

IMMIGRATION ACT, 1999

ARRANGEMENT OF SECTIONS

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Acts referred to

Aliens Act, 1935	1935, No. 14
[<i>Child Care Act, 1991</i>	<i>1991, No. 17</i>
<i>Civil Service Commissioners Act, 1956</i>	<i>1956, No. 45</i>
<i>Civil Service Regulation Act, 1956</i>	<i>1956, No. 46</i>
<i>Civil Service Regulation Acts, 1956 to 1996</i> ¹	
Refugee Act, 1996	1996, No. 17

¹ The Acts in italics are referred to only in s. 11 (Amendment of Refugee Act), which is spent.

IMMIGRATION ACT, 1999

AN ACT TO MAKE PROVISION IN RELATION TO THE CONTROL OF NON-NATIONALS, TO AMEND THE ALIENS ACT, 1935, AND THE REFUGEE ACT, 1996, AND TO PROVIDE FOR RELATED MATTERS. [7th July, 1999]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation.

1.—(1) In this Act, except where the context otherwise requires—

“the Act of 1935” means the Aliens Act, 1935;

“the Minister” means the Minister for Justice, Equality and Law Reform;

“non-national” means an alien within the meaning of the Act of 1935 other than an alien to whom, by virtue of an order under section 10 of that Act, none of the provisions of that Act applies;

“prescribed” means prescribed by regulations made by the Minister.

(2) In this Act—

(a) a reference to any enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended or extended by or under any subsequent enactment including this Act,

(b) a reference to a section is a reference to a section of this Act unless it is indicated that reference to some other enactment is intended,

(c) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

Orders under Act of 1935.

2.—(1) Every order made before the passing of this Act under section 5 of the Act of 1935 other than the orders or provisions of orders specified in the Schedule to this Act shall have statutory effect as if it were an Act of the Oireachtas.

(2) If subsection (1) would, but for this subsection, conflict with a constitutional right of any person, the operation of that subsection shall be subject to such limitation as is necessary to secure that it does not so conflict but shall be otherwise of full force and effect.

Deportation orders.

3.—(1) Subject to the provisions of section 5 (prohibition of refoulement) of the Refugee Act, 1996, and the subsequent provisions of this section, the Minister may by order (in this Act referred to as “a deportation order”) require any non-national specified in the order to leave the State within such period as may be specified in the order and to remain thereafter out of the State.

(1A)² A person the subject of a deportation order under this section may be detained in accordance with the provisions of this Act for the purpose of ensuring his or her deportation from the State.

(2) An order under subsection (1) may be made in respect of—

(a) a person who has served or is serving a term of imprisonment imposed on him or her by a court in the State,

² Subsection ins. 29/2000 s. 10(a)(i).

