



# Nationality, Immigration and Asylum Act 2002

## 2002 CHAPTER 41

### PART 5

#### IMMIGRATION AND ASYLUM APPEALS

##### *Appeal to adjudicator*

#### **81 Adjudicators**

- (1) The Lord Chancellor shall appoint adjudicators for the purposes of this Part.
- (2) A person is eligible for appointment as an adjudicator only if he—
  - (a) has a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41),
  - (b) is an advocate or solicitor in Scotland of at least seven years' standing,
  - (c) is a member of the Bar of Northern Ireland, or a solicitor of the Supreme Court of Northern Ireland, of at least seven years' standing, or
  - (d) has legal or other experience which in the Lord Chancellor's opinion makes him suitable for appointment.
- (3) The Lord Chancellor—
  - (a) shall appoint one of the adjudicators as Chief Adjudicator,
  - (b) may appoint one of the adjudicators as Deputy Chief Adjudicator,
  - (c) may appoint one or more adjudicators as Regional Adjudicator, and
  - (d) may appoint one or more adjudicators as Deputy Regional Adjudicator.
- (4) The Chief Adjudicator shall perform such functions as the Lord Chancellor may assign to him.
- (5) The Deputy Chief Adjudicator—
  - (a) may act for the Chief Adjudicator if he is unable to act or unavailable, and

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- (b) shall perform such other functions as the Chief Adjudicator may delegate or assign to him.
- (6) A Regional Adjudicator shall perform such functions as the Chief Adjudicator may assign to him.
- (7) A Deputy Regional Adjudicator—
  - (a) may act for the Regional Adjudicator whose deputy he is if the Regional Adjudicator is unable to act or unavailable, and
  - (b) shall perform such other functions as may be delegated or assigned to him by the Regional Adjudicator whose deputy he is or assigned to him by the Chief Adjudicator.
- (8) Schedule 4 (which makes further provision about adjudicators) shall have effect.

## **82 Right of appeal: general**

- (1) Where an immigration decision is made in respect of a person he may appeal to an adjudicator.
- (2) In this Part “immigration decision” means—
  - (a) refusal of leave to enter the United Kingdom,
  - (b) refusal of entry clearance,
  - (c) refusal of a certificate of entitlement under section 10 of this Act,
  - (d) refusal to vary a person’s leave to enter or remain in the United Kingdom if the result of the refusal is that the person has no leave to enter or remain,
  - (e) variation of a person’s leave to enter or remain in the United Kingdom if when the variation takes effect the person has no leave to enter or remain,
  - (f) revocation under section 76 of this Act of indefinite leave to enter or remain in the United Kingdom,
  - (g) a decision that a person is to be removed from the United Kingdom by way of directions under section 10(1)(a), (b) or (c) of the Immigration and Asylum Act 1999 (c. 33) (removal of person unlawfully in United Kingdom),
  - (h) a decision that an illegal entrant is to be removed from the United Kingdom by way of directions under paragraphs 8 to 10 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry: removal),
  - (i) a decision that a person is to be removed from the United Kingdom by way of directions given by virtue of paragraph 10A of that Schedule (family),
  - (j) a decision to make a deportation order under section 5(1) of that Act, and
  - (k) refusal to revoke a deportation order under section 5(2) of that Act.
- (3) A variation or revocation of the kind referred to in subsection (2)(e) or (f) shall not have effect while an appeal under subsection (1) against that variation or revocation—
  - (a) could be brought (ignoring any possibility of an appeal out of time with permission), or
  - (b) is pending.
- (4) The right of appeal under subsection (1) is subject to the exceptions and limitations specified in this Part.

### **83 Appeal: asylum claim**

- (1) This section applies where a person has made an asylum claim and—
  - (a) his claim has been rejected by the Secretary of State, but
  - (b) he has been granted leave to enter or remain in the United Kingdom for a period exceeding one year (or for periods exceeding one year in aggregate).
- (2) The person may appeal to an adjudicator against the rejection of his asylum claim.

