



# Special Immigration Appeals Commission Act 1997

1997 CHAPTER 68

**U.K.**

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))

## **1 Establishment of the Commission. U.K.**

(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.

[<sup>F1</sup>(3) The Commission shall be a superior court of record.

*Status: Point in time view as at 01/04/2003.*

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- (4) A decision of the Commission shall be questioned in legal proceedings only in accordance with—
- (a) section 7, or
  - (b) section 30(5)(a) of the Anti-terrorism, Crime and Security Act 2001 (derogation).]

#### Textual Amendments

F1 S. 1(3)(4) inserted (14.12.2001) by 2001 c. 24, s. 35

#### [<sup>F2</sup> Jurisdiction: appeals **U.K.**

- (1) A person may appeal to the Special Immigration Appeals Commission against a decision if—
- (a) he would be able to appeal against the decision under section 82(1) or 83(2) of the Nationality, Immigration and Asylum Act 2002 but for a certificate of the Secretary of State under section 97 of that Act (national security, &c.), or
  - (b) an appeal against the decision under section 82(1) or 83(2) of that Act lapsed under section 99 of that Act by virtue of a certificate of the Secretary of State under section 97 of that Act.
- (2) The following provisions shall apply, with any necessary modifications, in relation to an appeal against an immigration decision under this section as they apply in relation to an appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002—
- (a) section 3C of the Immigration Act 1971 (c. 77) (continuation of leave pending variation decision),
  - (b) section 78 of the Nationality, Immigration and Asylum Act 2002 (no removal while appeal pending),
  - (c) section 79 of that Act (deportation order: appeal),
  - (d) section 82(3) of that Act (variation or revocation of leave to enter or remain: appeal),
  - (e) section 84 of that Act (grounds of appeal),
  - (f) section 85 of that Act (matters to be considered),
  - (g) section 86 of that Act (determination of appeal),
  - (h) section 87 of that Act (successful appeal: direction),
  - (i) section 96 of that Act (earlier right of appeal),
  - (j) section 104 of that Act (pending appeal),
  - (k) section 105 of that Act (notice of immigration decision), and
  - (l) section 110 of that Act (grants).
- (3) The following provisions shall apply, with any necessary modifications, in relation to an appeal against the rejection of a claim for asylum under this section as they apply in relation to an appeal under section 83(2) of the Nationality, Immigration and Asylum Act 2002—
- (a) section 85(4) of that Act (matters to be considered),
  - (b) section 86 of that Act (determination of appeal),
  - (c) section 87 of that Act (successful appeal: direction), and
  - (d) section 110 of that Act (grants).

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- (4) An appeal against the rejection of a claim for asylum under this section shall be treated as abandoned if the appellant leaves the United Kingdom.
- (5) A person may bring or continue an appeal against an immigration decision under this section while he is in the United Kingdom only if he would be able to bring or continue the appeal while he was in the United Kingdom if it were an appeal under section 82(1) of that Act.
- (6) In this section “immigration decision” has the meaning given by section 82(2) of the Nationality, Immigration and Asylum Act 2002.]

**Textual Amendments**

- F2** S. 2 substituted (1.4.2003) by 2002 c. 41, ss. 114(3), 162(1), **Sch. 7 para. 20** (with s. 159); S.I. 2003/754, art. 2(1), **Sch. 1** (with arts. 3, 4, Sch. 2 para. 5) (as amended (8.4.2003) by S.I. 2003/1040, art. 2)

[<sup>F4</sup>**2A** **Jurisdiction:** [<sup>F3</sup>**racial discrimination and]human rights. U.K.**

<sup>F5</sup> .....

