



IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006

SUMMARY AND COMMENT

This Act received Royal Assent on 30 March but is not yet in force. The Government has announced that it will start to bring the Act's provisions into force in June 2006 with full implementation not expected until 2008. Although less voluminous than earlier Acts it nevertheless has 64 sections and three schedules. It is the seventh substantial Act of Parliament on immigration and related topics to be introduced since 1993. It introduces new provisions and amends existing provisions in this increasingly complex branch of the law. Acts already in force on these subjects are:

- Immigration Act 1971
- Immigration Act 1988
- Asylum and Immigration Appeals Act 1993
- Asylum and Immigration Act 1996
- Special Immigration Appeals Commission Act 1997
- Immigration and Asylum Act 1999
- Nationality, Immigration and Asylum Act 2002
- Asylum and Immigration (Treatment of Claimants, etc.) Act 2004

The Race Relations Act 1976 and Human Rights Act 1998 are also very important in relation to immigration and asylum. The British Nationality Act 1981 and the Anti-terrorism, Crime and Security Act 2001 have some marginal relevance. As well as Acts of Parliament there is a considerable and ever growing volume of subordinate legislation, particularly Immigration Rules made under the 1971 Act and Regulations governing the conduct of appeals. In addition there is much case law.

Each Act has introduced new provisions and significantly amended previous Acts. This branch of the law has rapidly become much more complicated in recent years and there is a pressing need for a Consolidation Act to bring together all the provisions on asylum, immigration and nationality and generally tidy up the law so as to make it more readily accessible and comprehensible by those who have to administer it. This need was urged on the government in the course of debate in the House of Lords on the Bill, but there is no indication so far that the government has any plans to undertake consolidation.

This is not intended as a comprehensive summary of the Act but as a brief description of its main provisions. By the same token, it should not be taken as authoritative legal advice but simply as giving information and guidance.

Appeals

The early sections of the Act are concerned with appeals and impose new restrictions on the right to appeal against adverse Home Office asylum or immigration decisions. Of these the most significant is section 4 which restricts the right of appeal against refusal of entry clearance to cases in which the application for entry clearance was made either for the purpose of entering as a dependant or a visitor, in both cases limited by reference to regulations made by the Home Secretary. The most important aspect of this new section is that there will no longer be a right of appeal against refusal of entry clearance as a student, a restriction which caused much concern in the course of debate.

By section 6 a person may not appeal against refusal of leave to enter the United Kingdom unless on his arrival in the United Kingdom he had entry clearance and the purpose of entry specified in the entry clearance is the same as that specified in his application for leave to enter.

In both these new sections appeals brought on grounds of asylum, human rights or racial discrimination by public authorities or on human rights grounds are not excluded.

Employment

Section 15 imposes civil penalties in the form of fines on employers of adults (ie persons over the age of 16) subject to immigration control, in defined circumstances. A person is subject to immigration control if he requires leave to enter or remain in the United Kingdom under the provisions of the Immigration Act 1971. The defined circumstances for the purposes of the Clause are that (i) the employee had no leave to enter or remain or (ii) his leave was invalid, had expired or prevented him from accepting employment. Provision is made in Sections 16 and 17 for objections on the part of the employer to the imposition of a penalty and for appeal to a county court against such imposition.

Section 15 creates a civil penalty, not a criminal offence. However, by the operation of section 21, if the employer *knowingly* employs an adult subject to immigration control in the circumstances explained in the previous paragraph, he commits an offence which is punishable on indictment to imprisonment for a term not exceeding two years or on summary conviction for a term not exceeding 12 months in England or 6 months in Scotland or Northern Ireland and/or in either case to a fine.

Section 23 imposes an obligation on the Home Secretary to issue a Code of Practice specifying what employers should do to avoid (1) liability to civil penalties, (2) the commission of offences under section 21 and (3) discrimination which would be contrary to race relations legislation.

Previous similar provisions in the Asylum and Immigration Act 1996 are repealed by section 26.

Information

Sections 27-31 increase the powers of immigration officers, Customs and police to obtain information, including fingerprints and other biometric information, and to search arriving passengers. Section 32 gives the police powers to require advance information about passengers and crew or freight of ships and aircraft arriving, expected to arrive, leaving or expected to leave the United Kingdom. Existing powers of Revenue and Customs to obtain such information are by Section 33 extended to ships and aircraft arriving or expected to arrive in the United Kingdom. Sections 36-41 provide for the sharing of information about passengers among the various agencies concerned when such sharing is justified by the needs of national security.

Refugee Convention

The 1951 Convention on the Status of Refugees and its 1967 Protocol are the United Nations treaties under which signatory states, including the United Kingdom, consider applications for asylum. Two important provisions specifically exclude certain categories of persons from the protection of the Convention. By Article 1(F) the Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) he has committed a serious non-political crime outside the country of refuge [i.e. the country where he has applied for asylum] prior to admission to that country as a refugee [the word “refugee” to be construed in this context as an asylum seeker];
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

The other important provision is Article 33.2. To assist understanding I quote the whole of Article 33.

Article 33 Prohibition of expulsion or return (“refoulement”)

1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

Articles 1(F) and 33.2 are most useful exclusions for denying the protection of the Convention to terrorists and other major criminals. In my own experience the Home Office officials who first considered asylum claims often failed to realise that the evidence against particular applicants was sufficient to enable them to use either of

these two provisions to deny them protection. Regrettably this same failure sometimes persisted at the appeal stage.

Section 55 of the 2006 Act empowers the Home Secretary to issue a certificate stating that the appellant is not entitled to the protection of Article 33.1 of the Convention because one or other of the exclusions referred to above applies. If such a certificate is issued, the Asylum and Immigration Tribunal is required by section 55 to begin its hearing of the appeal by considering the contents of the certificate. If the Tribunal agrees with the certificate then there will be no necessity to consider the evidence which the appellant would otherwise adduce in support of his asylum appeal and the Tribunal will be able to dismiss the appeal on this preliminary point. In this way there should be some savings of court time and public money.

Provisions on citizenship

These provisions are no doubt inspired by the recent case of Abu Hamza, a naturalised British citizen recently convicted of offences related to terrorism. Section 40(2) of the British Nationality Act 1981 empowers the Home Secretary to deprive a person of British citizenship if he is satisfied that that person has done something prejudicial to the vital interests of the United Kingdom or a British overseas territory. Such an order may not be made if the person concerned is thereby rendered stateless. Section 56 of the 2006 Act amends the wording so that the Home Secretary must be satisfied that deprivation of citizenship is conducive to the public good. This is the expression used elsewhere in immigration legislation to deal with e.g. the deportation of suspected terrorists.

Section 2 of the Immigration Act 1971 defines “right of abode in the United Kingdom” as extending to British citizens and to Commonwealth citizens who acquired that right before the commencement of the British Nationality Act 1981. By section 57 of the 2006 Act the Home Secretary is empowered to deprive a person of the right of abode if he thinks that it would be conducive to the public good for the person concerned to be excluded or removed from the United Kingdom.

Various provisions of the British Nationality Act 1981 deal with the registration of persons as British citizens or as British overseas territories citizens. Legislation passed before the cession of Hong Kong to China provides for the registration of Hong Kong citizens as British citizens or as British Overseas citizens. Section 58(1) of the 2006 Act now precludes the registration as a citizen of any description of any person falling within the categories *concerned unless the Home Secretary is satisfied that the person concerned is of good character.*

Harry Mitchell QC
5 April 2006