### **84 Grounds of appeal**

- (1) An appeal under section 82(1) against an immigration decision must be brought on one or more of the following grounds—
  - (a) that the decision is not in accordance with immigration rules;
  - (b) that the decision is unlawful by virtue of section 19B of the Race Relations Act 1976 (c. 74) (discrimination by public authorities);
  - (c) that the decision is unlawful under section 6 of the Human Rights Act 1998 (c. 42) (public authority not to act contrary to Human Rights Convention) as being incompatible with the appellant’s Convention rights;
  - (d) that the appellant is an EEA national or a member of the family of an EEA national and the decision breaches the appellant’s rights under the Community Treaties in respect of entry to or residence in the United Kingdom;
  - (e) that the decision is otherwise not in accordance with the law;
  - (f) that the person taking the decision should have exercised differently a discretion conferred by immigration rules;
  - (g) that removal of the appellant from the United Kingdom in consequence of the immigration decision would breach the United Kingdom’s obligations under the Refugee Convention or would be unlawful under section 6 of the Human Rights Act 1998 as being incompatible with the appellant’s Convention rights.
- (2) In subsection (1)(d) “EEA national” means a national of a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as it has effect from time to time).
- (3) An appeal under section 83 must be brought on the grounds that removal of the appellant from the United Kingdom would breach the United Kingdom’s obligations under the Refugee Convention.

### **85 Matters to be considered**

- (1) An appeal under section 82(1) against a decision shall be treated by the adjudicator as including an appeal against any decision in respect of which the appellant has a right of appeal under section 82(1).
- (2) If an appellant under section 82(1) makes a statement under section 120, the adjudicator shall consider any matter raised in the statement which constitutes a ground of appeal of a kind listed in section 84(1) against the decision appealed against.
- (3) Subsection (2) applies to a statement made under section 120 whether the statement was made before or after the appeal was commenced.
- (4) On an appeal under section 82(1) or 83(2) against a decision an adjudicator may consider evidence about any matter which he thinks relevant to the substance of the

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decision, including evidence which concerns a matter arising after the date of the decision.

- (5) But in relation to an appeal under section 82(1) against refusal of entry clearance or refusal of a certificate of entitlement under section 10—
- (a) subsection (4) shall not apply, and
  - (b) the adjudicator may consider only the circumstances appertaining at the time of the decision to refuse.

## **86 Determination of appeal**

- (1) This section applies on an appeal under section 82(1) or 83.
- (2) The adjudicator must determine—
- (a) any matter raised as a ground of appeal (whether or not by virtue of section 85(1)), and
  - (b) any matter which section 85 requires him to consider.
- (3) The adjudicator must allow the appeal in so far as he thinks that—
- (a) a decision against which the appeal is brought or is treated as being brought was not in accordance with the law (including immigration rules), or
  - (b) a discretion exercised in making a decision against which the appeal is brought or is treated as being brought should have been exercised differently.
- (4) For the purposes of subsection (3) a decision that a person should be removed from the United Kingdom under a provision shall not be regarded as unlawful if it could have been lawfully made by reference to removal under another provision.
- (5) In so far as subsection (3) does not apply, the adjudicator shall dismiss the appeal.
- (6) Refusal to depart from or to authorise departure from immigration rules is not the exercise of a discretion for the purposes of subsection (3)(b).

## **87 Successful appeal: direction**

- (1) If an adjudicator allows an appeal under section 82 or 83 he may give a direction for the purpose of giving effect to his decision.
- (2) A person responsible for making an immigration decision shall act in accordance with any relevant direction under subsection (1).
- (3) But a direction under this section shall not have effect while an appeal under section 101 or a further appeal—
- (a) could be brought (ignoring any possibility of an appeal out of time with permission), or
  - (b) has been brought and has not been finally determined.
- (4) A direction under subsection (1) shall be treated as part of the determination of the appeal for the purposes of section 101.

### *Exceptions and limitations*

#### **88 Ineligibility**

- (1) This section applies to an immigration decision of a kind referred to in section 82(2) (a), (b), (d) or (e).
- (2) A person may not appeal under section 82(1) against an immigration decision which is taken on the grounds that he or a person of whom he is a dependant—
  - (a) does not satisfy a requirement as to age, nationality or citizenship specified in immigration rules,
  - (b) does not have an immigration document of a particular kind (or any immigration document),
  - (c) is seeking to be in the United Kingdom for a period greater than that permitted in his case by immigration rules, or
  - (d) is seeking to enter or remain in the United Kingdom for a purpose other than one for which entry or remaining is permitted in accordance with immigration rules.
- (3) In subsection (2)(b) “immigration document” means—
  - (a) entry clearance,
  - (b) a passport,
  - (c) a work permit or other immigration employment document within the meaning of section 122, and
  - (d) a document which relates to a national of a country other than the United Kingdom and which is designed to serve the same purpose as a passport.
- (4) Subsection (2) does not prevent the bringing of an appeal on any or all of the grounds referred to in section 84(1)(b), (c) and (g).

