



# Nationality, Immigration and Asylum Act 2002

## 2002 CHAPTER 41

### PART 5

#### IMMIGRATION AND ASYLUM APPEALS

VALID FROM 01/04/2003

#### *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,

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- (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).

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

- C1** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), arts. 3, 4 (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](#)))

VALID FROM 01/10/2004

**[<sup>F1</sup>88A Ineligibility: entry clearance**

- (1) A person may not appeal under section 82(1) against refusal of entry clearance if the decision to refuse is taken on grounds which—
- (a) relate to a provision of immigration rules, and
  - (b) are specified for the purpose of this section by order of the Secretary of State.
- (2) Subsection (1)—
- (a) does not prevent the bringing of an appeal on either or both of the grounds referred to in section 84(1)(b) and (c), and
  - (b) is without prejudice to the effect of section 88 in relation to an appeal under section 82(1) against refusal of entry clearance.]

**Textual Amendments**

- F1** S. 88A inserted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), ss. 29(1), 48(1)-(3); [S.I. 2004/2523](#), art. 2, Sch.

**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.

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- (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).

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

- C2** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), arts. 3, 4 (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](#)))

**F<sup>2</sup>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.
- (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).

**Textual Amendments**

- F2** S. 88A substituted (prosp.) for ss. 88A, 90, 91 by [Immigration, Asylum and Nationality Act 2006 \(c. 13\)](#), ss. 4(1), 62

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

- C3** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), arts. 3, 4 (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](#)))

**F<sup>3</sup>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).

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### Textual Amendments

- F3** S. 88A substituted (prosp.) for ss. 88A, 90, 91 by [Immigration, Asylum and Nationality Act 2006 \(c. 13\)](#), [ss. 4\(1\), 62](#)

### Modifications etc. (not altering text)

- C4** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), arts. 3, 4 (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](#)))

## 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.

### Modifications etc. (not altering text)

- C5** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), arts. 3, 4 (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](#)))

## 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—
  - (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.

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

- C6** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), arts. 3, 4 (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](#)))

VALID FROM 10/02/2003

**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

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- (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—
- (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.

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

- C7 Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), arts. 3, 4 (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](#)))

**Commencement Information**

- II S. 94 wholly in force at 1.4.2003; s. 94 not in force at Royal Assent see s. 162(2); s. 94(5) in force for certain purposes at 10.2.2003 by [S.I. 2003/249](#), art. 2, Sch.; s. 94 in force at 1.4.2003 insofar as not already in force by virtue of [S.I. 2003/754](#), art. 2, Sch. 1

VALID FROM 01/12/2007

**[<sup>F4</sup>94A European Common List of Safe Countries of Origin**

- (1) The Secretary of State shall by order prescribe a list of States to be known as the “European Common List of Safe Countries of Origin”.
- (2) Subsections (3) and (4) apply where a person makes an asylum claim or a human rights claim (or both) and that person is –
- (a) a national of a State which is listed in the European Common List of Safe Countries of Origin, or
- (b) a Stateless person who was formerly habitually resident in such a State.
- (3) The Secretary of State shall consider the claim or claims mentioned in subsection (2) to be unfounded unless satisfied that there are serious grounds for considering that the State in question is not safe in the particular circumstances of the person mentioned in that subsection.
- (4) The Secretary of State shall also certify the claim or claims mentioned in subsection (2) under section 94(2) unless satisfied that the claim or claims is or are not clearly unfounded.
- (5) An order under subsection (1) –

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- (a) may be made only if the Secretary of State thinks it necessary for the purpose of complying with the United Kingdom's obligations under Community law,
- (b) may include transitional, consequential or incidental provision,
- (c) shall be made by statutory instrument, and
- (d) shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

- F4** S. 94A inserted (1.12.2007) by [The Asylum \(Procedures\) Regulations 2007 \(S.I. 2007/3187\)](#), reg. 4

### 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).

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

- C8** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), arts. 3, 4 (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](#)))

### 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



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- (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).

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

- C9** S. 96 applied (with modifications) by 1997 c. 68, s. 2(2)(i) (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**)  
 Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), art. 3, 4 (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by S.I. 2003/1040 and S.I. 2003/1339))
- C10** S. 96(1)(a) modified (1.4.2003) by S.I. 2000/2326, reg. 33(3) (as inserted by [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2003 \(S.I. 2003/549\)](#), **reg. 2(9)**)  
 S. 96(1)(a) modified (30.4.2006) by [The Immigration \(European Economic Area\) Regulations 2006 \(S.I. 2006/1003\)](#), reg. 31(2), **Sch. 2 para. 4(7)**
- C11** S. 96(2)(a)(c) modified (1.4.2003) by S.I. 2000/2326, reg. 33(3) (as inserted by [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2003 \(S.I. 2003/549\)](#), **reg. 2(9)**)
- C12** S. 96(3) modified (1.4.2003) by S.I. 2000/2326, reg. 33(4) (as inserted by [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2003 \(S.I. 2003/549\)](#), **reg. 2(9)**)

#### 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.



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- (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.

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

- C13** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), arts. 3, 4 (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](#)))

VALID FROM 31/08/2006

**[<sup>F5</sup>97A National security: deportation**

- (1) This section applies where the Secretary of State certifies that the decision to make a deportation order in respect of a person was taken on the grounds that his removal from the United Kingdom would be in the interests of national security.
- (2) Where this section applies—
- (a) section 79 shall not apply,
  - (b) the Secretary of State shall be taken to have certified the decision to make the deportation order under section 97, and
  - (c) for the purposes of section 2(5) of the Special Immigration Appeals Commission Act 1997 (c. 68) (appeals from within United Kingdom) it shall be assumed that section 92 of this Act—
    - (i) would not apply to an appeal against the decision to make the deportation order by virtue of section 92(2) to (3D),
    - (ii) would not apply to an appeal against that decision by virtue of section 92(4)(a) in respect of an asylum claim, and
    - (iii) would be capable of applying to an appeal against that decision by virtue of section 92(4)(a) in respect of a human rights claim unless the Secretary of State certifies that the removal of the person from the United Kingdom would not breach the United Kingdom's obligations under the Human Rights Convention.
- (3) A person in respect of whom a certificate is issued under subsection (2)(c)(iii) may appeal to the Special Immigration Appeals Commission against the issue of the certificate; and for that purpose the Special Immigration Appeals Commission Act 1997 shall apply as to an appeal against an immigration decision to which section 92 of this Act applies.
- (4) The Secretary of State may repeal this section by order.]

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### Textual Amendments

**F5** S. 97A inserted (31.8.2006) by [Immigration, Asylum and Nationality Act 2006 \(c. 13\)](#), [ss. 7\(1\)](#), 62; [S.I. 2006/2226](#), [art. 3](#), [Sch. 1](#) (subject to transitional provisions in [art. 4](#))

## 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).
- (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).

### Modifications etc. (not altering text)

**C14** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), [arts. 3, 4](#) (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](#)))

## 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.

### Modifications etc. (not altering text)

**C15** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), [arts. 3, 4](#) (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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