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10. Assisting Illegal Immigration - Time Limit for Prosecutions

Prosecutions for offences under sections 24-27 of the 1971 Act are a matter for the police and the CPS (**see also:** Requesting police assistance). The normal time limit for summary offences is six months. However under section 28 of the 1971 Act an extended limit of three years applies to certain offences if a chief of police (at least Chief Superintendent rank, Assistant Chief Constable in Northern Ireland) certifies that evidence sufficient to justify proceeding came to the notice of a relevant police officer only within the last 2 months.

There is no time limit for offences which can be tried on indictment (sections 24A, 25, 25B, 26A and 26B).

The offences to which the extended time limit applies are those under the “old” section 25(2) (“harbouring”), which applies where the offence was committed before 10 February 2003, and section 8 of the Asylum and Immigration Act 1996.

10.1. Harbouring

Before it was substituted by section 143 of the Nationality, Immigration and Asylum Act 2002 (which came into force on 10 February 2003), section 25(2) of the 1971 Act stated that "a person knowingly harbouring anyone whom he knows or has reasonable cause for believing to be either an illegal entrant or a person who has committed an offence under section 24(1) (b) or (c)"... (I.e.

an overstayer or worker/claimant in breach) "...shall be guilty of an offence, punishable on summary conviction with a fine of not more than £5,000.or with imprisonment for not more than six months or with both." The offence of harbouring has now been subsumed into sections 25 and 25B of the 1971 Act as substituted, but an act committed before 10 February 2003 which constitutes an offence under the old section 25(2) might still be the subject of a prosecution up until February 2006 if the extended time limit (see above) applies, and a person who is suspected of having committed an offence under the old section before 10 February 2003 may still be arrested without a warrant (under section 28A) and an immigration officer may still apply for a warrant under section 28B in order to enter premises to search for and arrest a suspect.

10.2. Facilitation

The former offences of knowingly being concerned in making arrangements for securing or facilitating the entry of an illegal entrant or asylum seeker or obtaining leave to remain for someone by deception which were contained in section 25(1) of the 1971 Act (as amended), have been replaced by the offences contained in sections 25-25B of the Act, as inserted by section 143 of the Nationality, Immigration and Asylum Act 2002. The provisions of the former section 25(1) will continue to apply in respect of things done before section 143 of the 2002 Act took effect. **See also:** Facilitation Pre-10 February 2003.

The relevant provisions of the 1971 Act (as substituted) are; (1) section 25 (assisting unlawful immigration to EU member state) ; (2) section 25A (helping asylum-seekers to enter the UK); (3) section 25B (assisting entry to the UK in breach of a deportation or exclusion order); (4) section 25C (forfeiture of vehicles, ships or aircraft); and (5) section 25D (by a British subject by virtue of the British Nationality Act 1965).

10.3. Section 25- assisting unlawful immigration to member state

New section 25 makes it an offence to do an act which facilitates the commission of a breach of immigration law by an individual who is not a citizen of a member state, where the individual knows or has reasonable cause to believe that: (1) his act facilitates the commission of a breach of immigration law, and (2) the individual is not a citizen of the EU. "Immigration Law" is defined as a law which has effect in an EU member state and which controls entitlement to enter, transit across or be in the State. . The offence can be committed outside the UK by (1) British citizens (or any other persons falling within section 25(5)), and (2) bodies incorporated in the UK. . Under section 25(7) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 Norway and Iceland

are to be regarded as member States for the purposes of section 25 (and citizens of those States will be regarded as EU citizens for those purposes).

The maximum penalty for the offence is 14 years' imprisonment and/or an unlimited fine.

Section 1 of the 2004 Act inserted section 25(7)&(8) into the 1971 Act and empowers the Secretary of State to prescribe a list of additional States, such as Norway and Iceland, which are to be regarded as member States for the purposes of section 25 of the 1971 Act. The list is implemented separately by way of an order. Such an Order (the "Immigration (Assisting Unlawful Immigration) (Section 25 List of Schengen Acquis States) Order 2004" (the "2004 Order")) was made on 1 November 2004. Article 2 of this Order contains a list that includes Norway and Iceland. In the future the Secretary of State may add or take away from this list where necessary, without the need for additional primary legislation.

10.4. Helping asylum seekers enter the United Kingdom

New Section 25A makes it an offence to knowingly and for gain facilitate the arrival in the UK of an individual, where the accused knows or has reasonable cause to believe that the individual is an asylum-seeker. As with the section 25 offence, this offence can be committed outside the UK by (1) British citizens (or any persons falling within section 25(5)), and (2) bodies incorporated in the UK. The maximum penalty for this offence is 14 years imprisonment and/or an unlimited fine.

