Nationality and Borders Act 2022

2022 CHAPTER 36

PART 6

MISCELLANEOUS

70 Visa penalty provision: general

(1) The immigration rules may make such visa penalty provision as the Secretary of State considers appropriate in relation to a country specified under section 71 or 72.

(2) "Visa penalty provision" is provision that does one or more of the following in relation to applications for entry clearance made by persons as nationals or citizens of a specified country—

(a) requires that entry clearance must not be granted pursuant to such an application before the end of a specified period;

(b) suspends the power to grant entry clearance pursuant to such an application;

(c) requires such an application to be treated as invalid for the purposes of the immigration rules;

(d) requires the applicant to pay £190 in connection with the making of such an application, in addition to any fee or other amount payable pursuant to any other enactment.

(3) The Secretary of State may by regulations substitute a different amount for the amount for the time being mentioned in subsection (2)(d).

(4) Before making visa penalty provision in relation to a specified country, the Secretary of State must give the government of that country reasonable notice of the proposal to do so.

(5) The immigration rules must secure that visa penalty provision does not apply in relation to an application made before the day on which the provision comes into force.

(6) Visa penalty provision may—

(a) make different provision for different purposes;

(b) provide for exceptions or exemptions, whether by conferring a discretion or otherwise;

(c) include incidental, supplementary, transitional, transitory or saving provision.

(7) Regulations under subsection (3)—

(a) are subject to affirmative resolution procedure if they increase the amount for the time being specified in subsection (2)(d);

(b) are subject to negative resolution procedure if they decrease that amount.

(8) Sums received by virtue of subsection (2)(d) must be paid into the Consolidated Fund.

(9) In this section—

"country" includes any territory outside the United Kingdom;

"entry clearance" has the same meaning as in the Immigration Act 1971 (see section 33(1) of that Act);

"immigration rules" means rules under section 3(2) of the Immigration Act 1971;

"specified" means specified in the immigration rules.

71 Visa penalties for countries posing risk to international peace and security etc

(1) A country may be specified under this section if, in the opinion of the Secretary of State, the government of the country has taken action that—

(a) gives, or is likely to give, rise to a threat to international peace and security,

(b) results, or is likely to result, in armed conflict, or

(c) gives, or is likely to give, rise to a breach of international humanitarian law.

(2) In deciding whether to specify a country for the purposes of this section, the Secretary of State must take the following into account—

(a) the extent of the action taken;

(b) the likelihood of further action falling within subsection (1) being taken;

(c) the reasons for the action being taken;

(d) such other matters as the Secretary of State considers appropriate.

(3) In this section—

"action" includes a failure to act;

"country" and "specified" have the same meanings as in section 70.

72 Removals from the UK: visa penalties for uncooperative countries

(1) A country may be specified under this section if, in the opinion of the Secretary of State—

(a) the government of the country is not cooperating in relation to the return to the country from the United Kingdom of any of its nationals or citizens who require leave to enter or remain in the United Kingdom but do not have it, and

(b) as a result, there are nationals or citizens of the country that the Secretary of State has been unable to return to the country, whether or not others have been returned.

(2) In forming an opinion as to whether a country is cooperating in relation to returns, the Secretary of State must take the following into account—

(a) any arrangements (whether formal or informal) entered into by the government of the country with the United Kingdom government or the Secretary of State with a view to facilitating returns;

(b) the extent to which the government of the country is—

(i) taking the steps that are in practice necessary or expedient in relation to facilitating returns, and

(ii) doing so promptly;

(c) such other matters as the Secretary of State considers appropriate.

(3) In determining whether to specify a country for the purposes of this section, the Secretary of State must take the following into account—

(a) the length of time for which the government of the country has not been cooperating in relation to returns;

(b) the extent of the lack of cooperation;

(c) the reasons for the lack of cooperation;

(d) such other matters as the Secretary of State considers appropriate.

(4) In this section—

"cooperating in relation to returns" means cooperating as mentioned in subsection (1)(a);

"country" and "specified" have the same meanings as in section 70;

"facilitating returns" means facilitating the return of nationals or citizens to a country as mentioned in subsection (1)(a).

73 Visa penalties under section 71: review and revocation

(1) This section applies where any visa penalty provision made pursuant to section 71 is in force in relation to a country.

(2) The Secretary of State must, before the end of each relevant period—

(a) review the extent to which the country's government is continuing to act in a way that, in the opinion of Secretary of State, has or is likely to have any of the consequences mentioned in section 71(1), and

(b) in light of that review, determine whether it is appropriate to amend the visa penalty provision.