- (b) a person whose deportation has been recommended by a court in the State before which such person was indicted for or charged with any crime or offence,
 - (c) a person who has been required to leave the State under Regulation 14 of the European Communities (Aliens) Regulations, 1977 (S.I. No. 393 of 1977),
 - (d) a person to whom Regulation 19 of the European Communities (Right of Residence for Non-Economically Active Persons) Regulations, 1997 (S.I. No. 57 of 1997) applies,
 - (e) a person whose application for asylum has been transferred to a convention country for examination pursuant to section 22 of the Refugee Act, 1996,
 - (f) a person whose application for asylum has been refused by the Minister,
 - (g) a person to whom leave to land in the State has been refused,
 - (h) a person who, in the opinion of the Minister, has contravened a restriction or condition imposed on him or her in respect of landing in or entering into or leave to stay in the State,
 - (i) a person whose deportation would, in the opinion of the Minister, be conducive to the common good.
- (3)(a) Subject to subsection (5), where the Minister proposes to make a deportation order, he or she shall notify the person concerned in writing of his or her proposal and of the reasons for it and, where necessary and possible, the person shall be given a copy of the notification in a language that he or she understands.
- (b) A person who has been notified of a proposal under paragraph (a) may, within 15 working days of the sending of the notification, make representations in writing to the Minister and the Minister shall—
- (i) before deciding the matter, take into consideration any representations duly made to him or her under this paragraph in relation to the proposal, and
 - (ii) notify the person in writing of his or her decision and of the reasons for it and, where necessary and possible, the person shall be given a copy of the notification in a language that the person understands.
- (4) A notification of a proposal of the Minister under subsection (3) shall include—
- (a) a statement that the person concerned may make representations in writing to the Minister within 15 working days of the sending to him or her of the notification,
 - (b) a statement that the person may leave the State before the Minister decides the matter and shall require the person to so inform the Minister in writing and to furnish the Minister with information concerning his or her arrangements for leaving,
 - (c) a statement that the person may consent to the making of the deportation order within 15 working days of the sending to him or her of the notification and that the Minister shall thereupon arrange for the removal of the person from the State as soon as practicable, and
 - (d) any other information which the Minister considers appropriate in the circumstances.
- (5) The provisions of subsection (3) shall not apply to—
- (a) a person who has consented in writing to the making of a deportation order and the Minister is satisfied that he or she understands the consequences of such consent,
 - (b) a person to whom paragraph (c), (d) or (e) of subsection (2) applies, or
 - (c) a person who is outside the State.

(6) In determining whether to make a deportation order in relation to a person, the Minister shall have regard to—

- (a) the age of the person;
- (b) the duration of residence in the State of the person;
- (c) the family and domestic circumstances of the person;
- (d) the nature of the person's connection with the State, if any;
- (e) the employment (including self-employment) record of the person;
- (f) the employment (including self-employment) prospects of the person;
- (g) the character and conduct of the person both within and (where relevant and ascertainable) outside the State (including any criminal convictions);
- (h) humanitarian considerations;
- (i) any representations duly made by or on behalf of the person;
- (j) the common good; and
- (k) considerations of national security and public policy,

so far as they appear or are known to the Minister.

(7) A deportation order shall be in the form prescribed or in a form in the like effect.

(8) Where a person who has consented in writing to the making of a deportation order is not deported from the State within 3 months of the making of the order, the order shall cease to have effect.

(9)(a)³(i) Subject to paragraph (b), where the Minister has made a deportation order under this section, the notice under subsection (3)(b)(ii) may require the person the subject of the deportation order to do any one or more of the following for the purpose of ensuring his or her deportation from the State:

- (I) present himself or herself to such member of the Garda Síochána or immigration officer at such date, time and place as may be specified in the notice;
- (II) produce any travel document, passport, travel ticket or other document in his or her possession required for the purpose of such deportation to such member of the Garda Síochána or immigration officer at such date, time and place as may be specified in the notice;
- (III) co-operate in any way necessary to enable a member of the Garda Síochána or immigration officer to obtain a travel document, passport, travel ticket or other document required for the purpose of such deportation;
- (IV) reside or remain in a particular district or place in the State pending removal from the State;
- (V) report to a specified Garda Síochána station or immigration officer at specified intervals pending removal from the State;
- (VI) notify such member of the Garda Síochána or immigration officer as may be specified in the notice as soon as possible of any change of address.

³ Paragraph subst. 29/2000 s. 10(a)(ii).

(ii) Where the notice under subsection (3)(b)(ii) contains a requirement to do an act specified in subparagraph (i), a member of the Garda Síochána or immigration officer may, if he or she considers it necessary for the purpose of ensuring the deportation of the person concerned from the State, require the person in writing to do any one or more of the acts specified in subparagraph (i), and any such further requirement shall have effect as if it were a requirement in a notice under subsection (3)(b)(ii).

(iii) A further requirement under subparagraph (ii) shall, where necessary and possible, be given to the person concerned in a language that he or she understands.

