

NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Immigration and Asylum Appeals

Appeal to adjudicator

Section 81 and Schedule 4: Adjudicators

216. **Section 81** sets out the criteria for the appointment of adjudicators by the Lord Chancellor and for functions to be assigned to the Chief Adjudicator, Deputy Chief Adjudicator, Regional Adjudicators and Deputy Regional Adjudicators. Subsection (1) requires the Lord Chancellor to appoint adjudicators to hear appeals under Part 5 of the Act. Subsection (2) states the qualifications or experience necessary for appointment. Subsection (3) requires the Lord Chancellor to appoint a Chief Adjudicator, and enables him to appoint a Deputy Chief Adjudicator, one or more Regional Adjudicators and one or more Deputy Regional Adjudicators. Subsection (4) requires the Chief Adjudicator to carry out such functions as the Lord Chancellor may assign. Subsection (5) sets out the duties of the Deputy Chief Adjudicator. Subsection (6) sets out that Regional Adjudicators shall perform such functions as are assigned to them by the Chief Adjudicator. Subsection (7) sets out the duties of a Deputy Regional Adjudicator. Subsection (8) provides for Schedule 4 to have effect.
217. **Schedule 4** makes provision on the terms of office of, proceedings before, and payment arrangements for, adjudicators and their support staff. Paragraph 1 deals with the terms of office for adjudicators. Paragraph 2 requires the Chief Adjudicator to arrange for adjudicators to hear appeals and specifies that these must take place when and where the Lord Chancellor determines. Paragraph 3 enables the Chief Adjudicator to determine that a panel consisting of more than one adjudicator may deal with a particular appeal or category of appeal or appeal-related proceedings. Paragraph 4 requires adjudicators to carry out duties allocated by the Chief Adjudicator.
218. **Paragraph 5** of Schedule 4 enables the Lord Chancellor to appoint staff to support adjudicators. Paragraph 6 relates to the remuneration, allowances and expenses of adjudicators and their staff. Paragraph 7 concerns payment of compensation on ceasing to be an adjudicator in special circumstances.

Section 82: Right of appeal: general

219. **Section 82** and related sections differ considerably in structure from the earlier legislation on immigration appeals, in order to produce a clearer package of appeal rights. The scheme is based on the principle that there is one right of appeal against any of the listed "immigration decisions". Where multiple decisions would result in multiple rights of appeal these are subsumed into one appeal. All appealable grounds of appeal can be raised in that appeal (section 86). The requirement for a person to

state all grounds for their application, see section 120, helps to ensure that all relevant issues are dealt with in one appeal. Exceptions and limitations restrict rights of appeal in certain circumstances and define which appeals can be exercised in the United Kingdom (sections 88 to 95).

- 220. Subsection (2) lists the "immigration decisions" which attract rights of appeal. These are basically the same decisions that trigger a right of appeal under Part IV of the 1999 Act, but there is a new decision (revocation of indefinite leave under section 76 of the Act). The position relating to removal directions has been clarified. It is the initial immigration decision which may result in removal which attracts the right of appeal, not any consequential giving of directions to the carrier or re-giving of directions following an appeal or temporary suspension.
- 221. Subsection(3) states that where a decision curtails a person's leave to enter or remain so that none remains, or revokes indefinite leave, the variation does not have effect during the period when an appeal may be brought or while an appeal is pending.

Section 83: Appeal: asylum claim

- 222. **Section 83** gives a right of appeal to an adjudicator on asylum grounds only (see section 84(3)) when an asylum claimant is refused asylum but granted leave to enter or remain for more than a year. If periods of less than 12 months are given, the right of appeal arises when an aggregate of 12 months leave has been given since the decision to refuse asylum was taken. There is no right of appeal under section 82 for a person in this position and the purpose of this provision is to provide a specific single-issue asylum appeal.

Section 84: Grounds of appeal

- 223. **Section 84** lists in subsection (1) the grounds on which an appeal under section 82(1) can be brought. Listing the grounds in this way both illustrates what grounds are possible or acceptable and follows the categories of appeal set out in the earlier legislation, for example, immigration appeals, asylum appeals, human rights appeals and race relations appeals. What was a separate category of appeal is now simply a possible ground for the one appeal.