(3) If, at any time, the Secretary of State forms the opinion that, despite the fact that the country's government has taken or is taking action as mentioned in section 71(1), the visa penalty provision is not necessary or expedient in connection with—

(a) the promotion of international peace and security,

(b) the resolution or prevention of armed conflict, or

(c) the promotion of compliance with international humanitarian law,

the Secretary of State must as soon as practicable revoke the visa penalty provision.

(4) Each of the following is a relevant period—

(a) the period of 2 months beginning with the day on which the visa penalty provision came into force;

(b) each subsequent period of 2 months.

(5) In this section, "visa penalty provision" has the same meaning as in section 70.

74 Visa penalties under section 72: review and revocation

(1) This section applies where any visa penalty provision made pursuant to section 72 is in force in relation to a country.

(2) The Secretary of State must, before the end of each relevant period—

(a) review the extent to which the country's cooperation in relation to returns has improved, and

(b) in light of that review, determine whether it is appropriate to amend the visa penalty provision.

(3) If at any time the Secretary of State is no longer of the opinion mentioned in section 72(1), the Secretary of State must as soon as practicable revoke the visa penalty provision.

(4) Each of the following is a relevant period—

(a) the period of 2 months beginning with the day on which the visa penalty provision came into force;

(b) each subsequent period of 2 months.

(5) In this section—

(a) "visa penalty provision" has the same meaning as in section 70;

(b) "cooperation in relation to returns" means cooperation as mentioned in section 72(1)(a).

75 Electronic travel authorisations

(1) The Immigration Act 1971 is amended in accordance with subsections (2) to (4).

(2) After Part 1 insert—

"PART 1A

ELECTRONIC TRAVEL AUTHORISATIONS

11C Electronic travel authorisations

(1) In this Act, "an ETA" means an authorisation in electronic form to travel to the United Kingdom.

(2) Immigration rules may require an individual of a description specified in the rules not to travel to the United Kingdom from any place (including a place in the common travel area), whether with a view to entering the United Kingdom or to passing through it without entering, unless the individual has an ETA that is valid for the individual's journey to the United Kingdom.

(3) The rules may not impose this requirement on an individual if—

(a) the individual is a British citizen, or

(b) the individual would, on arrival in the United Kingdom, be entitled to enter without leave.

(4) In relation to an individual travelling to the United Kingdom on a local journey from a place in the common travel area, subsection (3)(b) applies only if the

individual would also be entitled to enter without leave if the journey were instead from a place outside the common travel area.

(5) The rules may impose the requirement mentioned in subsection (2) on an individual who—

(a) travels to the United Kingdom on a local journey from a place in any of the Islands, and

(b) has leave to enter or remain in that island,

only if it appears to the Secretary of State necessary to do so by reason of differences between the immigration laws of the United Kingdom and that island.

(6) The rules must—

(a) provide for the form or manner in which an application for an ETA may be made, granted or refused;

(b) specify the conditions (if any) which must be met before an application for an ETA may be granted;

(c) specify the grounds on which an application for an ETA must or may be refused;

(d) specify the criteria to be applied in determining—

(i) the period for which an ETA is valid;

(ii) the number of journeys to the United Kingdom during that period for which it is valid (which may be unlimited);

(e) require an ETA to include provision setting out the matters mentioned in paragraph (d)(i) and (ii);

(f) provide for the form or manner in which an ETA may be varied or cancelled;

(g) specify the grounds on which an ETA must or may be varied or cancelled.

(7) The rules may also—

(a) provide for exceptions to the requirement described in subsection (2), and

(b) make other provision relating to ETAs.

(8) Rules made by virtue of this section may make different provision for different cases or descriptions of case.

11D Electronic travel authorisations and the Islands

(1) The Secretary of State may by regulations make provision about the effects in the United Kingdom of the grant or refusal under the law of any of the Islands of an authorisation in electronic form to travel to that island.

(2) Regulations under subsection (1) may in particular make provision about—

(a) the recognition in the United Kingdom of an authorisation granted as mentioned in subsection (1);

(b) the conditions or limitations that are to apply in the United Kingdom to such an authorisation;

(c) the effects in the United Kingdom of such an authorisation being varied or cancelled under the law of any of the Islands;

(d) the circumstances in which the Secretary of State or an immigration officer may vary or cancel such an authorisation (so far as it applies in the United Kingdom).

(3) The Secretary of State may, where requested to do so by any of the Islands, carry out functions on behalf of that island in relation to the granting of authorisations in electronic form to travel to that island.

(4) Regulations under subsection (1)—

(a) may make provision modifying the effect of any provision of, or made under, this Act or any other enactment (whenever passed or made);

(b) may make different provision for different purposes;

(c) may make transitional, transitory or saving provision;

(d) may make incidental, supplementary or consequential provision.

