

Asylum and Immigration (Treatment of Claimants, etc.) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Home Office, are published separately as HL Bill 36 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

The Baroness Scotland of Asthal has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Asylum and Immigration (Treatment of Claimants, etc.) Bill are compatible with the Convention rights.

Asylum and Immigration (Treatment of Claimants, etc.) Bill

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TO

Make provision about asylum and immigration.

BE 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:—

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— 5
- (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. 10
- (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 Community Treaties, 15
- (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))”. 20

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. 5
- (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. 10
- (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. 15
- (4) It is a defence for a person charged with an offence under subsection (1) to prove—
- (a) that he is an EEA national, 20
 - (b) 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, or
 - (c) that he has a reasonable excuse for not being in possession of a document of the kind specified in subsection (1). 25
- (5) It is a defence for a person charged with an offence under subsection (2) in respect of a child to prove—
- (a) that the child is an EEA national,
 - (b) 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, or 30
 - (c) that the person has a reasonable excuse for not being in possession of a document of the kind specified in subsection (2).
- (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). 35
- (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 40
 - (ii) beyond the control of the person charged with the offence, and 45

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

- (14) 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.
- (15) 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. 5
- (16) 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.

3 Immigration documents: forgery

- (1) Section 5 of the Forgery and Counterfeiting Act 1981 (c. 45) (offences relating to various documents) shall be amended as follows. 10
- (2) After subsection (5)(f) (passports) insert –
“(fa) immigration documents;”.
- (3) After subsection (8) add –
- “(9) In subsection (5)(fa) “immigration document” means a card, adhesive label or other instrument which satisfies subsection (10) or (11). 15
- (10) A card, adhesive label or other instrument satisfies this subsection if it –
- (a) is designed to be given, in the exercise of a function under the Immigration Acts (within the meaning of section 29 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004), to a person who has been granted leave to enter or remain in the United Kingdom, and 20
- (b) carries information (whether or not wholly or partly electronically) about the leave granted. 25
- (11) A card, adhesive label or other instrument satisfies this subsection if it is given to a person to confirm a right of his under the Community Treaties in respect of entry to or residence in the United Kingdom.”

4 Trafficking people for exploitation

- (1) A person commits an offence if he arranges or facilitates the arrival in the United Kingdom of an individual (the “passenger”) and – 30
- (a) he intends to exploit the passenger in the United Kingdom or elsewhere, or
- (b) he believes that another person is likely to exploit the passenger in the United Kingdom or elsewhere. 35
- (2) A person commits an offence if he arranges or facilitates travel within the United Kingdom by an individual (the “passenger”) in respect of whom he believes that an offence under subsection (1) may have been committed and –
- (a) he intends to exploit the passenger in the United Kingdom or elsewhere, or 40
- (b) he believes that another person is likely to exploit the passenger in the United Kingdom or elsewhere.
- (3) A person commits an offence if he arranges or facilitates the departure from the United Kingdom of an individual (the “passenger”) and –

- (a) he intends to exploit the passenger outside the United Kingdom, or
 - (b) he believes that another person is likely to exploit the passenger outside the United Kingdom.
- (4) For the purposes of this section a person is exploited if (and only if) –
- (a) he is the victim of behaviour that contravenes Article 4 of the Human Rights Convention (slavery and forced labour), 5
 - (b) he is encouraged, required or expected to do anything as a result of which he or another person would commit an offence under the Human Organ Transplants Act 1989 (c. 31) or the Human Organ Transplants (Northern Ireland) Order 1989 (S.I. 1989/2408 (N.I. 21)), 10
 - (c) he is subjected to force, threats or deception designed to induce him –
 - (i) to provide services of any kind,
 - (ii) to provide another person with benefits of any kind, or
 - (iii) to enable another person to acquire benefits of any kind, or
 - (d) he is requested or induced to undertake any activity, having been chosen as the subject of the request or inducement on the grounds that –
 - (i) he is mentally or physically ill or disabled, he is young or he has a family relationship with a person, and 15
 - (ii) a person without the illness, disability, youth or family relationship would be likely to refuse the request or resist the inducement. 20
- (5) A person guilty of an offence under this section shall be liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years, to a fine or to both, or 25
 - (b) on summary conviction, to imprisonment for a term not exceeding twelve months, to a fine not exceeding the statutory maximum or to both.

5 Section 4: supplemental

- (1) Subsections (1) to (3) of section 4 apply to anything done –
- (a) in the United Kingdom, 30
 - (b) outside the United Kingdom by an individual to whom subsection (2) below applies, or
 - (c) outside the United Kingdom by a body incorporated under the law of a part of the United Kingdom. 35
- (2) This subsection applies to –
- (a) a British citizen,
 - (b) a British overseas territories citizen,
 - (c) a British National (Overseas),
 - (d) a British Overseas citizen, 40
 - (e) a person who is a British subject under the British Nationality Act 1981 (c. 61), and
 - (f) a British protected person within the meaning of that Act.
- (3) In section 4(4)(a) “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. 45

- (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.
- (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).” 5
- (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).” 10
- (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).” 15
- (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)”.
- (9) At the end of paragraph 4 of Schedule 5 to the Proceeds of Crime Act 2002 (lifestyle offences: Northern Ireland: people trafficking) add—
 “(3) An offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (exploitation).” 20
- (10) After paragraph 2(l) of the Schedule to the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (S.I. 2003/417 (N.I. 4)) (offence against child) insert—
 “(m) an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation).” 25
- (11) 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. 30
- (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. 35
- (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.

6 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;”. 40

*Treatment of claimants***7 Claimant's credibility**

- (1) In determining whether to believe a statement made by or on behalf of a person who makes an asylum claim or a human rights claim, a deciding authority shall take account, as damaging the claimant's credibility, of any behaviour to which this section applies. 5
- (2) This section applies to any behaviour by the claimant that the deciding authority thinks –
 - (a) is designed or likely to conceal information,
 - (b) is designed or likely to mislead, or 10
 - (c) is designed or likely to obstruct or delay the handling or resolution of the claim or the taking of a decision in relation to the claimant.
- (3) Without prejudice to the generality of subsection (2) the following kinds of behaviour shall be treated as designed or likely to conceal information or to mislead – 15
 - (a) failure without reasonable explanation to produce a passport on request to an immigration officer or to the Secretary of State,
 - (b) the production of a document which is not a valid passport as if it were,
 - (c) the destruction, alteration or disposal, in each case without reasonable explanation, of a passport, 20
 - (d) the destruction, alteration or disposal, in each case without reasonable explanation, of a ticket or other document connected with travel, and
 - (e) failure without reasonable explanation to answer a question asked by a deciding authority.
- (4) This section also applies to failure by the claimant to take advantage of a reasonable opportunity to make an asylum claim or human rights claim while in a safe country. 25
- (5) This section also applies to failure by the claimant to make an asylum claim or human rights claim before being notified of an immigration decision, unless the claim relies wholly on matters arising after the notification. 30
- (6) This section also applies to failure by the claimant to make an asylum claim or human rights claim before being arrested under an immigration provision, unless –
 - (a) he had no reasonable opportunity to make the claim before the arrest, or 35
 - (b) the claim relies wholly on matters arising after the arrest.
- (7) In this section –
 - “asylum claim” has the meaning given by section 113(1) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (subject to subsection (8) below), 40
 - “deciding authority” means –
 - (a) an immigration officer,
 - (b) the Secretary of State,
 - (c) the Asylum and Immigration Tribunal, or
 - (d) the Special Immigration Appeals Commission, 45

“human rights claim” has the meaning given by section 113(1) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (subject to subsection (9) below),

“immigration decision” means –

- (a) refusal of leave to enter the United Kingdom, 5
- (b) refusal to vary a person’s leave to enter or remain in the United Kingdom,
- (c) grant of leave to enter or remain in the United Kingdom,
- (d) a decision that a person is to be removed from the United Kingdom by way of directions under section 10(1)(a), (b), (ba) or (c) of the Immigration and Asylum Act 1999 (c. 33) (removal of persons unlawfully in United Kingdom), 10
- (e) a decision that a person is to be removed from the United Kingdom by way of directions under paragraphs 8 to 12 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry: removal), 15
- (f) a decision to make a deportation order under section 5(1) of that Act, and
- (g) a decision to take action in relation to a person in connection with extradition from the United Kingdom, 20

“immigration provision” means –

- (a) sections 28A, 28AA, 28B, 28C and 28CA of the Immigration Act 1971 (immigration offences: enforcement),
- (b) paragraph 17 of Schedule 2 to that Act (control of entry),
- (c) section 8 of this Act, and 25
- (d) a provision of the Extradition Act 1989 (c. 33) or 2003 (c. 41),

“notified” means notified in such manner as may be specified by regulations made by the Secretary of State,

“passport” includes a document which relates to a national of a country other than the United Kingdom and which is designed to serve the same purpose as a passport, and 30

“safe country” means a country to which Part 2 of Schedule 3 applies.

- (8) A passport produced by or on behalf of a person is valid for the purposes of subsection (3)(b) if it –
 - (a) relates to the person by whom or on whose behalf it is produced, 35
 - (b) has not been altered otherwise than by or with the permission of the authority who issued it, and
 - (c) was not obtained by deception.
- (9) In subsection (4) a reference to an asylum claim or human rights claim shall be treated as including a reference to a claim of entitlement to remain in a country other than the United Kingdom made by reference to the rights that a person invokes in making an asylum claim or a human rights claim in the United Kingdom. 40
- (10) Regulations under subsection (5) specifying a manner of notification may, in particular – 45
 - (a) apply or refer to regulations under section 105 of the Nationality, Immigration and Asylum Act 2002 (notice of immigration decisions);
 - (b) make provision similar to provision that is or could be made by regulations under that section;

- (c) modify a provision of regulations under that section in its effect for the purpose of regulations under this section;
 - (d) provide for notice to be treated as received at a specified time if sent to a specified class of place in a specified manner.
- (11) Regulations under subsection (5) specifying a manner of notification— 5
- (a) may make incidental, consequential or 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.
- (12) This section shall not prevent a deciding authority from determining not to believe a statement on the grounds of behaviour to which this section does not apply. 10
- (13) Before the coming into force of section 14 a reference in this section to the Asylum and Immigration Tribunal shall be treated as a reference to—
- (a) an adjudicator appointed, or treated as if appointed, under section 81 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (appeals), and 15
 - (b) the Immigration Appeal Tribunal.

