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3 Illegal entry by deception

Section 26(1) (c) of the 1971 Act states that a person shall be guilty of an offence punishable on summary conviction with a fine or with imprisonment for not more than six months, or with both, if on examination he "makes or causes to be made to an IO or other person lawfully acting in the execution of a relevant enactment (i.e. the Immigration Acts), a return, statement or representation which he knows to be false or does not believe to be true".

Section 24A of the 1971 Act as inserted by the 1999 Act states that a person is guilty of an offence if, by means which include deception by him,

- (a) he obtains or seeks to obtain leave to enter or remain in the United Kingdom (see 3.11); or
- (b) He secures or seeks to secure the avoidance, postponement or revocation of enforcement action against him.

"Enforcement action" in this context means:

- ◆ the giving of directions for his removal from the United Kingdom ("directions") under Schedule 2 to the 1971 Act or section 10 of the 1999 Act*;
- ◆ the making of a deportation order against him under section 5 of the 1971 Act; or
- ◆ His removal from the United Kingdom in consequence of directions or a deportation order.

A person guilty of such an offence is liable:

◆ on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both; or

◆ On conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

*section 10 of the 1999 Act deals with administrative removal procedures and came into force on 2 October 2000.

3.1. Materiality of deception

To establish illegal entry, deception **must be material to the grant of leave**. In other words, had the person granting leave to enter known the truth, he would not have granted the leave he did (**see also**: Deception when entry clearance has effect as leave to enter).

In the case of *Khawaja*, it was held that, had the IO known the true facts, he would have been bound to refuse entry.

If no clear admission of deception is made, the interview must prove **to a high degree of probability** that deception was employed to obtain entry to the United Kingdom.

Questions should concentrate on his intentions and whether he deceived the person granting leave to enter as to his true intentions.

3.2. Burden and Standard of Proof

Where a person proves that he was granted leave to enter, the burden of proving that he obtained leave to enter by deception rests with the IO.

Where there is evidence of leave, the IO will have to prove illegal entry by deception **to a high degree of probability**.

3.3. Silent Deception

When a person enters the UK, there is no duty of candour on him to disclose material facts to an IO who does not ask about them. Such non-disclosure does not in itself constitute illegal entry, but his conduct, or conduct accompanied by silence, at his on entry interview may prove that he has entered illegally having deceived the entry clearance officer or the IO on arrival. If, for instance, a person remains silent about a previous breach of the immigration laws which he knows or should reasonably know would be detrimental to his application for leave to enter the UK, he may commit an offence under section 24A of the 1971 Act (**see also:** Leave to remain by deception) or 26(1) (c) of that Act if his non-disclosure of a fact alters the truth of what has been said.

Likewise, a person who hears or sees something he knows to be a false representation being made on his behalf to an entry clearance officer or an IO which he knows to be material to the grant of leave to enter, and who remains silent, commits an offence under section 24A of the 1971 Act and perhaps under section 26(1) (c) of the 1971 Act. The age of the person and his relationship to the individual making the statement should be taken into account. Cases of difficulty should be referred to EPU before notice of illegal entry is served.

3.4 Third party deception

A person can be an illegal entrant if a third party has secured his entry as a result of dishonesty; it makes no difference that the entrant knows nothing of the breach of immigration law he is committing.

In the case of *Khan* (1977), it was held that the person was an illegal entrant notwithstanding the fact that she was unaware that her husband had presented a false passport to secure her entry to the United Kingdom.

In the case of children, the deception of a parent is imputed to the children. Even if the children are unaware of the deception employed, they may be treated as if they were parties to the deception perpetrated by the parent.

The 1996 Act amended section 33(1) of the 1971 Act to include in the definition of an illegal entrant, a person entering or seeking to enter by means which include deception by another person.

3.5. Students

The case of **Adesina** established that it was sufficient for the IO to show that if the person given leave to enter as a visitor intended studies on arrival, then he is an illegal entrant as, had the IO known that studies were intended, he would not have granted entry as a visitor. It is irrelevant to the illegal entry contention that leave to enter as a student might have been granted.