(5) Regulations under subsection (1) are to be made by statutory instrument.

(6) A statutory instrument containing regulations under subsection (1) is subject to annulment in pursuance of a resolution of either House of Parliament."

(3) In section 24A (deception), in subsection (1)(a)—

(a) after "obtain" insert "— (i)";

(b) after "Kingdom" insert ", or

(ii) an ETA".

(4) In section 33 (interpretation), in subsection (1), at the appropriate place insert—

""an ETA" has the meaning given by section 11C;".

(5) In section 82 of the Immigration and Asylum Act 1999 (interpretation of Part 5, which relates to immigration advisers and immigration service providers), in subsection (1), in the definition of "relevant matters", after paragraph (a) insert—

"(aa) an application for an ETA (within the meaning of section 11C of the Immigration Act 1971 (electronic travel authorisations));".

(6) In section 126 of the Nationality, Immigration and Asylum Act 2002 (compulsory provision of physical data), in subsection (2), before paragraph (a) insert—

"(za) an ETA (within the meaning of section 11C of the Immigration Act 1971 (electronic travel authorisations)),".

76 Liability of carriers

(1) Section 40 of the Immigration and Asylum Act 1999 (liability of carriers in respect of passengers) is amended in accordance with subsections (2) to (8).

(2) For subsection (1) substitute—

"(1) The Secretary of State may charge the owner of a ship or aircraft the sum of £2,000 where—

(a) an individual who would not, on arrival in the United Kingdom, be entitled to enter without leave arrives by travelling on the ship or aircraft, and

(b) at least one of the Cases set out in subsections (1A) to (1C) applies.

(1A) Case 1 is where, on being required to do so by an immigration officer, the individual fails to produce an immigration document which is valid and which satisfactorily establishes the individual's identity and the individual's nationality or citizenship.

(1B) Case 2 is where—

(a) the individual requires an entry clearance,

(b) an entry clearance in electronic form of the required kind has not been granted, and

(c) if required to do so by an immigration officer, the individual fails to produce an entry clearance in documentary form of the required kind.

(1C) Case 3 is where—

(a) the individual was required not to travel to the United Kingdom unless the individual had an authorisation in electronic form ("an ETA") under immigration rules made by virtue of section 11C of the Immigration Act 1971 that was valid for the individual's journey to the United Kingdom, and

(b) the individual did not have such an ETA."

(3) Omit subsection (2).

(4) In subsection (4), for the words from "No charge" to "documents" substitute "No charge shall be payable on the basis that Case 1 applies in respect of any individual if the owner provides evidence that the individual produced an immigration document of the kind mentioned in subsection (1A)".

(5) After subsection (4) insert—

"(4A) No charge shall be payable on the basis that Case 2 applies in respect of any individual if the owner provides evidence that—

(a) the individual produced an entry clearance in documentary form of the required kind to the owner or an employee or agent of the owner when embarking on the ship or aircraft for the voyage or flight to the United Kingdom,

(b) the owner or an employee or agent of the owner reasonably believed, on the basis of information provided by the Secretary of State in respect of the individual, that the individual did not require an entry clearance of the kind in question,

(c) the owner or an employee or agent of the owner reasonably believed, on the basis of information provided by the Secretary of State, that an entry clearance in electronic form of the required kind had been granted, or

(d) the owner or an employee or agent of the owner was unable to establish whether an entry clearance in electronic form of the required kind had been granted in respect of the individual and had a reasonable excuse for being unable to do so.

(4B) No charge shall be payable on the basis that Case 3 applies in respect of any individual if the owner provides evidence that the owner or an employee or agent of the owner—

(a) reasonably believed, on the basis of information provided by the Secretary of State in respect of the individual, that the individual was not required to have an ETA that was valid for the individual's journey to the United Kingdom,

(b) reasonably believed, on the basis of information provided by the Secretary of State, that the individual had such an ETA, or

(c) was unable to establish whether the individual had such an ETA and had a reasonable excuse for being unable to do so."

(6) In subsection (5), for "subsection (4)" substitute "subsection (4) or (4A)(a)".

(7) In subsection (6), for "a visa", in the first two places it occurs, substitute "an entry clearance".

(8) In subsection (10), for "subsection (2)" substitute "subsection (1)".

(9) In consequence of the amendments made by this section—

(a) for the heading of section 40 of the Immigration and Asylum Act 1999 substitute "Charge in respect of individual without proper documents or authorisation";

(b) for the italic heading before section 40 of that Act substitute "Individuals without proper documents or authorisation".

