



# Asylum and Immigration (Treatment of Claimants, etc.) Act 2004

## 2004 CHAPTER 19

### *Appeals*

#### **26 Unification of appeal system**

- (1) For section 81 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (appeals: adjudicators) substitute—

#### *“Appeal to Tribunal*

##### **81 The Asylum and Immigration Tribunal**

- (1) There shall be a tribunal to be known as the Asylum and Immigration Tribunal.
- (2) Schedule 4 (which makes provision about the Tribunal) shall have effect.
- (3) A reference in this Part to the Tribunal is a reference to the Asylum and Immigration Tribunal.”
- (2) In section 82(1) of that Act (right of appeal: general) for “to an adjudicator” substitute “to the Tribunal”.
- (3) In section 83(2) of that Act (appeal: asylum claim) for “to an adjudicator” substitute “to the Tribunal”.
- (4) For Schedule 4 to that Act (adjudicators) substitute the Schedule set out in Schedule 1 to this Act (Asylum and Immigration Tribunal).
- (5) The following provisions of that Act shall cease to have effect—
- (a) sections 100 to 103 (Immigration Appeal Tribunal), and
  - (b) Schedule 5 (Immigration Appeal Tribunal).
- (6) Before section 104 of that Act (pending appeal) insert—

**“103A Review of Tribunal’s decision**

- (1) A party to an appeal under section 82 or 83 may apply to the appropriate court, on the grounds that the Tribunal made an error of law, for an order requiring the Tribunal to reconsider its decision on the appeal.
- (2) The appropriate court may make an order under subsection (1)—
  - (a) only if it thinks that the Tribunal may have made an error of law, and
  - (b) only once in relation to an appeal.
- (3) An application under subsection (1) must be made—
  - (a) in the case of an application by the appellant made while he is in the United Kingdom, within the period of 5 days beginning with the date on which he is treated, in accordance with rules under section 106, as receiving notice of the Tribunal’s decision,
  - (b) in the case of an application by the appellant made while he is outside the United Kingdom, within the period of 28 days beginning with the date on which he is treated, in accordance with rules under section 106, as receiving notice of the Tribunal’s decision, and
  - (c) in the case of an application brought by a party to the appeal other than the appellant, within the period of 5 days beginning with the date on which he is treated, in accordance with rules under section 106, as receiving notice of the Tribunal’s decision.
- (4) But—
  - (a) rules of court may specify days to be disregarded in applying subsection (3)(a), (b) or (c), and
  - (b) the appropriate court may permit an application under subsection (1) to be made outside the period specified in subsection (3) where it thinks that the application could not reasonably practicably have been made within that period.
- (5) An application under subsection (1) shall be determined by reference only to—
  - (a) written submissions of the applicant, and
  - (b) where rules of court permit, other written submissions.
- (6) A decision of the appropriate court on an application under subsection (1) shall be final.
- (7) In this section a reference to the Tribunal’s decision on an appeal does not include a reference to—
  - (a) a procedural, ancillary or preliminary decision, or
  - (b) a decision following remittal under section 103B, 103C or 103E.
- (8) This section does not apply to a decision of the Tribunal where its jurisdiction is exercised by three or more legally qualified members.
- (9) In this section “the appropriate court” means—
  - (a) in relation to an appeal decided in England or Wales, the High Court,
  - (b) in relation to an appeal decided in Scotland, the Court of Session, and

- (c) in relation to an appeal decided in Northern Ireland, the High Court in Northern Ireland.
- (10) An application under subsection (1) to the Court of Session shall be to the Outer House.

### **103B Appeal from Tribunal following reconsideration**

- (1) Where an appeal to the Tribunal has been reconsidered, a party to the appeal may bring a further appeal on a point of law to the appropriate appellate court.
- (2) In subsection (1) the reference to reconsideration is to reconsideration pursuant to—
  - (a) an order under section 103A(1), or
  - (b) remittal to the Tribunal under this section or under section 103C or 103E.
- (3) An appeal under subsection (1) may be brought only with the permission of—
  - (a) the Tribunal, or
  - (b) if the Tribunal refuses permission, the appropriate appellate court.
- (4) On an appeal under subsection (1) the appropriate appellate court may—
  - (a) affirm the Tribunal’s decision;
  - (b) make any decision which the Tribunal could have made;
  - (c) remit the case to the Tribunal;
  - (d) affirm a direction under section 87;
  - (e) vary a direction under section 87;
  - (f) give a direction which the Tribunal could have given under section 87.
- (5) In this section “the appropriate appellate court” means—
  - (a) in relation to an appeal decided in England or Wales, the Court of Appeal,
  - (b) in relation to an appeal decided in Scotland, the Court of Session, and
  - (c) in relation to an appeal decided in Northern Ireland, the Court of Appeal in Northern Ireland.
- (6) An appeal under subsection (1) to the Court of Session shall be to the Inner House.

