

SUMMARY OVERVIEW OF SELECTED PROVISIONSTHE ASYLUM AND IMMIGRATION (TREATMENT OF CLAIMANTS, ETC.) ACT 2004

<i>Section and title</i>	<i>Summary</i>	<i>Commencement as of 15.10.04</i>	<i>Priority and comment</i>
s.2. Entering United Kingdom without passport	<p>New criminal offence committed when a person is unable to produce an immigration document [i.e. a passport or similar] at a 'leave or asylum interview' in respect of either himself or a child with whom he claims to be living or travelling.</p> <p>Statutory defences arise when a person can prove: (a) he is an EEA national, (b) he is a member of the family of an EEA national and is exercising a community right, (c) he has a reasonable excuse for not being in possession of an immigration document, [specifically this does <i>not</i> include taking an agent's advice] or (d) he travelled to the United Kingdom without, at any stage having possession of an immigration document. It is also a defence to produce a false passport and to prove that it was used for all purposes in during the journey to the UK.</p> <p>Offence is either way, with maximum 2 years sentence on indictment. An IO can arrest without warrant.</p>	22.9.04	<p>IMPORTANT. The govt has stated this offence will be used against those who have destroyed documentation. Guidance states it is not the intention to penalise those who arrive having never had a document or who present a false document they have used.</p> <p>Initial indications are that prosecutions are most likely at international airports where the IS believe passengers could not possibly embark without documents.</p>
s.6 Employment	Amends the offence of employing someone without permission to work in s8 of the 1996 Act. Previously summary only, the offence is now triable either way, so there is no limit on the fine which can be imposed on indictment	1.10.04	Low priority. There have been only a handful of prosecutions in recent years

<p>s.8 Claimant's Credibility</p>	<p>Stipulates various behaviours which the HO or appellate authority is required to take account of as being damaging to credibility when deciding whether to believe a statement made by or on behalf of an asylum or human rights claimant.</p> <p>In general this is behaviour which a deciding authority thinks: is designed or likely to conceal information; is designed or likely to mislead; or is designed or likely to obstruct or delay the procedure of the claim. [Subsection (2)]</p> <p>In addition various specific behaviours are listed: relating to the non production of passports (without reasonable explanation); the production of false passports as if they were valid; the failure to answer questions (without reasonable explanation); failure to take a reasonable opportunity in a safe third country; making a claim after notification of an immigration decision; making a claim after a person has been arrested under an immigration provision.</p> <p>NB for several of the behaviours a "reasonable explanation" proviso exists.</p>	<p>Partially commenced 1.10.04 for the purposes of enabling regulations to be brought.</p>	<p>IMPORTANT. This is likely to be used by the Home Office to challenge appeal decisions.</p> <p>Note that the minister Baroness Scotland stated: The fact that various behaviours must be taken into account does not mean that an asylum claim has to be refused where those behaviours are exhibited... The clause will not force a deciding authority to give undue weight to any of the factors it lists; it will merely ensure that all these factors are considered in a systematic and transparent way.[05.04.04. HL hans col 1683]</p>
-----------------------------------	--	--	---

<p>s.9 Failed asylum seekers: withdrawal of support</p>	<p>Failed asylum seekers with family will lose NASS support if the Secretary of State certifies that, in his opinion, such a person has failed without reasonable excuse to take reasonable steps to leave the United Kingdom voluntarily or place himself in a position in which he is able to leave the United Kingdom voluntarily. There is an appeal to the ASA against the certification. Procedure will include a series of letters and an interview threatening to use the certificate procedure, and then a 14 day period from notification to termination.</p>	<p>Not commenced. It is likely the govt are talking to local government about implementation.</p>	<p>Government repeatedly stated they did not intend or expect significant numbers of children to go into care.</p>
<p>s.10 Failed asylum seekers: accommodation</p>	<p>Permits continuation of the provision of accommodation to be made conditional upon the performance of or participation in community activities. The criteria to be used in determining when accommodation should be provided to be set out in regulations</p>	<p>Not yet. Detailed regulations needed.</p>	<p>Provision is not very practical and is unlikely to have significant impact.</p>
<p>s.11 Accommodation for asylum seekers: local connection</p>	<p>Makes a NASS dispersal area a local connection for emergency housing purposes. Interim or emergency accommodation excluded. Govt.s intention for Asylum seekers to establish a local connection with dispersal area as they are carefully selected for their capability to support long term integration for refugees</p>	<p>Not yet</p>	<p>Response to developments in case law.</p>
<p>s.12 Refugee: back-dating of benefits</p>	<p>Ends right of convention refugees to apply for backdated benefit. Replaces with s.13 integration loans.</p>	<p>Not yet. Will be introduced with s.13. DWP should still process applications for time until commencement.</p>	<p>Govt argued Arts 23 and 24 of Convention not contravened, as NASS package meets equal treatment.</p>