#### **89 Visitor or student without entry clearance**

- (1) This section applies to a person who applies for leave to enter the United Kingdom—
  - (a) as a visitor,
  - (b) in order to follow a course of study for which he has been accepted and which will not last more than six months,
  - (c) in order to study but without having been accepted for a course, or
  - (d) as the dependant of a person who applies for leave to enter as a visitor or for a purpose described in paragraph (b) or (c).
- (2) A person may not appeal under section 82(1) against refusal of leave to enter the United Kingdom if at the time of the refusal he does not have entry clearance.
- (3) Subsection (2) does not prevent the bringing of an appeal on any or all of the grounds referred to in section 84(1)(b), (c) and (g).

#### **90 Non-family visitor**

- (1) A person who applies for entry clearance for the purpose of entering the United Kingdom as a visitor may appeal under section 82(1) against refusal of entry clearance only if the application was made for the purpose of visiting a member of the applicant's family.

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- (2) In subsection (1) the reference to a member of the applicant’s family shall be construed in accordance with regulations.
- (3) Regulations under subsection (2) may, in particular, make provision wholly or partly by reference to the duration of two individuals' residence together.
- (4) Subsection (1) does not prevent the bringing of an appeal on either or both of the grounds referred to in section 84(1)(b) and (c).

## **91 Student**

- (1) A person may not appeal under section 82(1) against refusal of entry clearance if he seeks it—
  - (a) in order to follow a course of study for which he has been accepted and which will not last more than six months,
  - (b) in order to study but without having been accepted for a course, or
  - (c) as the dependant of a person seeking entry clearance for a purpose described in paragraph (a) or (b).
- (2) Subsection (1) does not prevent the bringing of an appeal on either or both of the grounds referred to in section 84(1)(b) and (c).

## **92 Appeal from within United Kingdom: general**

- (1) A person may not appeal under section 82(1) while he is in the United Kingdom unless his appeal is of a kind to which this section applies.
- (2) This section applies to an appeal against an immigration decision of a kind specified in section 82(2)(c), (d), (e), (f) and (j).
- (3) This section also applies to an appeal against refusal of leave to enter the United Kingdom where at the time of the refusal the appellant is in the United Kingdom and has—
  - (a) entry clearance, or
  - (b) a work permit.
- (4) This section also applies to an appeal against an immigration decision if the appellant—
  - (a) has made an asylum claim, or a human rights claim, while in the United Kingdom, or
  - (b) is an EEA national or a member of the family of an EEA national and makes a claim to the Secretary of State that the decision breaches the appellant’s rights under the Community Treaties in respect of entry to or residence in the United Kingdom.

## **93 Appeal from within United Kingdom: “third country” removal**

- (1) A person may not appeal under section 82(1) while he is in the United Kingdom if a certificate has been issued in relation to him under section 11(2) or 12(2) of the Immigration and Asylum Act 1999 (c. 33) (removal of asylum claimants to “third country”).
- (2) But subsection (1) does not apply to an appeal if—

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- (a) the appellant has made a human rights claim, and
- (b) the Secretary of State has not certified that in his opinion the human rights claim is clearly unfounded.

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

- (1) This section applies to an appeal under section 82(1) where the appellant has made an asylum claim or a human rights claim (or both).
- (2) A person may not bring an appeal to which this section applies in reliance on section 92(4) if the Secretary of State certifies that the claim or claims mentioned in subsection (1) is or are clearly unfounded.
- (3) If the Secretary of State is satisfied that an asylum claimant or human rights claimant is entitled to reside in a State listed in subsection (4) he shall certify the claim under subsection (2) unless satisfied that it is not clearly unfounded.
- (4) Those States are—
  - (a) the Republic of Cyprus,
  - (b) the Czech Republic,
  - (c) the Republic of Estonia,
  - (d) the Republic of Hungary,
  - (e) the Republic of Latvia,
  - (f) the Republic of Lithuania,
  - (g) the Republic of Malta,
  - (h) the Republic of Poland,
  - (i) the Slovak Republic, and
  - (j) the Republic of Slovenia.
- (5) The Secretary of State may by order add a State, or part of a State, to the list in subsection (4) if satisfied that—
  - (a) there is in general in that State or part no serious risk of persecution of persons entitled to reside in that State or part, and
  - (b) removal to that State or part of persons entitled to reside there will not in general contravene the United Kingdom's obligations under the Human Rights Convention.
- (6) The Secretary of State may by order remove from the list in subsection (4) a State or part added under subsection (5).
- (7) A person may not bring an appeal to which this section applies in reliance on section 92(4) if the Secretary of State certifies that—
  - (a) it is proposed to remove the person to a country of which he is not a national or citizen, and
  - (b) there is no reason to believe that the person's rights under the Human Rights Convention will be breached in that country.
- (8) In determining whether a person in relation to whom a certificate has been issued under subsection (7) may be removed from the United Kingdom, the country specified in the certificate is to be regarded as—