8 Failed asylum seekers: withdrawal of support

- (1) In Schedule 3 to the Nationality, Immigration and Asylum Act 2002 (withholding and withdrawal of support) after paragraph 7 insert— 20
- “Fifth class of ineligible person: failed asylum-seeker with family*
- 7A (1) Paragraph 1 applies to a person if—
- (a) he—
 - (i) is treated as an asylum-seeker for the purposes of Part VI of the Immigration and Asylum Act 1999 (c. 33) (support) by virtue only of section 94(3A) (failed asylum-seeker with dependent child), or 25
 - (ii) is treated as an asylum-seeker for the purposes of Part 2 of this Act by virtue only of section 18(2), 30
 - (b) the Secretary of State has certified that in his opinion the person has failed without reasonable excuse to take reasonable steps—
 - (i) to leave the United Kingdom voluntarily, or
 - (ii) to place himself in a position in which he is able to leave the United Kingdom voluntarily, 35
 - (c) the person has received a copy of the Secretary of State’s certificate, and
 - (d) the period of 14 days, beginning with the date on which the person receives the copy of the certificate, has elapsed. 40
- (2) Paragraph 1 also applies to a dependant of a person to whom that paragraph applies by virtue of sub-paragraph (1).
- (3) For the purpose of sub-paragraph (1)(d) if the Secretary of State sends a copy of a certificate by first class post to a person’s last

- known address, the person shall be treated as receiving the copy on the second day after the day on which it was posted.
- (4) The Secretary of State may by regulations vary the period specified in sub-paragraph (1)(d).”
- (2) In paragraph 14(1) and (2) of Schedule 3 to the Nationality, Immigration and Asylum Act 2002 (c. 41) (local authority to notify Secretary of State) for “paragraph 6 or 7” substitute “paragraph 6, 7 or 7A”. 5
- (3) No appeal may be brought under section 103 of the Immigration and Asylum Act 1999 (c. 33) (asylum support appeal) against a decision – 10
- (a) that by virtue of a provision of Schedule 3 to the Nationality, Immigration and Asylum Act 2002 other than paragraph 7A a person is not qualified to receive support, or
- (b) on the grounds of the application of a provision of that Schedule other than paragraph 7A, to stop providing support to a person.
- (4) On an appeal under section 103 of the Immigration and Asylum Act 1999 against a decision made by virtue of paragraph 7A of Schedule 3 to the Nationality, Immigration and Asylum Act 2002 the adjudicator may, in particular – 15
- (a) annul a certificate of the Secretary of State issued for the purposes of that paragraph; 20
- (b) require the Secretary of State to reconsider the matters certified.
- (5) An order under section 33 providing for this section to come into force may, in particular, provide for this section to have effect with specified modifications before the coming into force of a provision of the Nationality, Immigration and Asylum Act 2002. 25

Enforcement powers

9 Immigration officer: power of arrest

- (1) Where an immigration officer in the course of exercising a function under the Immigration Acts forms a reasonable suspicion that a person has committed or attempted to commit an offence listed in subsection (2), he may arrest the person without warrant. 30
- (2) Those offences are –
- (a) the offence of conspiracy at common law (in relation to conspiracy to defraud),
- (b) at common law in Scotland, any of the following offences – 35
- (i) fraud,
- (ii) conspiracy to defraud,
- (iii) uttering and fraud,
- (iv) bigamy,
- (v) theft, and 40
- (vi) reset,
- (c) an offence under section 57 of the Offences against the Person Act 1861 (c. 100) (bigamy),
- (d) an offence under section 3 or 4 of the Perjury Act 1911 (c. 6) (false statements), 45

- (e) an offence under section 7 of that Act (aiding, abetting &c.) if it relates to an offence under section 3 or 4 of that Act,
- (f) an offence under section 53 of the Registration of Births, Marriages and Deaths (Scotland) Act 1965 (knowingly giving false information to district registrar, &c.), 5
- (g) an offence under any of the following provisions of the Theft Act 1968 (c. 60) –
- (i) section 1 (theft),
 - (ii) section 15 (obtaining property by deception),
 - (iii) section 16 (obtaining pecuniary advantage by deception), 10
 - (iv) section 17 (false accounting), and
 - (v) section 22 (handling stolen goods),
- (h) an offence under section 1, 15, 16, 17 or 21 of the Theft Act (Northern Ireland) 1969 (c. 16) (N.I.),
- (i) an offence under section 1 or 2 of the Theft Act 1978 (c. 31) (obtaining services, or evading liability, by deception), 15
- (j) an offence under Article 3 or 4 of the Theft (Northern Ireland) Order 1978 (S.I. 1978/1407 (N.I. 23)),
- (k) an offence under Article 8 or 9 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)), 20
- (l) an offence under Article 12 of that Order if it relates to an offence under Article 8 or 9 of that Order, and
- (m) an offence under any of the following provisions of the Forgery and Counterfeiting Act 1981 (c. 45) –
- (i) section 1 (forgery), 25
 - (ii) section 2 (copying false instrument),
 - (iii) section 3 (using false instrument),
 - (iv) section 4 (using copy of false instrument), and
 - (v) section 5(1) and (3) (false documents).
- (3) The following provisions of the Immigration Act 1971 (c. 77) shall have effect for the purpose of making, or in connection with, an arrest under this section as they have effect for the purpose of making, or in connection with, arrests for offences under that Act –
- (a) section 28C (entry and search before arrest),
 - (b) sections 28E and 28F (entry and search after arrest), 35
 - (c) sections 28G and 28H (search of arrested person), and
 - (d) section 28I (seized material).
- (4) In section 19D(5)(a) of the Race Relations Act 1976 (c. 74) (permitted discrimination) –
- (a) for “(within the meaning of section 158 of the Nationality, Immigration and Asylum Act 2002)” substitute “(within the meaning of section 29 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004)”, 40 and
 - (b) at the end add “and excluding section 9 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004”. 45

10 Fingerprinting

- (1) Section 141 of the Immigration and Asylum Act 1999 (c. 33) (fingerprinting) shall be amended as follows.

- (2) In subsection (7) for paragraph (c) substitute—
“(c) any person (“C”) in respect of whom a relevant immigration decision has been made;”.
- (3) In subsection (8) for paragraph (c) substitute—
“(c) for C, on the service on him of notice of the relevant immigration decision by virtue of section 105 of the Nationality, Immigration and Asylum Act 2002 (c. 41);”.
- (4) In subsection (9) for paragraph (c) substitute—
“(c) for C—
(i) the time when the relevant immigration decision ceases to have effect, whether as a result of an appeal or otherwise, or
(ii) if a deportation order has been made against him, its revocation or its otherwise ceasing to have effect;”.
- (5) After subsection (15) add—
“(16) “Relevant immigration decision” means a decision of the kind mentioned in section 82(2)(g), (h), (i), (j) or (k) of the Nationality, Immigration and Asylum Act 2002.”

11 Information about passengers

In paragraph 27B of Schedule 2 to the Immigration Act 1971 (c. 77) (control on entry: provision of information about passengers) after sub-paragraph (4) insert—

- “(4A) The officer may ask the carrier to provide a copy of all or part of a document that relates to a passenger and contains passenger information.”

12 Retention of documents

Where a document comes into the possession of the Secretary of State or an immigration officer in the course of the exercise of an immigration function, the Secretary of State or an immigration officer may retain the document while he suspects that—

- (a) a person to whom the document relates may be liable to removal from the United Kingdom in accordance with a provision of the Immigration Acts, and
(b) retention of the document may facilitate the removal.

13 Control of entry

After paragraph 2A(2) of Schedule 2 to the Immigration Act 1971 (control of entry: persons arriving with leave to enter) insert—

- “(2A) Where the person’s leave to enter derives, by virtue of section 3A(3), from an entry clearance, he may also be examined by an immigration officer for the purpose of establishing whether the leave should be cancelled on the grounds that the person’s purpose in arriving in the United Kingdom is different from the purpose specified in the entry clearance.”

*Appeals***14 Unification of appeal system**

- (1) For section 81 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (appeals: adjudicators) substitute—

“Appeal to Tribunal 5

81 The Asylum and Immigration Tribunal

- (1) There shall be a tribunal to be known as the Asylum and Immigration Tribunal. 5
- (2) Schedule 4 (which makes provision about the Tribunal) shall have effect. 10
- (3) A reference in this Part to the Tribunal is a reference to the Asylum and Immigration Tribunal.”
- (2) In section 82(1) of that Act (right of appeal: general) for “to an adjudicator” substitute “to the Tribunal”.
- (3) In section 83(2) of that Act (appeal: asylum claim) for “to an adjudicator” substitute “to the Tribunal”. 15
- (4) For Schedule 4 to that Act (adjudicators) substitute the Schedule set out in Schedule 1 to this Act (Asylum and Immigration Tribunal).
- (5) The following provisions of that Act shall cease to have effect— 20
- (a) sections 100 to 103 (Immigration Appeal Tribunal), and
- (b) Schedule 5 (Immigration Appeal Tribunal).
- (6) Before section 106 of that Act (rules) insert—

“105A Review by Tribunal

- (1) The Tribunal shall review its decision on an appeal if requested to do so by a party to the appeal. 25
- (2) A request under subsection (1) must assert that the Tribunal’s decision would have been different but for a clear error of law by the Tribunal identified in the request.
- (3) A review shall consider only the assertion made in accordance with subsection (2). 30
- (4) A review shall be conducted by reference only to written submissions.
- (5) But if in the course of a review the Tribunal forms the opinion that the exceptional nature of the case makes it impossible properly to determine the review without an oral hearing, the Tribunal may hold an oral hearing. 35
- (6) On a review by the Tribunal of its decision on an appeal the Tribunal may—
- (a) uphold the decision, or
- (b) substitute another decision.

