



Special Immigration Appeals Commission Act 1997

1997 CHAPTER 68

An Act to establish the Special Immigration Appeals Commission; to make provision with respect to its jurisdiction; and for connected purposes. [17th December 1997]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Modifications etc. (not altering text)

- C1** Act restricted (2.10.2000) by 1999 c. 33, s. 73(9); S.I. 2000/2444, art. 2, Sch. 1 (with arts. 3, 4)
Act amended (22.5.2000 for specified purposes and 2.10.2000 otherwise) by 1999 c. 33, s. 74; S.I. 2000/1282, art. 2, Sch.; S.I. 2000/2444, art. 2, Sch. 1 (with arts. 3, 4)
Act restricted (2.10.2000) by 1999 c. 33, s. 76(2)(3); S.I. 2000/2444, art. 2, Sch. 1 (with arts. 3, 4)
Act modified (14.12.2001) by 2001 c. 24, s. 24(3)
Act: power to apply (with modifications) conferred (1.4.2003) by 2002 c. 41, ss.109(2)(a), 162(1) (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1 (with arts. 3, 4, Sch. 2 para. 5)
- C2** Act applied (with modifications) by S.I. 2000/2326, reg. 31(8) (as substituted (1.4.2003) by The Immigration (European Economic Area) (Amendment) Regulations 2003 (S.I. 2003/549), regs. 1, 2(8) (with reg. 3(1))

VALID FROM 03/08/1998

1 Establishment of the Commission.

- (1) There shall be a commission, known as the Special Immigration Appeals Commission, for the purpose of exercising the jurisdiction conferred by this Act.
- (2) Schedule 1 to this Act shall have effect in relation to the Commission.

Status: Point in time view as at 11/06/1998. This version of this Act contains provisions that are not valid for this point in time.
Changes to legislation: Special Immigration Appeals Commission Act 1997 is up to date with all changes known to be in force on or before 21 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

2 Jurisdiction: appeals.

[^{F1}(1) A person may appeal to the Special Immigration Appeals Commission against a decision which he would be entitled to appeal against under any provision (other than section 59(2)) of Part IV of the Immigration and Asylum Act 1999 (“the 1999 Act”) or the Immigration (European Economic Area) Order 1994 (“the 1994 Order”) but for a public interest provision.

(1A) “Public interest provision” means any of—

- (a) sections 60(9), 62(4), 64(1) or (2) or 70(1) to (6) of the 1999 Act; or
- (b) paragraphs (b), (c) or (d) of Article 20(2) of the 1994 Order.]

(2) A person may appeal to the Special Immigration Appeals Commission against the refusal of an entry clearance if he would be entitled to appeal against the refusal under subsection (2) of section 13 of the ^{M1}Immigration Act 1971, but for subsection (5) of that section (exclusion conducive to public good), and—

- (a) he seeks to rely on an enforceable Community right or any provision made under section 2(2) of the ^{M2}European Communities Act 1972, or
- (b) he seeks to enter the United Kingdom under immigration rules making provision about entry—
 - (i) to exercise rights of access to a child resident there,
 - (ii) as the spouse or fiance of a person present and settled there, or
 - (iii) as the parent, grandparent or other dependent relative of a person present and settled there.

(3) Schedule 2 to this Act (which makes supplementary provision relating to appeals under this section) shall have effect.

(4) In this section, “immigration rules” has the same meaning as in the Immigration Act 1971.

Textual Amendments

F1 S. 2(1)(1A) substituted (*prosp.*) by 1999 c. 33, s. 169(1), Sch. 14 paras. 118, 119 (which Sch. 14 para. 119 was repealed (2.10.2000) by S.I. 2000/2326, reg. 32(4))

Modifications etc. (not altering text)

C3 S. 2: power to amend conferred (22.5.2000) by 1999 c. 33, s. 80(8)(a); S.I. 2000/1282, art. 2, Sch.

Marginal Citations

M1 1971 c. 77

M2 1972 c. 68.

[^{F2}2A Jurisdiction: human rights.

