a passport or other document produced or found in accordance with this paragraph relates to a person examined under paragraph 2, 2A or 3 above, the person carrying out the examination may require the person being examined to provide information (whether or not by submitting to a process by means of which information is obtained or recorded) about his external physical characteristics (which may include, in particular, fingerprints or features of the iris or any other part of the eye).” 20

(2) Paragraph 4(2A) of that Schedule shall cease to have effect. 25

## 28 Fingerprinting

- (1) Section 141 of the Immigration and Asylum Act 1999 (c. 33) (fingerprinting) shall be amended as follows.
- (2) In subsection (7)(d) for “arrested under paragraph 17 of Schedule 2 to the 1971 Act;” substitute “detained under paragraph 16 of Schedule 2 to the 1971 Act or arrested under paragraph 17 of that Schedule;” 30
- (3) In subsection (8)(d) for “arrest;” substitute “detention or arrest;”.
- (4) At the end add –
  - “(17) Section 157(1) applies to this section (in so far as it relates to removal centres by virtue of subsection (5)(e)) as it applies to Part VIII.” 35

## 29 Attendance for fingerprinting

For section 142(2) of the Immigration and Asylum Act 1999 (c. 33) (attendance for fingerprinting: timing) substitute –

- “(2) In the case of a notice given to a person of a kind specified in section 141(7)(a) to (d) or (f) (in so far as it applies to a dependant of a person of a kind specified in section 141(7)(a) to (d)), the notice – 40
  - (a) must require him to attend during a specified period of at least seven days beginning with a day not less than seven days after the date given in the notice as its date of issue, and

- (b) may require him to attend at a specified time of day or during specified hours.
- (2A) In the case of a notice given to a person of a kind specified in section 141(7)(e) or (f) (in so far as it applies to a dependant of a person of a kind specified in section 141(7)(e)), the notice –
  - (a) may require him to attend during a specified period beginning with a day not less than three days after the date given in the notice as its date of issue,
  - (b) may require him to attend on a specified day not less than three days after the date given in the notice as its date of issue, and
  - (c) may require him to attend at a specified time of day or during specified hours.”

### 30 Proof of right of abode

For section 3(9) of the Immigration Act 1971 (c. 77) (proof of right of abode) substitute –

- “(9) A person seeking to enter the United Kingdom and claiming to have the right of abode there shall prove it by means of –
- (a) a United Kingdom passport describing him as a British citizen,
  - (b) a United Kingdom passport describing him as a British subject with the right of abode in the United Kingdom,
  - (c) an ID card issued under the Identity Cards Act 2006 describing him as a British citizen,
  - (d) an ID card issued under that Act describing him as a British subject with the right of abode in the United Kingdom, or
  - (e) a certificate of entitlement.”

### 31 Provision of information to immigration officers

- (1) Schedule 2 to the Immigration Act 1971 (controls on entry: administration) shall be amended as follows.
- (2) In paragraph 27 (provision of passenger lists, &c.) for sub-paragraph (2) substitute –
 

“(2) The Secretary of State may by order require, or enable an immigration officer to require, a responsible person in respect of a ship or aircraft to supply –

  - (a) a passenger list showing the names and nationality or citizenship of passengers arriving or leaving on board the ship or aircraft;
  - (b) particulars of members of the crew of the ship or aircraft.
- (3) An order under sub-paragraph (2) may relate –
  - (a) to all ships or aircraft arriving or expected to arrive in the United Kingdom;
  - (b) to all ships or aircraft leaving or expected to leave the United Kingdom;
  - (c) to ships or aircraft arriving or expected to arrive in the United Kingdom from or by way of a specified country;

- (d) to ships or aircraft leaving or expected to leave the United Kingdom to travel to or by way of a specified country;
  - (e) to specified ships or specified aircraft.
- (4) For the purposes of sub-paragraph (2) the following are responsible persons in respect of a ship or aircraft – 5
- (a) the owner or agent, and
  - (b) the captain.
- (5) An order under sub-paragraph (2) –
- (a) may specify the time at which or period during which information is to be provided, 10
  - (b) may specify the form and manner in which information is to be provided,
  - (c) shall be made by statutory instrument, and
  - (d) shall be subject to annulment in pursuance of a resolution of either House of Parliament.” 15
- (3) In paragraph 27B (passenger information) –
- (a) in each place after “passenger information” insert “or service information”, and
  - (b) after sub-paragraph (9) insert –
- “(9A) “Service information” means such information relating to the voyage or flight undertaken by the ship or aircraft as may be specified.” 20
- (4) In section 27 of the Immigration Act 1971 (c. 77) (offences) –
- (a) in paragraph (b)(iv) for “the requirements of paragraph 27B or 27C of Schedule 2” substitute “a requirement imposed by or under Schedule 2”, and
  - (b) in paragraph (c) omit “as owner or agent of a ship or aircraft or”. 25

## 32 Passenger and crew information: police powers

- (1) This section applies to ships and aircraft which are –
- (a) arriving, or expected to arrive, in the United Kingdom, or 30
  - (b) leaving, or expected to leave, the United Kingdom.
- (2) The owner or agent of a ship or aircraft shall comply with any requirement imposed by a constable of the rank of superintendent or above to provide passenger or service information.
- (3) A passenger or member of crew shall provide to the owner or agent of a ship or aircraft any information that he requires for the purpose of complying with a requirement imposed by virtue of subsection (2). 35
- (4) A constable may impose a requirement under subsection (2) only if he thinks it necessary –
- (a) in the case of a constable in England, Wales or Northern Ireland, for police purposes, or 40
  - (b) in the case of a constable in Scotland, for police purposes which are or relate to reserved matters.
- (5) In this section –

