

## **The Immigration Acts**

### **1. Commonwealth Immigrants Act 1962**

1.1 Part I of the Commonwealth Immigrants Act 1962 provided that, with effect from 1 July 1962, citizens of Commonwealth countries, with certain exceptions, became subject to immigration control. Under s.12, which came into force on 31 May 1962, the period of ordinary residence prescribed for registration under s.6(1) of the BNA 1948 or s.3(2) of the BNA 1958 was increased from 1 to 5 years, and persons recommended for deportation lost their entitlement to registration under s.6(1) of the BNA 1948.

### **2. Commonwealth Immigrants Act 1968**

2.1 The Commonwealth Immigrants Act 1968 widened the control to include persons who were citizens of the United Kingdom and Colonies either by birth in a colony or by registration in a Commonwealth country before it became independent (e.g. born in Hong Kong or registered in Kenya before 12 December 1963).

### **3. Immigration Act 1971**

3.1 The Immigration Act 1971 provides for the control of immigration into the United Kingdom of people of all nationalities, for the making of deportation orders and the rights of appeal against immigration decisions, and confers the right of abode on certain categories. It also amended the British Nationality Act 1948 in respect of registration under s.6 of certain Commonwealth citizens as CUKCs.

### **4. Immigration (Carriers' Liability) Act 1987**

4.1 The Immigration (Carriers' Liability) Act 1987 (ICLA), which came into force on 5 March 1987, provides for a charge to be levied on the owners or agents of a ship or aircraft where a passenger requiring leave to enter the UK arrives either

- without valid travel documentation; or
- without a valid visa (if required); or
- without a Direct Airside Transit visa (if a national of a country listed in the Immigration (Transit Visa) Orders 1993 and 1995 and simply in transit to another country)

4.2 Although carriers are not required to be satisfied that the passenger will be acceptable to the UK authorities, they are expected to ensure that the passenger:

- presents valid documentation which is acceptable for entry into the UK; and
- is the rightful holder of that document; and
- has a suitable visa where necessary

### **5. Immigration Act 1988**

5.1 The Immigration Act 1988 received Royal Assent on 10 May 1988.

Main provisions

5.2 The Act consists of 12 sections, together with a Schedule of minor amendments. It does not alter the overall framework of immigration control contained in the 1971 Act, but makes a number of detailed changes:

- Section 1 repeals s.1(5) of the Immigration Act 1971. The main effect of this was to end the exemption of certain Commonwealth citizens from the need to meet the marriage tests and the maintenance and accommodation requirements when bringing their families into the UK for settlement.
- Section 2 restricts entry clearance and the issue of certificates of right of abode in cases of polygamous marriages (see RIGHT OF ABODE)
- Section 3 extends to all passengers the requirement that persons seeking admission to the United Kingdom on the basis that they have the right of abode here should establish that they have that right by obtaining the necessary documentation before travelling to this country
- Section 4 ended the exemption from immigration control formerly enjoyed by locally-engaged staff in non-diplomatic posts within diplomatic missions
- Section 5 restricts the grounds of appeal available to someone who is to be deported administratively and who has been here for less than 7 years
- Section 6 makes overstaying a continuing offence
- Section 7 relieves European Economic Area nationals having rights of residence under the Treaty of Rome of the need to obtain leave to enter or remain in the UK.
- Section 8 is linked to s.9, and provides authority for the process known as "pre-clearance", by which passengers are examined by immigration officers either at their point of embarkation or while en route to this country
- Section 9 makes it possible to impose a charge for the grant of indefinite leave to remain in the UK and for other particular immigration services such as pre-clearance arrangements, where these are sought by carriers

5.3 The Act's three remaining sections involve commencement and other technicalities, and make no changes to the substance of immigration law. The Schedule to the 1988 Act makes some minor amendments to the 1971 Act, primarily concerning the powers of immigration officers in on-entry cases.

#### Commencement

5.4 Sections 6 (Overstaying), 8 (Pre-clearance), 9 (Charging) and most of the Schedule came into force automatically on 10 July 1988. All the other main provisions of the 1988 Act came into force on 1 August 1988 except s.7 which was brought into effect on 20 July 1994.

## 6. Asylum and Immigration Appeals Act 1993

6.1 The Asylum and Immigration Act 1993 came into force on 26 July 1993.

Main provisions

6.2 The 1993 Act defines a claim for asylum in terms of the UK's obligations under the United Nations Convention 1951 and the 1967 Protocol relating to the Status of Refugees. Under the Convention, a person must have a well-founded fear of persecution for reasons of race, religion, nationality, social group or political opinion.

6.3 The other main provisions of the 1993 Act include:

- The power to fingerprint all asylum applicants (and their dependants) as a means of detecting and deterring "multiple applications" (section 3)
- A reduction in the obligation of housing authorities under the homelessness legislation towards asylum seekers (section 4)
- A right of appeal before a special adjudicator for all unsuccessful asylum applications before removal from the UK, and the introduction of accelerated and fast track appeals procedures (section 8)
- Time limits within which the Immigration Appellate Authorities must determine appeals (section 8)
- An additional avenue of appeal to the Court of Appeal (section 9)

## 7. Asylum and Immigration Act 1996

7.1 The Asylum and Immigration Act 1996 received Royal Assent on 24 July. Section 11 and Schedule 1 came into force automatically on 24 July 1996. The other provisions came into force on various dates up to 1 November, except for s.8 which came into force on 27 January 1997.

### 7.2 Main provisions

- Section 1 widened the scope of the accelerated appeals procedure in asylum cases
- Section 2 provided that the right of appeal against removal to safe third countries in the EU (and Canada, Norway, Switzerland and the USA) would be exercisable only from abroad
- Section 3 established a specific right of appeal against certification in third country asylum cases
- Section 4 strengthened the criminal law provisions with regard to obtaining leave to enter or remain by deception, facilitating leave to remain, and searching premises with warrants
- Section 5 created offences relating to the facilitation of entry for asylum seekers to the United Kingdom for reward, and to the use of deception for the purpose of obtaining leave to remain

- Section 6 aligned the financial and custodial penalties for a number of offences under the 1971 Act
- Section 7 created new powers for the arrest of immigration offenders and for searching for evidence of immigration offences
- Section 8 created a new offence (punishable by a fine) of employing a person who is prohibited from working, and provided for a defence against prosecution (for further information, see Chapter 5 Section 11 of the Immigration Directorate Instructions)
- Sections 9-11 relate to the provision welfare and State benefits etc to asylum seekers
- Section 12 extended the power to curtail leave and to allow for the leave of dependants of asylum seekers to be curtailed when curtailing the leave of the principal applicant

7.3 The Schedules to the 1996 Act set out the scope of changes to the benefit regulations as they apply to persons from abroad and make amendments to the 1971, 1988 and 1993 Acts.

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