- (7) On a review by the Tribunal of its decision on an appeal the Tribunal may act under subsection (6)(b) only if satisfied that the decision would have been different but for a clear error of law by the Tribunal.
- (8) The Tribunal shall not review its decision on an appeal more than once.” 5
- (7) After section 108 of that Act (proceedings in private) insert—
- “108A Exclusivity and finality of Tribunal’s jurisdiction**
- (1) No court shall have any supervisory or other jurisdiction (whether statutory or inherent) in relation to the Tribunal.
- (2) No court may entertain proceedings for questioning (whether by way of appeal or otherwise)— 10
- (a) any determination, decision or other action of the Tribunal (including a decision about jurisdiction and a decision under section 105A),
- (b) any action of the President or a Deputy President of the Tribunal that relates to one or more specified cases, 15
- (c) any decision in respect of which a person has or had a right of appeal to the Tribunal under—
- (i) section 82, 83 or 109 of this Act, or
- (ii) section 40A of the British Nationality Act 1981 (c. 61), 20
- (d) any matter which the Tribunal—
- (i) was obliged to determine in accordance with section 86 of this Act, or
- (ii) would have been obliged to determine in accordance with that section had a right of appeal mentioned in paragraph (c) been exercised, or 25
- (e) a decision to remove a person from the United Kingdom or to deport a person, if—
- (i) the removal or deportation is in consequence of an immigration decision, and 30
- (ii) the person was notified, in accordance with regulations under section 105, of a right to appeal under section 82(1) against the immigration decision (whether or not he exercised the right).
- (3) Subsections (1) and (2)— 35
- (a) prevent a court, in particular, from entertaining proceedings to determine whether a purported determination, decision or action of the Tribunal was a nullity by reason of—
- (i) lack of jurisdiction,
- (ii) irregularity, 40
- (iii) error of law,
- (iv) breach of natural justice, or
- (v) any other matter, but
- (b) do not prevent a court from—
- (i) reviewing a decision to issue a certificate under section 94 or 96 of this Act or under Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (removal to safe country), 45

- (ii) entertaining proceedings to determine whether the Tribunal has acted in a way which is incompatible with a person's rights under Article 5 of the Human Rights Convention (liberty and security), or
 - (iii) considering whether a member of the Tribunal has acted in bad faith. 5
- (4) A court may consider whether a member of the Tribunal has acted in bad faith, in reliance on subsection (3)(b)(iii), only if satisfied that significant evidence has been adduced of—
 - (a) dishonesty, 10
 - (b) corruption, or
 - (c) bias.
- (5) Section 7(1) of the Human Rights Act 1998 (c. 42) (claim that public authority has infringed Convention right) is subject to subsections (1) to (3) above. 15
- (6) Nothing in this section shall prevent an appeal under section 2, 2B or 7 of the Special Immigration Appeals Commission Act 1997 (c. 68) (appeals to and from Commission).
- (7) In this section "action" includes failure to act.
- 108B Reference to appellate court 20**
- (1) The President of the Tribunal may refer to the appropriate appellate court a point of law which arises in the course of proceedings before the Tribunal.
- (2) The President may refer a point of law under this section only if he thinks a reference appropriate because of—
 - (a) the complexity or importance of the point of law, or
 - (b) an earlier decision of an appellate court on a related matter. 25
- (3) Where the President refers a point of law which arises in the course of proceedings—
 - (a) the Tribunal shall submit to the appellate court—
 - (i) any findings of fact made by the Tribunal in the proceedings, and
 - (ii) the Tribunal's opinion on the point of law referred,
 - (b) the Tribunal shall not determine the proceedings until after receiving the opinion of the appellate court, 35
 - (c) the appellate court shall give its opinion on the point of law to the Tribunal, and
 - (d) the Tribunal shall determine the proceedings, and any other proceedings, having regard to the opinion of the appellate court. 40
- (4) The President may refer a point of law only if the proceedings in the course of which the point arises—
 - (a) have not been determined by the Tribunal, or
 - (b) are the subject of a review under section 105A that has not been completed. 45
- (5) Rules of court may make provision about—

- (a) the procedure to be followed by an appellate court on a reference under this section;
- (b) the constitution of an appellate court for the purposes of a reference under this section;
- (c) costs. 5
- (6) No appeal shall lie to the House of Lords from any decision of an appellate court in relation to the giving of an opinion under this section.
- (7) In this section “the appropriate appellate court” means—
- (a) in relation to proceedings which are being heard or are to be heard by the Tribunal sitting in England or in Wales, the Court of Appeal, 10
- (b) in relation to proceedings which are being heard or are to be heard by the Tribunal sitting in Scotland, the Court of Session, and
- (c) in relation to proceedings which are being heard or are to be heard by the Tribunal sitting in Northern Ireland, Her Majesty’s Court of Appeal in Northern Ireland.” 15
- (8) Schedule 2 (which makes amendments consequential on this section, and transitional provision) shall have effect.
- 15 Unfounded human rights or asylum claim 20**
- (1) Section 94 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (no appeal from within United Kingdom for unfounded human rights or asylum claim) shall be amended as follows.
- (2) After subsection (1) insert—
- “(1A) A person may not bring an appeal against an immigration decision of a kind specified in section 82(2)(c), (d) or (e) in reliance on section 92(2) if the Secretary of State certifies that the claim or claims mentioned in subsection (1) above is or are clearly unfounded.” 25
- (3) In subsection (2) for “in reliance on section 92(4)” substitute “in reliance on section 92(4)(a)”. 30
- (4) In subsection (4) omit paragraphs (a) to (j).
- (5) After subsection (5) insert—
- “(5A) If the Secretary of State is satisfied that the statements in subsection (5) (a) and (b) are true of a State or part of a State in relation to a description of person, an order under subsection (5) may add the State or part to the list in subsection (4) in respect of that description of person. 35
- (5B) Where a State or part of a State is added to the list in subsection (4) in respect of a description of person, subsection (3) shall have effect in relation to a claimant only if the Secretary of State is satisfied that he is within that description (as well as being satisfied that he is entitled to reside in the State or part). 40
- (5C) A description for the purposes of subsection (5A) may refer to—
- (a) gender,
- (b) language,

- (c) race,
 - (d) religion,
 - (e) nationality,
 - (f) membership of a social or other group,
 - (g) political opinion, or
 - (h) any other attribute or circumstance that the Secretary of State thinks appropriate.” 5
- (6) For subsection (6) substitute –
- “(6) The Secretary of State may by order amend the list in subsection (4) so as to omit a State or part added under subsection (5); and the omission may be – 10
- (a) general, or
 - (b) effected so that the State or part remains listed in respect of a description of person.”
- (7) After subsection (6) insert – 15
- “(6A) Subsection (3) shall not apply in relation to an asylum claimant or human rights claimant who –
- (a) is the subject of a certificate under section 2 or 70 of the Extradition Act 2003 (c. 41),
 - (b) is in custody pursuant to arrest under section 5 of that Act, 20
 - (c) is the subject of a provisional warrant under section 73 of that Act,
 - (d) is the subject of an authority to proceed under section 7 of the Extradition Act 1989 (c. 33) or an order under paragraph 4(2) of Schedule 1 to that Act, or 25
 - (e) is the subject of a provisional warrant under section 8 of that Act or of a warrant under paragraph 5(1)(b) of Schedule 1 to that Act.”
- (8) After section 112(5) of that Act (orders, &c.) insert –
- “(5A) If an instrument makes provision under section 94(5) and 94(6) – 30
- (a) subsection (4)(b) above shall apply, and
 - (b) subsection (5)(b) above shall not apply.”
- 16 Appeal from within United Kingdom**
- For section 92(3) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (appeal from within United Kingdom: person with entry clearance or work permit) substitute – 35
- “(3) This section also applies to an appeal against refusal of leave to enter the United Kingdom if –
- (a) at the time of the refusal the appellant is in the United Kingdom, and
 - (b) on his arrival in the United Kingdom the appellant had entry clearance. 40
- (3A) But this section does not apply by virtue of subsection (3) if subsection (3B) or (3C) applies to the refusal of leave to enter.

- (3B) This subsection applies to a refusal of leave to enter which is a deemed refusal under paragraph 2A(9) of Schedule 2 to the Immigration Act 1971 (c. 77) resulting from cancellation of leave to enter by an immigration officer –
- (a) under paragraph 2A(8) of that Schedule, and 5
 - (b) on the grounds specified in paragraph 2A(2A) of that Schedule.
- (3C) This subsection applies to a refusal of leave to enter which specifies that the grounds for refusal are that the leave is sought for a purpose other than that specified in the entry clearance.
- (3D) This section also applies to an appeal against refusal of leave to enter the United Kingdom if at the time of the refusal the appellant –
- (a) is in the United Kingdom,
 - (b) has a work permit, and
 - (c) is any of the following (within the meaning of the British Nationality Act 1981 (c. 61)) – 15
 - (i) a British overseas territories citizen,
 - (ii) a British Overseas citizen,
 - (iii) a British National (Overseas),
 - (iv) a British protected person, or
 - (v) a British subject.” 20

17 Seamen and aircrews: right of appeal

In section 82(2) of the Nationality, Immigration and Asylum Act 2002 (c. 41) after paragraph (i) insert –

- “(ia) a decision that a person is to be removed from the United Kingdom by way of directions under paragraph 12(2) of Schedule 2 to the Immigration Act 1971 (seamen and aircrews),”.

Removal and detention

18 Removing asylum seeker to safe country

- (1) Schedule 3 (which concerns the removal of persons claiming asylum to countries known to protect refugees and to respect human rights) shall have effect. 30
- (2) Sections 11 and 12 of the Immigration and Asylum Act 1999 (c. 33) (removal of asylum claimant to country under standing or other arrangements) shall cease to have effect. 35
- (3) The following provisions of the Nationality, Immigration and Asylum Act 2002 shall cease to have effect –
- (a) section 80 (new section 11 of 1999 Act), and
 - (b) section 93 (appeal from within United Kingdom: “third country” removal). 40

19 Detention pending deportation

- (1) In paragraph 2(1) of Schedule 3 to the Immigration Act 1971 (c. 77) (detention pending deportation on recommendation by court) for the words “and that person is neither detained in pursuance of the sentence or order of any court nor for the time being released on bail by any court having power so to release him” substitute “and that person is not detained in pursuance of the sentence or order of any court”. 5
- (2) In paragraph 2(2) of that Schedule (detention following notice of deportation) for the words “and he is neither detained in pursuance of the sentence or order of a court nor for the time being released on bail by a court having power so to release him” substitute “and he is not detained in pursuance of the sentence or order of a court”. 10

20 Deportation or removal: cooperation

- (1) The Secretary of State may require a person to take specified action if the Secretary of State thinks that— 15
- (a) the action will or may enable a travel document to be obtained by or for the person, and
 - (b) possession of the travel document will facilitate the person’s deportation or removal from the United Kingdom.
- (2) In particular, the Secretary of State may require a person to— 20
- (a) provide information or documents to the Secretary of State or to any other person;
 - (b) obtain information or documents;
 - (c) provide fingerprints, submit to the taking of a photograph or provide information, or submit to a process for the recording of information, about external physical characteristics (including, in particular, features of the iris or any other part of the eye); 25
 - (d) make, or consent to or cooperate with the making of, an application to a person acting for the government of a State other than the United Kingdom; 30
 - (e) cooperate with a process designed to enable determination of an application;
 - (f) complete a form accurately and completely;
 - (g) attend an interview and answer questions accurately and completely;
 - (h) make an appointment. 35
- (3) A person commits an offence if he fails without reasonable excuse to comply with a requirement of the Secretary of State under subsection (1).
- (4) A person guilty of an offence under subsection (3) shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or 40
 - (b) on summary conviction, to imprisonment for a term not exceeding twelve months, to a fine not exceeding the statutory maximum or to both.
- (5) If a constable or immigration officer reasonably suspects that a person has committed an offence under subsection (3) he may arrest the person without warrant. 45

