



Nationality, Immigration and Asylum Act 2002

2002 CHAPTER 41

PART 5

IMMIGRATION AND ASYLUM APPEALS

[^{F1}Appeal to Tribunal]

86 Determination of appeal

- (1) This section applies on an appeal under section 82(1) [^{F1}, 83 or 83A.]
- (2) [^{F2}The Tribunal] 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 [^{F3}it] to consider.
- (3) [^{F2}The Tribunal] must allow the appeal in so far as [^{F4}it] 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, [^{F2}the Tribunal] 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).

Status: Point in time view as at 28/10/2011. This version of this provision has been superseded.

Changes to legislation: Nationality, Immigration and Asylum Act 2002, Section 86 is up to date with all changes known to be in force on or before 26 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)

Textual Amendments

- F1** Words in s. 86(1) substituted (31.8.2006) by [Immigration, Asylum and Nationality Act 2006 \(c. 13\)](#), ss. 14, 62, [Sch. 1 para. 4](#); S.I. 2006/2226, [art. 3](#), Sch. 1 (subject to transitional provisions in art. 4)
- F2** Words in s. 86 substituted (4.4.2005) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), ss. 26, 48(1)-(3), [Sch. 2 para. 18\(1\)\(2\)](#); S.I. 2005/565, [art. 2](#) (with savings in arts. 3-9)
- F3** Word in s. 86 substituted (4.4.2005) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), ss. 26, 48(1)-(3), [Sch. 2 para. 18\(1\)\(2\)](#); S.I. 2005/565, [art. 2](#) (with savings in arts. 3-9)
- F4** Word in s. 86 substituted (4.4.2005) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), ss. 26, 48(1)-(3), [Sch. 2 para. 18\(1\)\(2\)](#); S.I. 2005/565, [art. 2](#) (with savings in arts. 3-9)

Modifications etc. (not altering text)

- C1** S. 86 applied (with modifications) by 1997 c. 68, [s. 2\(2\)\(g\)\(3\)\(b\)](#) (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 \(S.I. 2003/754\)](#), 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))
 Ss. 85-87 applied (1.4.2003) by S.I. 2000/2326, Sch. 2 (as substituted by [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2003 \(S.I. 2003/549\)](#), [reg. 2\(10\)](#) (with transitional provisions in reg. 3))

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