- (a) “passenger or service information” means information which is of a kind specified by order of the Secretary of State and which relates to—
- (i) passengers,
  - (ii) members of crew, or
  - (iii) a voyage or flight,
- (b) “police purposes” has the meaning given by section 21(3) of the Immigration and Asylum Act 1999 (c. 33) (disclosure by Secretary of State), and
- (c) “reserved matters” has the same meaning as in the Scotland Act 1998 (c. 46).
- (6) A requirement imposed under subsection (2)—
- (a) must be in writing,
  - (b) may apply generally or only to one or more specified ships or aircraft,
  - (c) must specify a period, not exceeding six months and beginning with the date on which it is imposed, during which it has effect,
  - (d) must state—
    - (i) the information required, and
    - (ii) the date or time by which it is to be provided.
- (7) The Secretary of State may make an order specifying a kind of information under subsection (5)(a) only if satisfied that the nature of the information is such that there are likely to be circumstances in which it can be required under subsection (2) without breaching Convention rights (within the meaning of the Human Rights Act 1998 (c. 42)).
- (8) An order under subsection (5)(a)—
- (a) may apply generally or only to specified cases or circumstances,
  - (b) may make different provision for different cases or circumstances,
  - (c) may specify the form and manner in which information is to be provided,
  - (d) shall be made by statutory instrument, and
  - (e) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### 33 Freight information: police powers

- (1) This section applies to ships, aircraft and vehicles which are—
- (a) arriving, or expected to arrive, in the United Kingdom, or
  - (b) leaving, or expected to leave, the United Kingdom.
- (2) If a constable of the rank of superintendent or above requires a person specified in subsection (3) to provide freight information he shall comply with the requirement.
- (3) The persons referred to in subsection (2) are—
- (a) in the case of a ship or aircraft, the owner or agent,
  - (b) in the case of a vehicle, the owner or hirer, and
  - (c) in any case, persons responsible for the import or export of the freight into or from the United Kingdom.
- (4) A constable may impose a requirement under subsection (2) only if he thinks it necessary—

- (a) in the case of a constable in England, Wales or Northern Ireland, for police purposes, or
- (b) in the case of a constable in Scotland, for police purposes which are or relate to reserved matters.
- (5) In this section – 5
- (a) “freight information” means information which is of a kind specified by order of the Secretary of State and which relates to freight carried,
- (b) “police purposes” has the meaning given by section 21(3) of the Immigration and Asylum Act 1999 (c. 33) (disclosure by Secretary of State), and 10
- (c) “reserved matters” has the same meaning as in the Scotland Act 1998 (c. 46).
- (6) A requirement imposed under subsection (2) –
- (a) must be in writing,
- (b) may apply generally or only to one or more specified ships, aircraft or vehicles, 15
- (c) must specify a period, not exceeding six months and beginning with the date on which it is imposed, during which it has effect, and
- (d) must state – 20
- (i) the information required, and
- (ii) the date or time by which it is to be provided.
- (7) The Secretary of State may make an order specifying a kind of information under subsection (5)(a) only if satisfied that the nature of the information is such that there are likely to be circumstances in which it can be required under subsection (2) without breaching Convention rights (within the meaning of the Human Rights Act 1998 (c. 42)). 25
- (8) An order under subsection (5)(a) –
- (a) may apply generally or only to specified cases or circumstances,
- (b) may make different provision for different cases or circumstances,
- (c) may specify the form and manner in which the information is to be provided, 30
- (d) shall be made by statutory instrument, and
- (e) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- 34 Offence 35**
- (1) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed under section 32(2) or (3) or 33(2).
- (2) A person who is guilty of an offence under subsection (1) shall be liable on summary conviction to –
- (a) imprisonment for a term not exceeding 51 weeks in England and Wales or 6 months in Scotland or Northern Ireland, 40
- (b) a fine not exceeding level 4 on the standard scale, or
- (c) both.
- (3) In relation to a conviction occurring before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44) (51 week maximum term of 45

sentences) the reference to 51 weeks in subsection (2)(a) shall be taken as a reference to three months.

### 35 Power of Revenue and Customs to obtain information

In section 35(2) and (3) of the Customs and Excise Management Act 1979 (c. 2) (arrivals in the United Kingdom) after “arriving” insert “, or expected to arrive,”. 5

### 36 Duty to share information

- (1) This section applies to –
  - (a) the Secretary of State in so far as he has functions under the Immigration Acts, 10
  - (b) a chief officer of police, and
  - (c) Her Majesty’s Revenue and Customs.
- (2) The persons specified in subsection (1) shall share information to which subsection (4) applies and which is obtained or held by them in the course of their functions to the extent that the information is likely to be of use for – 15
  - (a) immigration purposes,
  - (b) police purposes, or
  - (c) Revenue and Customs purposes.
- (3) But a chief officer of police in Scotland shall share information under subsection (2) only to the extent that it is likely to be of use for – 20
  - (a) immigration purposes,
  - (b) police purposes, in so far as they are or relate to reserved matters within the meaning of the Scotland Act 1998 (c. 46), or
  - (c) Revenue and Customs purposes other than the prosecution of crime.
- (4) This subsection applies to information which – 25
  - (a) is obtained or held in the exercise of a power specified by the Secretary of State and the Treasury jointly by order and relates to –
    - (i) passengers on a ship or aircraft,
    - (ii) crew of a ship or aircraft,
    - (iii) freight on a ship or aircraft, or 30
    - (iv) flights or voyages, or
  - (b) relates to such other matters in respect of travel or freight as the Secretary of State and the Treasury may jointly specify by order.
- (5) The Secretary of State and the Treasury may make an order under subsection (4) which has the effect of requiring information to be shared only if satisfied that – 35
  - (a) the sharing is likely to be of use for –
    - (i) immigration purposes,
    - (ii) police purposes, or
    - (iii) Revenue and Customs purposes, and 40
  - (b) the nature of the information is such that there are likely to be circumstances in which it can be shared under subsection (2) without breaching Convention rights (within the meaning of the Human Rights Act 1998 (c. 42)).