10.5 Assisting entry to the United Kingdom in breach of a deportation or exclusion order

Under section 25B it is an offence to:

- (a) Do an act which facilitates the breach of a deportation order in force against an EU citizen, where the accused knows or has reasonable cause for believing that his act facilitates a breach of the order,
- (b) do an act, in respect of an EU citizen who the Secretary of State has excluded from the UK on the grounds that his exclusion is conducive to the public good, which assists the individual arrive in, enter or remain in the UK, and (2) the Secretary of State has directed that the individual's exclusion is conducive to the public good.

As with the section 25 and 25A offences, these offences can be committed outside the UK by (1) British citizens (or any other persons falling within section 25(5)), and (2) bodies incorporated in the UK. The maximum penalty for this offence is 14 years imprisonment and/or unlimited fine.

10.6. Forfeiture of vehicles, ships or aircraft

Section 25C allows a court in certain circumstances to order the forfeiture of ships, aircraft and vehicles used or intended to be used in connection with an offence under 25, 25A, 25B or 25D.

10.7. Powers of arrest

The powers allowing an immigration officer to arrest without warrant - and to enter premises without warrant in order to arrest - a person who has committed an offence under the old section 25(1) or who is suspected of committing an offence under that section continue to apply. Appropriately trained Immigration Officers can arrest for this offence and any prosecutions must be referred to the relevant Criminal Investigation Team. A Police Officer can also arrest for this under section 24 of PACE.

10.8. Facilitation Pre-10 February 2003

This section applies only to acts done before 10 February 2003.

The offences in this section are only relevant for acts done before 10 February 2003.

Prior to 10 February 2003, section 25(1) of the 1971 Act (as amended) stated: "Any person knowingly concerned in making or carrying out arrangements for securing or facilitating:

- a) The entry into the United Kingdom of anyone whom he knows or has reasonable cause for believing to be an illegal entrant;
- b) The entry into the United Kingdom of anyone whom he knows or has reasonable cause for believing to be an asylum claimant; or
- c) The obtaining by anyone of leave to remain in the United Kingdom by means which he knows or has reasonable cause for believing to include deception, shall be guilty of an offence punishable on summary conviction with a fine of no more than £5,000 or with imprisonment for not more than six months or with both or, on conviction on indictment, with a fine or with imprisonment for not more than ten years or with both."

See also: Police and Criminal Evidence Act 1984 (PACE) and PACE Codes of Practice

10.9. Facilitating the entry of an illegal entrant

Under section 25(1) (a) (as inserted by section 5 of the 1996 Act) it was an offence to facilitate the entry into the UK of anyone the accused knew or had reasonable cause to believe to be an illegal entrant. Notice of illegal entry (IS151a) should normally be served before arrest/charges are laid. Section 25(5) set out the extent to which facilitation activities carried out outside the UK could be regarded as offences, and section 25(6) set out the powers of Court powers to order forfeiture of ships and aircraft and vehicles used or intended to be used in relation to the offence. These also continue to apply in respect of offences committed before 10 February 2003.

10.9.1. Facilitating the entry of an asylum applicant

Under section 25(1) (b) (as inserted by section 5 of the 1996 Act), it was an offence to facilitate the entry of anyone who the accused knew or had reasonable grounds to believe to be an asylum applicant. Section 25(5) and 25(6) of the 1971 Act applied to this offence.

Section 25(1A) (as inserted by section 5(2) of the 1996 Act and amended by section 29 of the 1999 Act) provided that nothing in section 25(1) (b) applied to anything done in relation to a person who:

- ◆ had been detained under paragraph 16 of Schedule 2 to the 1971 Act; or
- ◆ Had been granted temporary admission under paragraph 21 of Schedule 2 to the 1971 Act.

Section 25(1B) (as inserted by section 29 of the 1999 Act) provided that nothing in section 25(1) (b) applied to anything done by a person "otherwise than for gain".

Section 25(1C) (as inserted by section 29 of the 1999 Act) provided that nothing in section 25(1) (b) applied to anything done to assist an asylum claimant by a person in the course of duties on behalf of a *bona fide* refugee organisation, if the purposes of that organisation include assistance to persons in the position of the asylum claimant.

10.10. Facilitating the obtaining of leave to remain by deception

Under section 25(1) (c) (as inserted by section 5 of the 1996 Act), it was an offence to facilitate the obtaining by anyone of leave to remain by means which include deception. (Sub-sections 25(5) and 25(6) of the 1971 Act did not apply to this offence).

10.11. Powers of arrest (those facilitating the obtaining of leave to remain by deception)

The powers allowing an immigration officer to arrest without warrant - and to enter premises without warrant in order to arrest - a person who has committed an offence under the old section 25(1) or who is suspected of committing an offence under that section continue to apply in respect of the offences in sections 25, 25A and 25B. A police officer can exercise a similar of arrest (under section 24(1) (b) of PACE) to arrest for an offence under section 25(1).