77 Special Immigration Appeals Commission

(1) The Special Immigration Appeals Commission Act 1997 is amended in accordance with subsections (2) to (4).

(2) After section 2E insert—

"**2F Jurisdiction: review of certain immigration decisions**

(1) Subsection (2) applies in relation to any decision of the Secretary of State which—

(a) relates to a person's entitlement to enter, reside in or remain in the United Kingdom, or to a person's removal from the United Kingdom,

(b) is not subject—

(i) to a right of appeal, or

(ii) to a right under a provision other than subsection (2) to apply to the Special Immigration Appeals Commission for the decision to be set aside, and

(c) is certified by the Secretary of State acting in person as a decision that was made wholly or partly in reliance on information which, in the opinion of the Secretary of State, should not be made public—

(i) in the interests of national security,

(ii) in the interests of the relationship between the United Kingdom and another country, or

(iii) otherwise in the public interest.

(2) The person to whom the decision relates may apply to the Special Immigration Appeals Commission to set aside the decision.

(3) In determining whether the decision should be set aside, the Commission must apply the principles which would be applied in judicial review proceedings.

(4) If the Commission decides that the decision should be set aside, it may make any such order, or give any such relief, as may be made or given in judicial review proceedings."

(3) In section 6A (procedure in relation to jurisdiction under sections 2C to 2E)—

(a) in the heading, for "2E" substitute "2F",

(b) in subsection (1), for "or 2E" substitute ", 2E or 2F",

(c) in subsection (2)(a), for "or 2E" substitute ", 2E or 2F", and

(d) in subsection (2)(b), for "or (as the case may be) 2E(2)" substitute ", 2E(2) or (as the case may be) 2F(2)".

(4) In section 7 (appeals from the Commission), in subsection (1A), for "or 2E" substitute ", 2E or 2F".

(5) If subsection (4) comes into force before the day on which paragraph 26(5) of Schedule 9 to the Immigration Act 2014 comes into force, until that day subsection (4) has effect as if, in section 7(1A), for "or 2D" it substituted ", 2D or 2F".

(6) In section 115(8) of the Equality Act 2010 (immigration cases), for "section 2D and 2E" substitute "section 2D, 2E or 2F".

78 Counter-terrorism questioning of detained entrants away from place of arrival

(1) Schedule 7 to the Terrorism Act 2000 (port and border controls) is amended as follows.

(2) In paragraph 1(2) (definitions), in the definition of "ship", after "hovercraft" insert "and any floating vessel or structure".

(3) In paragraph 2 (power to question person about involvement in terrorism in port or border area or on ship or aircraft), after sub-paragraph (3) insert—

"(3A) This paragraph also applies to a person if—

(a) the person is—

(i) being detained under a provision of the Immigration Acts, or

(ii) in custody having been arrested under paragraph 17(1) of Schedule 2 to the Immigration Act 1971,

(b) the period of 5 days beginning with the day after the day on which the person was apprehended has not yet expired, and

(c) the examining officer believes that—

(i) the person arrived in the United Kingdom by sea from a place outside the United Kingdom, and

(ii) the person was apprehended within 24 hours of the person's arrival on land.

(3B) For the purposes of sub-paragraph (3A)(b) and (c), a person is "apprehended"—

(a) in a case within sub-paragraph (3A)(a)(i) where the person is arrested (and not released) before being detained as mentioned in that provision, when the person is arrested;

(b) in any other case within sub-paragraph (3A)(a)(i), when the person is first detained as mentioned in that provision;

(c) in a case within sub-paragraph (3A)(a)(ii), when the person is arrested as mentioned in that provision."

79 References to justices of the peace in relation to Northern Ireland

(1) In section 33(1) of the Immigration Act 1971 (interpretation) at the appropriate place insert—

""justice of the peace", in relation to Northern Ireland, means lay magistrate;".

(2) In section 167(1) of the Immigration and Asylum Act 1999 (interpretation) at the appropriate place insert—

""justice of the peace", in relation to Northern Ireland, means lay magistrate;".

(3) In section 45 of the UK Borders Act 2007 (search for evidence of nationality: other premises), after subsection (5) insert—

"(6) In the application of this section to Northern Ireland a reference to a justice of the peace is to be treated as a reference to a lay magistrate."

80 Tribunal charging power in respect of wasted resources

(1) After section 25 of the Tribunals, Courts and Enforcement Act 2007 insert—

"**25A First-tier Tribunal and Upper Tribunal: charging power in respect of wasted resources**

(1) If, in respect of proceedings before the First-tier Tribunal or Upper Tribunal, the Tribunal considers that—

(a) a relevant participant has acted improperly, unreasonably or negligently, and

(b) as a result, the Tribunal's resources have been wasted,

it may charge the participant an amount under this section.