Section 85: Matters to be considered

- 224. **Section 85(1)** provides that an appeal under section 82(1) shall be treated by an adjudicator as including an appeal against any decision where the person has a right of appeal under section 82(1). Thus it is not necessary for a person to lodge separate appeals if subject to different immigration decisions: all appealable decisions are to be subsumed in the one appeal.
- 225. If a person makes a statement under section 120 in response to a requirement to state any additional grounds (the "one-stop warning"), the adjudicator must consider any of the matters raised in the statement, if these matters amount to a ground of appeal, as listed in section 84. It does not matter whether the statement is made before or after the appeal is commenced (subsections (2) and (3)).
- 226. Subsection (4) allows the adjudicator to consider any evidence that he thinks is relevant to the substance of the decision, including any evidence which arises after the date of decision. The subsection also applies to appeals under section 83 where asylum has been refused but leave to remain granted. But subsection (4) does not apply to an appeal against the refusal of an entry clearance or a certificate of entitlement: in these cases the adjudicator can only consider the circumstances as they were at the time of the decision to refuse.

Section 86: Determination of Appeal

227. This section describes what adjudicators are required to do in consideration of appeals under sections 82(1) or 83. Adjudicators will be required to determine any ground of appeal which is raised in response to any decision against which an appeal has been lodged or against which an appeal is to be treated as included by virtue of section 85(1). They must also determine any other matters which are raised which must be considered under section 85.
228. Subsection (3) states that an adjudicator must allow an appeal if he thinks a relevant decision was not in accordance with the law or that a discretion should have been exercised differently. Otherwise, the appeal must be dismissed (subsection (5)). A refusal to depart from the Immigration Rules does not count as the exercise of a discretion for this purpose (subsection (6)).
229. Subsection (4) indicates that a decision that a person should be removed from the United Kingdom will not be regarded as unlawful if the decision to remove could have been lawfully made under another provision. Thus if the adjudicator comes to a different conclusion from the Secretary of State about the person's nationality or immigration status, but nevertheless considers that the decision to remove is correct on its merits, the appeal does not have to be allowed on a technicality and the process re-started.

Section 87: Successful appeal: direction

230. Section 87 deals with directions which can be given by an adjudicator when allowing an appeal. There is a power under subsection (1) for an adjudicator to give a direction for the purposes of giving an effect to his decision. Subsection (2) requires a decision-maker to act in accordance with any relevant direction. Subsection (3) provides that a direction shall not have effect while an appeal to the Tribunal or a further appeal could be brought, or has been brought and not been finally determined. Under subsection (4) the direction is treated as part of the adjudicator's determination.

Sections 88 to 99: Exceptions and limitations

231. Sections 88 to 99 set out detailed provisions relating to exceptions and limitations on the general right of appeal as well as stating when appeals may be pursued in the United Kingdom (i.e. when they are "suspensive"). It should be noted that the exceptions do not generally prevent an appeal being brought on asylum, human rights or race discrimination grounds.

Section 88: Ineligibility

232. Section 88 deals with cases where the application has been refused because the person (or a person on whom his application depends) does not meet a basic non-discretionary requirement of the Immigration Rules: thus any appeal based on the Rules could not succeed. An additional category (to those established in the 1999 Act) is subsection (2) (d), which prevents an appeal where the applicant wished to stay for a purpose not covered by the Immigration Rules. Some categories of application currently regarded as "concessions" outside the Rules will be incorporated into the Rules. An appeal may nevertheless be brought on asylum, human rights or race discrimination grounds.

Section 89: Visitor or student without entry clearance

233. Section 89 retains the 1999 Act exceptions relating to a person without entry clearance who applies for leave to enter the United Kingdom at a port of entry as a visitor, a student (who has not enrolled on a course or has enrolled on a course that lasts less than six months) or a dependant of such a person. No appeal can be brought against a decision to refuse entry in these cases (subsection (2)), except on asylum, human rights or race discrimination grounds.

Section 90: Non-family visitor

234. **Section 90** restricts appeals against the refusal of entry clearance for a visit to those cases involving a visit to a family member in the United Kingdom. But it does not prevent any other visit applicant who is refused entry clearance from appealing on asylum, race or human rights grounds. Subsections (2) and (3) provide for regulations to be made to define who are to be regarded as family members.

Section 91: Student

235. **Section 91** retains the exceptions for appeals by students and their dependants who are refused entry clearance. There is no appeal if the person has not been accepted for a course, or has been accepted and the course lasts for less than six months. This section does not prevent appeals on race or human rights grounds.