- (6) An offence under subsection (3) 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. 5
- (7) In subsection (1) –
- “travel document” means a passport or other document which is issued by or for Her Majesty’s Government or the government of another State and which enables or facilitates travel from the United Kingdom to another State, and 10
- “removal from the United Kingdom” means removal under –
- (a) Schedule 2 to the Immigration Act 1971 (control on entry) (including a provision of that Schedule as applied by another provision of the Immigration Acts), 15
 - (b) section 10 of the Immigration and Asylum Act 1999 (c. 33) (removal of person unlawfully in United Kingdom), or
 - (c) Schedule 3 to this Act.
- (8) While sections 11 and 12 of the Immigration and Asylum Act 1999 continue to have effect, the reference in subsection (7)(c) above to Schedule 3 to this Act shall be treated as including a reference to those sections. 20
- (9) In so far as subsection (3) extends to England and Wales, subsection (4)(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. 25
- (10) In so far as subsection (3) extends to Scotland, subsection (4)(b) shall have effect as if the reference to twelve months were a reference to six months.
- (11) In so far as subsection (3) extends to Northern Ireland, subsection (4)(b) shall have effect as if the reference to twelve months were a reference to six months.
- 21 Electronic monitoring** 30
- (1) In this section –
- (a) “residence restriction” means a restriction as to residence imposed under –
 - (i) paragraph 21 of Schedule 2 to the Immigration Act 1971 (control on entry) (including that paragraph as applied by another provision of the Immigration Acts), or 35
 - (ii) Schedule 3 to that Act (deportation),
 - (b) “reporting restriction” means a requirement to report to a specified person imposed under any of those provisions,
 - (c) “employment restriction” means a restriction as to employment or occupation imposed under any of those provisions, and 40
 - (d) “immigration bail” means –
 - (i) release under a provision of the Immigration Acts on entry into a recognizance or bail bond, and
 - (ii) bail granted in accordance with a provision of the Immigration Acts by a court, a justice of the peace, the sheriff, the Asylum and Immigration Tribunal, the Secretary of State or an 45

- immigration officer (but not by a police officer or by the Special Immigration Appeals Commission).
- (2) Where a residence restriction is imposed on an adult –
- (a) he may be required to cooperate with electronic monitoring, and
 - (b) failure to comply with a requirement under paragraph (a) shall be treated for all purposes of the Immigration Acts as failure to observe the residence restriction. 5
- (3) Where a reporting restriction could be imposed on an adult –
- (a) he may instead be required to cooperate with electronic monitoring, and 10
 - (b) the requirement shall be treated for all purposes of the Immigration Acts as a reporting restriction.
- (4) Immigration bail may be granted to an adult subject to a requirement that he cooperate with electronic monitoring; and the requirement may (but need not) be imposed as a condition of a recognizance or bail bond. 15
- (5) In this section a reference to requiring an adult to cooperate with electronic monitoring is a reference to requiring him to cooperate with such arrangements as the person imposing the requirement may specify for detecting and recording by electronic means the location of the adult, or his presence in or absence from a location – 20
- (a) at specified times,
 - (b) during specified periods of time, or
 - (c) throughout the currency of the arrangements.
- (6) In particular, arrangements for the electronic monitoring of an adult –
- (a) may require him to wear a device; 25
 - (b) may require him to make specified use of a device;
 - (c) may prohibit him from causing or permitting damage of or interference with a device;
 - (d) may prohibit him from taking or permitting action that would or might prevent the effective operation of a device; 30
 - (e) may require him to communicate in a specified manner and at specified times or during specified periods of time;
 - (f) may involve the performance of functions by persons other than the person imposing the requirement to cooperate with electronic monitoring (and those functions may relate to any aspect or condition of a residence restriction, of a reporting restriction, of an employment restriction, of a requirement under this section or of immigration bail). 35
- (7) In this section “adult” means an individual who is at least 18 years old.
- (8) The Secretary of State –
- (a) may make rules about arrangements for electronic monitoring for the purposes of this section, and 40
 - (b) when he thinks that satisfactory arrangements for electronic monitoring are available in respect of an area, shall notify persons likely to be in a position to exercise power under this section in respect of the area. 45

- (9) Rules under subsection (8)(a) may, in particular, require that arrangements for electronic monitoring impose on a person of a specified description responsibility for specified aspects of the operation of the arrangements.
- (10) A requirement to cooperate with electronic monitoring –
- (a) shall comply with rules under subsection (8)(a), and 5
 - (b) may not be imposed in respect of an adult who is or is expected to be in an area unless the person imposing the requirement has received a notification from the Secretary of State under subsection (8)(b) in respect of that area.
- (11) Rules under subsection (8)(a) – 10
- (a) may include incidental, consequential or transitional provision,
 - (b) may make provision generally or only in relation to specified cases, circumstances or areas,
 - (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
- (12) Before the commencement of section 14 a reference in this section to the Asylum and Immigration Tribunal shall be treated as a reference to –
- (a) a person appointed, or treated as if appointed, as an adjudicator under section 81 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (appeals), and 20
 - (b) the Immigration Appeal Tribunal.

*Immigration services***22 Provision of immigration services**

- (1) For section 84(2) and (3) of the Immigration and Asylum Act 1999 (c. 33) (person qualified to provide immigration services) substitute – 25
- “(2) A person is a qualified person if he is –
- (a) a registered person,
 - (b) authorised by a designated professional body to practise as a member of the profession whose members the body regulates, 30
 - (c) the equivalent in an EEA State of –
 - (i) a registered person, or
 - (ii) a person within paragraph (b),
 - (d) a person permitted, by virtue of exemption from a prohibition, to provide in an EEA State advice or services equivalent to immigration advice or services, or 35
 - (e) acting on behalf of, and under the supervision of, a person within any of paragraphs (a) to (d) (whether or not under a contract of employment).
- (3) Subsection (2)(a) and (e) are subject to any limitation on the effect of a person’s registration imposed under paragraph 2(2) of Schedule 6.” 40
- (2) In section 85(1) of that Act (registration by the Commissioner) omit “and (b)”.
- (3) In section 89 of that Act (disciplinary charge upheld by Immigration Services Tribunal) –

- (a) for subsections (2) and (3) substitute –
- “(2) If the person charged is a registered person or acts on behalf of a registered person, the Tribunal may –
- (a) direct the Commissioner to record the charge and the Tribunal’s decision for consideration in connection with the registered person’s next application for continued registration; 5
- (b) direct the registered person to apply for continued registration as soon as is reasonably practicable.”, and
- (b) in subsection (8) for “employed by him or working” substitute “acting on his behalf or” 10
- (4) In section 90(4) of that Act (orders by disciplinary bodies) for “works under the supervision of” substitute “is acting on behalf of”.
- (5) In Schedule 5 to that Act (Immigration Services Commissioner) –
- (a) for paragraph 1(1)(b) substitute – 15
- “(b) those acting on behalf of registered persons,”,
- (b) for paragraph 1(3)(b) substitute –
- “(b) any person acting on behalf of that person.”,
- (c) for paragraph 3(3)(b) substitute –
- “(b) a person who is acting on behalf of a person who is within paragraph (a);”, 20
- (d) for paragraph 4(1)(b) substitute –
- “(b) persons acting on behalf of persons who are within paragraph (a).”,
- (e) in paragraph 5(3)(b) for “employed by, or working under the supervision of,” substitute “acting on behalf of”, 25
- (f) for paragraph 5(3)(e) substitute –
- “(e) an alleged breach of a rule of a relevant regulatory body,”,
- (g) for paragraph 6(3)(c) substitute – 30
- “(c) in any other case, refer the matter to any relevant regulatory body.”,
- (h) in paragraphs 9(1)(a) and (b) for “or a person employed by, or working under the supervision of,” substitute “or is acting on behalf of”,
- (i) for paragraph 9(1)(c) substitute – 35
- “(c) refer the complaint and his decision on it to a relevant regulatory body;”,
- (j) for paragraphs 9(3)(a) and (b) substitute –
- “(a) imposing restrictions on the provision of immigration advice or immigration services by the relevant person or by a person acting on his behalf or under his supervision; 40
- (b) prohibiting the provision of immigration advice or immigration services by the relevant person or a person acting on his behalf or under his supervision.”, 45
- and
- (k) for paragraphs 9(4)(b) to (d) substitute –
- “(b) a person acting on behalf of a registered person;”.

- (6) In Schedule 6 to that Act (registration) –
- (a) in paragraph 1(1) omit “or (b)”, and
 - (b) in paragraph 3(7)(a) for “section 89(3)(b)” substitute “section 89(2)(b)”.

23 Immigration Services Commissioner: power of entry

- (1) After section 92 of the Immigration and Asylum Act 1999 (c. 33) (offences: enforcement) insert – 5

“92A Investigation of offence: power of entry

- (1) On an application made by the Commissioner a justice of the peace may issue a warrant authorising the Commissioner to enter and search premises. 10
- (2) A justice of the peace may issue a warrant in respect of premises only if satisfied that there are reasonable grounds for believing that –
- (a) an offence under section 91 has been committed,
 - (b) there is material on the premises which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence, and 15
 - (c) any of the conditions specified in subsection (3) is satisfied.
- (3) Those conditions are –
- (a) that it is not practicable to communicate with a person entitled to grant entry to the premises, 20
 - (b) that it is not practicable to communicate with a person entitled to grant access to the evidence,
 - (c) that entry to the premises will be prevented unless a warrant is produced, and
 - (d) that the purpose of a search may be frustrated or seriously prejudiced unless the Commissioner can secure immediate entry on arrival at the premises. 25
- (4) The Commissioner may seize and retain anything for which a search is authorised under this section.
- (5) A person commits an offence if without reasonable excuse he obstructs the Commissioner in the exercise of a power by virtue of this section. 30
- (6) A person guilty of an offence under subsection (5) shall be liable on summary conviction to –
- (a) imprisonment for a term not exceeding six months,
 - (b) a fine not exceeding level 5 on the standard scale, or 35
 - (c) both.
- (7) In this section –
- (a) a reference to the Commissioner includes a reference to a member of his staff authorised in writing by him,
 - (b) a reference to premises includes a reference to premises used wholly or partly as a dwelling, and 40
 - (c) a reference to material includes a reference to material –
 - (i) whether or not it is material subject to legal privilege, excluded material or special procedure material (in each

- case within the meaning of the Police and Criminal Evidence Act 1984 (c. 60)), and
- (ii) whether or not it would be admissible in evidence at a trial.
- (8) In the application of this section to Scotland— 5
- (a) a reference to a justice of the peace shall be taken as a reference to the sheriff or a justice of the peace, and
- (b) for sub-paragraph (i) of subsection (7)(c) there is substituted— 10
- “(i) whether or not it is material comprising items subject to legal privilege (as defined by section 412 of the Proceeds of Crime Act 2002 (c. 29)),”.
- (9) In the application of this section to Northern Ireland the reference to the Police and Criminal Evidence Act 1984 (c. 60) shall be taken as a reference to the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).” 15
- (2) In paragraph 7 of Schedule 5 to the Immigration and Asylum Act 1999 (c. 33) (investigation of complaints, &c.: power of entry)—
- (a) in sub-paragraph (1)(b) after “(b)” insert “, (c)”,
- (b) in sub-paragraph (1)(c) for “registered person.” substitute “registered or exempt person.”, 20
- (c) in sub-paragraph (1A)(a) after “(b)” insert “, (c)”,
- (d) in sub-paragraph (1A)(b) for “registered person.” substitute “registered or exempt person.”, and
- (e) after sub-paragraph (8) insert— 25
- “(9) Sub-paragraphs (7) and (8) shall apply to an exempt person as they apply to a registered person, but with a reference to cancellation of registration being treated as a reference to withdrawal of exemption.
- (10) In this paragraph “exempt person” means a person certified by the Commissioner as exempt under section 84(4)(a).” 30