- (6) Information shared in accordance with subsection (2) –
- (a) shall be made available to each of the persons specified in subsection (1), and
  - (b) may be used for immigration purposes, police purposes or Revenue and Customs purposes (regardless of its source). 5
- (7) An order under subsection (4) may not specify –
- (a) a power of Her Majesty’s Revenue and Customs if or in so far as it relates to a matter to which section 7 of the Commissioners for Revenue and Customs Act 2005 (c. 11) (former Inland Revenue matters) applies, or 10
  - (b) a matter to which that section applies.
- (8) An order under subsection (4) –
- (a) shall 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. 15
- (9) In this section –
- “chief officer of police” means –
    - (a) in England and Wales, the chief officer of police for a police area specified in section 1 of the Police Act 1996 (c. 16),
    - (b) in Scotland, the chief constable of a police force maintained under the Police (Scotland) Act 1967 (c. 77), and 20
    - (c) in Northern Ireland, the chief constable of the Police Service of Northern Ireland,
  - “immigration purposes” has the meaning given by section 20(3) of the Immigration and Asylum Act 1999 (c. 33) (disclosure to Secretary of State), 25
  - “police purposes” has the meaning given by section 21(3) of that Act (disclosure by Secretary of State), and
  - “Revenue and Customs purposes” means those functions of Her Majesty’s Revenue and Customs specified in section 21(6) of that Act. 30
- (10) This section has effect despite any restriction on the purposes for which information may be disclosed or used.

### **37 Information sharing: code of practice**

- (1) The Secretary of State and the Treasury shall jointly issue one or more codes of practice about – 35
- (a) the use of information shared in accordance with section 36(2), and
  - (b) the extent to which, or form or manner in which, shared information is to be made available in accordance with section 36(6).
- (2) A code –
- (a) shall not be issued unless a draft has been laid before Parliament, and 40
  - (b) shall come into force in accordance with provision made by order of the Secretary of State and the Treasury jointly.
- (3) The Secretary of State and the Treasury shall jointly from time to time review a code and may revise and re-issue it following a review; and subsection (2) shall apply to a revised code. 45

- (4) An order under subsection (2) –
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### 38 Disclosure of information for security purposes 5

- (1) A person specified in subsection (2) may disclose information obtained or held in the course of his functions to a person specified in subsection (3) if he thinks that the information is likely to be of use for a purpose specified in –
  - (a) section 1 of the Security Service Act 1989 (c. 5), or
  - (b) section 1 or 3 of the Intelligence Services Act 1994 (c. 13). 10
- (2) The persons who may disclose information in accordance with subsection (1) are –
  - (a) the Secretary of State in so far as he has functions under the Immigration Acts,
  - (b) a chief officer of police, and 15
  - (c) Her Majesty’s Revenue and Customs.
- (3) The persons to whom information may be disclosed in accordance with subsection (1) are –
  - (a) the Director-General of the Security Service,
  - (b) the Chief of the Secret Intelligence Service, and 20
  - (c) the Director of the Government Communications Headquarters.
- (4) The information referred to in subsection (1) is information –
  - (a) which is obtained or held in the exercise of a power specified by the Secretary of State and the Treasury jointly by order and relates to –
    - (i) passengers on a ship or aircraft, 25
    - (ii) crew of a ship or aircraft,
    - (iii) freight on a ship or aircraft, or
    - (iv) flights or voyages, or
  - (b) which relates to such other matters in respect of travel or freight as the Secretary of State and the Treasury may jointly specify by order. 30
- (5) In subsection (2) “chief officer of police” means –
  - (a) in England and Wales, the chief officer of police for a police area specified in section 1 of the Police Act 1996 (c. 16),
  - (b) in Scotland, the chief constable of a police force maintained under the Police (Scotland) Act 1967 (c. 77), and
  - (c) in Northern Ireland, the chief constable of the Police Service of Northern Ireland. 35
- (6) An order under subsection (4) may not specify –
  - (a) a power of Her Majesty’s Revenue and Customs if or in so far as it relates to a matter to which section 7 of the Commissioners for Revenue and Customs Act 2005 (c. 11) (former Inland Revenue matters) applies, or
  - (b) a matter to which that section applies. 40
- (7) An order under this section –
  - (a) shall be made by statutory instrument, and 45

(b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

(8) This section has effect despite any restriction on the purposes for which information may be disclosed or used.

### **39 Disclosure to law enforcement agencies** 5

- (1) A chief officer of police may disclose information obtained in accordance with section 32 or 33 to –
- (a) the States of Jersey police force;
  - (b) the salaried police force of the Island of Guernsey;
  - (c) the Isle of Man constabulary; 10
  - (d) any other foreign law enforcement agency.
- (2) In subsection (1) “foreign law enforcement agency” means a person outside the United Kingdom with functions similar to functions of –
- (a) a police force in the United Kingdom, or
  - (b) the Serious Organised Crime Agency. 15
- (3) In subsection (1) “chief officer of police” means –
- (a) in England and Wales, the chief officer of police for a police area specified in section 1 of the Police Act 1996 (c. 16),
  - (b) in Scotland, the chief constable of a police force maintained under the Police (Scotland) Act 1967 (c. 77), and 20
  - (c) in Northern Ireland, the chief constable of the Police Service of Northern Ireland.