(1) A person who alleges that an authority has, in taking an appealable decision, acted in breach of his human rights may appeal to the Commission against that decision.

(2) For the purposes of this section, an authority acts in breach of a person’s human rights if he acts, or fails to act, in relation to that other person in a way which is made unlawful by section 6(1) of the ^{M3}Human Rights Act 1998.

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- (3) Subsections (4) and (5) apply if, in any appellate proceedings being heard by the Commission, a question arises as to whether an authority has, in taking a decision which is the subject of the proceedings, acted in breach of the appellant's human rights.
- (4) The Commission has jurisdiction to consider the question.
- (5) If the Commission decides that the authority concerned acted in breach of the appellant's human rights, the appeal may be allowed on that ground.
- (6) "Authority" means—
- (a) the Secretary of State;
 - (b) an immigration officer;
 - (c) a person responsible for the grant or refusal of entry clearance.
- (7) "Appealable decision" means a decision against which a person would be entitled to appeal under Part IV of the 1999 Act or the 1994 Order but for a public interest provision.
- (8) "The 1999 Act", "the 1994 Order" and "public interest provision" have the same meaning as in section 2.]

Textual Amendments

F2 S. 2A inserted (*prosp.*) by 1999 c. 33, ss. 169(1), 170(4), Sch. 14 paras. 118, 121 (which Sch. 14 para. 121 was repealed (2.10.2000) in so far as it relates to the insertion of of subsections (7) and (8) by S.I. 2000/2326, reg. 32(4))

Modifications etc. (not altering text)

C4 S. 2A: power to amend conferred (22.5.2000) by 1999 c. 33, s. 80(8)(a); S.I. 2000/1282, art. 2, Sch.

Marginal Citations

M3 1998 c. 42.

VALID FROM 01/04/2003

[^{F3}2B

A person may appeal to the Special Immigration Appeals Commission against a decision to make an order under section 40 of the British Nationality Act 1981 (c. 61) (deprivation of citizenship) if he is not entitled to appeal under section 40A(1) of that Act because of a certificate under section 40A(2).]

Textual Amendments

F3 S. 2B inserted (1.4.2003) by 2002 c. 41, ss. 4(2), 162(1); (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1 (with arts. 3, 4, Sch. 2 para. 5)

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VALID FROM 03/08/1998

3 Jurisdiction: bail.

- (1) In the case of a person to whom subsection (2) below applies, the provisions of Schedule 2 to the Immigration Act 1971 specified in Schedule 3 to this Act shall have effect with the modifications set out there.
- (2) This subsection applies to a person who is detained under the Immigration Act 1971 if—
 - (a) the Secretary of State certifies that his detention is necessary in the interests of national security,
 - (b) he is detained following a decision to refuse him leave to enter the United Kingdom on the ground that his exclusion is in the interests of national security, or
 - (c) he is detained following a decision to make a deportation order against him on the ground that his deportation is in the interests of national security.

VALID FROM 03/08/1998

4 Determination of appeals.

- (1) The Special Immigration Appeals Commission on an appeal to it under this Act—
 - (a) shall allow the appeal if it considers—
 - (i) that the decision or action against which the appeal is brought was not in accordance with the law or with any immigration rules applicable to the case, or
 - (ii) where the decision or action involved the exercise of a discretion by the Secretary of State or an officer, that the discretion should have been exercised differently, and
 - (b) in any other case, shall dismiss the appeal.
- (2) Where an appeal is allowed, the Commission shall give such directions for giving effect to the determination as it thinks requisite, and may also make recommendations with respect to any other action which it considers should be taken in the case under the ^{M4}Immigration Act 1971; and it shall be the duty of the Secretary of State and of any officer to whom directions are given under this subsection to comply with them.
- (3) In this section, “immigration rules” has the same meaning as in the Immigration Act 1971.

Marginal Citations

M4 1971 c. 77.

