

IMMIGRATION AND ASYLUM ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part IV: Appeals

178. Part IV of the Act sets out arrangements for immigration and asylum appeals.

Section 56 and Schedule 2: The appellate authorities

179. [Section 56](#) provides for the Immigration Appeal Tribunal to continue in being.
180. [Schedule 2](#) re-enacts with modifications Part II of Schedule 5 to the 1971 Act concerning the appointment and payment of Tribunal members and staff. References to the Secretary of State have been replaced by references to the Lord Chancellor, to whom responsibility was transferred by the [Transfer of Functions \(Immigration Appeals\) Order 1987 \(SI 1987 No. 465\)](#).
181. [Paragraph 1](#) of Schedule 2 allows the Lord Chancellor to appoint such number of members to the Tribunal as he sees fit. [Paragraph 1\(3\)](#) sets out the criteria for appointment as one of the legally qualified members.
182. [Paragraph 2\(1\)](#) requires the Lord Chancellor, as now, to appoint a President and, in addition, a Deputy President and requires both appointments to be made from amongst the legally qualified members. The Deputy will support the President in the judicial management of the Tribunal.
183. [Paragraph 6\(3\)](#) provides for the jurisdiction of the Tribunal to be exercised, in a case or category of case, by a panel of one or more members as the President may direct.

Section 57 and Schedule 3: Adjudicators

184. [Section 57](#) confirms that there will continue to be adjudicators to hear appeals for the purposes of the Act. Subsection (2) requires the Lord Chancellor, as now, to appoint a Chief Adjudicator from amongst those appointed under subsection (1). The Chief Adjudicator will allocate duties amongst the adjudicators and will have such other functions as the Lord Chancellor may confer on him.
185. [Schedule 3](#) re-states and brings together the appointment and payment arrangements for adjudicators and their support staff as set out in Part I of Schedule 5 to the 1971 Act, section 8(5) of the Asylum and Immigration Appeals Act 1993 and section 3(3) of the Asylum and Immigration Act 1996.
186. [Paragraph 1](#) of Schedule 3 provides a new power for the Lord Chancellor to appoint a Deputy Chief Adjudicator and Regional Adjudicators from amongst those appointed under section 57. The Deputy and Regional Adjudicators will have such functions as the Chief Adjudicator may confer on them. The Deputy Chief Adjudicator will be able to act on behalf of the Chief Adjudicator when the Chief Adjudicator is absent.

187. **Paragraph 2** sets out the criteria for appointment as an adjudicator. In the past, the Lord Chancellor had been required to designate those who may deal with asylum appeals. This will no longer be the case. In future, it will be a matter for the Chief Adjudicator to decide when an adjudicator is able to deal with asylum appeals. Paragraphs 3 and 4 relate to the terms of office and remuneration of adjudicators and paragraph 5 to compensation on ceasing to be an adjudicator.
188. **Paragraph 6** allows the Chief Adjudicator to direct that a case or category of case may be dealt with by a panel consisting of more than one adjudicator. Paragraph 7 relates to the appointment of staff to support adjudicators.

Section 58: Appeals: General

189. This section and the sections which follow it in Part IV set out a revised system of appeals, including a new system for a one-stop comprehensive appeal following refusal of leave to enter or remain. Part IV replaces all rights of appeal established in earlier legislation.
190. **Section 58** establishes important general principles. Subsection (1) provides that the right of appeal given by a particular provision of Part IV is subject to any limitations specified in other sections of Part IV.
191. Subsection (5) sets out when an appeal is pending and when it ends: it clarifies that an appeal ceases to be pending when it is abandoned. An adjudicator may rule that an appeal has been abandoned, or an appeal may have to be treated as abandoned, under subsections (8) to (10), because the appellant leaves the United Kingdom, is granted leave to enter or remain, or a deportation order is made against him. Subsections (6) and (7) ensure that an appeal continues to be pending so long as a further appeal may be brought and until such further appeal is finally determined. It is important to know when an appeal is pending, in particular in the light of the effect it has under Part II of Schedule 4 of the Act (stay on directions for removal).