24 Offence of advertising services

After section 92A of the Immigration and Asylum Act 1999 (inserted by section 23 above) insert—

“92B Advertising

- (1) A person commits an offence if— 35
- (a) he offers to provide immigration advice or immigration services, and
- (b) provision by him of the advice or services would constitute an offence under section 91.
- (2) For the purpose of subsection (1) a person offers to provide advice or services if he— 40
- (a) makes an offer to a particular person or class of person,
- (b) makes arrangements for an advertisement in which he offers to provide advice or services, or

- (c) makes arrangements for an advertisement in which he is described or presented as competent to provide advice or services.
- (3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale. 5
- (4) Subsections (3) to (7) of section 91 shall have effect for the purposes of this section as they have effect for the purposes of that section.
- (5) An information relating to an offence under this section may in England and Wales be tried by a magistrates' court if— 10
- (a) it is laid within the period of six months beginning with the date (or first date) on which the offence is alleged to have been committed, or
- (b) it is laid— 15
- (i) within the period of two years beginning with that date, and
- (ii) within the period of six months beginning with a date certified by the Immigration Services Commissioner as the date on which the commission of the offence came to his notice. 20
- (6) In Scotland, proceedings for an offence under this section may be commenced—
- (a) at any time within the period of six months beginning with the date (or first date) on which the offence is alleged to have been committed, or 25
- (b) at any time within both—
- (i) the period of two years beginning with that date, and
- (ii) the period of six months beginning with a date specified, in a certificate signed by or on behalf of the procurator fiscal, as the date on which evidence sufficient in his opinion to warrant such proceedings came to his knowledge, 30
- and any such certificate purporting to be so signed shall be deemed so signed unless the contrary is proved and be conclusive as to the facts stated in it. 35
- (7) Subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995 (c. 46) (date on which proceedings are deemed commenced) has effect to the purposes of subsection (6) as it has effect for the purposes of that section.
- (8) A complaint charging the commission of an offence under this section may in Northern Ireland be heard and determined by a magistrates' court if— 40
- (a) it is made within the period of six months beginning with the date (or first date) on which the offence is alleged to have been committed, or 45
- (b) it is made—
- (i) within the period of two years beginning with that date, and

- (ii) within the period of six months beginning with a date certified by the Immigration Services Commissioner as the date on which the commission of the offence came to his notice.”

25 Appeal to Immigration Services Tribunal 5

Section 87(3)(f) of the Immigration and Asylum Act 1999 (c. 33) (appeal to Tribunal against deferral of decision) shall cease to have effect.

26 Professional bodies

- (1) Section 86 of the Immigration and Asylum Act 1999 (designated professional bodies) shall be amended as follows. 10
- (2) For subsection (2) substitute –
 - “(2) The Secretary of State may by order remove a body from the list in subsection (1) if he considers that the body –
 - (a) has failed to provide effective regulation of its members in their provision of immigration advice or immigration services, or 15
 - (b) has failed to comply with a request of the Commissioner for the provision of information (whether general or in relation to a particular case or matter).”
- (3) For subsection (9)(b) substitute –
 - “(b) report to the Secretary of State if the Commissioner considers that a designated professional body –
 - (i) is failing to provide effective regulation of its members in their provision of immigration advice or immigration services, or
 - (ii) has failed to comply with a request of the Commissioner for the provision of information (whether general or in relation to a particular case or matter).” 20 25
- (4) After subsection (9) insert –
 - “(9A) A designated professional body shall comply with a request of the Commissioner for the provision of information (whether general or in relation to a specified case or matter).” 30
- (5) In section 166(2) of the Immigration and Asylum Act 1999 (regulations and orders) after “in relation to” insert “orders made under section 90(1),”.
- (6) For paragraph 21(2) of Schedule 5 to the Immigration and Asylum Act 1999 (Commissioner: annual report) substitute –
 - “(2) The report must, in particular, set out the Commissioner’s opinion as to the extent to which each designated professional body has –
 - (a) provided effective regulation of its members in their provision of immigration advice or immigration services, and
 - (b) complied with requests of the Commissioner for the provision of information.” 35 40

*Fees***27 Fees**

- (1) In prescribing a fee for an application or process under a provision specified in subsection (2) the Secretary of State may, with the consent of the Treasury, prescribe an amount which is intended to – 5
- (a) exceed the administrative costs of determining the application or undertaking the process, and
 - (b) reflect benefits that the Secretary of State thinks are likely to accrue to the person who makes the application, to whom the application relates or by or for whom the process is undertaken, if the application is successful or the process is completed. 10
- (2) Those provisions are –
- (a) section 41(2) of the British Nationality Act 1981 (c. 61) (fees for applications, &c. under that Act),
 - (b) section 5(1)(a) and (b) of the Immigration and Asylum Act 1999 (c. 33) (fees for application for leave to remain, &c.), and 15
 - (c) sections 10 and 122 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (certificate of entitlement to right of abode; and fees for work permit, &c.).
- (3) An Order in Council under section 1 of the Consular Fees Act 1980 (c. 23) (fees) which prescribes a fee in relation to an application for the issue of a certificate under section 10 of the Nationality, Immigration and Asylum Act 2002 (right of abode: certificate of entitlement) may prescribe an amount which is intended to – 20
- (a) exceed the administrative costs of determining the application, and 25
 - (b) reflect benefits that in the opinion of Her Majesty in Council are likely to accrue to the applicant if the application is successful.
- (4) Where an instrument prescribes a fee in reliance on this section it may include provision for the refund, where an application is unsuccessful or a process is not completed, of that part of the fee which is intended to reflect the matters specified in subsection (1)(b) or (3)(b). 30
- (5) Provision included by virtue of subsection (4) –
- (a) may determine, or provide for the determination of, the amount to be refunded;
 - (b) may confer a discretion on the Secretary of State or another person (whether in relation to determining the amount of a refund or in relation to determining whether a refund should be made). 35
- (6) This section is without prejudice to the power to make an order under section 102 of the Finance (No. 2) Act 1987 (c. 51) (government fees and charges) in relation to a power under a provision specified in this section. 40

28 Transfer of leave stamps

- (1) Section 5 of the Immigration and Asylum Act 1999 (charges) shall be amended as follows.
- (2) For subsection (1)(c) (transfer of indefinite leave stamp to new document)

substitute –

“(c) the fixing of a limited leave stamp or indefinite leave stamp on a passport or other document issued to the applicant where the stamp was previously fixed on another passport or document issued to the applicant.”

5

(3) For subsection (5) substitute –

“(5) In this section –

(a) “limited leave stamp” means a stamp, sticker or other attachment which indicates that a person has been granted limited leave to enter or remain in the United Kingdom, and

10

(b) “indefinite leave stamp” means a stamp, sticker or other attachment which indicates that a person has been granted indefinite leave to enter or remain in the United Kingdom.”

General

29 Interpretation: “the Immigration Acts”

15

(1) A reference to “the Immigration Acts” is to –

(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),

20

(e) the Immigration and Asylum Act 1999 (c. 33),

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

(g) this Act.

(2) This section has effect in relation to a reference in this Act or any other enactment (including an enactment passed or made before this Act).

25

(3) For section 158(1) and (2) of the Nationality, Immigration and Asylum Act 2002 substitute –

“(1) A reference to “the Immigration Acts” shall be construed in accordance with section 29 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.”

30

(4) In the following provisions for “section 158 of the Nationality, Immigration and Asylum Act 2002” substitute “section 29 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004” –

(a) section 32(5) of the Immigration Act 1971, and

(b) section 167(1) of the Immigration and Asylum Act 1999.

35

30 Interpretation: immigration officer

In this Act “immigration officer” means a person appointed by the Secretary of State as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971.

31 Money

40

There shall be paid out of money provided by Parliament –

- (a) any expenditure incurred by a Minister of the Crown in connection with this Act, and
- (b) any increase attributable to this Act in the sums payable under any other enactment out of money provided by Parliament.

32 Repeals

5

The enactments listed in Schedule 4 are hereby repealed to the extent specified.

33 Commencement

- (1) Sections 2 and 20 shall come into force at the end of the period of two months beginning with the date on which this Act is passed.
- (2) The other preceding provisions of this Act shall come into force in accordance with provision made—
 - (a) in the case of section 14 or Schedule 1 or 2, by order of the Lord Chancellor,
 - (b) in the case of sections 4 and 5 in so far as they extend to Scotland, by order of the Scottish Ministers, and
 - (c) in any other case, by order of the Secretary of State.
- (3) An order under subsection (2)—
 - (a) may make transitional or incidental provision,
 - (b) may make different provision for different purposes, and
 - (c) shall be made by statutory instrument.
- (4) Transitional provision under subsection (3)(a) in relation to the commencement of section 14 may, in particular, make provision in relation to proceedings which, immediately before commencement—
 - (a) are awaiting determination by an adjudicator appointed, or treated as if appointed, under section 81 of the Nationality, Immigration and Asylum Act 2002 (c. 41),
 - (b) are awaiting determination by the Immigration Appeal Tribunal,
 - (c) having been determined by an adjudicator could be brought before the Immigration Appeal Tribunal,
 - (d) are awaiting the determination of a further appeal brought in accordance with section 103 of that Act,
 - (e) having been determined by the Immigration Appeal Tribunal could be brought before another court by way of further appeal under that section,
 - (f) are or could be made the subject of an application under section 101 of that Act (review of decision on permission to appeal to Tribunal), or
 - (g) are or could be made the subject of another kind of application to the High Court or the Court of Session.
- (5) Provision made under subsection (4) may, in particular—
 - (a) provide for the institution or continuance of an appeal of a kind not generally available after the commencement of section 14,
 - (b) provide for the termination of proceedings, or
 - (c) make any other provision that the Lord Chancellor thinks appropriate.

34 Extent

- (1) This Act extends (subject to subsection (2)) to—
 - (a) England and Wales,
 - (b) Scotland, and
 - (c) Northern Ireland. 5
- (2) An amendment effected by this Act has the same extent as the enactment, or as the relevant part of the enactment, amended (ignoring extent by virtue of an Order in Council).
- (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— 10
 - (a) any of the Channel Islands;
 - (b) the Isle of Man.