Section 92: Appeal from within United Kingdom: general

236. **Section 92** sets out the circumstances in which a person may appeal while he is in the United Kingdom, suspending any removal which might follow from the decision. While the appeal is pending a person who has made an asylum or human rights claim or European claim while in the United Kingdom may appeal while in the United Kingdom (subsection (4)). See sections 93 and 94 for cases where the appeal must be brought after the claimant has left the United Kingdom.
237. Other appeals will only be suspensive when made against certain types of decision (subsections (2) and (3)). These **include**: a decision to make a deportation order; a refusal of leave to enter at the port if the applicant holds an entry clearance or work permit; a decision relating to a person who applied for an extension of stay before his existing leave expired; and a decision to curtail a person's leave to enter or remain. Appeals against the refusal of a certificate of entitlement under section 10 and revocation of indefinite leave are also suspensive.

Section 93: Appeal from within United Kingdom: "third country" removal

238. Clause 93 is broadly similar to a provision in earlier legislation relating to cases where a certificate has been issued under section 11 or 12 of the 1999 Act (removal of asylum claimants to a "third country"). Under subsection (1) a person may not appeal under section 82(1) while in the United Kingdom if a certificate has been issued. If, however, the appellant has made a human rights claim which the Secretary of State has not certified as clearly unfounded, the person can appeal while in the United Kingdom (subsection (2)).

Section 94: Appeal from within the United Kingdom: unfounded human rights or asylum claim

239. This section applies to a right of appeal against an immigration decision (see section 82(1)). Where the person has made either an asylum claim or a human rights claim, or both, an appeal may not be brought while the person is in the United Kingdom by virtue of section 92(4) i.e. on the grounds that they have made an asylum or human rights claim, if the Secretary of State certifies that the claim or claims are clearly unfounded.
240. Subsection (3) provides that if the asylum or human rights claimant is entitled to reside in any of the States listed in subsection (4) then the claim shall be certified unless the Secretary of State is satisfied that it is not clearly unfounded. The States listed are all "EU accession states": Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia.
241. Subsection (5) enables the Secretary of State, by order, to add a State, or part of a State to the list in subsection (4) if he is satisfied that there is in general no serious risk of

persecution in the State or part State of persons entitled to reside there and that removal to that State will not in general contravene the United Kingdom's obligations under ECHR. Subsection (6) allows for a State or part State that has been added in accordance with subsection (5) to be removed, by order.

242. Subsection (7) provides that an appeal may not be brought while the person is in the United Kingdom in reliance on section 92(4), if the Secretary of State certifies that it is intended to remove the applicant to a third country of which he is not a national and that there is no reason to suppose that his human rights will be breached in that country. Subsection (8) provides that a country which is named in the certificate to which it is intended to remove an applicant under subsection (7), is to be regarded as one where the applicant's rights under the Refugee Convention will be observed and from where he will not be sent to another country other than in accordance with the Convention.
243. Subsection (9) provides that where a certificate is issued under this section an appeal that is made outside of the United Kingdom shall be considered as if the applicant had not been removed from this country.

Section 95: Appeal from outside United Kingdom: removal

244. This provision prevents an appeal being lodged on asylum grounds by a person who is outside the United Kingdom. It does not apply when a person has been removed on the basis that their asylum claim has been certified under section 94: in that case the asylum appeal must necessarily be made from abroad.

Section 96: Earlier right of appeal

245. Sections 96 and 120 set out the "one-stop" arrangements which prevent a person from seeking to appeal when they have already had an opportunity to put their case to an adjudicator. In all cases, the person will have been required to state any grounds for their application. The earlier legislation (section 73 of the 1999 Act) has been extended in a number of respects. This section covers situations where a person chooses not to appeal a decision but nevertheless makes a further claim or application; where a person withdraws or abandons an appeal but makes a further claim or application; and where a person chooses not to make a claim in response to a requirement under section 120 which would give rise to a right of appeal but has no right of appeal in respect of the matters he has actually put forward. The section also makes it clearer that certification powers are, where the relevant conditions are met, also applicable where a further claim or application is made after leaving and returning to the United Kingdom.
246. Under subsection (1) no appeal can be brought on any ground against an otherwise appealable decision if the Secretary of State or immigration officer certifies that the person was notified of a right of appeal against another decision - whether or not any appeal was lodged or completed - and that in his opinion the person made their claim or application in order to delay removal, or the removal of a family member, and that in his opinion the person had no other legitimate purpose for making the claim or application. If an appeal has already been brought, the appeal may not be continued if a certificate is issued.
247. Subsection (2) prevents an appeal being brought if the Secretary of State or immigration officer certifies that a new decision relates to a ground which was raised on an earlier appeal, or should have been declared in response to an earlier requirement under section 120, or could have been raised at an appeal had the applicant chosen to exercise a right of appeal. If an appeal has already been brought, the appeal may not be continued if a certificate is issued.
248. Under subsection (3), where a further appeal right does arise, the Secretary of State or immigration officer may certify that certain grounds of appeal were already considered in an earlier appeal. The appellant is not then allowed to rely on those grounds.