### **40 Searches: contracting out**

- (1) An authorised person may, in accordance with arrangements made under this section, search a searchable ship, aircraft, vehicle or other thing for the purpose of satisfying himself whether there are individuals whom an immigration officer might wish to examine under paragraph 2 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry: administrative provisions). 25
- (2) For the purposes of subsection (1) –
- (a) “authorised” means authorised for the purpose of this section by the Secretary of State, and
  - (b) a ship, aircraft, vehicle or other thing is “searchable” if an immigration officer could search it under paragraph 1(5) of that Schedule. 30
- (3) The Secretary of State may authorise a specified class of constable for the purpose of this section. 35
- (4) The Secretary of State may, with the consent of the Commissioners for Her Majesty’s Revenue and Customs, authorise a specified class of officers of Revenue and Customs for the purpose of this section.
- (5) The Secretary of State may authorise a person other than a constable or officer of Revenue and Customs for the purpose of this section only if – 40
- (a) the person applies to be authorised, and
  - (b) the Secretary of State thinks that the person is –
    - (i) fit and proper for the purpose, and
    - (ii) suitably trained.

- (6) The Secretary of State –
- (a) may make arrangements for the exercise by authorised constables of the powers under subsection (1),
  - (b) may make arrangements with the Commissioners for Her Majesty’s Revenue and Customs for the exercise by authorised officers of Revenue and Customs of the powers under subsection (1), and 5
  - (c) may make arrangements with one or more persons for the exercise by authorised persons other than constables and officers of Revenue and Customs of the power under subsection (1).
- (7) Where in the course of a search under this section an authorised person discovers an individual whom he thinks an immigration officer might wish to examine under paragraph 2 of that Schedule, the authorised person may – 10
- (a) search the individual for the purpose of discovering whether he has with him anything of a kind that might be used – 15
    - (i) by him to cause physical harm to himself or another,
    - (ii) by him to assist his escape from detention, or
    - (iii) to establish information about his identity, nationality or citizenship or about his journey;
  - (b) retain, and as soon as is reasonably practicable deliver to an immigration officer, anything of a kind described in paragraph (a) found on a search under that paragraph; 20
  - (c) detain the individual, for a period which is as short as is reasonably necessary and which does not exceed three hours, pending the arrival of an immigration officer to whom the individual is to be delivered;
  - (d) take the individual, as speedily as is reasonably practicable, to a place for the purpose of delivering him to an immigration officer there; 25
  - (e) use reasonable force for the purpose of doing anything under paragraphs (a) to (d).
- (8) Despite the generality of subsection (7) – 30
- (a) an individual searched under that subsection may not be required to remove clothing other than an outer coat, a jacket or a glove (but he may be required to open his mouth), and 30
  - (b) an item may not be retained under subsection (7)(b) if it is subject to legal privilege –
    - (i) in relation to a search carried out in England and Wales, within the meaning of the Police and Criminal Evidence Act 1984 (c. 60), 35
    - (ii) in relation to a search carried out in Scotland, within the meaning of section 412 of the Proceeds of Crime Act 2002 (c. 29), and 40
    - (iii) in relation to a search carried out in Northern Ireland, within the meaning of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).

#### 41 Section 40: supplemental

- (1) Arrangements under section 40(6)(c) must include provision for the appointment of a Crown servant to – 45
- (a) monitor the exercise of powers under that section by authorised persons (other than constables or officers of Revenue and Customs),

- (b) inspect from time to time the way in which the powers are being exercised by authorised persons (other than constables or officers of Revenue and Customs), and
- (c) investigate and report to the Secretary of State about any allegation made against an authorised person (other than a constable or officer of Revenue and Customs) in respect of anything done or not done in the purported exercise of a power under that section. 5
- (2) The authorisation for the purpose of section 40 of a constable or officer of Revenue and Customs or of a class of constable or officer of Revenue and Customs – 10
- (a) may be revoked, and
- (b) shall have effect, unless revoked, for such period as shall be specified (whether by reference to dates or otherwise) in the authorisation.
- (3) The authorisation of a person other than a constable or officer of Revenue and Customs for the purpose of section 40 – 15
- (a) may be subject to conditions,
- (b) may be suspended or revoked by the Secretary of State by notice in writing to the authorised person, and
- (c) shall have effect, unless suspended or revoked, for such period as shall be specified (whether by reference to dates or otherwise) in the authorisation. 20
- (4) A class may be specified for the purposes of section 40(3) or (4) by reference to –
- (a) named individuals,
- (b) the functions being exercised by a person, 25
- (c) the location or circumstances in which a person is exercising functions, or
- (d) any other matter.
- (5) An individual or article delivered to an immigration officer under section 40 shall be treated as if discovered by the immigration officer on a search under Schedule 2 to the Immigration Act 1971 (c. 77). 30
- (6) A person commits an offence if he –
- (a) absconds from detention under section 40(7)(c),
- (b) absconds while being taken to a place under section 40(7)(d) or having been taken to a place in accordance with that paragraph but before being delivered to an immigration officer, 35
- (c) obstructs an authorised person in the exercise of a power under section 40, or
- (d) assaults an authorised person who is exercising a power under section 40. 40
- (7) But a person does not commit an offence under subsection (6) by doing or failing to do anything in respect of an authorised person who is not readily identifiable –
- (a) as a constable or officer of Revenue and Customs, or
- (b) as an authorised person (whether by means of a uniform or badge or otherwise). 45
- (8) A person guilty of an offence under subsection (6) shall be liable on summary conviction to –

- (a) imprisonment for a term not exceeding 51 weeks, in the case of a conviction in England and Wales, or six months, in the case of a conviction in Scotland or Northern Ireland,
- (b) a fine not exceeding level 5 on the standard scale, or
- (c) both. 5
- (9) In relation to a conviction occurring before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44) (51 week maximum term of sentences) the reference in subsection (8)(a) to 51 weeks shall be treated as a reference to six months.
- 42 Information: embarking passengers 10**
- (1) Schedule 2 to the Immigration Act 1971 (c. 77) (control on entry, &c.) shall be amended as follows.
- (2) In paragraph 3(1) for the words from “and if he is not” to the end substitute –  
“and, if he is not a British citizen, for the purpose of establishing –
- (a) his identity; 15
- (b) whether he entered the United Kingdom lawfully;
- (c) whether he has complied with any conditions of leave to enter or remain in the United Kingdom;
- (d) whether his return to the United Kingdom is prohibited or restricted.
- (1A) An immigration officer who examines a person under sub-paragraph (1) may require him, by notice in writing, to submit to further examination for a purpose specified in that sub-paragraph.” 20
- (3) After paragraph 16(1A) insert –
- “(1B) A person who has been required to submit to further examination under paragraph 3(1A) may be detained under the authority of an immigration officer, for a period not exceeding 12 hours, pending the completion of the examination.” 25
- (4) In paragraph 21(1) after “16” insert “(1), (1A) or (2)”.