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- (a) a place where a person's life and liberty is not threatened by reason of his race, religion, nationality, membership of a particular social group, or political opinion, and
  - (b) a place from which a person will not be sent to another country otherwise than in accordance with the Refugee Convention.
- (9) Where a person in relation to whom a certificate is issued under this section subsequently brings an appeal under section 82(1) while outside the United Kingdom, the appeal shall be considered as if he had not been removed from the United Kingdom.

#### **95 Appeal from outside United Kingdom: removal**

A person who is outside the United Kingdom may not appeal under section 82(1) on the ground specified in section 84(1)(g) (except in a case to which section 94(9) applies).

#### **96 Earlier right of appeal**

- (1) An appeal under section 82(1) against an immigration decision (“the new decision”) in respect of a person may not be brought or continued if the Secretary of State or an immigration officer certifies—
- (a) that the person was notified of a right to appeal under that section against another immigration decision (whether or not an appeal was brought and whether or not any appeal brought has been determined),
  - (b) that in the opinion of the Secretary of State or the immigration officer the new decision responds to a claim or application which the person made in order to delay his removal from the United Kingdom or the removal of a member of his family, and
  - (c) that in the opinion of the Secretary of State or the immigration officer the person had no other legitimate purpose for making the claim or application.
- (2) An appeal under section 82(1) against an immigration decision in respect of a person may not be brought or continued if the Secretary of State or an immigration officer certifies that the immigration decision relates to an application or claim which relies on a ground which the person—
- (a) raised on an appeal under that section against another immigration decision,
  - (b) should have included in a statement which he was required to make under section 120 in relation to another immigration decision or application, or
  - (c) would have been permitted or required to raise on an appeal against another immigration decision in respect of which he chose not to exercise a right of appeal.
- (3) A person may not rely on any ground in an appeal under section 82(1) if the Secretary of State or an immigration officer certifies that the ground was considered in another appeal under that section brought by that person.
- (4) In subsection (1) “notified” means notified in accordance with regulations under section 105.
- (5) Subsections (1) to (3) apply to prevent or restrict a person's right of appeal whether or not he has been outside the United Kingdom since an earlier right of appeal arose or since a requirement under section 120 was imposed.



- (6) In this section a reference to an appeal under section 82(1) includes a reference to an appeal under section 2 of the Special Immigration Appeals Commission Act 1997 (c. 68) which is or could be brought by reference to an appeal under section 82(1).

## **97 National security, &c.**

- (1) An appeal under section 82(1) or 83(2) against a decision in respect of a person may not be brought or continued if the Secretary of State certifies that the decision is or was taken—
- (a) by the Secretary of State wholly or partly on a ground listed in subsection (2), or
  - (b) in accordance with a direction of the Secretary of State which identifies the person to whom the decision relates and which is given wholly or partly on a ground listed in subsection (2).
- (2) The grounds mentioned in subsection (1) are that the person's exclusion or removal from the United Kingdom is—
- (a) in the interests of national security, or
  - (b) in the interests of the relationship between the United Kingdom and another country.
- (3) An appeal under section 82(1) or 83(2) against a decision may not be brought or continued if the Secretary of State certifies that the decision is or was taken wholly or partly in reliance on information which in his opinion should not be made public—
- (a) in the interests of national security,
  - (b) in the interests of the relationship between the United Kingdom and another country, or
  - (c) otherwise in the public interest.
- (4) In subsections (1)(a) and (b) and (3) a reference to the Secretary of State is to the Secretary of State acting in person.