Section 59: Leave to enter the United Kingdom

192. **Section 59** is concerned with appeals in relation to refusal of leave to enter at the port and refusals of entry clearance abroad. Subsection (1) confers a right of appeal to an adjudicator against either a refusal of leave to enter or a decision that the applicant is a person who is subject to immigration control and therefore requires leave to enter. Where an appellant under this section claims that he should be removed to a different country, he must in accordance with section 68(3) provide evidence, if he is not a national of that country, that the country will admit him. The provision is to ensure that the objection to destination is taken as part of the appeal against refusal of leave to enter: it is not a separate right of appeal in its own right.

Section 60: Limitations on rights of appeal under section 59

193. **Section 60** sets out the restrictions on rights of appeal under section 59. Subsection (1) provides that persons who claim that they are not subject to immigration control have no right of appeal if they do not possess the appropriate documentary evidence. Subsection (2) provides that there is no right of appeal where a person is seeking leave to enter for a purpose for which the Immigration Rules or an order made by the Secretary of State require a person to hold a particular document, and the person does not hold such a document.
194. Subsection (3) provides that the right of appeal against refusal of leave to enter can only be exercised in the United Kingdom in the cases of persons who held a current entry clearance or work permit. Otherwise, the appeal must be made after removal.
195. Subsections (4) and (5) deny a right of appeal against refusal of entry clearance or leave to enter under section 56 in respect of:

These notes refer to the Immigration and Asylum Act 1999 (c.33) which received Royal Assent on 11 November 1999

- visitors (but not including family visitors – see below);
- students accepted for a course for up to 6 months;
- those intending to study but not accepted for any course; or
- a dependant of one of the above.

The appeal right is not removed in the case of such a person if he holds a current entry clearance.

196. Under subsection (5), a person who is refused an entry clearance for a family visit will now enjoy a right of appeal. The meaning of “family visitor” will be prescribed in regulations and the procedures relating to this right of appeal will be set out in procedural rules. Subsection (6) enables the Secretary of State by regulation to require a family visitor appealing under section 59 to pay a fee and for the fee to be repaid if the appeal is allowed.
197. Subsection (7) of section 60 denies a right of appeal against refusal of leave to enter where refusal is mandatory under the Immigration Rules, including a requirement to hold specific documents which are defined in subsection (8) as entry clearances, passports or other identity documents, and work permits. Subsection (9) denies a right of appeal against refusal of leave to enter or refusal of entry clearance if the Secretary of State certifies that directions have been given by the Secretary of State personally that the person’s exclusion is conducive to the public good.

Section 61: Variation of limited leave to enter or remain

198. This section gives a right of appeal against a decision to vary or refuse to vary limited leave if, as a result of the decision, the person with the leave may be required to leave the United Kingdom within 28 days. This gives effect to the principle that a right of appeal should exist only for the most adverse immigration decisions and that there should be no right of appeal unless a decision requires the person’s departure from the United Kingdom. A person must have valid leave to enter or remain at the time the application is made in order to have a right of appeal under this section (see also commentary on section 10 and commentary on section 69 in relation to asylum seekers granted exceptional leave to enter).

Section 62: Limitations on rights of appeal under section 61

199. Section 62 applies restrictions on the right of appeal under section 61. Subsection (1) denies a right of appeal against a refusal to grant further leave in circumstances where refusal is mandatory under the Immigration Rules. Dependants of such persons similarly have no right of appeal. In addition, there is no right of appeal under section 61 against a refusal where the Secretary of State personally certifies that the person’s departure would be conducive to the public good in the interests of national security, the relations between the United Kingdom and any other country, or for other reasons of a political nature. As at present, such persons would have a right of appeal to SIAC. Finally, there is no right of appeal under section 61 against a variation of leave made by statutory instrument, or a refusal to make such an instrument.

Section 63: Appeals against deportation orders

200. Section 63 gives a right of appeal against a decision to make a deportation order or a refusal to revoke a deportation order. Subsection (2) ensures that an order cannot be made while the person may still bring an appeal against the decision to make an order. Subsection (4) provides that an appellant may object to the country to which it is intended to deport him and claim that he ought to be removed, if at all, to a different country specified by him. Where a person claims that he should be removed to a different country specified by him he must show, in accordance with section 68(3),

if he is not a national of the country, that the specified country will admit him. This provision is to ensure that objection to destination is taken as part of the appeal against deportation: it is not a separate right of appeal in its own right.