*Claimants and applicants*

- 43 Accommodation 30**
- (1) In section 99(1) of the Immigration and Asylum Act 1999 (c. 33) (provision of support by local authorities) –
- (a) for “asylum-seekers and their dependants (if any)” substitute “persons”, and
- (b) after “section” insert “4,”. 35
- (2) In section 99(4) (expenditure) after “section” insert “4,”.
- (3) In section 118(1)(b) (housing authority accommodation) for “95” substitute “4, 95 or 98”.
- (4) In the following provisions for “under Part VI of the Immigration and Asylum Act 1999” substitute “under section 4 or Part VI of the Immigration and Asylum Act 1999” – 40

- (a) section 3A(7A) of the Protection from Eviction Act 1977 (c. 43) (excluded tenancies and licences),
- (b) paragraph 3A(1) of Schedule 2 to the Housing (Northern Ireland) Order 1983 (S.I. 1983/1118 (N.I. 15)) (non-secure tenancies),
- (c) section 23A(5A) of the Rent (Scotland) Act 1984 (c. 58) (excluded tenancies and occupancy rights), 5
- (d) paragraph 4A(1) of Schedule 1 to the Housing Act 1985 (c. 68) (non-secure tenancies),
- (e) paragraph 11B of Schedule 4 to the Housing (Scotland) Act 1988 (c. 43) (non-assured tenancies), and 10
- (f) paragraph 12A(1) of Schedule 1 to the Housing Act 1988 (c. 50) (non-assured tenancies).
- (5) A tenancy is not a Scottish secure tenancy (within the meaning of the Housing (Scotland) Act 2001 (asp 10) if it is granted in order to provide accommodation under section 4 of the Immigration and Asylum Act 1999 (c. 33) (accommodation). 15
- (6) A tenancy which would be a Scottish secure tenancy but for subsection (4) becomes a Scottish secure tenancy if the landlord notifies the tenant that it is to be regarded as such.
- 44 Integration loans** 20
- (1) Section 13 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19) (integration loan for refugees) shall be amended as follows.
- (2) In subsection (1) for “to refugees.” substitute “—
- (a) to refugees, and
- (b) to such other classes of person, or to persons other than refugees in such circumstances, as the regulations may prescribe.” 25
- (3) In subsection (2)(b) for “granted him indefinite leave to enter or remain” substitute “granted him leave to enter or remain”.
- (4) In subsection (3)(a)(iii) after “as a refugee” insert “or since some other event”.
- (5) In subsection (3)(h) for “refugee” substitute “person”. 30
- (6) The heading to the section becomes “Integration loans for refugees and others”.
- 45 Inspection of detention facilities**
- (1) For section 5A(5A) of the Prison Act 1952 (c. 52) (removal centres: inspection) substitute—
- “(5A) Subsections (2) to (5) shall apply— 35
- (a) in relation to removal centres within the meaning of section 147 of the Immigration and Asylum Act 1999,
- (b) in relation to short term holding facilities within the meaning of that section, and
- (c) in relation to escort arrangements within the meaning of that section. 40
- (5B) In their application by virtue of subsection (5A) subsections (2) to (5)—

- (a) shall apply to centres, facilities and arrangements anywhere in the United Kingdom, and
- (b) shall have effect—
- (i) as if a reference to prisons were a reference to removal centres, short term holding facilities and escort arrangements, 5
- (ii) as if a reference to prisoners were a reference to detained persons and persons to whom escort arrangements apply, and
- (iii) with any other necessary modifications.” 10
- (2) In section 55 of that Act (extent)—
- (a) omit subsection (4A), and
- (b) after subsection (5) insert—
- “(6) But (despite subsections (4) and (5)) the following shall extend to England and Wales, Scotland and Northern Ireland— 15
- (a) section 5A(5A) and (5B), and
- (b) section 5A(2) to (5) in so far as they apply by virtue of section 5A(5A).”
- 46 Removal: cancellation of leave**
- For section 10(8) of the Immigration and Asylum Act 1999 (c. 33) (removal directions: cancellation of leave to enter or remain in UK) substitute— 20
- “(8) When a person is notified that a decision has been made to remove him in accordance with this section, the notification invalidates any leave to enter or remain in the United Kingdom previously given to him.”
- 47 Capacity to make nationality application** 25
- After section 44 of the British Nationality Act 1981 (c. 61) (decisions involving discretion) insert—
- “44A Waiver of requirement for full capacity**
- Where a provision of this Act requires an applicant to be of full capacity, the Secretary of State may waive the requirement in respect of a specified applicant if he thinks it in the applicant’s best interests.” 30
- 48 Procedure**
- (1) Rules under section 3 of the Immigration Act 1971 (c. 77)—
- (a) may require a specified procedure to be followed in making or pursuing an application or claim (whether or not under those rules or any other enactment), 35
- (b) may, in particular, require the use of a specified form and the submission of specified information or documents,
- (c) may make provision about the manner in which a fee is to be paid, and
- (d) may make provision for the consequences of failure to comply with a requirement under paragraph (a), (b) or (c). 40