## **98 Other grounds of public good**

- (1) This section applies to an immigration decision of a kind referred to in section 82(2) (a) or (b).
- (2) An appeal under section 82(1) against an immigration decision may not be brought or continued if the Secretary of State certifies that the decision is or was taken—
- (a) by the Secretary of State wholly or partly on the ground that the exclusion or removal from the United Kingdom of the person to whom the decision relates is conducive to the public good, or
  - (b) in accordance with a direction of the Secretary of State which identifies the person to whom the decision relates and which is given wholly or partly on that ground.
- (3) In subsection (2)(a) and (b) a reference to the Secretary of State is to the Secretary of State acting in person.
- (4) Subsection (2) does not prevent the bringing of an appeal on either or both of the grounds referred to in section 84(1)(b) and (c).

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- (5) Subsection (2) does not prevent the bringing of an appeal against an immigration decision of the kind referred to in section 82(2)(a) on the grounds referred to in section 84(1)(g).

**99 Sections 96 to 98: appeal in progress**

- (1) This section applies where a certificate is issued under section 96(1) or (2), 97 or 98 in respect of a pending appeal.
- (2) The appeal shall lapse.

*Appeal from adjudicator*

**100 Immigration Appeal Tribunal**

- (1) There shall continue to be an Immigration Appeal Tribunal.
- (2) Schedule 5 (which makes provision about the Tribunal) shall have effect.

**101 Appeal to Tribunal**

- (1) A party to an appeal to an adjudicator under section 82 or 83 may, with the permission of the Immigration Appeal Tribunal, appeal to the Tribunal against the adjudicator's determination on a point of law.
- (2) A party to an application to the Tribunal for permission to appeal under subsection (1) 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.
- (3) Where an application is made under subsection (2)—
- (a) it shall be determined by a single judge by reference only to written submissions,
  - (b) the judge may affirm or reverse the Tribunal's decision,
  - (c) the judge's decision shall be final, and
  - (d) if, in an application to the High Court, the judge thinks the application had no merit he shall issue a certificate under this paragraph (which shall be dealt with in accordance with Civil Procedure Rules).
- (4) The Lord Chancellor may by order repeal subsections (2) and (3).

**102 Decision**

- (1) On an appeal under section 101 the Immigration Appeal Tribunal may—
- (a) affirm the adjudicator's decision;
  - (b) make any decision which the adjudicator could have made;
  - (c) remit the appeal to an adjudicator;
  - (d) affirm a direction given by the adjudicator under section 87;
  - (e) vary a direction given by the adjudicator under that section;
  - (f) give any direction which the adjudicator could have given under that section.

- (2) In reaching their decision on an appeal under section 101 the Tribunal may consider evidence about any matter which they think relevant to the adjudicator's decision, including evidence which concerns a matter arising after the adjudicator's decision.
- (3) But where the appeal under section 82 was against refusal of entry clearance or refusal of a certificate of entitlement—
  - (a) subsection (2) shall not apply, and
  - (b) the Tribunal may consider only the circumstances appertaining at the time of the decision to refuse.
- (4) In remitting an appeal to an adjudicator under subsection (1)(c) the Tribunal may, in particular—
  - (a) require the adjudicator to determine the appeal in accordance with directions of the Tribunal;
  - (b) require the adjudicator to take additional evidence with a view to the appeal being determined by the Tribunal.

### **103 Appeal from Tribunal**

- (1) Where the Immigration Appeal Tribunal determines an appeal under section 101 a party to the appeal may bring a further appeal on a point of law—
  - (a) where the original decision of the adjudicator was made in Scotland, to the Court of Session, or
  - (b) in any other case, to the Court of Appeal.
- (2) An appeal under this section may be brought only with the permission of—
  - (a) the Tribunal, or
  - (b) if the Tribunal refuses permission, the court referred to in subsection (1)(a) or (b).
- (3) The remittal of an appeal to an adjudicator under section 102(1)(c) is not a determination of the appeal for the purposes of subsection (1) above.

#### *Procedure*

### **104 Pending appeal**

- (1) An appeal under section 82(1) is pending during the period—
  - (a) beginning when it is instituted, and
  - (b) ending when it is finally determined, withdrawn or abandoned (or when it lapses under section 99).
- (2) An appeal under section 82(1) is not finally determined for the purposes of subsection (1)(b) while a further appeal or an application under section 101(2)—
  - (a) has been instituted and is not yet finally determined, withdrawn or abandoned, or
  - (b) may be brought (ignoring the possibility of an appeal out of time with permission).
- (3) The remittal of an appeal to an adjudicator under section 102(1)(c) is not a final determination for the purposes of subsection (2) above.