s.13 Integration loans for refugees	New HO administered loan scheme for convention refugees. £11m pa fund. Broad discretion to make regulations.. HO administered. No interest to be charged. One loan per person. Can make payments by instalment.	Not in force. No sign of draft regulations yet.	
s.14 Immigration officer: power of arrest	Gives Immigration Officers powers to arrest for list of criminal offences – eg theft act and bigamy	Not in force yet	Govt assured IO's would not actively investigate non-immigration offences.
s.15 fingerprinting	Gives power to immigration service to fingerprint at beginning of removal procedure, prior to setting of RDs	1.10.04	Little practical impact. Restores pre 2002 position
s.16 Information about passengers-	Power to require copy documents from carriers.	Not yet in force.	Govt will consult. Will be used in targeted way.
s.17 Retention of documents	Gives power to HO to hold any document which facilitates removal	Not in force	Currently 1971 Act only empowers an IO to retain
Sections 19- 25 Procedure for marriage.	Amends law on civil [not C of E] marriage procedure. In order to marry those subject to immigration control will need HO permission – or an entry clearance – and will be subject to special pre marriage registration procedure. There will be a fee (c£200-250?) for applying for HO permission. EU citizens are exempted.	Not yet in force, but early implementation likely to be a government priority.	IMPORTANT. Govt indicated that those with settled status will be exempt, and those with more than 6 months leave are likely to be given permission.

A4

s.26 Unification of Appeals	Creates new 'single tier' Asylum and Immigration Tribunal. The only challenge from a single member decision is by a papers only statutory review procedure to the High Court /Ct of Sessions, which may lead to the AIT reconsidering its decision. A panel AIT decision, or reconsidered case, has a right of appeal to the Court of Appeal. The statutory review and reconsideration procedure will be legal aid funded retrospectively at the reconsideration hearing by an order from the AIT – weak cases may get no funding.	Expected commencement in April 2005. Govt currently consulting on the legal aid provision.	VERY IMPORTANT.
s.27 Unfounded human rights or asylum claim.	Enables a country of part of a country to be designated for non-suspensive appeals under s 94 2002 Act in respect of a 'description of person'. The description may refer to the attributes relating to convention reasons 1951 convention, or any other attribute or circumstance the SSHD thinks appropriate. [e.g. age employment, shared history].	1.10.04	Potentially important. No hints yet from the Govt of intended targets.
s.28 Appeal from within United Kingdom	Removes in country appeal right for work permit holders and entry clearance holders where his purpose in arriving in the United Kingdom is different from the purpose specified in the entry clearance. Does not affect consideration of asylum claims	1.10.04	WP holders now mostly need E C in any case. s.18 confirms immigration service power to examine for the purpose of use of s28
s.29 Entry Clearance	Enables removal of specific entry clearance appeal rights specified by statutory instrument by reference to 'a provision in the immigration rules'.	1.10.04 but no statutory instrument yet.	Importance unclear. Potentially far reaching. Only clear intended target is future rule specifying students must enrol on approved list of colleges.

s.30. Earlier right of appeal.	Appears to clarify the one stop wording of s 96 of 2002 Act.	1.10.04	Appears useful.
s.33. Removing asylum seeker to safe country	Creates 4 categories of third countries [in schedule 3 to the Act] with varying levels of deemed or presumed safety in respect of different aspects of UN convention or ECHR argument	1.10.04	Important.
s.35 Deportation or removal: co-operation.	New offence of failing without reasonable excuse to comply with specified action to enable redocumentation for removal. Offence is either way, with maximum 2 years sentence on indictment. An IO can arrest without warrant.	22.9.04	Important.
s.36 Electronic monitoring	Gives power to impose conditions of electronic monitoring in circumstances of bail, temporary admission. Allows the use of tagging, voice recognition and tracking technology.	1.10.04	Being piloted.
s.38. Power of entry.	Gives the OISC power to search premises with a warrant when investigating the offence of providing immigration services or advice when unqualified to do so.	1.10.04	
s.39 Offence of advertising services	A new criminal offence of advertising or offering to provide immigration advice or services when unqualified	1.10.04	
s.42. Amount of fees	Gives SSHD power to set fees for certain applications [incl. variation, nationality, and work permits] at a level in excess of administrative cost and which reflects the likely benefits to the applicant	1.10.04 - but HO still consulting on levels of fees generally.	Important. We can expect significant rises in fees.
s.43 Transfer of leave stamps	Enables fees to be prescribed for applications for limited leave stamps as well as indefinite leave stamps to be transferred into the applicant's passport or other document	1.10.04	S 42 does not apply to this provision.

Al