5 Procedure in relation to jurisdiction under sections 2 and 3.

- (1) The Lord Chancellor may make rules—

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- (a) for regulating the exercise of the rights of appeal conferred by section 2 above,
 - (b) for prescribing the practice and procedure to be followed on or in connection with appeals under that section, including the mode and burden of proof and admissibility of evidence on such appeals, and
 - (c) for other matters preliminary or incidental to or arising out of such appeals, including proof of the decisions of the Special Immigration Appeals Commission.
- (2) Rules under this section shall provide that an appellant has the right to be legally represented in any proceedings before the Commission on an appeal under section 2 above, subject to any power conferred on the Commission by such rules.
- (3) Rules under this section may, in particular—
 - (a) make provision enabling proceedings before the Commission to take place without the appellant being given full particulars of the reasons for the decision which is the subject of the appeal,
 - (b) make provision enabling the Commission to hold proceedings in the absence of any person, including the appellant and any legal representative appointed by him,
 - (c) make provision about the functions in proceedings before the Commission of persons appointed under section 6 below, and
 - (d) make provision enabling the Commission to give the appellant a summary of any evidence taken in his absence.
- (4) Rules under this section may also include provision—
 - (a) enabling any functions of the Commission which relate to matters preliminary or incidental to an appeal, or which are conferred by Part II of Schedule 2 to the ^{M5}Immigration Act 1971, to be performed by a single member of the Commission, or
 - (b) conferring on the Commission such ancillary powers as the Lord Chancellor thinks necessary for the purposes of the exercise of its functions.
- (5) The power to make rules under this section shall include power to make rules with respect to applications to the Commission under paragraphs 22 to 24 of Schedule 2 to the Immigration Act 1971 and matters arising out of such applications.
- (6) In making rules under this section, the Lord Chancellor shall have regard, in particular, to—
 - (a) the need to secure that decisions which are the subject of appeals are properly reviewed, and
 - (b) the need to secure that information is not disclosed contrary to the public interest.
- (7) Section 9(1) of the ^{M6}Interception of Communications Act 1985 (exclusion of evidence) shall not apply to proceedings before the Commission.
- (8) The power to make rules under this section shall be exercisable by statutory instrument.
- (9) No rules shall be made under this section unless a draft of them has been laid before and approved by resolution of each House of Parliament.

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Modifications etc. (not altering text)

- C5** S. 5 extended (*prosp.*) by 1999 c. 33, ss. 44(13), 170(4)
- C6** S. 5(1) amended (22.5.2000 for specified purposes and otherwise 2.10.2000) by 1999 c. 33, s. 74(3) (a); S.I. 2000/1282, art. 2, Sch.; S.I. 2000/2444, art. 2, Sch. 1 (with transitional provisions in arts. 3, 4)

Marginal Citations

- M5** 1971 c. 77.
- M6** 1985 c. 56.

VALID FROM 03/08/1998

6 Appointment of person to represent the appellant's interests.

- (1) The relevant law officer may appoint a person to represent the interests of an appellant in any proceedings before the Special Immigration Appeals Commission from which the appellant and any legal representative of his are excluded.
- (2) For the purposes of subsection (1) above, the relevant law officer is—
 - (a) in relation to proceedings before the Commission in England and Wales, the Attorney General,
 - (b) in relation to proceedings before the Commission in Scotland, the Lord Advocate, and
 - (c) in relation to proceedings before the Commission in Northern Ireland, the Attorney General for Northern Ireland.
- (3) A person appointed under subsection (1) above—
 - (a) if appointed for the purposes of proceedings in England and Wales, shall have a general qualification for the purposes of section 71 of the ^{M7}Courts and Legal Services Act 1990,
 - (b) if appointed for the purposes of proceedings in Scotland, shall be—
 - (i) an advocate, or
 - (ii) a solicitor who has by virtue of section 25A of the ^{M8}Solicitors (Scotland) Act 1980 rights of audience in the Court of Session and the High Court of Justiciary, and
 - (c) if appointed for the purposes of proceedings in Northern Ireland, shall be a member of the Bar of Northern Ireland.
- (4) A person appointed under subsection (1) above shall not be responsible to the person whose interests he is appointed to represent.