Section 64: Limitations on rights of appeal under section 63

201. This section sets out limitations on the right of appeal under section 63. As now, there will be no right of appeal to the Immigration Appellate Authority for those whom it is decided to deport on the ground that this would be conducive to the public good for national security or similar reasons. Likewise, there will still be no right of appeal to the Immigration Appellate Authority against a refusal to revoke a deportation order where the Secretary of State certifies the appellant's exclusion on these grounds, nor if the Secretary of State personally refuses to revoke the order. As now, there will instead be a right of appeal in these circumstances to SIAC.
202. An appeal against a refusal to revoke a deportation order will still not be exercisable in the United Kingdom. But sections 65 and 69 will enable an in-country appeal solely on human rights or asylum grounds in some circumstances. Finally, section 64 re-enacts the restriction in the 1971 Act which prevents a person who is being deported as a family member from disputing statements about the family relationship made to secure his entry or stay here, with provision for circumstances when that person cannot be held responsible for such statements.

Section 65: Acts made unlawful by section 6(1) of the Human Rights Act 1998

203. This section creates a new right of appeal on human rights grounds. It provides for a right of appeal where someone believes that a decision under the Immigration Acts relating to their entitlement to enter or remain in the United Kingdom was made in breach of their human rights. Acting in breach of human rights in acting in a way made unlawful by section 6(1) of the Human Rights Act 1998. Under subsections (2) and (7) the right of appeal applies to decisions made by an immigration officer, the Secretary of State or an entry clearance officer.
204. Under subsections (3) to (5) the adjudicator or Tribunal has the power to consider, and allow the appeal on the basis of, any relevant human rights issues which arise in proceedings on any appeal. The Act also confers jurisdiction on SIAC to consider human rights questions (paragraph 121 of Schedule 14).

Section 66: Validity of directions for removal

205. **Section 66** provides for a right of appeal against directions for removal in certain circumstances. Under subsection (2) the appellant is limited, as now, to arguing that there was in law no power to give the directions on the grounds quoted: the appeal is not a review of whether or not the directions should have been made in the appellant's particular circumstances. Subsection (4) provides that where an appeal is against directions given by virtue of a deportation order the appellant cannot dispute the original validity of that order: he will already have had the opportunity to do so.
206. Subsection (3) maintains the principle that an appeal under this section may not be exercised in the United Kingdom; but where the person has an in-country appeal under the asylum or new human rights provisions, he may dispute the validity of the directions at the same time.

Section 67: Removal on objection to destination

207. **Section 67** confers a right of appeal against directions for removal on the ground that removal should be to a specified country other than the one in the directions. This right is not extended to those removed under section 10.

Section 68: Limitations on rights of appeal under section 67

208. **Section 68** sets out a number of limitations on the right of appeal under section 67. A person will not be entitled to appeal against the destination specified in removal directions given following a refusal of leave to enter unless he is also appealing against the decision that he required leave to enter or he was refused leave at a time when he held a current entry clearance or work permit. In addition, if a person is entitled to object to a country on an appeal under section 59 or section 63 and he does not object to it, or his objection is not upheld, then section 64 does not entitle him to appeal against any directions subsequently given as a result of the refusal if their effect will be his removal to that country.

Section 69: Claims for asylum

209. **Section 69** sets out the rights of appeal of persons who are refused asylum. Subsection (1) provides for a right of appeal on asylum grounds against refusal of leave to enter. Subsection (2) provides a right of appeal on asylum grounds against a decision to vary or refuse to vary a person's limited leave to enter or remain and where the decision would require the person's departure within 28 days. The section also provides a right of appeal on asylum grounds against deportation and removal (subsections (4) and (5)).
210. In contrast to other provisions in Part IV, which restrict a right of appeal to decisions which require the applicant's departure from the United Kingdom, subsection (3) provides a right of appeal where an asylum seeker is refused asylum but granted leave to enter or remain on other grounds. A right of appeal is provided in such circumstances in the light of the significant difference in the rights attached to refugee status as distinct from other immigration categories.