In the case of **Brakwah** (1989), it was held that somebody who enters wishing to study, if he can get into college, can properly be described as intending to study at the time when he seeks entry to the country. That is, if he had it in mind to study, and it can be proved to the required standard that he lied when he said that he wished to enter for a few weeks as a visitor and that lie was the effective means of obtaining leave to enter, then he can be treated as an illegal entrant.

In the case of **Zhou** (2003), it was held that someone could enter the United Kingdom as a student and enrol on a full time course of study. If he subsequently stopped attending his course but continued to work for 20 hours each week, it was found that despite his non-attendance, he retained the student conditions he had been granted on arrival (**see also**: Students who work)

A visa national who enters by deception when studies are intended should be removed as an illegal entrant irrespective of the studies being undertaken.

However, in cases where a non-visa national enters by the use of verbal deception, account should be taken of the quality of study. Satisfactory attendance at higher and long-term studies (e.g. University or HND courses) and compliance with all the requirements of the student rules should be taken into account when deciding if removal is appropriate. Where it is considered that the person would qualify from abroad to return here as a student, it would not be appropriate to serve papers. Instead, report the circumstances to the relevant casework section so that they can note why illegal entry papers have not been served.

3.6 Asylum seekers

The case of **Norman** established that a person who sought entry as a visitor when his true intention was to claim asylum was an illegal entrant. Had the IO on arrival known that asylum was intended, then he would not have granted entry as a visitor.

3.7. Children as illegal entrants

The decision to serve notice of illegal entry on a child under the age of 16 years remains discretionary. The option to do so should be considered if, for instance, there is the possibility of prosecuting others for facilitation, to trigger a right of appeal in asylum cases or to secure removal. In these cases, the child's nationality should be clearly established to eliminate the possibility that he is entitled to British citizenship. **See also:** interviewing juveniles.

A child may be an illegal entrant because of third party deception.

3.8 Forged documents

It is an offence under section 26(1)(d) of the 1971 Act for a person, without lawful authority, to alter any certificate of entitlement, entry clearance, work permit or other document issued or made under or for the purposes of the 1971 Act, or to use for the purposes of the 1971 Act, or to have in his possession for such use, any passport, certificate of entitlement, entry clearance, work permit or other document which he knows or has reasonable cause to believe to be false.

Presenting such a document or passport is a representation that breaches section 26(1) (c) of the 1971 Act and is also an offence under section 24A of the same Act. A person who enters the United Kingdom by presenting a forged passport or in a false identity is therefore an illegal entrant by deception. (However, if a British or EEA passport to which he is not entitled is presented, he has not obtained entry by deception (because no leave has been granted) rather he has entered without leave. **See also:** Entry by presenting false or forged British or EEA passports and Procedures when a foreign national has entered by presenting a forged British or EEA passport.

3.9 Entry under article 13 of the Immigration (Leave to Enter and Remain) Order 2000

In accordance with article 13 of the Immigration (Leave to Enter and Remain) Order 2000, which came into force on 30 July 2000, leave does not lapse on travel outside the common travel area in the following circumstances:

- ◆ where the leave is in force and was conferred by means of an entry clearance (other than a visit visa/entry certificate) under article 2; or
- ◆ Where the leave is in force and was given by an immigration officer or the Secretary of State for a period exceeding six months.

This does not apply where a limited leave has been varied by the Secretary of State and following the variation the period of leave remaining is six months or less.

It is important to bear in mind the following:

- ◆ The leave of all persons who left the UK before 30 July 2000 lapsed upon their departure and the provisions of continuing leave will not apply upon their return.
- ◆ Persons granted leave for six months or less will continue to see their leave lapse upon leaving the UK after 30 July 2000.
- ◆ Not all persons who leave the UK after 30 July 2000 and who were originally granted leave for over six months prior to 30 July 2000 will benefit from the provisions of continuing leave when they return even if their leave is still current. If they left the UK before 30 July 2000 and re-entered under section 3(3)(b), whether they will subsequently be able to benefit from the provisions of continuing leave will depend on whether the balance of the original leave was over six months at the time of the last entry under 3(3)(b). If the balance was six months or less, this is the period of time they were admitted for and therefore their leave will lapse on departure, even if they depart after 30 July 2000.