Modifications etc. (not altering text)

- C7** S. 6: functions transferred (6.5.1999) by S.I. 1999/901, art. 5, Sch. (with arts. 8, 9)
S. 6 applied (14.12.2001) by 2001 c. 24, s. 27(1)(a)

Marginal Citations

- M7** 1990 c. 41.

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M8 1980 c. 46.

VALID FROM 03/08/1998

7 Appeals from the Commission.

- (1) Where the Special Immigration Appeals Commission has made a final determination of an appeal, any party to the appeal may bring a further appeal to the appropriate appeal court on any question of law material to that determination.
- (2) An appeal under this section may be brought only with the leave of the Commission or, if such leave is refused, with the leave of the appropriate appeal court.
- (3) In this section “the appropriate appeal court” means—
 - (a) in relation to a determination made by the Commission in England and Wales, the Court of Appeal,
 - (b) in relation to a determination made by the Commission in Scotland, the Court of Session, and
 - (c) in relation to a determination made by the Commission in Northern Ireland, the Court of Appeal in Northern Ireland.
- (4) In section 33(4) of the Immigration Act 1971, after “1993” there shall be inserted “or section 7 of the Special Immigration Appeals Commission Act 1997”.

VALID FROM 02/10/2000

[^{F4}7A Pending appeals.

- (1) For the purposes of this Act, an appeal to the Commission is to be treated as pending during the period beginning when notice of appeal is given and ending when the appeal is finally determined, withdrawn or abandoned.
- (2) An appeal is not to be treated as finally determined while a further appeal may be brought.
- (3) If a further appeal is brought, the original appeal is not to be treated as finally determined until the further appeal is determined, withdrawn or abandoned.
- (4) A pending appeal to the Commission is to be treated as abandoned if the appellant leaves the United Kingdom.
- (5) A pending appeal to the Commission is to be treated as abandoned if the appellant is granted leave to enter or remain in the United Kingdom.
- (6) But subsection (5) does not apply to an appeal brought under section 2(1) as a result of section 70(4) of the Immigration and Asylum Act 1999.
- (7) A pending appeal brought under section 2(1) as a result of section 62(3) of that Act is to be treated as abandoned if a deportation order is made against the appellant.]

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Textual Amendments

F4 S. 7A inserted (2.10.2000) by 1999 c. 33, s.169(1), Sch. 14 paras. 118, 124; S.I. 2000/2444, art. 2, Sch. 1 (with transitional provisions in arts. 3, 4)

Modifications etc. (not altering text)

C8 S. 7A applied (14.12.2001) by 2001 c. 24, s. 27(1)(c)

C9 S. 7A(7) modified (2.10.2000) by S.I. 2000/2326, reg. 36(4)

8 Procedure on applications to the Commission for leave to appeal.

- (1) The Lord Chancellor may make rules regulating, and prescribing the procedure to be followed on, applications to the Special Immigration Appeals Commission for leave to appeal under section 7 above.
- (2) Rules under this section may include provision enabling an application for leave to appeal to be heard by a single member of the Commission.
- (3) The power to make rules under this section shall be exercisable by statutory instrument.
- (4) No rules shall be made under this section unless a draft of them has been laid before and approved by resolution of each House of Parliament.

Modifications etc. (not altering text)

C10 S. 8 modified (14.12.2001) by 2001 c. 24, s. 27(5)

9 Short title, commencement and extent.

- (1) This Act may be cited as the Special Immigration Appeals Commission Act 1997.
- (2) This Act, except for this section, shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be so appointed for different purposes.
- (3) Her Majesty may by Order in Council direct that any of the provisions of this Act shall extend, with such modifications as appear to Her Majesty to be appropriate, to any of the Channel Islands or the Isle of Man.
- (4) This Act extends to Northern Ireland.

Subordinate Legislation Made

P1 S. 9(2) power partly exercised (26.5.1998): 11.6.1998 appointed for ss. 5 and 8 by S.I. 1998/1336, art. 2
S. 9(2) power fully exercised (31.7.1998): 3.8.1998 appointed for the provisions of the Act not already in force by S.I. 1998/1892, art. 2

Status:

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Changes to legislation:

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