- (2) In respect of any application or claim in connection with immigration (whether or not under the rules referred to in subsection (1) or any other enactment) the Secretary of State –
- (a) may require a specified procedure to be followed (and may, in particular, require the use of a specified form and the submission of specified information or documents), 5
  - (b) may direct the manner in which a fee is to be paid and the rules referred to in subsection (1) may provide for the consequences of failure to comply with a requirement under paragraph (a) or (b).
- (3) The following shall cease to have effect – 10
- (a) section 31A of the Immigration Act 1971 (c. 77) (procedure for applications), and
  - (b) section 25 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 (c. 19) (marriage: application for permission).
- (4) At the end of section 41(1) of the British Nationality Act 1981 (c. 61) (procedure) add – 15
- “(j) as to the consequences of failure to comply with provision made under any of paragraphs (a) to (i).”
- (5) In section 10(2)(c) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (right of abode: certificate of entitlement: procedure) for “made in a specified form;” substitute “accompanied by specified information;” 20
- (6) Paragraph 2(3) of Schedule 23 to the Civil Partnership Act 2004 (c. 33) (immigration: procedure) shall cease to have effect.

#### 49 Fees

- (1) The Secretary of State may by order require an application or claim in connection with immigration or nationality (whether or not under an enactment) to be accompanied by a specified fee. 25
- (2) The Secretary of State may by order provide for a fee to be charged by him, by an immigration officer or by another specified person in respect of –
- (a) the provision on request of a service (whether or not under an enactment) in connection with immigration or nationality, 30
  - (b) a process (whether or not under an enactment) in connection with immigration or nationality,
  - (c) the provision on request of advice in connection with immigration or nationality, or 35
  - (d) the provision on request of information in connection with immigration or nationality.
- (3) Where an order under this section provides for a fee to be charged, regulations made by the Secretary of State –
- (a) shall specify the amount of the fee, 40
  - (b) may provide for exceptions,
  - (c) may confer a discretion to reduce, waive or refund all or part of a fee,
  - (d) may make provision about the consequences of failure to pay a fee,
  - (e) may make provision about enforcement, and
  - (f) may make provision about the time or period of time at or during which a fee may or must be paid. 45

- (4) Fees paid by virtue of this section shall—
- (a) be paid into the Consolidated Fund, or
  - (b) be applied in such other way as the relevant order may specify.

## 50 Fees: supplemental

- (1) A fee imposed under section 49 may relate to a thing whether or not it is done wholly or partly outside the United Kingdom; but that section is without prejudice to— 5
- (a) section 1 of the Consular Fees Act 1980 (c. 23), and
  - (b) any other power to charge a fee.
- (2) Section 49 is without prejudice to the application of section 102 of the Finance (No. 2) Act 1987 (c. 51) (government fees and charges); and an order made under that section in respect of a power repealed by Schedule 2 to this Act shall have effect as if it related to the powers under section 49 above in so far as they relate to the same matters as the repealed power. 10
- (3) An order or regulations under section 49— 15
- (a) may make provision generally or only in respect of specified cases or circumstances,
  - (b) may make different provision for different cases or circumstances,
  - (c) may include incidental, consequential or transitional provision, and
  - (d) shall be made by statutory instrument. 20
- (4) An order under section 49—
- (a) may be made only with the consent of the Treasury, and
  - (b) may be made only if a draft has been laid before and approved by resolution of each House of Parliament.
- (5) Regulations under section 49— 25
- (a) may be made only with the consent of the Treasury, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) A reference in section 49 to anything in connection with immigration or nationality includes a reference to anything in connection with an enactment (including an enactment of a jurisdiction outside the United Kingdom) that relates wholly or partly to immigration or nationality. 30
- (7) Schedule 2 (consequential amendments) shall have effect.

### *Miscellaneous*

## 51 Arrest pending deportation 35

At the end of paragraph 2(4) of Schedule 3 to the Immigration Act 1971 (c. 77) (deportation: power to detain) insert “; and for that purpose the reference in paragraph 17(1) to a person liable to detention includes a reference to a person who would be liable to detention upon receipt of a notice which is ready to be given to him.” 40

**52 Refugee Convention: construction**

- (1) In the construction and application of Article 1(F)(c) of the Refugee Convention the reference to acts contrary to the purposes and principles of the United Nations shall be taken as including, in particular –
- (a) acts of committing, preparing or instigating terrorism (whether or not the acts amount to an actual or inchoate offence), and 5
  - (b) acts of encouraging or inducing others to commit, prepare or instigate terrorism (whether or not the acts amount to an actual or inchoate offence).
- (2) Where the Secretary of State rejects an asylum claim wholly or partly on the grounds that Article 1(F) of the Refugee Convention applies, or makes any other decision wholly or partly in reliance on the application of that Article, the Asylum and Immigration Tribunal or the Special Immigration Appeals Commission – 10
- (a) must begin its consideration of the Refugee Convention on any appeal in which the rejection or decision is to be considered by considering whether or not Article 1(F) applies, and 15
  - (b) if it concludes that Article 1(F) applies, must dismiss the appeal in so far as it relies on the Refugee Convention.
- (3) In this section – 20
- “asylum claim” means a claim by a person that to remove him from or require him to leave the United Kingdom would be contrary to the United Kingdom’s obligations under the Refugee Convention,
  - “the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951, and 25
  - “terrorism” has the meaning given by section 1 of the Terrorism Act 2000 (c. 11).
- (4) Section 72(10)(a) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (serious criminal: Tribunal or Commission to begin by considering certificate) shall have effect subject to subsection (2)(a) above. 30

**53 Deprivation of citizenship**

- (1) For section 40(2) of the British Nationality Act 1981 (c. 61) (deprivation of citizenship: prejudicing UK interests) substitute –
- “(2) The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that deprivation is conducive to the public good.” 35
- (2) At the end of section 40A(3) of that Act (deprivation: appeal) add –
- “, and
  - (e) section 108 (forged document: proceedings in private).”; 40
- (and omit the word “and” before section 40A(3)(d)).