35 Short title

This Act may be cited as the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. 15

SCHEDULES

SCHEDULE 1

Section 14

NEW SCHEDULE 4 TO THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

Schedule 4

The Asylum and Immigration Tribunal 5

Membership

- | | | |
|---|--|----|
| 1 | The Lord Chancellor shall appoint the members of the Asylum and Immigration Tribunal. | |
| 2 | A person is eligible for appointment as a member of the Tribunal only if he— | |
| | (a) has a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41), | 10 |
| | (b) is an advocate or solicitor in Scotland of at least seven years' standing, | |
| | (c) is a member of the Bar of Northern Ireland, or a solicitor of the Supreme Court of Northern Ireland, of at least seven years' standing, or | 15 |
| | (d) in the Lord Chancellor's opinion, has legal experience which makes him as suitable for appointment as if he satisfied paragraph (a), (b) or (c). | |
| 3 | (1) A member— | 20 |
| | (a) may resign by notice in writing to the Lord Chancellor, | |
| | (b) shall cease to be a member on reaching the age of 70, and | |
| | (c) otherwise, shall hold and vacate office in accordance with the terms of his appointment (which may include provision for dismissal). | |
| | (2) Sub-paragraph (1)(b) is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (c. 8) (extension to age 75). | 25 |
| 4 | The Lord Chancellor may by order make provision for the title of members of the Tribunal. | |

Presidency

- | | | |
|---|---|----|
| 5 | (1) The Lord Chancellor shall appoint— | 30 |
| | (a) a member of the Tribunal, who holds or has held high judicial office within the meaning of the Appellate Jurisdiction Act 1876 (c. 59), as President of the Tribunal, and | |
| | (b) one or more members of the Tribunal as Deputy President. | |
| | (2) A Deputy President— | 35 |

- (a) may act for the President if the President is unable to act or unavailable, and
- (b) shall perform such functions as the President may delegate or assign to him.

Proceedings 5

6 The Tribunal shall sit at times and places determined by the Lord Chancellor.

7 (1) The jurisdiction of the Tribunal shall be exercised by such number of its members as the President may direct.

(2) A direction under this paragraph— 10

(a) may relate to the whole or part of specified proceedings or to the whole or part of proceedings of a specified kind,

(b) may enable jurisdiction to be exercised by a single member,

(c) may require or permit the transfer of the whole or part of proceedings— 15

(i) from one member to another,

(ii) from one group of members to another,

(iii) from one member to a group of members, or

(iv) from a group of members to one member,

(d) may be varied or revoked by a further direction, and 20

(e) is subject to rules under section 106.

8 (1) The President may make arrangements for the allocation of proceedings to members of the Tribunal.

(2) Arrangements under this paragraph—

(a) may permit allocation by the President or another member of the Tribunal, 25

(b) may permit the allocation of a case to a specified member or to a specified class of member,

(c) may include provision for transfer, and

(d) are subject to rules under section 106. 30

Staff

9 The Lord Chancellor may appoint staff for the Tribunal.

Money

10 The Lord Chancellor—

(a) may pay remuneration and allowances to members of the Tribunal, 35

(b) may pay remuneration and allowances to staff of the Tribunal, and

(c) may defray expenses of the Tribunal.

11 The Lord Chancellor may pay compensation to a person who ceases to be a member of the Tribunal if the Lord Chancellor thinks it appropriate because of special circumstances. 40

SCHEDULE 2

Section 14

ASYLUM AND IMMIGRATION TRIBUNAL: CONSEQUENTIAL AMENDMENTS AND
TRANSITIONAL PROVISION

PART 1

CONSEQUENTIAL AMENDMENTS

5

Appellate Jurisdiction Act 1876 (c. 59)

- 1 After section 3 of the Appellate Jurisdiction Act 1876 (House of Lords: appellate jurisdiction) insert—

“3A No appeal against asylum or immigration ruling

Section 3 is subject to section 108B(6) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (no appeal from appellate court in reference from Asylum and Immigration Tribunal).”

10

Immigration Act 1971 (c. 77)

- 2 (1) Schedule 2 to the Immigration Act 1971 (control on entry) shall be amended as follows.

15

- (2) In the following provisions for “adjudicator” (or “an adjudicator” or “the adjudicator”) substitute “the Asylum and Immigration Tribunal”—

- (a) paragraph 22(1A), (2) and (3),
(b) paragraph 23(1) and (2),
(c) paragraph 24(2), and
(d) paragraph 25.

20

- (3) In paragraph 24(3) for “An adjudicator, justice of the peace or sheriff before whom a person is brought by virtue of sub-paragraph (2)(a) above” substitute “Where a person is brought before the Asylum and Immigration Tribunal, a justice of the peace or the sheriff by virtue of sub-paragraph (2)(a), the Tribunal, justice of the peace or sheriff”.

25

- (4) In paragraph 29—

- (a) in sub-paragraph (2) for “an adjudicator or the Immigration Appeal Tribunal” substitute “the Asylum and Immigration Tribunal”,

30

- (b) in sub-paragraph (3)—

- (i) for “An adjudicator” substitute “The Asylum and Immigration Tribunal”,
(ii) for “that or any other adjudicator” substitute “the Tribunal”,
(iii) omit the words from “and where an adjudicator dismisses” to the end,

35

- (c) omit sub-paragraph (4), and

- (d) in sub-paragraph (6)—

- (i) for “an adjudicator or the Tribunal” substitute “the Asylum and Immigration Tribunal”,

- (ii) for “the adjudicator or Tribunal” substitute “the Tribunal”, and

40

- (iii) for “the adjudicator or the Tribunal” substitute “the Tribunal”.

- (5) In paragraphs 30, 31, 32 and 33 –
- (a) for “an adjudicator and the Tribunal” substitute “the Tribunal”,
 - (b) for “an adjudicator or the Tribunal” substitute “the Tribunal”,
 - (c) for “the adjudicator or the Tribunal, as the case may be” substitute “the Tribunal”, 5
 - (d) for “the adjudicator or Tribunal” substitute “the Tribunal”,
 - (e) for “the adjudicator or the Tribunal” substitute “the Tribunal”,
 - (f) for “an adjudicator or Tribunal” substitute “the Tribunal”, and
 - (g) for “before an adjudicator or before the Tribunal” substitute “before the Tribunal”. 10
- (6) In paragraph 33 –
- (a) in sub-paragraph (2)(a) for “before an adjudicator” substitute “before the Tribunal”,
 - (b) in sub-paragraph (2)(b) for “before that adjudicator or before the Tribunal, as the case may be” substitute “before it”, and 15
 - (c) in sub-paragraph (3) for “An adjudicator, justice of the peace or sheriff before whom a person is brought by virtue of sub-paragraph (2)(a) above” substitute “Where a person is brought before the Asylum and Immigration Tribunal, a justice of the peace or the sheriff by virtue of sub-paragraph (2)(a), the Tribunal, justice of the peace or sheriff”. 20

House of Commons Disqualification Act 1975 (c. 24)

- 3 (1) Schedule 1 to the House of Commons Disqualification Act 1975 (disqualifying offices) shall be amended as follows.
- (2) In Part II for the entry relating to the Immigration Appeal Tribunal substitute – 25
- “The Asylum and Immigration Tribunal.”
- (3) In Part III omit the entry relating to immigration adjudicators.

Northern Ireland Assembly Disqualification Act 1975 (c. 25)

- 4 (1) Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (disqualifying offices) shall be amended as follows. 30
- (2) In Part II for the entry relating to the Immigration Appeal Tribunal substitute –
- “The Asylum and Immigration Tribunal.”
- (3) In Part III omit the entry relating to immigration adjudicators. 35

British Nationality Act 1981 (c. 61)

- 5 In section 40A of the British Nationality Act 1981 (deprivation of citizenship: appeal) –
- (a) in subsection (1) for “an adjudicator appointed under section 81 of the Nationality, Immigration and Asylum Act 2002 (immigration appeal)” substitute “the Asylum and Immigration Tribunal”, and 40
 - (b) omit subsections (3) to (5).

Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (S.I. 1981/228 (N.I. 8))

- 6 (1) For paragraph 6A of Part 1 of Schedule 1 to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (proceedings for which legal aid may be given under Part II of that Order) substitute –
- “6A. Proceedings before the Asylum and Immigration Tribunal or the Special Immigration Appeals Commission.” 5
- (2) The amendment made by sub-paragraph (1) is without prejudice to any power to amend or revoke the provision inserted by that sub-paragraph.

Courts and Legal Services Act 1990 (c. 41)

- 7 In Schedule 11 to the Courts and Legal Services Act 1990 (judges barred from legal practice) for the entries relating to the Immigration Appeal Tribunal and immigration adjudicators substitute –
- “President or other member of the Asylum and Immigration Tribunal”.
- 10

Tribunals and Inquiries Act 1992 (c. 53) 15

- 8 (1) The Tribunals and Inquiries Act 1992 shall be amended as follows.
- (2) In section 7 (dismissal) omit subsection (3).
- (3) In Schedule 1 (tribunals under supervision of Council) for the entry for immigration appeals substitute –

“Immigration and asylum	22.	The Asylum and Immigration Tribunal constituted under section 81 of the Nationality, Immigration and Asylum Act 2002.”	20
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Judicial Pensions and Retirement Act 1993 (c. 8)

- 9 (1) The Judicial Pensions and Retirement Act 1993 shall be amended as follows. 25
- (2) In Schedule 1 (qualifying judicial offices) for the entries relating to the Immigration Appeal Tribunal and immigration adjudicators substitute (in the place occupied by the first of those entries) –
- “President or other member of the Asylum and Immigration Tribunal”.
- 30
- (3) In Schedule 5 (retirement: relevant offices) for the entries relating to the Immigration Appeal Tribunal and immigration adjudicators substitute –
- “President or other member of the Asylum and Immigration Tribunal”.

Asylum and Immigration Appeals Act 1993 (c. 23) 35

- 10 Section 9A of the Asylum and Immigration Appeals Act 1993 (bail) shall cease to have effect.