- 249. Subsection (4) indicates that the word “notified” in subsection (1) means notified in accordance with regulations made under section 105. These "Notices" Regulations will set out the circumstances when rights of appeal are to be notified and require that information be given as to how to appeal and the assistance available.
- 250. Subsection (5) indicates that a claim or application or grounds of appeal can be certified if the person has left the United Kingdom and subsequently returned.
- 251. Subsection (6) ensures that appeals, or potential appeals, to the Special Immigration Appeals Commission are counted as appeals or potential appeals for the purposes of this section.

Section 97 National Security, &c.

- 252. Section 97 provides that where the Secretary of State certifies that a decision was taken on certain grounds (subsection (2)) or in reliance on certain information (subsection (3)), the person may not appeal under this Act. However, under the Special Immigration Appeals Commission Act 1997 they may appeal to the Special Immigration Appeals Commission (SIAC), the body set up specifically to deal with appeals where national security and other sensitive matters are a consideration.

Section 98: Other grounds of public good

- 253. Section 98 prevents a person from appealing a refusal of leave to enter or refusal of entry clearance, or prevents such an appeal from continuing, where the Secretary of State has personally certified that the person’s exclusion from the United Kingdom is conducive to the public good, or directed that the person be refused on that ground. Subsections (4) and (5) provide that this does not prevent the person appealing on human rights or race discrimination grounds, or from appealing refusal of leave to enter on asylum grounds.

Section 99: sections 96 to 98: appeal in progress

- 254. This section provides for a pending appeal to lapse if it is certified under section 96(1) or (2), 97 or 98.

Appeal from adjudicator

Section 100 and Schedule 5: Immigration Appeal Tribunal

- 255. Section 100 provides for the Tribunal to continue in being and gives effect to Schedule 5.
- 256. Schedule 5 makes further provision about the Immigration Appeal Tribunal. Paragraph 1 requires the Lord Chancellor to appoint its members and paragraph 2 deals with certain terms of office. Paragraph 3 requires the Lord Chancellor to appoint as President a member who holds or has held high judicial office, and paragraph 4 requires him to appoint a legally-qualified member of the Tribunal as Deputy President and sets out his functions. Paragraph 5 requires the Tribunal to sit when and where the Lord Chancellor determines. Paragraphs 6 and 7 enable the Tribunal to sit in more than one division and enable the President to direct that certain cases or classes of case be decided by a single member or a set number of members, or legally qualified members.
- 257. Paragraph 8 enables the Lord Chancellor to appoint staff for the Tribunal while paragraphs 9 and 10 concern remuneration and allowances for the Tribunal and its staff, Tribunal expenses, and compensation should a member leave in special circumstances. Paragraph 11 sets out the requirements for designation as a legally qualified member of the Tribunal.

Section 101: Appeal to Tribunal

258. Subsection (1) provides an appeal with permission to the Tribunal against the adjudicator's decision on a point of law. Subsection (2) provides that a party to an application to the Tribunal for permission to appeal may apply to the High Court or, in Scotland, to the Court of Session, for a review of the Tribunal's decision on the ground that the Tribunal made an error of law. Subsection (3) provides that an application shall be determined by a single judge by reference only to written submissions. The judge may affirm or reverse the Tribunal's decision, and the judge's decision is final. Subsection (3) also provides that if, in an application to the High Court, the judge thinks the application had no merit he is required to issue a certificate to this effect. Subsection (4) allows the Lord Chancellor to make an order to repeal the statutory review process set out in subsections (2) and (3). The order is subject to affirmative resolution.

Section 102: Decision

259. Subsection (1) sets out the options open to the Tribunal when determining an appeal: it may affirm the adjudicator's decision (subsection (1)(a)), make any decision which the adjudicator could have made (subsection (1)(b)), remit it to an adjudicator (subsection (1)(c)), affirm any directions made by the adjudicator under section 87, or vary or give any direction which the adjudicator could have given.
260. Subsections (2) and (3) govern the evidence the Tribunal may consider. This is on the same basis as evidence which may be considered by an adjudicator under section 85 (4) and (5). Subsection (4) enables the Tribunal, in remitting an appeal to an adjudicator, to require the adjudicator to determine the appeal in accordance with its directions, or to take additional evidence so that the case may come back to the Tribunal for determination.