**54 Deprivation of right of abode**

- (1) After section 2 of the Immigration Act 1971 (c. 77) (right of abode) insert—
- “2A Deprivation of right of abode**
- (1) The Secretary of State may by order remove from a specified person a right of abode in the United Kingdom which he has under section 2(1)(b). 5
- (2) The Secretary of State may make an order under subsection (1) in respect of a person only if the Secretary of State thinks that it would be conducive to the public good for the person to be excluded or removed from the United Kingdom. 10
- (3) An order under subsection (1) may be revoked by order of the Secretary of State.
- (4) While an order under subsection (1) has effect in relation to a person—
- (a) section 2(2) shall not apply to him, and
- (b) any certificate of entitlement granted to him shall have no effect.” 15
- (2) In section 82(2) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (right of appeal: definition of immigration decision) after paragraph (ia) insert—
- “(ib) a decision to make an order under section 2A of that Act (deprivation of right of abode),” 20

**55 Acquisition of British nationality, &c.**

- (1) The Secretary of State shall not grant an application for registration as a citizen of any description or as a British subject under a provision listed in subsection (2) unless satisfied that the person is of good character. 25
- (2) Those provisions are—
- (a) sections 1(3) and (4), 3(1), (2) and (5), 4(2) and (5), 4A, 4B, 4C, 5, 10(1) and (2), 13(1) and (3) of the British Nationality Act 1981 (c. 61) (registration as British citizen),
- (b) sections 15(3) and (4), 17(1), (2) and (5), 22(1) and (2), 24, 27(1) and 32 of that Act (registration as British overseas territories citizen, &c.), 30
- (c) section 1 of the Hong Kong (War Wives and Widows) Act 1996 (c. 41) (registration as British citizen),
- (d) section 1 of the British Nationality (Hong Kong) Act 1997 (c. 20) (registration as British citizen), and 35
- (e) article 6(3) of the Hong Kong (British Nationality) Order 1986 (S.I. 1986/948) (registration as British Overseas citizen).
- (3) Where the Secretary of State makes arrangements under section 43 of the British Nationality Act 1981 for a function to be exercised by some other person, subsection (1) above shall have effect in relation to that function as if the reference to the Secretary of State were a reference to that other person. 40

**56 Detained persons: national minimum wage**

- (1) After section 153 of the Immigration and Asylum Act 1999 (c. 33) (removal

centres: rules) insert –

**“153A Detained persons: national minimum wage**

A detained person does not qualify for the national minimum wage in respect of work which he does in pursuance of removal centre rules.”

- (2) After section 45A of the National Minimum Wage Act 1998 (c. 39) (exemptions from national minimum wage: persons discharging fines) insert – 5

**“45B Immigration: detained persons**

Section 153A of the Immigration and Asylum Act 1999 (c. 33) (persons detained in removal centres) disqualifies certain persons for the national minimum wage.” 10

*General*

**57 Money**

There shall be paid out of money provided by Parliament –

- (a) any expenditure of the Secretary of State in connection with this Act, and 15  
(b) any increase attributable to this Act in sums payable under another enactment out of money provided by Parliament.

**58 Repeals**

Schedule 3 (repeals) shall have effect.

**59 Commencement** 20

- (1) The preceding provisions of this Act shall come into force in accordance with provision made by order of the Secretary of State.
- (2) An order under subsection (1) – 25  
(a) may make provision generally or only for specified purposes,  
(b) may make different provision for different purposes,  
(c) may include transitional or incidental provision or savings, and  
(d) shall be made by statutory instrument.

**60 Extent**

- (1) This Act extends to – 30  
(a) England and Wales,  
(b) Scotland, and  
(c) Northern Ireland.
- (2) But – 35  
(a) an amendment by this Act of another Act has the same extent as that Act or as the relevant part of that Act (ignoring extent by virtue of an Order in Council), and

- (b) a provision of this Act shall, so far as it relates to nationality, have the same extent as the British Nationality Act 1981 (c. 61) (disregarding excepted provisions under section 53(7) of that Act).
- (3) Her Majesty may by Order in Council direct that a provision of this Act is to extend, with or without modification or adaptation, to— 5
- (a) any of the Channel Islands;
- (b) the Isle of Man.
- (4) Subsection (3) does not apply in relation to the extension to a place of a provision which extends there by virtue of subsection (2)(b).
- 61 Citation** 10
- (1) This Act may be cited as the Immigration, Asylum and Nationality Act 2006.
- (2) A reference (in any enactment, including one passed or made before this Act) to “the Immigration Acts” is to— 15
- (a) the Immigration Act 1971 (c. 77),
- (b) the Immigration Act 1988 (c. 14),
- (c) the Asylum and Immigration Appeals Act 1993 (c. 23),
- (d) the Asylum and Immigration Act 1996 (c. 49),
- (e) the Immigration and Asylum Act 1999 (c. 33),
- (f) the Nationality, Immigration and Asylum Act 2002 (c. 41),
- (g) the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), and 20
- (h) this Act.
- (3) The following shall cease to have effect— 25
- (a) section 32(5) of the Immigration Act 1971 (“the Immigration Acts”),
- (b) in section 167(1) of the Immigration and Asylum Act 1999, the definition of “the Immigration Acts”,
- (c) section 158 of the Nationality, Immigration and Asylum Act 2002 (“the Immigration Acts”), and
- (d) section 44 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19) (“the Immigration Acts”). 30
- (4) In Schedule 1 to the Interpretation Act 1978 (c. 30) (defined expressions) at the appropriate place insert—
- ““The Immigration Acts” has the meaning given by section 61 of the Immigration, Asylum and Nationality Act 2006.”