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- (4) An appeal under section 82(1) shall be treated as abandoned if the appellant—
  - (a) is granted leave to enter or remain in the United Kingdom, or
  - (b) leaves the United Kingdom.
- (5) An appeal under section 82(2)(a), (c), (d), (e) or (f) shall be treated as finally determined if a deportation order is made against the appellant.

### **105 Notice of immigration decision**

- (1) The Secretary of State may make regulations requiring a person to be given written notice where an immigration decision is taken in respect of him.
- (2) The regulations may, in particular, provide that a notice under subsection (1) of a decision against which the person is entitled to appeal under section 82(1) must state—
  - (a) that there is a right of appeal under that section, and
  - (b) how and when that right may be exercised.
- (3) The regulations may make provision (which may include presumptions) about service.

### **106 Rules**

- (1) The Lord Chancellor may make rules—
  - (a) regulating the exercise of the right of appeal under section 82, 83 or 101;
  - (b) prescribing procedure to be followed in connection with proceedings under section 82, 83, 101(1) or 103.
- (2) In particular, rules under subsection (1)—
  - (a) must entitle an appellant to be legally represented at any hearing of his appeal;
  - (b) may enable or require an appeal to be determined without a hearing;
  - (c) may enable or require an appeal to be dismissed without substantive consideration where practice or procedure has not been complied with;
  - (d) may enable or require an adjudicator or the Immigration Appeal Tribunal to treat an appeal as abandoned in specified circumstances;
  - (e) may enable or require an adjudicator or the Tribunal to determine an appeal in the absence of parties in specified circumstances;
  - (f) may enable or require an adjudicator or the Tribunal to determine an appeal by reference only to written submissions in specified circumstances;
  - (g) may make provision about the adjournment of an appeal by an adjudicator (which may include provision prohibiting an adjudicator from adjourning except in specified circumstances);
  - (h) may make provision about the treatment of adjourned appeals by an adjudicator (which may include provision requiring an adjudicator to determine an appeal within a specified period);
  - (i) may make provision about the use of electronic communication in the course of or in connection with a hearing;
  - (j) may make provision about the remittal of an appeal by the Tribunal to an adjudicator under section 102;
  - (k) may enable an adjudicator to set aside a decision of himself or another adjudicator;
  - (l) may enable the Tribunal to set aside a decision of the Tribunal;

- (m) must make provision about the consolidation of appeals (which may, in particular, include provision for the adjournment or remission of a further appeal under section 101);
  - (n) may make provision (which may include presumptions) about service;
  - (o) may confer ancillary powers on an adjudicator or the Tribunal;
  - (p) may confer a discretion on an adjudicator or the Tribunal;
  - (q) may require an adjudicator or the Tribunal to give notice of a determination to a specified person;
  - (r) may require or enable notice of a determination to be given on behalf of an adjudicator or the Tribunal;
  - (s) may make provision about the grant of bail by an adjudicator or the Tribunal (which may, in particular, include provision which applies or is similar to any enactment).
- (3) Rules under subsection (1)—
- (a) may enable an adjudicator or the Tribunal to make an award of costs or expenses,
  - (b) may make provision (which may include provision conferring discretion on a court) for the taxation or assessment of costs or expenses,
  - (c) may make provision about interest on an award of costs or expenses (which may include provision conferring a discretion or providing for interest to be calculated in accordance with provision made by the rules),
  - (d) may enable an adjudicator or the Tribunal to disallow all or part of a representative's costs or expenses,
  - (e) may enable an adjudicator or the Tribunal to require a representative to pay specified costs or expenses, and
  - (f) shall make provision in respect of proceedings before an adjudicator or the Tribunal which has an effect similar to that of section 101(3)(d) and the Civil Procedure Rules referred to there.
- (4) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed in accordance with rules under subsection (1) to attend before an adjudicator or the Tribunal—
- (a) to give evidence, or
  - (b) to produce a document.
- (5) A person who is guilty of an offence under subsection (4) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **107 Practice directions**

- (1) The President of the Immigration Appeal Tribunal may give directions as to the practice to be followed by the Tribunal.
- (2) The Chief Adjudicator may give directions as to the practice to be followed by adjudicators.