Section 103: Appeal from Tribunal

261. Subsection (1) provides that where the Tribunal determines an appeal, under section 101, a party to the appeal may bring a further appeal to the Court of Appeal on a point of law. Where the original decision of the adjudicator was made in Scotland, a party to the appeal may bring a further appeal to the Court of Session on a point of law. Subsection (2) provides that such a further appeal may be brought only with the permission of the Tribunal. If the Tribunal refuses permission, permission may be sought from the Court of Appeal or, in Scotland, the Court of Session.

Procedure

Section 104: Pending appeal

262. **Section 104** makes provision equivalent to section 58 of the 1999 Act. It defines when an appeal under section 82(1) is pending, during which time the appellant is generally protected from enforcement of the consequences of a decision. An appeal is pending from the time it is instituted (in accordance with Procedure Rules under section 106). It remains pending until the time limit for taking it further expires or until it has been finally determined, withdrawn or abandoned. An appeal while the appellant is in the United Kingdom ceases to be pending if the person leaves the United Kingdom or is granted leave to enter or remain here (subsection (4)). In some circumstances (those specified in subsection (5)) the making of a deportation order brings appeals to an end. It is assumed that the relevant issues will have been addressed during the course of any appeal against the decision to deport the person concerned.
263. Subsection (3) now makes it clear that if the Tribunal remits an appeal to an adjudicator, its determination is not a final determination for this purpose, so the appeal remains pending.

264. The section does not apply to appeals under section 83 where leave to remain of more than 12 months has been granted to a person refused asylum.

Section 105: Notice of immigration decision

265. **Section 105** makes provision similar to paragraph 1(1) of Schedule 4 to the 1999 Act, concerning regulations governing the service of appealable decisions. Regulations may be made requiring written notice to be given of an immigration decision within the terms of section 82. When the decision is appealable the notice must declare the right of appeal and give details of how it may be exercised. Subsection (3) enables the Notices Regulations to make provision for service of the notice, including presumptions - this might include, for example, provision for service where a person has absconded and no address is known.

Section 106: Rules

266. **Section 106** makes provision similar to and expands upon paragraphs 3, 4 and 8 of Schedule 4 to the 1999 Act. Subsection (1) of section 106 allows the Lord Chancellor to make appeals procedure rules that regulate the exercise of the right of appeal in Part 5 of this Act and prescribe the procedure to be followed in connection with proceedings. Subsection (2) sets out particular matters that must or may be included in the rules. It clarifies the content and effect of paragraph 4 of Schedule 4 to the 1999 Act and provides that rules may make provision about the grant of bail (contained in the Immigration Act 1971). Subsection (3) introduces new measures which enable the rules to include provisions about costs powers for the adjudicator and the Tribunal. Subsections (4) and (5) re-enact paragraph 8 of Schedule 4 to the 1999 Act, which makes it an offence to fail to give evidence or produce a document without reasonable excuse when required to do so by the rules.

Section 107: Practice Directions

267. Section 107 enables practice directions to be given by the President of the Tribunal and the Chief Adjudicator.

Section 108: Forged document: proceedings in private

268. **Section 108** makes provision equivalent to paragraph 6 of Schedule 4 to the 1999 Act which enables an adjudicator, following an allegation that relevant documents are forged, to hold further proceedings in private where to do otherwise would not be in the public interest. The class of document which may be relevant has been extended since many types of document may be submitted in evidence and these may rely on sophisticated technologies. The security features, ways of forging or defeating them and forgery detection methods should not normally be divulged to the public.

General

Section 109: European Union and European Economic Area

269. This section allows the Secretary of State to make regulations that may provide for an appeal against an immigration decision taken in respect of a person who has, or who claims to have, a right under any of the Community Treaties. Subsection (2) states that these Regulations may apply this Act or the Special Immigration Appeals Commission Act 1997, with or without modification. Subsection (3) defines that an immigration decision for this section is one about a person's entitlement to enter, remain or one about a person's removal from the United Kingdom.

Section 110: Grants

270. **Section 110** enables the Secretary of State to make grants to voluntary organisations which assist, advise or give other services with regard to the welfare of those who

have a right of appeal under this Part of the Act. Grants may be conditional, including conditions as to repayment in certain circumstances.