## SCHEDULES

### SCHEDULE 1

Section 14

#### IMMIGRATION AND ASYLUM APPEALS: CONSEQUENTIAL AMENDMENTS

##### *Nationality, Immigration and Asylum Act 2002 (c. 41)*

- |    |  |    |
|----|--|----|
| 1  | The Nationality, Immigration and Asylum Act 2002 (appeals) shall be amended as follows.  | 5  |
| 2  | In section 72(9) (serious criminal) after “, 83” insert “, 83A”.   |    |
| 3  | In section 82(3) (suspension of variation or revocation pending appeal) for “subsection (2)(e) or (f)” substitute “subsection (2)(f), (fa) or (fb)”.   |    |
| 4  | After section 82(3) insert—  | 10 |
|    | “(3A) If a person has made an application for variation of limited leave to enter or remain, of a kind referred to in subsection (2)(fa) or (fb), and that application has been refused, his leave to enter or remain is extended by virtue of this subsection during any period within which an appeal against the refusal— | 15 |
|    | (a) could be brought (ignoring any possibility of an appeal out of time with permission), or   |    |
|    | (b) is pending.”   |    |
| 5  | In section 85(4) (matters to be considered) for “or 83(2)” substitute “, 83(2) or 83A(2)”.   | 20 |
| 6  | In section 86(1) (determination of appeal) for “or 83.” substitute “, 83 or 83A.”  |    |
| 7  | In section 87(1) (successful appeal: direction) for “or 83” substitute “, 83 or 83A”.  |    |
| 8  | In section 88(1) (ineligibility) for “, (b), (d) or (e)” substitute “or (b)”.  |    |
| 9  | In section 92(2) (appeal from within United Kingdom) for “(d), (e), (f)” substitute “(f), (fa), (fb)”.   | 25 |
| 10 | In section 94(1A) (appeal from within United Kingdom: unfounded claim) omit “, (d) or (e)”.  |    |
| 11 | In section 97(1) and (3) (national security, &c.) for “or 83(2)” substitute “, 83(2) or 83A(2)”.   | 30 |
| 12 | In section 103A(1) (review of Tribunal’s decision) for “or 83” substitute “, 83 or 83A”.   |    |
| 13 | In section 103E(1) (appeal from Tribunal sitting as panel) for “or 83” substitute “, 83 or 83A”.   |    |



2 Section 42A of the British Nationality Act 1981 (registration and naturalisation: fee) shall cease to have effect.

*Immigration and Asylum Act 1999 (c. 33)*

3 Sections 5 and 27 of the Immigration and Asylum Act 1999 (charges) shall cease to have effect. 5

*Nationality, Immigration and Asylum Act 2002 (c. 41)*

4 In section 10(2) (right of abode: certificate of entitlement) –

- (a) paragraph (e) shall cease to have effect, and
- (b) in paragraph (f) for “(a) to (e)” substitute “(a) to (d)”.

5 Section 122 (fee for work permit, &c.) shall cease to have effect. 10

*Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)*

6 (1) Section 42 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (amount of fees) shall be amended as follows.

(2) In subsection (1) –

- (a) for “In prescribing a fee for an application or process under a provision specified in subsection (2)” substitute “In prescribing a fee under section 49 of the Immigration, Asylum and Nationality Act 2006 (fees) in connection with a matter specified in subsection (2)”, and 15

- (b) omit “, with the consent of the Treasury,”. 20

(3) For subsection (2) substitute –

“(2) Those matters are –

- (a) anything done under, by virtue of or in connection with a provision of the British Nationality Act 1981 (c. 61) or of the former nationality Acts (within the meaning given by section 50(1) of that Act), 25

- (b) an application for leave to remain in the United Kingdom,
- (c) an application for the variation of leave to enter, or remain in, the United Kingdom,

- (d) section 10 of the Nationality, Immigration and Asylum Act 2002 (right of abode: certificate of entitlement), 30

- (e) a work permit, and

- (f) any other document which relates to employment and is issued for a purpose of immigration rules or in connection with leave to enter or remain in the United Kingdom.” 35

SCHEDULE 3

Section 58

REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Prison Act 1952 (c. 52)	Section 55(4A).

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Immigration Act 1971 (c. 77)	Section 3C(2)(b) and (c). In section 27, in paragraph (c) the words “as owner or agent of a ship or aircraft or”.	5
British Nationality Act 1981 (c. 61)	Section 31A. Section 32(5). In Schedule 2, paragraph 4(2A). In section 40A(3), the word “and” before paragraph (d). Section 41(2). In section 41(3) – (a) the words “or (2)”, and (b) paragraph (b). Section 42A.	10
Asylum and Immigration Act 1996 (c. 49)	Sections 8 and 8A.	15
Immigration and Asylum Act 1999 (c. 33)	Section 5. Section 27. In section 167(1), the definition of “the Immigration Acts”.	20
Nationality, Immigration and Asylum Act 2002 (c. 41)	Section 10(2)(e). Section 82(2)(d) and (e). In section 94(1A), the words “, (d) or (e)”. Section 110. Section 122. Section 158.	25
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)	Section 25. In section 42(1) the words “, with the consent of the Treasury,”. Section 44.	30
Civil Partnership Act 2004 (c. 33)	Paragraph 2(3) of Schedule 23.	

# Immigration, Asylum and Nationality Bill

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## B I L L

To make provision about immigration, asylum and nationality; and for connected purposes.

*Brought from the Commons on 17th November  
2005*

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*Ordered to be Printed, 17th November  
2005*

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PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS  
LONDON – THE STATIONERY OFFICE LIMITED  
Printed in the United Kingdom by  
The Stationery Office Limited  
£x.xx

HL Bill 43

(xxxxx)

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