Section 70: Limitations on rights of appeal under section 69

211. **Section 70** imposes a number of limitations on the rights of appeal set out under section 69. These principally concern cases where leave to enter has been refused on the grounds that the appellant's exclusion from the United Kingdom would be in the interests of national security; or where a decision to make a deportation order, or to refuse to revoke one, was also made on grounds of national security. They also include cases where the Secretary of State personally (and not someone acting under his authority) has refused to revoke a deportation order. In all of these instances, there is no entitlement to appeal under section 69. However, there is a right of appeal to SIAC under section 2 of the Special Immigration Appeals Commission Act 1997 in these circumstances.
212. Subsection (4) has the effect of restricting the right of appeal, set out in subsection (3) of section 69, against a refusal to grant asylum but where limited leave to enter or remain has been given. A person who has been granted leave but refused asylum on the basis that he falls under Article 1(F) of the Refugee Convention (which lists those categories of persons considered not to be deserving of protection) will not have a right of appeal under section 69 where the Secretary of State certifies that the disclosure of material on which the refusal was based is not in the interests of national security. In such cases, SIAC will hear the appeal unless it quashes the certificate and remits the matter to the ordinary appellate bodies under section 4(1A) of the Special Immigration Appeals Commission Act 1997 (as inserted by paragraph 122 of Schedule 14 to the Act). Finally, section 70(7) states that a claim for asylum must have been made before the time of the refusal to grant or vary leave, or the making of directions (as the case may be), if the person wishes to appeal against the refusal on asylum grounds.

Section 71: Removal of asylum claimants to safe third countries

213. **Section 71** provides a right of appeal against a certificate issued under sections 11 or 12 where it is claimed that any of the requirements applicable to such a certificate was, or

is, not satisfied. In these circumstances, a person may appeal to an adjudicator against the certificate, but not to the Immigration Appeal Tribunal (Schedule 4, paragraph 22).

Section 72: Miscellaneous limitations on rights of appeal

214. This section imposes limitations on certain appeal rights. Subsection (1) provides that unless a certificate issued under sections 11 or 12 has been set aside on appeal under section 65 or 71, or otherwise ceases to have effect, the person in respect of whom it was issued is not entitled to appeal on other matters arising before his removal.
215. Subsection (2) provides that an appeal under section 71 will not be exercisable in the United Kingdom if the applicant has been, or is to be sent, to a Member State of the EU or a designated safe third country; nor will that person be able to appeal before removal under section 65 (human rights) if the Secretary of State certifies that the allegation is manifestly unfounded. Subsection (3) provides that applicants cannot appeal against a decision made on an application where that application had to be made on a prescribed form and they did not comply with any prescribed procedures and time limits.

Section 73: Limitation on further appeals

216. **Section 73** makes provision for cases where a person has appealed and that appeal has been finally determined, but there has been a further decision, against which a notice of appeal has been lodged. Subsections (2) and (3) provide that the Secretary of State may certify a human rights claim made in such a notice to the effect that it could reasonably have been made before, is designed to delay removal and has no other legitimate purpose. On certification the human rights aspect of the appeal is to be treated as finally determined.
217. Subsections (4) and (5) prevent a person from pursuing an appeal based on matters which were considered at the earlier appeal, if the Secretary of State certifies that they were so considered.
218. Subsections (7) to (9) effectively allow an immigration officer or the Secretary of State to certify that a further application is being made to delay removal and for no other legitimate purpose; if certified, no appeal can be brought.

Section 74: “One-stop” procedure: duty to disclose grounds for appeal etc

219. **Section 74** requires the decision-maker to serve on persons who have a right of appeal exercisable in the United Kingdom against a decision, a notice inviting submission of additional grounds. The notice must also be served on any family member. Additional grounds might be immigration, asylum or human rights matters, compassionate circumstances or a mixture of these. These additional grounds will then be considered. If these new grounds for remaining are also refused, and the refusal attracts a right of appeal, the refusal will be dealt with at a single appeal along with the original refusal. Adjudicators will not necessarily have powers to consider every matter which has been raised in additional grounds (see also notes on section 77 and Schedule 4, paragraph 21). Subsections (8) and (9) provide for regulations to prescribe who are relevant family members and the procedures to be followed in respect of notices and statements.