**Textual Amendments**

- F3** Words in s. 2A sidenote inserted (2.4.2001) by 2000 c. 34, s. 9(1), **Sch. 2 para. 27** (with s. 10(5)); S.I. 2001/566, art. 2(1) (subject to art. 2(2))
- F4** S. 2A inserted (2.10.2000) by 1999 c. 33, s. 169(1), Sch. 14 paras. 118, **121**; S.I. 2000/2444, art. 2, **Sch. 1** (with transitional provisions in arts. 3, 4, Sch. 2 para. 5(2))
- F5** S. 2A repealed (1.4.2003) by 2002 c. 41, ss. 114(3), 161, 162(1), Sch. 7 para. 21, **Sch. 9** (with S. 159); S.I. 2003/754, art. 2(1), **Sch. 1** (with arts. 3, 4, Sch. 2 para. 5)

[<sup>F6</sup>**2B** **U.K.**

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**

- F6** 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)

**3** **Jurisdiction: bail. U.K.**

- (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—

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- (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.

**4 Determination of appeals. U.K.**

F7 .....

**Textual Amendments**

F7 S. 4 repealed (1.4.2003) by 2002 c. 41, ss. 114(3), 161, 162(1), Sch. 7 para. 22, Sch. 9 (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1 (with arts. 3, 4, Sch. 2 para. 5)

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

- (1) The Lord Chancellor may make rules—
  - (a) for regulating the exercise of the rights of appeal conferred by section 2 [F8 or 2B]... above,
  - (b) for prescribing the practice and procedure to be followed on or in connection with appeals under that section [F9 section 2 [F8 or 2B]... above], 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 [F8 or 2B]... above, subject to any power conferred on the Commission by such rules.
- [F10(2A) Rules under this section may, in particular, do anything which may be done by rules under section 106 of the Nationality, Immigration and Asylum Act 2002 (appeals: 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—

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- (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 <sup>M1</sup>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.
- <sup>F11</sup>(7) .....
- (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.

#### Textual Amendments

- F8** Words in s. 5(1)(a)(b)(2) inserted (1.4.2003) by 2002 c. 41, **ss. 4(3), 162(1)**, (with s. 159); S.I. 2003/754, **art. 2(1), Sch. 1** (with arts. 3, 4, Sch. 2 para. 5)
- F9** Words in s. 5(1)(b) substituted (2.4.2001) by 2000 c. 34, s. 9(1), **Sch. 2 para. 28(b)** (with s. 10(5)); S.I. 2001/566, **art. 2(1)** (subject to art. 2(2))
- F10** S. 5(2A) inserted (1.4.2003) by 2002 c. 41, ss. 114(3), 162(1), **Sch. 7 para. 23(b)** (with s. 159); S.I. 2003/754, **art. 2(1), Sch. 1** (with arts. 3, 4, Sch. 2 para. 5)
- F11** S. 5(7) repealed (2.10.2000) by 2000 c. 23, s. 82, **Sch. 5** (with s. 82(3)); S.I. 2000/2543, **art. 3**

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

- C3** S. 5 modified (14.12.2001) by 2001 c. 24, **s. 27(5)**
- C4** 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

- M1** 1971 c. 77.

## 6 Appointment of person to represent the appellant's interests. **U.K.**

- (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,

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- (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 <sup>M2</sup>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 <sup>M3</sup>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)**

**C5** 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\(1\)\(a\)](#)

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**Marginal Citations**

**M2** [1990 c. 41.](#)

**M3** [1980 c. 46.](#)

**7 Appeals from the Commission. U.K.**

- (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.

<sup>F12</sup>(4) .....

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#### Textual Amendments

**F12** S. 7(4) repealed (2.10.2000) by 1999 c. 33, s. 169(1)(3), Sch. 14 para. 118, 123, **Sch. 16**; S.I. 2000/2444, art. 2, **Sch. 1** (with transitional provisions in arts. 3, 4)

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

**C6** S. 7 applied (14.12.2001) by 2001 c. 24, s. 27(1)(b)

**C7** S. 7(2)(3) applied by 2001 c. 24, s. 24(5) (as added (22.9.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 32(1), 48(2))

### [<sup>F13</sup>7A Pending appeals. **U.K.**

<sup>F14</sup> .....