#### **108 Forged document: proceedings in private**

- (1) This section applies where it is alleged—

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- (a) that a document relied on by a party to an appeal under section 82, 83 or 101 is a forgery, and
  - (b) that disclosure to that party of a matter relating to the detection of the forgery would be contrary to the public interest.
- (2) The adjudicator or the Immigration Appeal Tribunal—
- (a) must investigate the allegation in private, and
  - (b) may proceed in private so far as necessary to prevent disclosure of the matter referred to in subsection (1)(b).

### *General*

#### **109 European Union and European Economic Area**

- (1) Regulations may provide for, or make provision about, an appeal against an immigration decision taken in respect of a person who has or claims to have a right under any of the Community Treaties.
- (2) The regulations may—
- (a) apply a provision of this Act or the Special Immigration Appeals Commission Act 1997 (c. 68) with or without modification;
  - (b) make provision similar to a provision made by or under this Act or that Act;
  - (c) disapply or modify the effect of a provision of this Act or that Act.
- (3) In subsection (1) “immigration decision” means a decision about—
- (a) a person’s entitlement to enter or remain in the United Kingdom, or
  - (b) removal of a person from the United Kingdom.

#### **110 Grants**

- (1) The Secretary of State may make a grant to a voluntary organisation which provides—
- (a) advice or assistance to persons who have a right of appeal under this Part;
  - (b) other services for the welfare of those persons.
- (2) A grant under this section may be subject to terms or conditions (which may include conditions as to repayment).

#### **111 Monitor of certification of claims as unfounded**

- (1) The Secretary of State shall appoint a person to monitor the use of the powers under sections 94(2) and 115(1).
- (2) The person appointed under this section shall make a report to the Secretary of State—
- (a) once in each calendar year, and
  - (b) on such occasions as the Secretary of State may request.
- (3) Where the Secretary of State receives a report under subsection (2)(a) he shall lay a copy before Parliament as soon as is reasonably practicable.
- (4) The person appointed under this section shall hold and vacate office in accordance with the terms of his appointment (which may include provision about retirement, resignation or dismissal).

- (5) The Secretary of State may—
  - (a) pay fees and allowances to the person appointed under this section;
  - (b) defray expenses of the person appointed under this section.
- (6) A person who is employed within a government department may not be appointed under this section.

## **112 Regulations, &c.**

- (1) Regulations under this Part shall be made by the Secretary of State.
- (2) Regulations and rules under this Part—
  - (a) must be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Regulations and rules under this Part—
  - (a) may make provision which applies generally or only in a specified case or in specified circumstances,
  - (b) may make different provision for different cases or circumstances,
  - (c) may include consequential, transitional or incidental provision, and
  - (d) may include savings.
- (4) An order under section 94(5) or 115(8)—
  - (a) must be made by statutory instrument,
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament, and
  - (c) may include transitional provision.
- (5) An order under section 94(6) or 115(9)—
  - (a) must be made by statutory instrument,
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament, and
  - (c) may include transitional provision.
- (6) An order under section 101(4)—
  - (a) must be made by statutory instrument,
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament,
  - (c) may include consequential or transitional provision, and
  - (d) may include savings.

## **113 Interpretation**

- (1) In this Part, unless a contrary intention appears—
  - “asylum claim” means a claim made by a person to the Secretary of State at a place designated by the Secretary of State that to remove the person from or require him to leave the United Kingdom would breach the United Kingdom’s obligations under the Refugee Convention,

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“entry clearance” has the meaning given by section 33(1) of the Immigration Act 1971 (c. 77) (interpretation),

“human rights claim” means a claim made by a person to the Secretary of State at a place designated by the Secretary of State that to remove the person from or require him to leave the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998 (c. 42) (public authority not to act contrary to Convention) as being incompatible with his Convention rights,

“the Human Rights Convention” has the same meaning as “the Convention” in the Human Rights Act 1998 and “Convention rights” shall be construed in accordance with section 1 of that Act,

“illegal entrant” has the meaning given by section 33(1) of the Immigration Act 1971,

“immigration rules” means rules under section 1(4) of that Act (general immigration rules),

“prescribed” means prescribed by regulations,

“the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol,

“visitor” means a visitor in accordance with immigration rules, and

“work permit” has the meaning given by section 33(1) of the Immigration Act 1971 (c. 77) (interpretation).

- (2) A reference to varying leave to enter or remain in the United Kingdom does not include a reference to adding, varying or revoking a condition of leave.