A person who is able to benefit from the provisions of article 13 and has returned to the United Kingdom from outside the Common Travel Area within the currency of their leave can still be an illegal entrant if there is an admission or firm evidence that deception was employed to obtain the last grant of leave to enter or remain (if in the same capacity as the previous leave to enter, otherwise administrative removal action is a possibility), as this leave has not lapsed and it is still relevant to consider it to be the last leave granted.

There may also be circumstances when illegal entry action can be taken where there is evidence that deception (by way of false return, statement or representation but not silent deception) occurred not on the grant of leave, but when the person returned to the UK from outside the Common Travel Area in circumstances where his leave did not lapse.

An IO at a port of entry does have the power to examine persons returning with continuing leave in order to assess a number of things, including whether there has been a change of circumstances in the person's case. (This is set out in paragraph 2A of Schedule 2 to the 1971 Act, as inserted by paragraph 57 of Schedule 14 to the 1999 Act.) If there has been such an examination, but it is decided on balance to admit a person under their continuing leave, then it might be possible to subsequently treat them as an illegal entrant if an enforcement officer could show, to a high degree of probability, that when being examined by the IO on arrival, a false statement was made and that, had the IO known the true facts he would have been bound to cancel leave. This would be illegal entry under section 26(1) (c) of the 1971 Act.

It is important therefore for the IO to check, in all cases where a person being interviewed about illegal entry has evidence they have been granted leave to enter (including leave to enter conferred by means of an entry clearance) or remain which does not lapse on travelling outside of the Common Travel Area, whether or not the person has travelled outside of the Common Travel Area since 30 July 2000.

3.10. Leave to remain by deception

Section 24A of the 1971 Act as inserted by the 1999 Act states that it is an offence for a person who is not a British citizen to obtain or seek to obtain leave to enter or remain in the United Kingdom by means which include deception by him.

Where leave to remain has been obtained by deception, administrative removal under section 10 of the 1999 Act will be the correct course of action. The person has also committed an offence under section 24A of the 1971 Act.

NB This offence is restricted to those who obtain or seek to obtain leave to remain by deception on or after 1 October 1996 where the deception was practised after that date, and includes those whose applications were made prior to 1 October 1996 but have exercised deception after 1 October 1996.

A person, who sought leave to enter in one category by deception and then obtained leave to remain in the same category, can still be treated as an illegal entrant, despite the fact that he has since obtained further leave to remain. (This is by virtue of paragraph 9(2) of Schedule 2 to the 1971 Act, as amended by the 1996 Act. Consequently, it does not apply to people who were given leave to remain before 1 October 1996.)

Where it was established that an application proved to be deceptive before 1 October 1996 either by interview or by documents that have been seen, it is not appropriate to re-interview the applicant and maintain that it is a continuing application.

Where leave to remain was granted prior to 1 October 1996 and it is clearly established that it was obtained by use of the same deception on which leave to enter was granted, it may be possible to treat the person as an illegal entrant. Advice should be sought from EPU.

Where a person obtained indefinite leave to remain before 1 October 1996, and it can be proved that it was obtained by deception, (e.g. if he obtained it on the basis of his marriage to a British citizen but he had not disclosed that the marriage had already ended in divorce), it may be possible to treat him as an illegal entrant if he has since travelled and used that leave to re-enter the United Kingdom. It is necessary, in such cases, to prove that he knew that he had employed deception to obtain his indefinite leave and that he had subsequently entered the United Kingdom illegally by presenting a passport containing an indefinite leave endorsement to which he was not entitled. He thus entered by deception and is an illegal entrant under section 26(1) (c). Alternatively, where it can be proved to a high degree of probability that a person gained ILR by deception before 1 October 1996, consideration can be given to administrative deportation action under section 3(5)(a) of the 1971 Act (**See also:** Deportation and Administrative Removal). However, in view of the time that has elapsed, advice shall be sought from EPU before taking action.

Where leave to remain has been granted to a person who has entered in breach of a deportation order, see chapter 5 - Entry in breach of a deportation order ([link](#)).

Where a person has left the common travel area following the grant of limited leave to remain and returned, **see also:** Entry under article 13 of the Immigration (Leave to Enter and Remain) Order 2000.