#### Textual Amendments

**F13** 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)

**F14** S. 7A repealed (1.4.2003) by 2002 c. 41, ss. 114(3), 161, 162(1), Sch. 7 para. 24, **Sch. 9** (with s. 159); S.I. 2003/754, art. 2(1), **Sch. 1** (with arts. 3, 4, Sch. 2 para. 5)

### 8 Procedure on applications to the Commission for leave to appeal. **U.K.**

- (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)

**C8** S. 8 modified (14.12.2001) by 2001 c. 24, s. 27(5)

### 9 Short title, commencement and extent. **U.K.**

- (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.

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(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**



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## SCHEDULES

### SCHEDULE 1 U.K.

Section 1.

#### THE COMMISSION

##### *Members*

- 1 (1) The Special Immigration Appeals Commission shall consist of such number of members appointed by the Lord Chancellor as he may determine.
- (2) A member of the Commission shall hold and vacate office in accordance with the terms of his appointment and shall, on ceasing to hold office, be eligible for re-appointment.
- (3) A member of the Commission may resign his office at any time by notice in writing to the Lord Chancellor.

##### *Chairman*

- 2 The Lord Chancellor shall appoint one of the members of the Commission to be its chairman.

##### *Payments to members*

- 3 (1) The Lord Chancellor may pay to the members of the Commission such remuneration and allowances as he may determine.
- (2) The Lord Chancellor may, if he thinks fit in the case of any member of the Commission pay such pension, allowance or gratuity to or in respect of the member, or such sums towards the provision of such pension, allowance or gratuity, as he may determine.
- (3) If a person ceases to be a member of the Commission and it appears to the Lord Chancellor that there are special circumstances which make it right that the person should receive compensation, he may pay to that person a sum of such amount as he may determine.

##### *Proceedings*

- 4 The Commission shall sit at such times and in such places as the Lord Chancellor may direct and may sit in two or more divisions.
- 5 The Commission shall be deemed to be duly constituted if it consists of three members of whom—
  - (a) at least one holds or has held high judicial office (within the meaning of the <sup>M4</sup>Appellate Jurisdiction Act 1876), and
  - (b) at least one is or has been—

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- (i) appointed as chief adjudicator under [<sup>F15</sup>section 81(3)(a) of the Nationality, Immigration and Asylum Act 2002], or
- (ii) a member of the Immigration Appeal Tribunal qualified as mentioned in [<sup>F16</sup>[<sup>F17</sup>paragraph 11 of Schedule 5] to that Act].

#### Textual Amendments

- F15** Words in Sch. 1 para. 5(b)(i) substituted (1.4.2003) by 2002 c. 41, ss. 114(3), 162(1), Sch. 7 para. 25(a) (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1 (with arts. 3, 4, Sch. 2 para. 5)
- F16** Words in Sch. 1, para. 5(b)(ii) substituted (14.2.2000) by 1999 c. 33, s. 169(1), Sch. 14, paras. 118, 125(b); S.I. 2000/168, art. 2, Sch. (with transitional provisions in art. 3)
- F17** Words in Sch. 1 para. 5(b)(ii) substituted (1.4.2003) by 2002 c. 41, ss. 114(3), 162(1), Sch. 7 para. 25(b) (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1 (with arts. 3, 4, Sch. 2 para. 5)

#### Marginal Citations

- M4** 1876 c. 59.

- 6 The chairman or, in his absence, such other member of the Commission as he may nominate, shall preside at sittings of the Commission and report its decisions.

#### Staff

- 7 The Lord Chancellor may appoint such officers and servants for the Commission as he thinks fit.

#### Expenses

- 8 The Lord Chancellor shall defray the remuneration of persons appointed under paragraph 7 above and such expenses of the Commission as he thinks fit.

F18F18 SCHEDULE 2 U.K.

#### Textual Amendments

- F18** Sch. 2 repealed (1.4.2003) by 2002 c. 41, ss. 114(3), 161, 162(1), Sch. 7 para. 26, Sch. 9 (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1 (with arts. 3, 4, Sch. 2 para. 5)

SCHEDULE 3 U.K.

Section 3.