Special Immigration Appeals Commission Act 1997 (c. 68)

- 11 The Special Immigration Appeals Commission Act 1997 shall be amended as follows.
- 12 (1) In Schedule 1 (constitution, &c.) for paragraph 5(b) substitute –
- “(b) at least one is or has been a member of the Asylum and Immigration Tribunal.” 5
- (2) A person is qualified for the purposes of paragraph 5(b) of that Schedule as it has effect after the commencement of sub-paragraph (1) above if he is qualified for the purposes of paragraph 5(b) as it had effect at any time since its commencement. 10
- 13 (1) Schedule 3 (bail) shall be amended as follows.
- (2) In paragraph 1(2) for ““adjudicator”” substitute ““Tribunal””.
- (3) In paragraph 1(3)(a) for “adjudicator”” substitute “the Asylum and Immigration Tribunal””.
- (4) In paragraph 1(3)(b) for “adjudicator”” substitute “the Asylum and Immigration Tribunal””. 15
- (5) In paragraph 1(4)(a) and (b) for “adjudicator”” substitute “the Asylum and Immigration Tribunal””.
- (6) In paragraph 2(2)(a) for ““an adjudicator”” substitute ““the Asylum and Immigration Tribunal””. 20
- (7) In paragraph 2(2)(b) for ““the adjudicator”” substitute ““the Asylum and Immigration Tribunal””.
- (8) In paragraph 2(3)(a) for ““an adjudicator”” substitute ““the Asylum and Immigration Tribunal””.
- (9) In paragraph 2(3)(b) for ““the adjudicator”” substitute ““the Asylum and Immigration Tribunal””. 25
- (10) In paragraph 6(2)(a) for ““an adjudicator or the Tribunal”” substitute ““the Tribunal””.
- (11) In paragraph 6(2)(b) for ““the adjudicator or the Tribunal, as the case may be,”” substitute ““the Tribunal””. 30
- (12) In paragraph 6(2)(c) for ““the adjudicator or Tribunal”” substitute ““the Tribunal””.
- (13) In paragraph 6(3)(a) for ““an adjudicator or the Tribunal”” substitute ““the Tribunal””.
- (14) In paragraph 6(3)(b) for ““the adjudicator or Tribunal”” substitute ““the Tribunal””. 35
- (15) In paragraph 7(a) for ““an adjudicator or the Tribunal”” substitute ““the Tribunal””.
- (16) In paragraph 7(b) for ““the adjudicator or Tribunal”” substitute ““the Tribunal””. 40
- (17) In paragraph 7(c) for ““the adjudicator or the Tribunal”” substitute ““the Tribunal””.

Access to Justice Act 1999 (c. 22)

- 14 For paragraph 2(1)(h) of Schedule 2 to the Access to Justice Act 1999

(Community Legal Service: excluded services) substitute –
“(h) the Asylum and Immigration Tribunal.”

Immigration and Asylum Act 1999 (c. 33)

- 15 In section 156(3) of the Immigration and Asylum Act 1999 (escorts and custody) for paragraphs (a) and (b) substitute – 5
“(a) the Asylum and Immigration Tribunal.”

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

- 16 The Nationality, Immigration and Asylum Act 2002 shall be amended as follows.
- 17 In section 72(10) (serious criminal) omit “adjudicator,” 10
- 18 (1) In the provisions listed in sub-paragraph (2) –
(a) for “an adjudicator” substitute “the Tribunal”,
(b) for “the adjudicator” substitute “the Tribunal”,
(c) for “he” in relation to an adjudicator substitute “it”, and
(d) for “his” in relation to an adjudicator substitute “its”. 15
- (2) The provisions are –
(a) section 85 (matters to be considered),
(b) section 86 (determination of appeal), and
(c) section 87 (successful appeal: direction).
- 19 In section 87 – 20
(a) for subsection (3) substitute –
“(3) But a direction under this section shall not have effect while a review under section 105A has been requested and not completed.”, and
(b) in subsection (4) for “as part of the determination of the appeal for the purposes of section 101” substitute “as part of the Tribunal’s decision on the appeal for the purposes of section 105A”. 25
- 20 In section 104 (pending appeal) –
(a) for subsection (2) substitute – 30
“(2) An appeal under section 82(1) is not finally determined for the purposes of subsection (1)(b) while a review under section 105A has been requested and not completed.”, and
(b) omit subsection (3) (remittal to adjudicator).
- 21 In section 106 (rules) –
(a) in subsection (1)(a) for “, 83 or 101” substitute “or 83 or by virtue of section 109”, 35
(b) in subsection (1)(b) for “, 83, 101(1) or 103” substitute “or 83 or by virtue of section 109”,
(c) after subsection (1) insert –
“(1A) In making rules under subsection (1) the Lord Chancellor shall aim to ensure – 40

-
- (a) that the rules are designed to ensure that proceedings before the Tribunal are handled as fairly, quickly and efficiently as possible, and
- (b) that the rules where appropriate confer on members of the Tribunal responsibility for ensuring that proceedings before the Tribunal are handled as fairly, quickly and efficiently as possible.”, 5
- (d) in subsection (2)(d) for “an adjudicator or the Immigration Appeal Tribunal” substitute “the Tribunal”,
- (e) in subsection (2)(e) omit “an adjudicator or”, 10
- (f) in subsection (2)(g) for “an adjudicator” substitute, in each place, “the Tribunal”,
- (g) in subsection (2)(h) for “an adjudicator” substitute, in each place, “the Tribunal”,
- (h) omit subsection (2)(j) and (k), 15
- (i) in subsection (2)(o) omit “an adjudicator or”,
- (j) in subsection (2)(p) omit “an adjudicator or”,
- (k) in subsection (2)(q) omit “an adjudicator or”,
- (l) in subsection (2)(r) omit “an adjudicator or”,
- (m) in subsection (2)(s) omit “an adjudicator or”, 20
- (n) after subsection (2)(s) insert –
- “(t) may make provision about the number of members exercising the Tribunal’s jurisdiction;
- (u) may make provision about the allocation of proceedings among members of the Tribunal (which may include provision for transfer); 25
- (v) may confer on members of the Tribunal responsibility for supervising other members and staff of the Tribunal;
- (w) must provide for a period within which a request for review under section 105A may be made (and may not enable the Tribunal to permit a request out of time); 30
- (x) may make other provision in relation to requests for review, and reviews, under section 105A (which may, in particular, include provision restricting the matters that may be adduced or considered); 35
- (y) may make provision about the making of a reference to an appellate court under section 108B (which may include provision about the procedure to be followed in a case in relation to which a reference is made); 40
- (z) may make provision about the form and content of decisions of the Tribunal.”,
- (o) in subsection (3)(a) omit “an adjudicator or”,
- (p) in subsection (3)(d) omit “an adjudicator or”, 45
- (q) in subsection (3)(e) omit “an adjudicator or”,
- (r) for subsection (3)(f) substitute –
- “(f) may enable the Tribunal to certify that an appeal or a request for a review had no merit (and shall make provision for the consequences of the issue of a certificate).”, and 50

- (s) in subsection (4) omit “an adjudicator or”.
- 22 (1) In section 107 (practice directions) –
- (a) for “the Immigration Appeal Tribunal” substitute “the Tribunal”,
 - (b) omit subsection (2), and
 - (c) at the end add – 5
- “(3) A practice direction may, in particular –
- (a) enable the President to require the Tribunal to treat a decision of the Tribunal specified by the President as authoritative in respect of a particular matter, and
 - (b) require the Tribunal to comply with a requirement imposed in accordance with paragraph (a).” 10
- (2) The reference to a decision of the Tribunal in section 107(3) (as added by sub-paragraph (1) above) shall be treated as including a reference to a decision of the Immigration Appeal Tribunal.
- 23 In section 108 (forged document: proceedings in private) – 15
- (a) in subsection (1)(a) for “, 83 or 101” substitute “or 83”, and
 - (b) in subsection (2) for “The adjudicator or the Immigration Appeal Tribunal” substitute “The Tribunal”.
- 24 At the end of section 112 (regulations, &c.) add –
- “(7) An order under paragraph 4 of Schedule 4 – 20
- (a) may include consequential or incidental provision (which may include provision amending, or providing for the construction of, a reference in an enactment, instrument or other document to a member of the Asylum and Immigration Tribunal), 25
 - (b) must be made by statutory instrument, and
 - (c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10))

- 25 (1) For paragraph 2(i) of Schedule 2 to the Access to Justice (Northern Ireland) Order 2003 (civil legal services: excluded services) substitute – 30
- “(i) proceedings before the Asylum and Immigration Tribunal or the Special Immigration Appeals Commission,”.
- (2) The amendment made by sub-paragraph (1) is without prejudice to any power to amend or revoke the provision inserted by that sub-paragraph. 35

PART 2

TRANSITIONAL PROVISION

- 26 In this Part “commencement” means the coming into force of section 14.
- 27 A person who immediately before commencement is, or is to be treated as, an adjudicator appointed under section 81 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (appeals) (as it has effect before commencement) shall be treated as having been appointed as a member of the Asylum and Immigration Tribunal under paragraph 1 of Schedule 4 to 40

- that Act (as it has effect after commencement) immediately after commencement.
- 28 A person who immediately before commencement is a legally qualified member of the Immigration Appeal Tribunal (within the meaning of Schedule 5 to that Act) shall be treated as having been appointed as a member of the Asylum and Immigration Tribunal under paragraph 1 of Schedule 4 to that Act immediately after commencement. 5
- 29 A person who immediately before commencement is a member of staff of adjudicators appointed or treated as appointed under section 81 of the Nationality, Immigration and Asylum Act 2002 (c. 41) or of the Immigration Appeal Tribunal shall be treated as having been appointed as a member of the staff of the Asylum and Immigration Tribunal under paragraph 9 of Schedule 4 to the Nationality, Immigration and Asylum Act 2002 immediately after commencement. 10

SCHEDULE 3

Section 18

15

REMOVAL OF ASYLUM SEEKER TO SAFE COUNTRY

PART 1

INTRODUCTORY

- 1 (1) In this Schedule –
- “asylum claim” means a claim 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, 20
- “Convention rights” means the rights identified as Convention rights by section 1 of the Human Rights Act 1998 (c. 42) (whether or not in relation to a State that is a party to the Convention), 25
- “human rights claim” means a claim 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 (public authority not to act contrary to Convention) as being incompatible with his Convention rights, 30
- “immigration appeal” means an appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 (appeal against immigration decision), and
- “the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol. 35
- (2) In this Schedule a reference to anything being done in accordance with the Refugee Convention is a reference to the thing being done in accordance with the principles of the Convention, whether or not by a signatory to it.