(b) A person who is ordinarily resident in the State and has been so resident for a period (whether partly before and partly after the passing of this Act or wholly after such passing) of not less than 5 years and is for the time being employed in the State or engaged in business or the practice of a profession in the State other than—

(i) a person who has served or is serving a term of imprisonment imposed on him or her by a court in the State, or

(ii) a person whose deportation has been recommended by a court in the State before which such person was indicted for or charged with any crime or offence, shall not be deported from the State under this section unless 3 months' notice in writing of such deportation has been given by the Minister to such person.

(10) A person who contravenes a provision of a deportation order or a requirement in a notice under subsection (3)(b)(ii) shall be guilty of an offence.

(11) The Minister may by order amend or revoke an order made under this section including an order under this subsection.

(12) In this section “working day” means any day not being a Saturday, Sunday or public holiday.

Exclusion orders.

4.—(1) The Minister may, if he or she considers it necessary in the interest of national security or public policy, by order (referred to in this Act as an “exclusion order”) exclude any non-national specified in the order from the State.

(2) A person who contravenes a provision of an exclusion order shall be guilty of an offence.

(3) The Minister may by order amend or revoke an order made under this section including an order under this subsection.

Arrest, detention and removal of non-nationals

5.—(1)⁴ Where an immigration officer or a member of the Garda Síochána, with reasonable cause suspects that a person against whom a deportation order is in force—

(a) has failed to comply with any provision of the order or with a requirement in a notice under section 3(3)(b)(ii),

(b) intends to leave the State and enter another state without lawful authority,

(c) has destroyed his or her identity documents or is in possession of forged identity documents, or

(d) intends to avoid removal from the State,

he or she may arrest him or her without warrant and detain him or her in a prescribed place.

⁴ Subsection subst. 29/2000 s. 10(b).

(2) A person arrested and detained under subsection (1) may be placed on a ship, railway train, road vehicle or aircraft about to leave the State by an immigration officer or a member of the Garda Síochána, and shall be deemed to be in lawful custody whilst so detained and until the ship, railway train, road vehicle or aircraft leaves the State.

(3) The master of any ship and the person in charge of any railway train, road vehicle or aircraft bound for any place outside the State shall, if so required by an immigration officer or a member of the Garda Síochána, receive a person against whom a deportation order has been made and his or her dependants, if any, on board such ship, railway train, road vehicle or aircraft and afford him or her and his or her dependants proper accommodation and maintenance during the journey.

(4)(a) Subsection (1) shall not apply to a person who is under the age of 18 years.

(b) If and for so long as the immigration officer or, as the case may be, the member of the Garda Síochána concerned has reasonable grounds for believing that the person is not under the age of 18 years, the provisions of subsection (1) shall apply as if he or she had attained the age of 18 years.

(c) Where an unmarried child under the age of 18 years is in the custody of any person (whether a parent or a person acting *in loco parentis* or any other person) and such person is detained pursuant to the provisions of this section, the immigration officer or the member of the Garda Síochána concerned shall, without delay, notify the health board for the area in which the person is being detained of the detention and of the circumstances thereof.

(5) Where a person detained under this section institutes court proceedings challenging the validity of the deportation order concerned, the court hearing those proceedings or any appeal therefrom may, on application to it, determine whether the person shall continue to be detained or shall be released, and may make any such release subject to such conditions as it considers appropriate, including, but without prejudice to the generality of the foregoing, any one or more of the following conditions:

(a) that the person reside or remain in a particular district or place in the State,

(b) that he or she report to a specified Garda Síochána station or immigration officer at specified intervals,

(c) that he or she surrender any passport or travel document in his or her possession.

(6)(a) A person shall not be detained under this section for a period or periods exceeding 8 weeks in aggregate.