BAIL: MODIFICATIONS OF SCHEDULE 2 TO THE IMMIGRATION ACT 1971

- 1 (1) Paragraph 22 shall be amended as follows.
- (2) In sub-paragraph (1A), for the words from the beginning to “adjudicator” there shall be substituted “ The Special Immigration Appeals Commission ”.

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- (3) In sub-paragraph (2)—
  - (a) for the words “immigration officer or adjudicator” there shall be substituted “ Special Immigration Appeals Commission ”, and
  - (b) for the words “officer or adjudicator” there shall be substituted “ Commission ”.
- (4) In sub-paragraph (3)—
  - (a) for “an immigration officer or adjudicator” there shall be substituted “ the Special Immigration Appeals Commission ”, and
  - (b) for “officer or adjudicator”, in both places, there shall be substituted “ Commission ”.
- 2 (1) Paragraph 23 shall be amended as follows.
  - (2) In sub-paragraph (1)—
    - (a) for “an adjudicator” there shall be substituted “ the Special Immigration Appeals Commission ”, and
    - (b) for “the adjudicator”, in each place, there shall be substituted “ the Commission ”.
  - (3) In sub-paragraph (2)—
    - (a) for “an adjudicator” there shall be substituted “ the Special Immigration Appeals Commission ”, and
    - (b) for “the adjudicator” there shall be substituted “ the Commission ”.
- 3 (1) Paragraph 24 shall be amended as follows.
  - (2) For sub-paragraph (2), there shall be substituted—

“(2) A person arrested under this paragraph shall be brought before the Special Immigration Appeals Commission within twenty-four hours.”
  - (3) In sub-paragraph (3), for the words from the beginning to “above” there shall be substituted “ Where a person is brought before the Special Immigration Appeals Commission by virtue of sub-paragraph (2) above, the Commission— ”.
- 4 (1) Paragraph 29 shall be amended as follows.
  - (2) For sub-paragraphs (2) to (4) there shall be substituted—

“(2) The Special Immigration Appeals Commission may release an appellant on his entering into a recognizance or, in Scotland, bail bond conditioned for his appearance before the Commission at a time and place named in the recognizance or bail bond.”
  - (3) For sub-paragraph (6) there shall be substituted—

“(6) In any case in which the Special Immigration Appeals Commission has power to release an appellant on bail, the Commission may, instead of taking the bail, fix the amount and conditions of the bail (including the amount in which any sureties are to be bound) with a view to its being taken subsequently by any such person as may be specified by the Commission; and on the recognizance or bail bond being so taken the appellant shall be released.”
- 5 Paragraph 30(2) shall be omitted.

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- 6 (1) Paragraph 31 shall be amended as follows.
- (2) In sub-paragraph (1)—
- (a) for “an adjudicator or the Tribunal” there shall be substituted “ the Special Immigration Appeals Commission ”,
  - (b) for “the adjudicator or the Tribunal, as the case may be,” there shall be substituted “ the Commission ”, and
  - (c) for “the adjudicator or Tribunal”, in both places, there shall be substituted “ the Commission ”.
- (3) In sub-paragraph (3)—
- (a) for “an adjudicator or the Tribunal” there shall be substituted “ the Special Immigration Appeals Commission ”, and
  - (b) for “the adjudicator or Tribunal” there shall be substituted “ it ”.
- 7 Paragraph 32 shall be amended as follows—
- (a) for “an adjudicator or the Tribunal” there shall be substituted “ the Special Immigration Appeals Commission ”,
  - (b) for “the adjudicator or Tribunal” there shall be substituted “ the Commission ”, and
  - (c) for “the adjudicator or the Tribunal” there shall be substituted “ the Commission ”.
- 8 (1) Paragraph 33 shall be amended as follows.
- (2) For sub-paragraph (2), there shall be substituted—
- “(2) A person arrested under this paragraph shall be brought before the Special Immigration Appeals Commission within twenty-four hours.”
- (3) In sub-paragraph (3), for the words from the beginning to “above” there shall be substituted “ Where a person is brought before the Special Immigration Appeals Commission by virtue of sub-paragraph (2) above, the Commission— ”.

**Status:**

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