(2) Subsection (1) is subject to Tribunal Procedure Rules.

(3) For the purposes of this section "relevant participant", in respect of proceedings, means—

(a) any person exercising a right of audience or right to conduct the proceedings on behalf of a party to proceedings,

(b) any employee of such a person, or

(c) where the Secretary of State is a party to proceedings and has not instructed a person mentioned in paragraph (a) to act on their behalf in the proceedings, the Secretary of State.

(4) A person may be found to have acted improperly, unreasonably or negligently for the purposes of subsection (1) by reason of having failed to act in a particular way.

(5) The proceeds of amounts charged under this section must be paid into the Consolidated Fund."

(2) In Schedule 5 to that Act (procedure in First-tier Tribunal and Upper Tribunal), after paragraph 11 insert—

"Charges in respect of wasted resources

11A (1) Rules may make provision for regulating matters relating to the charging of amounts under section 25A (First-tier Tribunal and Upper Tribunal: power to charge in respect of wasted resources).

(2) The provision mentioned in sub-paragraph (1) includes (in particular) provision prescribing scales of amounts that may be charged."

81 Tribunal Procedure Rules to be made in respect of costs orders etc

(1) Tribunal Procedure Rules governing proceedings before the Tribunal (see subsection (4)) must prescribe conduct that, in the absence of evidence to the contrary, is to be treated as—

(a) improper, unreasonable or negligent for the purposes of—

(i) section 25A(1) of the Tribunals, Courts and Enforcement Act 2007 (charge in respect of wasted resources);

(ii) section 29(4) of that Act (wasted costs);

(b) an unreasonable act for the purposes of section 29(3A) of that Act (unreasonable costs orders).

(2) Tribunal Procedure Rules must make provision to the effect that the Tribunal, if satisfied that conduct prescribed under subsection (1) has taken place, must consider whether to impose a charge or make an order in accordance with the provisions mentioned in that subsection.

(3) Nothing in Tribunal Procedure Rules may compel the Tribunal to impose a charge, or make an order, mentioned in subsection (1) in relation to conduct (whether or not that conduct is prescribed under that subsection).

(4) In this section "the Tribunal" means the Immigration and Asylum Chamber of the First-Tier Tribunal and of the Upper Tribunal (see Articles 2 and 9 of The First-tier Tribunal and Upper Tribunal (Chambers) Order 2010 (S.I. 2010/2655)).

(5) In this section "conduct" includes acts and omissions.

(6) In section 29 of the Tribunals, Courts and Enforcement Act 2007, after subsection (3) insert—

"(3A) The relevant Tribunal may, in particular, make an order in respect of costs in any proceedings mentioned in subsection (1), if it considers that a party or its legal or other representative has acted unreasonably in bringing, defending or conducting the proceedings."

82 Pre-consolidation amendments of immigration legislation

(1) The Secretary of State may by regulations make such amendments and modifications of the Acts relating to immigration as in the Secretary of State's opinion facilitate, or are otherwise desirable in connection with, the consolidation of the whole or a substantial part of the Acts relating to immigration.

(2) The Acts relating to immigration are—
   (a) the Immigration Act 1971;
   (b) the Immigration Act 1988;
   (c) the Asylum and Immigration Appeals Act 1993;
   (d) the Asylum and Immigration Act 1996;
   (e) the Special Immigration Appeals Commission Act 1997;
   (f) the Immigration and Asylum Act 1999;
   (g) the Nationality, Immigration and Asylum Act 2002;
   (h) the Asylum and Immigration (Treatment of Claimants, etc) Act 2004;
   (i) the Immigration, Asylum and Nationality Act 2006;
   (j) the UK Borders Act 2007;
   (k) Parts 10 and 12 of the Criminal Justice and Immigration Act 2008;
   (l) the Borders, Citizenship and Immigration Act 2009;
   (m) section 147 of and Schedule 8 to the Anti-Social Behaviour, Crime and Policing Act 2014;
   (n) the Immigration Act 2014;
   (o) the Immigration Act 2016;
   (p) Parts 1 and 3 of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020;
   (q) this Act, other than Part 1;
   (r) any other provision of an Act relating to immigration, whenever passed.

(3) For the purposes of this section, "amend" includes repeal (and similar terms are to be read accordingly).

(4) Regulations made under this section do not come into force unless an Act is passed consolidating the whole or a substantial part of the Acts relating to immigration.

(5) If such an Act is passed, any regulations made under this section come into force immediately before the Act comes into force.

(6) Regulations under this section are subject to affirmative resolution procedure.