3.11. Procedures when suspecting a person of illegal entry by deception

Obtain a landing card from the Landing Card Unit (LCU) where appropriate and visa application form if possible. Undertake a thorough interview under caution to establish illegal entry by deception to a **high degree of probability**. It is vital that the interview is well structured and planned, asking appropriate questions to gather all the facts before confronting the person with any discrepancies (see Chapter 56 - A Guide to Enforcement Interviewing).

If illegal entry has been proved to the required standard, serve notice of illegal entry (IS151a).

3.12. Deception when entry clearance has effect as leave to enter

Article 4 of the Immigration (Leave to Enter and Remain) Order 2000 sets out the extent to which entry clearances have effect as leave to enter. All entry clearances **issued** from 2 October 2000 have effect as leave to enter. (N.B. Direct Airside Transit Visas are not entry clearances.)

The ECO does not grant leave, but issues an entry clearance in the normal way which has effect as leave to enter when the person arrives in the UK. An IO at a port of entry then conducts an examination to establish that:

- ◆ the passenger is the rightful holder of the document and that the visa is genuine;
- ◆ There has been no such change of circumstances to cause the leave to be cancelled.

This examination is done under Schedule 2 to the 1971 Act. Therefore, any false return, statement or representation made to an IO will be covered by section 26 (1) (c) of the 1971 Act in the same way as for any other on entry examination. A person who has entered in such a way by deception will still be an illegal entrant.

Where a person has employed material deception in order to obtain the entry clearance in the first place, he will be guilty of an offence under section 24A of the 1971 Act as inserted by the 1999 Act, as he will have obtained leave to enter by means which include deception by him. It does not matter that the person deceived the ECO rather than the IO as the deception ultimately led to the obtaining of leave to enter.

The revised Visa Application Form (form IM2) will assist in many cases, as it will provide documentary evidence of the stated purpose and duration of the visit.

Passengers holding entry clearances issued on or after 2 October 2000 will have their passports endorsed by the IO on the first occasion the entry clearance is presented. On subsequent occasions, the examining IO will make no endorsement. It is important for the IO on the arrivals control to be able to establish whether or not the entry clearance has been presented before, especially in cases where the provisions of continuing leave may apply or where referral to the Port Medical Inspector might be required on first arrival. It is also helpful for the relevant casework section to be able to establish whether any probationary period has been successfully completed if a passenger subsequently applies for ILR.

Visit entry clearances issued from 2 October 2000 allow for multiple visits within their validity. The length of each visit, however, must not exceed six months or the remaining period of validity of the entry clearance, whichever is shorter.

Entry clearances issued prior to 2 October 2000 did not have effect as leave to enter. A person whose entry clearance was issued prior to 2 October 2000 still needed to be granted written leave to enter by an IO on arrival to the UK*, even if he arrived on or after 2 October 2000.

He will not, however, require leave on return to the UK after 30 July 2000 if his leave did not lapse on travel outside of the Common Travel Area (i.e. the provisions of continuing leave apply). If it did lapse, he will require written leave* on each subsequent arrival if he holds a "multiple entry" entry clearance, or a fresh entry clearance if he held a "single entry" entry clearance.

*unless granted leave as by virtue of Articles 8 or 9 of the Immigration (Leave to Enter and Remain) Order 2000 (only applies to visitors).

3.13. Erroneously issued residence permits

Where a residence permit has been issued to a person as an EEA national and it subsequently comes to light that he was not entitled to it as he had entered on false documentation, the residence permit has been determined to be no more than "declaratory"

and does not carry the same weight as leave to remain. Therefore, where the original entry was secured on falsified or improperly issued documentation, any subsequent grant of a residence permit can be discounted and illegal entry action pursued. Further advice should be sought from the International Policy Directorate or EPU.

3.14. Continuation of leave pending decision (Section 118 of the 2002 Act)

Section 118 of the 2002 Act amends Section 3C of the 1971 Act.

As before, when a person applies for a variation of his leave before that leave expires, but it then expires before a decision is taken, the leave is automatically extended for as long as the application remains outstanding. If the application is refused, the leave expires when the period for appealing in time runs out. If an appeal is lodged, the leave expires when the appeal ceases to be pending.

Leave under Section 3C now expires automatically if the applicant leaves the United Kingdom or if the application for variation is withdrawn. If a non-appealable decision is taken, leave expires when notice of the decision is given (i.e. by hand or posted).