Section 111: Monitor of certification of claims as unfounded

271. **Section 111** requires the Secretary of State to appoint a person to monitor the use of the powers under sections 94(2) and 115(1) (which relate to certifying asylum and human rights claims as clearly unfounded). The person appointed must produce a report once a year to the Secretary of State who must in turn lay a copy of that report before Parliament. The Secretary of State may also request the appointed person to make additional reports. The person may not be employed within a government department.

Section 112: Regulations, &c.

272. **Section 112** is a general provision regarding regulations and rules for this Part of the Act. They will be negative resolution statutory instruments, except orders made under sections 94(5), 101(4) and 115(8), which are affirmative orders.

Section 113: Interpretation

273. Subsection (1) defines certain common terms which are used throughout Part 5. The definitions of "asylum claim" and "human rights claim" reflect the intention that a claim can only be made in person at a designated place.
274. Subsection (2) ensures that references to varying leave to enter or remain do not cover decisions taken in relation to conditions of leave. For example, appeal rights do not accrue from a decision to refuse to allow a person to take employment if they are still permitted to remain here.

Section 114: Repeal

275. Subsection(1) repeals Part IV of the 1999 Act, which this Part replaces. Subsection (2) gives effect to Schedule 6 (transitional provisions). Subsection (3) gives effect to Schedule 7 (consequential amendments).

Section 115: Appeal from within the United Kingdom: unfounded human rights or asylum claim: transitional provision

276. **Section 115** applies similar provisions to those in Section 94 to appeals against refusals of asylum and human rights claims which are clearly unfounded and which are made in the transitional period between the granting of Royal Assent to this Act and the coming into force of the rest of Part 5. It therefore applies to appeals under Part IV of the Immigration and Asylum Act 1999.
277. Subsection (1) provides that an appeal cannot be brought while in the United Kingdom under sections 65 or 69 of the 1999 Act if the Secretary of State certifies that the appeal relates to an asylum or human rights claim which is clearly unfounded and where the individual does not have another right of appeal while in the United Kingdom under Part IV of the 1999 Act.
278. Subsection (2) provides that a person may not bring an asylum appeal while in the United Kingdom under section 69 or raise a question at an appeal under section 77 of the 1999 Act, if the Secretary of State certifies that it is proposed to remove him to a third country of which he is not a national and where there is no reason to believe that his human rights will be breached. Subsection (3) provides that a person may not bring a human rights appeal under section 65 of the 1999 Act if the same criteria as in subsection (2) are met.
279. Subsection (4) states that, in deciding whether a person who has been issued with a certificate under subsections (2) or (3) may be removed from the United Kingdom, the country specified in the certificate is to be regarded as one where the individual's rights

against persecution under the Refugee Convention will be met and one from where he will not be sent to another country other than in accordance with the Convention.

- 280. Subsection (5) provides that where a certificate is issued under this section, and an appeal or question under sections 65, 69 or 77 of the 1999 Act is made outside of the United Kingdom, the appeal will be considered as if the appellant had not been removed from this country.
- 281. Subsection (6) provides that when a person who is entitled to reside in any of the countries listed in subsection (7) makes an asylum or human rights claim, then the claim is to be certified unless the Secretary of State is satisfied that it is not clearly unfounded. The states listed are all "EU accession states": Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia.
- 282. Subsection (8) empowers the Secretary of State, by order, to add a State, or part of a State to the list in subsection (7) if he is satisfied that there is in general no serious risk of persecution in the State or part State of persons entitled to reside there and that removal to that State will not in general contravene our obligations under ECHR. Subsection (9) allows for a State or part State that has been added in accordance with subsection (8) to be removed, by order.

Section 116: Special Immigration Appeals Commission: Community Legal Service

- 283. [Section 116](#) brings proceedings before the Special Immigration Appeals Commission within the scope of the Community Legal Service, created under the Access to Justice Act 1999.

Section 117: Northern Ireland appeals: legal aid

- 284. This section amends Part 1 of Schedule 1 to the [Legal Aid, Advice and Assistance \(Northern Ireland\) Order 1981 \(S.I. 1981/228 \(N.I. 8\)\)](#) (proceedings for which legal aid may be given under Part II of that Order) to bring proceedings before the Immigration Adjudicators, the Immigration Appeal Tribunal (the Immigration Appellate Authority) and the Special Immigration Appeals Commission (SIAC) within the scope of legal aid in Northern Ireland.