#### **114 Repeal**

- (1) Part IV of the Immigration and Asylum Act 1999 (c. 33) (appeals) shall cease to have effect.
- (2) Schedule 6 (which makes transitional provision in connection with the repeal of Part IV of that Act and its replacement by this Part) shall have effect.
- (3) Schedule 7 (consequential amendments) shall have effect.

#### **115 Appeal from within United Kingdom: unfounded human rights or asylum claim: transitional provision**

- (1) A person may not bring an appeal under section 65 or 69 of the Immigration and Asylum Act 1999 (human rights and asylum) while in the United Kingdom if—
- (a) the Secretary of State certifies that the appeal relates to a human rights claim or an asylum claim which is clearly unfounded, and
  - (b) the person does not have another right of appeal while in the United Kingdom under Part IV of that Act.
- (2) A person while in the United Kingdom may not bring an appeal under section 69 of that Act, or raise a question which relates to the Human Rights Convention under section 77 of that Act, if the Secretary of State certifies that—
- (a) it is proposed to remove the person to a country of which he is not a national or citizen, and
  - (b) there is no reason to believe that the person’s rights under the Human Rights Convention will be breached in that country.



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*Status: This is the original version (as it was originally enacted).*

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- (3) A person while in the United Kingdom may not bring an appeal under section 65 of that Act (human rights) if the Secretary of State certifies that—
  - (a) it is proposed to remove the person to a country of which he is not a national or citizen, and
  - (b) there is no reason to believe that the person’s rights under the Human Rights Convention will be breached in that country.
- (4) In determining whether a person in relation to whom a certificate has been issued under subsection (2) or (3) may be removed from the United Kingdom, the country specified in the certificate is to be regarded as—
  - (a) a place where a person’s life and liberty is not threatened by reason of his race, religion, nationality, membership of a particular social group, or political opinion, and
  - (b) a place from which a person will not be sent to another country otherwise than in accordance with the Refugee Convention.
- (5) Where a person in relation to whom a certificate is issued under this section subsequently brings an appeal or raises a question under section 65, 69 or 77 of that Act while outside the United Kingdom, the appeal or question shall be considered as if he had not been removed from the United Kingdom.
- (6) If the Secretary of State is satisfied that a person who makes a human rights claim or an asylum claim is entitled to reside in a State listed in subsection (7), he shall issue a certificate under subsection (1) unless satisfied that the claim is not clearly unfounded.
- (7) Those States are—
  - (a) the Republic of Cyprus,
  - (b) the Czech Republic,
  - (c) the Republic of Estonia,
  - (d) the Republic of Hungary,
  - (e) the Republic of Latvia,
  - (f) the Republic of Lithuania,
  - (g) the Republic of Malta,
  - (h) the Republic of Poland,
  - (i) the Slovak Republic, and
  - (j) the Republic of Slovenia.
- (8) The Secretary of State may by order add a State, or part of a State, to the list in subsection (7) if satisfied that—
  - (a) there is in general in that State or part no serious risk of persecution of persons entitled to reside in that State or part, and
  - (b) removal to that State or part of persons entitled to reside there will not in general contravene the United Kingdom’s obligations under the Human Rights Convention.
- (9) The Secretary of State may by order remove from the list in subsection (7) a State or part added under subsection (8).
- (10) In this section “asylum claim” and “human rights claim” have the meanings given by section 113 but—
  - (a) a reference to a claim in that section shall be treated as including a reference to an allegation, and

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- (b) a reference in that section to making a claim at a place designated by the Secretary of State shall be ignored.

**116 Special Immigration Appeals Commission: Community Legal Service**

In paragraph 2(1) of Schedule 2 to the Access to Justice Act 1999 (c. 22) (Community Legal Service: courts and tribunals in which advocacy may be funded) the following shall be inserted after paragraph (h) (and before the word “or” which appears immediately after that paragraph)—

“(ha) the Special Immigration Appeals Commission.”

**117 Northern Ireland appeals: legal aid**

- (1) In 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) the following shall be inserted after paragraph 6—

“6A Proceedings before an adjudicator appointed for the purposes of Part 5 of the Nationality, Immigration and Asylum Act 2002, the Immigration Appeal Tribunal or the Special Immigration Appeals Commission.”

- (2) The amendment made by subsection (1) is without prejudice to the power to make regulations under Article 10(2) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 amending or revoking the provision inserted by that subsection.