(b) The following periods shall be excluded in reckoning a period for the purpose of paragraph (a):

(i) any period during which the person is remanded in custody pending a criminal trial or serving a sentence of imprisonment,

(ii) any period spent by the person on board a ship, railway train, road vehicle or aircraft pursuant to this section, and

(iii) if the person has instituted court proceedings challenging the validity of the deportation order concerned, any period spent by the person in a place of detention between the date of the institution of the proceedings and the date of their final determination including, where notice of appeal is given, the period between the giving thereof and the final determination of the appeal or any further appeal therefrom or the withdrawal of the appeal or, as appropriate, the expiry of the ordinary time for instituting any such appeal.

Service of notices.

6.—(1) Where a notice is required or authorised by or under this Act to be served on or given to a person, it shall be addressed to him or her and shall be served on or given to him or her in some one of the following ways:

- (a) where it is addressed to him or her by name, by delivering it to him or her, or
- (b)⁵ by sending it by post in a prepaid registered letter, or by any other form of recorded delivery service prescribed by the Minister, addressed to him or her at the address most recently furnished by him or her to the Registration Officer pursuant to Article 11 of the Aliens Order, 1946 (S.R. & O., No. 395 of 1946), or to the Refugee Applications Commissioner pursuant to section 9(4A) of the Refugee Act, 1996, as the case may be or, in a case in which an address for service has been furnished, at that address.

(2) Where a notice under this Act has been sent to a person in accordance with paragraph (b) of the foregoing subsection, the notice shall be deemed to have been duly served on or given to the person on the third day after the day on which it was so sent.

Regulations.

7.—(1) The Minister may—

- (a) by regulations provide, subject to the provisions of this Act, for any matter referred to in this Act as prescribed or to be prescribed, and
- (b) in addition to any other power conferred on him or her to make regulations, make regulations generally for the purposes of, and for the purpose of giving full effect to, this Act including regulations requiring a non-national against whom a deportation order has been made to repay any expenditure incurred by the Minister in relation to his or her deportation having regard to the financial circumstances of the person and providing for the procedure for such repayment.

(2)⁶ Regulations under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

Obstruction etc.

8.—(1) A person against whom a deportation order has been made—

- (a) shall not by act or omission, obstruct or hinder a person authorised by the Minister to deport a person from the State pursuant to the order while the person is engaged in such deportation,
- (b) shall, for the purpose of facilitating his or her deportation from the State, co-operate in any way necessary to enable a person so authorised to obtain a travel document, ticket or other document required for the purpose of such deportation and, in particular, shall comply with any request from a person so authorised to sign a document in that connection or to affix his or her fingerprints to such a document,
- (c) shall not behave in a manner likely to endanger the safety of himself or herself or the safety of others in the course of his or her deportation from the State.

(2) A person who contravenes this section shall be guilty of an offence.

Penalties.

9.—A person guilty of an offence under this Act shall be liable on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both.

⁵ Paragraph am. 29/2000 s. 10(c)(i).

⁶ Subsection ins. 29/2000 s. 10(c)(ii).

Increase of certain penalties under Act of 1935.

10.—Section 6(1) of the Act of 1935 is hereby amended by the substitution for “shall be liable on summary conviction thereof to a fine not exceeding one hundred pounds or, at the discretion of the Court, to imprisonment for any term not exceeding six months, and the Court, before which such person is so convicted, may, either in addition to or in lieu of any such fine or imprisonment,” of “shall be liable on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both, and the Court, before which such person is so convicted, may, either in addition to or in lieu of any such fine or imprisonment or both.”.

Amendment of Refugee Act, 1996.

11. [*spent*]

Laying of regulations before Houses of the Oireachtas.

12.—Every order under section 4 or regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling regulation is passed by either such House within the next subsequent 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Short title.

13.—This Act may be cited as the Immigration Act, 1999.

SCHEDULE

Article 13 of the Aliens Order, 1946 (S.R. & O., No. 395 of 1946).

Aliens (Visas) Order, 1999 (S.I. No. 25 of 1999).