

SECTION 31 OF IMMIGRATION AND ASYLUM ACT 1999 AND ARTICLE 31 OF THE 1951 REFUGEE CONVENTION

1. The previous guidance on the application of section 31 of the Immigration and Asylum Act 1999 has been withdrawn and is under review.

2. The following is therefore interim guidance in respect of Article 31 of the 1951 UN Convention Relating to the Status of Refugees (the Refugee Convention) and the provisions and purpose of section 31 of the 1999 Act.

Article 31 of the Refugee Convention

3. Article 31 provides that refugees should not have any penalties imposed upon them as a consequence of illegally entering or being present in the country of refuge illegally in order to seek sanctuary, provided that:

- they travel to the country of refuge directly from the territory where they fear persecution;
- present themselves to the domestic authorities without delay; and
- show good cause for their illegal entry or presence.

4. The text of Article 31 is as follows:

31(1) "The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

31(2) The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularised or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country."

5. Article 31(1) does not give a definition of penalties, but the drafters of the Convention appear to have had in mind measures such as prosecution, fine and imprisonment. Article 31(2) allows for administrative detention where it is necessary to investigate the circumstances of entry or to obtain further information in respect of their right to remain in the United Kingdom.

Section 31 of the Immigration and Asylum Act 1999

6. Section 31 affords a refugee, who has presented himself to the UK authorities

without delay, showed good cause for his illegal entry or presence and has made a claim for asylum as soon as was reasonably practicable, protection in England Wales and Northern Ireland against prosecution for the following offences:

- Part 1 of the Forgery and Counterfeiting Act 1981 [forgery and connected offences];
- Section 24A of the Immigration Act 1971 [deception];
- Section 26(1)(d) of the Immigration 1971 Act [falsification of documents].
- Sections 25(1) and (5) of the Identity Cards Act 2006 [possession of false identity documents] – relevant up to 21 January 2011 only.
- Sections 4(1) and 6(1) of the Identity Documents Act 2010, which replaced Sections 25(1) and (5) of the Identity Cards Act 2006 with effect from 21 January 2011

In Scotland the offences covered by this section are:

- Fraud
- Uttering a forged document
- Section 24A of the Immigration Act 1971 [deception]
- Section 26(1)(d) of the Immigration Act 1971 [falsification of documents].

7. The House of Lords in the case of *Asfaw* [2008] UKHL 31 partially extended the protection afforded by Section 31 to include:

- Attempting to obtain services by deception, namely obtaining travel tickets – where this is directly linked to the person's attempt to flee.

Their Lordships also held that the statutory defence is available for offences attributable to a refugee's attempt to leave the UK in the continuing course of a flight from persecution and that the term "coming directly" is to be interpreted liberally in that a refugee should be entitled to transit through other countries and then claim asylum, without risk of prosecution, in more or less the country of his choice.

8. A person who falls outside the scope of the section 31 defence is, however, liable to prosecution.

9. The role of the UK Border Agency Criminal and Financial Investigation teams is restricted to providing information and evidence to the Crown Prosecution Service (CPS), which is relevant to the assessment of whether or not a defence under section 31 may apply. It is always for the CPS to take the final decision as to whether there is sufficient evidence and whether it is in the public interest to proceed with a prosecution.

10. If the offender has already been granted asylum, or if it appears likely that they will be granted asylum, then the CPS would probably not consider a prosecution to be in the public interest; however, this is ultimately a decision for them.

11. The offence must have been committed or attempted in order to enter the UK to claim asylum. The defence does not apply to any offences committed **after** the subject has applied for asylum in the UK.

Enquiries

12. Enquiries about this note should be made to Bill Gale, Operational Policy and Rules Unit.

UK Border Agency
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