PART 2

40

FIRST LIST OF SAFE COUNTRIES (REFUGEE CONVENTION AND HUMAN RIGHTS)

- 2 This Part applies to –

-
- | | | |
|-----|--|----|
| (a) | Austria, | |
| (b) | Belgium, | |
| (c) | Republic of Cyprus, | |
| (d) | Czech Republic, | |
| (e) | Denmark, | 5 |
| (f) | Estonia, | |
| (g) | Finland, | |
| (h) | France, | |
| (i) | Germany, | |
| (j) | Greece, | 10 |
| (k) | Hungary, | |
| (l) | Iceland, | |
| (m) | Ireland, | |
| (n) | Italy, | |
| (o) | Latvia, | 15 |
| (p) | Lithuania, | |
| (q) | Luxembourg, | |
| (r) | Malta, | |
| (s) | Netherlands, | |
| (t) | Norway, | 20 |
| (u) | Poland, | |
| (v) | Portugal, | |
| (w) | Slovak Republic, | |
| (x) | Slovenia, | |
| (y) | Spain, and | 25 |
| (z) | Sweden. | |
| 3 | (1) This paragraph applies for the purposes of the determination by any person, tribunal or court whether a person who has made an asylum claim or a human rights claim may be removed – | |
| | (a) from the United Kingdom, and | 30 |
| | (b) to a State of which he is not a national or citizen. | |
| | (2) A State to which this Part applies shall be treated, in so far as relevant to the question mentioned in sub-paragraph (1), as a place – | |
| | (a) where a person’s life and liberty are not threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion, | 35 |
| | (b) from which a person will not be sent to another State in contravention of his Convention rights, and | |
| | (c) from which a person will not be sent to another State otherwise than in accordance with the Refugee Convention. | 40 |
| 4 | Section 77 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (no removal while claim for asylum pending) shall not prevent a person who has made a claim for asylum from being removed – | |
| | (a) from the United Kingdom, and | |
| | (b) to a State to which this Part applies; | 45 |
| | provided that the Secretary of State certifies that in his opinion the person is not a national or citizen of the State. | |
| 5 | (1) This paragraph applies where the Secretary of State certifies that – | |

- (a) it is proposed to remove a person to a State to which this Part applies, and
 - (b) in the Secretary of State’s opinion the person is not a national or citizen of the State.
- (2) The person may not bring an immigration appeal by virtue of section 92(2) or (3) of that Act (appeal from within United Kingdom: general). 5
- (3) The person may not bring an immigration appeal by virtue of section 92(4)(a) of that Act (appeal from within United Kingdom: asylum or human rights) in reliance on –
 - (a) an asylum claim which asserts that to remove the person to a specified State to which this Part applies would breach the United Kingdom’s obligations under the Refugee Convention, or 10
 - (b) a human rights claim in so far as it asserts that to remove the person to a specified State to which this Part applies would be unlawful under section 6 of the Human Rights Act 1998 because of the possibility of removal from that State to another State. 15
- (4) The person may not bring an immigration appeal by virtue of section 92(4)(a) of that Act in reliance on a human rights claim to which this sub-paragraph applies if the Secretary of State certifies that the claim is clearly unfounded; and the Secretary of State shall certify a human rights claim to which this sub-paragraph applies unless satisfied that the claim is not clearly unfounded. 20
- (5) Sub-paragraph (4) applies to a human rights claim if, or in so far as, it asserts a matter other than that specified in sub-paragraph (3)(b).
- 6 A person who is outside the United Kingdom may not bring an immigration appeal on any ground that is inconsistent with treating a State to which this Part applies as a place – 25
 - (a) where a person’s life and liberty are not threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion, 30
 - (b) from which a person will not be sent to another State in contravention of his Convention rights, and
 - (c) from which a person will not be sent to another State otherwise than in accordance with the Refugee Convention.

PART 3 35

SECOND LIST OF SAFE COUNTRIES (REFUGEE CONVENTION AND HUMAN RIGHTS(2))

- 7 (1) This Part applies to such States as the Secretary of State may by order specify.
- (2) An order under this paragraph –
 - (a) shall be made by statutory instrument, and 40
 - (b) shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- 8 (1) This paragraph applies for the purposes of the determination by any person, tribunal or court whether a person who has made an asylum claim may be removed – 45
 - (a) from the United Kingdom, and
 - (b) to a State of which he is not a national or citizen.

-
- (2) A State to which this Part applies shall be treated, in so far as relevant to the question mentioned in sub-paragraph (1), as a place –
- (a) where a person’s life and liberty are not threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion, and 5
 - (b) from which a person will not be sent to another State otherwise than in accordance with the Refugee Convention.
- 9 Section 77 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (no removal while claim for asylum pending) shall not prevent a person who has made a claim for asylum from being removed – 10
- (a) from the United Kingdom, and
 - (b) to a State to which this Part applies;
- provided that the Secretary of State certifies that in his opinion the person is not a national or citizen of the State.
- 10 (1) This paragraph applies where the Secretary of State certifies that – 15
- (a) it is proposed to remove a person to a State to which this Part applies, and
 - (b) in the Secretary of State’s opinion the person is not a national or citizen of the State.
- (2) The person may not bring an immigration appeal by virtue of section 92(2) or (3) of that Act (appeal from within United Kingdom: general). 20
- (3) The person may not bring an immigration appeal by virtue of section 92(4)(a) of that Act (appeal from within United Kingdom: asylum or human rights) in reliance on an asylum claim which asserts that to remove the person to a specified State to which this Part applies would breach the United Kingdom’s obligations under the Refugee Convention. 25
- (4) The person may not bring an immigration appeal by virtue of section 92(4)(a) of that Act in reliance on a human rights claim if the Secretary of State certifies that the claim is clearly unfounded; and the Secretary of State shall certify a human rights claim where this paragraph applies unless satisfied that the claim is not clearly unfounded. 30
- 11 A person who is outside the United Kingdom may not bring an immigration appeal on any ground that is inconsistent with treating a State to which this Part applies as a place –
- (a) where a person’s life and liberty are not threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion, and 35
 - (b) from which a person will not be sent to another State otherwise than in accordance with the Refugee Convention.
- PART 4 40
- THIRD LIST OF SAFE COUNTRIES: REFUGEE CONVENTION ONLY
- 12 (1) This Part applies to such States as the Secretary of State may by order specify.
- (2) An order under this paragraph – 45
- (a) shall be made by statutory instrument, and
 - (b) shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

- 13 (1) This paragraph applies for the purposes of the determination by any person, tribunal or court whether a person who has made an asylum claim may be removed –
- (a) from the United Kingdom, and
 - (b) to a State of which he is not a national or citizen. 5
- (2) A State to which this Part applies shall be treated, in so far as relevant to the question mentioned in sub-paragraph (1), as a place –
- (a) where a person’s life and liberty are not threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion, and 10
 - (b) from which a person will not be sent to another State otherwise than in accordance with the Refugee Convention.
- 14 Section 77 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (no removal while claim for asylum pending) shall not prevent a person who has made a claim for asylum from being removed – 15
- (a) from the United Kingdom, and
 - (b) to a State to which this Part applies;
- provided that the Secretary of State certifies that in his opinion the person is not a national or citizen of the State.
- 15 (1) This paragraph applies where the Secretary of State certifies that – 20
- (a) it is proposed to remove a person to a State to which this Part applies, and
 - (b) in the Secretary of State’s opinion the person is not a national or citizen of the State.
- (2) The person may not bring an immigration appeal by virtue of section 92(2) or (3) of that Act (appeal from within United Kingdom: general). 25
- (3) The person may not bring an immigration appeal by virtue of section 92(4)(a) of that Act (appeal from within United Kingdom: asylum or human rights) in reliance on an asylum claim which asserts that to remove the person to a specified State to which this Part applies would breach the United Kingdom’s obligations under the Refugee Convention. 30
- (4) The person may not bring an immigration appeal by virtue of section 92(4)(a) of that Act in reliance on a human rights claim if the Secretary of State certifies that the claim is clearly unfounded.
- 16 A person who is outside the United Kingdom may not bring an immigration appeal on any ground that is inconsistent with treating a State to which this Part applies as a place – 35
- (a) where a person’s life and liberty are not threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion, and 40
 - (b) from which a person will not be sent to another State otherwise than in accordance with the Refugee Convention.

PART 5

COUNTRIES CERTIFIED AS SAFE FOR INDIVIDUALS

- 17 This Part applies to a person who has made an asylum claim if the Secretary of State certifies that – 45
- (a) it is proposed to remove the person to a specified State,

-
- (b) in the Secretary of State’s opinion the person is not a national or citizen of the specified State, and
- (c) in the Secretary of State’s opinion the specified State is a place –
- (i) where the person’s life and liberty will not be threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion, and 5
- (ii) from which the person will not be sent to another State otherwise than in accordance with the Refugee Convention.
- 18 Where this Part applies to a person section 77 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (no removal while claim for asylum pending) shall not prevent his removal to the State specified under paragraph 17. 10
- 19 Where this Part applies to a person –
- (a) he may not bring an immigration appeal by virtue of section 92(2) or (3) of that Act (appeal from within United Kingdom: general), 15
- (b) he may not bring an immigration appeal by virtue of section 92(4)(a) of that Act (appeal from within United Kingdom: asylum or human rights) in reliance on an asylum claim which asserts that to remove the person to the State specified under paragraph 17 would breach the United Kingdom’s obligations under the Refugee Convention, 20
- (c) he may not bring an immigration appeal by virtue of section 92(4)(a) of that Act in reliance on a human rights claim if the Secretary of State certifies that the claim is clearly unfounded, and
- (d) he may not while outside the United Kingdom bring an immigration appeal on any ground that is inconsistent with the opinion certified under paragraph 17(c). 25

PART 6

AMENDMENT OF LISTS

- 20 (1) The Secretary of State may by order add a State to the list specified in paragraph 2. 30
- (2) The Secretary of State may by order –
- (a) add a State to a list specified under paragraph 7 or 12, or
- (b) remove a State from a list specified under paragraph 7 or 12.
- 21 (1) An order under paragraph 20(1) or (2)(a) – 35
- (a) shall be made by statutory instrument,
- (b) shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament, and
- (c) may include transitional provision.
- (2) An order under paragraph 20(2)(b) – 40
- (a) shall 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.

SCHEDULE 4

Section 32

REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Immigration Act 1971 (c. 77)	In Schedule 2— (a) in paragraph 29(3), the words from “and where an adjudicator dismisses” to the end, and (b) paragraph 29(4).	5
House of Commons Disqualification Act 1975 (c. 24)	In Part III of Schedule 1, the entry relating to immigration adjudicators.	10
Northern Ireland Assembly Disqualification Act 1975 (c. 25)	In Part III of Schedule 1, the entry relating to immigration adjudicators.	
British Nationality Act 1981 (c. 61)	Section 40A(3) to (5).	15
Tribunals and Inquiries Act 1992 (c. 53)	Section 7(3).	
Asylum and Immigration Appeals Act 1993 (c. 23)	Section 9A.	20
Immigration and Asylum Act 1999 (c. 33)	Sections 11 and 12. In section 72(10), “adjudicator”. In section 85(1), “and (b)”. Section 87(3)(f). In Schedule 6, in paragraph 1(1), “or (b)”.	25
Nationality, Immigration and Asylum Act 2002 (c. 41)	Section 80. Section 87(4). Section 93. Section 94(4)(a) to (j). Sections 100 to 103. Section 104(3). In section 106— (a) in subsection (2)(e), “an adjudicator or”, (b) subsection (2)(j) and (k), (c) in subsections (2)(o), (p), (q), (r) and (s), (3)(a), (d), (e) and (4), “an adjudicator or”. Section 107(2).	30
Nationality, Immigration and Asylum Act 2002 (c. 41)— <i>cont.</i>	Schedule 5.	40

Asylum and Immigration (Treatment of Claimants, etc.) Bill

A

B I L L

To make provision about asylum and immigration.

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