



# Nationality, Immigration and Asylum Act 2002

## 2002 CHAPTER 41

### PART 5

#### IMMIGRATION AND ASYLUM APPEALS

##### *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).

*Status: Point in time view as at 01/04/2003.*

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**Modifications etc. (not altering text)**

- C1** S. 110 applied (with modifications) by 1997 c. 68, **s. 2(2)(1)(3)(d)** (as substituted (1.4.2003) by 2002 c. 41, ss. 114, 162(2), **Sch. 7 para. 20** (with s. 159); S.I. 2003/754, art. 2(1), **Sch. 1**)
- C2** S. 110 extended by 2001 c. 24, **s. 27(10)** (as substituted (1.4.2003) by 2002 c. 41, ss. 114, 162(2), **Sch. 7 para. 30** (with s. 159); S.I. 2003/754, art. 2(1), **Sch. 1**)

**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.

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- (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,
  - “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.

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- (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.

#### Commencement Information

- II** S. 114 wholly in force at 1.4.2003; s. 114 not in force at Royal Assent see s. 162(2); s. 114(3) in force at 10.2.2003 by [S.I. 2003/1, art. 2, Sch.](#); s. 114(1)(2) in force at 1.4.2003 by [S.I. 2003/754, art. 2, Sch. 1](#)

### 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.
- (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.

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- (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.
  - [<sup>F1</sup>(k) the Republic of Albania,
  - (l) Bulgaria,
  - (m) Serbia and Montenegro,
  - (n) Jamaica,
  - (o) Macedonia,
  - (p) the Republic of Moldova, and
  - (q) Romania.]
- (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
  - (b) a reference in that section to making a claim at a place designated by the Secretary of State shall be ignored.

#### Textual Amendments

**F1** S. 115(7)(k)-(q) added (1.4.2003) by [The Asylum \(Designated States\) Order 2003 \(S.I. 2003/970\)](#), [art. 4](#)

#### Modifications etc. (not altering text)

**C3** S. 115 extended (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), [art. 3](#), [Sch. 2 para. 1\(5\)](#) (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))

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S. 115 continued (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), [art. 4\(1\)](#) (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))

## 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.

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