Section 75: Duty to disclose grounds for entering etc the United Kingdom

220. **Section 75** essentially applies the one-stop procedures set out in section 74 to categories of person who will only have a right of appeal in the United Kingdom if they make a specific asylum or human rights claim. The one-stop notice is to be served when they make that claim. Subsection (6) provides for regulations to prescribe that the provisions of sections 73, 76 or 77 may apply, with prescribed modifications, in such cases.

Section 76: Result of failure to comply with section 74

221. This section sets out the consequences of failure to comply with the requirements of section 74. It provides that if an applicant fails to mention a particular ground on which he intends to rely in his statement, even though he was aware of it at the time, he may not rely on that ground in any appeal. The section provides for exceptions to this general principle. Subsection (3) disapples the principle where the ground is a claim for asylum or a claim that an act breached the applicant's human rights, or where the Secretary of State considers that the applicant had a reasonable excuse for the omission.
222. Subsection (5) provides that if an applicant claims asylum after the prescribed period for the statement required under section 74, no appeal may be made against a refusal of that claim if the Secretary of State certifies that one purpose of making the claim for asylum was to delay removal from the United Kingdom and that the applicant had no other legitimate purpose.

Section 77: "One-stop" appeals

223. **Section 77** sets out a number of matters in respect of asylum appeals and the new "one-stop" appeal process. Its purpose is to require an adjudicator considering an asylum appeal also to deal with any other appealable matters raised by the appellant in his statement in response to the notice to him under section 74 and which he is not prevented from relying on by section 76. Section 77(3) embodies the principle, established in current case law, that in asylum matters the appellate body is to consider the evidence of the situation which obtains when the appeal is heard, rather than being limited to reviewing the evidence available when the initial decision was taken. Issues relating to Article 3 of the Human Rights Convention are included in this category. In other cases, however, the evidence must relate to the situation at the time of the decision (subsection (4)).

Section 78: Transfer of appellate proceedings

224. **Section 78** clarifies the position of those applicants who have appealed and who subsequently have a decision to deport or to refuse to revoke a deportation order taken against them, which they cannot appeal against under section 63 because of the limitations of rights of appeal imposed by section 64. If such a person appeals against that decision under section 2(1) or 2A of the Special Immigrations Appeals Commission Act 1997, any appeal under Part IV is transferred to, and must be heard by SIAC. Subsection (5) transfers an appeal to SIAC if an additional ground given under section 74 or 75 raises issues which would otherwise go to SIAC on appeal.

Section 79: Appeals without merit: penalty on continuing an appeal without merit

225. This section allows the Immigration Appeal Tribunal to notify a party bringing an appeal before it that, in the opinion of the Tribunal, the appeal lacks merit and that a fixed financial penalty may be imposed if the appeal is pursued and fails. The Tribunal will be able to exercise this power at any time before it determines an appeal by a notification in such form as may be prescribed in rules. The power will be exercisable if, in the future, the requirement to apply for leave to appeal to the Tribunal in that category of appeal is removed. The power of the Lord Chancellor to determine the financial penalty, which it is intended will cover the Tribunal's costs, will be exercisable through statutory instrument subject to annulment by either House of Parliament.

Section 80: EEA nationals

226. **Section 80** makes provision to make regulations giving rights of appeal which have been prescribed under EU law for EEA nationals, members of their family and certain non-EEA nationals who are members of a United Kingdom national's family. There will also be additional categories of person who are entitled to similar rights under agreements to which the United Kingdom is a party or by which it is bound. The rights of

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appeal will cover decisions relating to admission, residence and the issue or withdrawal of residence permits. The regulations will govern various aspects of the appeals and may make provisions requiring an appellant to state additional grounds. Appeals against decisions under this section will be heard by the Immigration Appellate Authority or, where appropriate, by SIAC. A person claiming to be an EEA national must produce evidence of identity to benefit from the provisions of section 80 (subsection (12)).

Section 81: Grants to voluntary organisations

227. This section enables the Secretary of State, with the approval of the Treasury, to make grants to any voluntary organisation which provides advice and assistance for, or other services for the welfare of persons who have rights of appeal under the Act.