### **103C Appeal from Tribunal instead of reconsideration**

- (1) On an application under section 103A in respect of an appeal the appropriate court, if it thinks the appeal raises a question of law of such importance that it should be decided by the appropriate appellate court, may refer the appeal to that court.
- (2) On a reference under subsection (1) the appropriate appellate court may—
  - (a) affirm the Tribunal’s decision;
  - (b) make any decision which the Tribunal could have made;
  - (c) remit the case to the Tribunal;
  - (d) affirm a direction under section 87;
  - (e) vary a direction under section 87;

- (f) give a direction which the Tribunal could have given under section 87;
- (g) restore the application under section 103A to the appropriate court.

(3) In this section—

“the appropriate court” has the same meaning as in section 103A,  
and

“the appropriate appellate court” has the same meaning as in  
section 103B.

(4) A reference under subsection (1) to the Court of Session shall be to the Inner House.

### **103D Reconsideration: legal aid**

(1) On the application of an appellant under section 103A, the appropriate court may order that the appellant’s costs in respect of the application under section 103A shall be paid out of the Community Legal Service Fund established under section 5 of the Access to Justice Act 1999 (c. 22).

(2) Subsection (3) applies where the Tribunal has decided an appeal following reconsideration pursuant to an order made—

- (a) under section 103A(1), and
- (b) on the application of the appellant.

(3) The Tribunal may order that the appellant’s costs—

- (a) in respect of the application for reconsideration, and
- (b) in respect of the reconsideration,

shall be paid out of that Fund.

(4) The Secretary of State may make regulations about the exercise of the powers in subsections (1) and (3).

(5) Regulations under subsection (4) may, in particular, make provision—

- (a) specifying or providing for the determination of the amount of payments;
- (b) about the persons to whom the payments are to be made;
- (c) restricting the exercise of the power (whether by reference to the prospects of success in respect of the appeal at the time when the application for reconsideration was made, the fact that a reference has been made under section 103C(1), the circumstances of the appellant, the nature of the appellant’s legal representatives, or otherwise).

(6) Regulations under subsection (4) may make provision—

- (a) conferring a function on the Legal Services Commission;
- (b) modifying a duty or power of the Legal Services Commission in respect of compliance with orders under subsection (3);
- (c) applying (with or without modifications), modifying or disapplying a provision of, or of anything done under, an enactment relating to the funding of legal services.

(7) Before making regulations under subsection (4) the Secretary of State shall consult such persons as he thinks appropriate.

- (8) This section has effect only in relation to an appeal decided in—
  - (a) England,
  - (b) Wales, or
  - (c) Northern Ireland.
- (9) In relation to an appeal decided in Northern Ireland this section shall have effect—
  - (a) as if a reference to the Community Legal Service Fund were to the fund established under paragraph 4(2)(a) of Schedule 3 to the Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/ 435 (N.I. 10)), and
  - (b) with any other necessary modifications.

### **103E Appeal from Tribunal sitting as panel**

- (1) This section applies to a decision of the Tribunal on an appeal under section 82 or 83 where its jurisdiction is exercised by three or more legally qualified members.
  - (2) A party to the appeal may bring a further appeal on a point of law to the appropriate appellate court.
  - (3) An appeal under subsection (2) may be brought only with the permission of—
    - (a) the Tribunal, or
    - (b) if the Tribunal refuses permission, the appropriate appellate court.
  - (4) On an appeal under subsection (2) the appropriate appellate court may—
    - (a) affirm the Tribunal’s decision;
    - (b) make any decision which the Tribunal could have made;
    - (c) remit the case to the Tribunal;
    - (d) affirm a direction under section 87;
    - (e) vary a direction under section 87;
    - (f) give a direction which the Tribunal could have given under section 87.
  - (5) In this section “the appropriate appellate court” means—
    - (a) in relation to an appeal decided in England or Wales, the Court of Appeal,
    - (b) in relation to an appeal decided in Scotland, the Court of Session, and
    - (c) in relation to an appeal decided in Northern Ireland, the Court of Appeal in Northern Ireland.
  - (6) A further appeal under subsection (2) to the Court of Session shall be to the Inner House.
  - (7) In this section a reference to the Tribunal’s decision on an appeal does not include a reference to—
    - (a) a procedural, ancillary or preliminary decision, or
    - (b) a decision following remittal under section 103B or 103C.”
- (7) Schedule 2 (which makes amendments consequential on this section, and transitional provision) shall have effect.

- (8) The Lord Chancellor may by order vary a period specified in—
- (a) section 103A(3)(a), (b) or (c) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (review of Tribunal’s decision) (as inserted by subsection (6) above), or
  - (b) paragraph 30(5)(b) of Schedule 2 to this Act.
- (9) An order under subsection (8)—
- (a) may make provision generally or only for specified cases or circumstances,
  - (b) may make different provision for different cases or circumstances,
  - (c) shall be made by statutory instrument, and
  - (d) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) Before making an order under subsection (8) the Lord Chancellor shall consult—
- (a) the Lord Chief Justice, if the order affects proceedings in England and Wales,
  - (b) the Lord President of the Court of Session, if the order affects proceedings in Scotland, and
  - (c) the Lord Chief Justice of Northern Ireland, if the order affects proceedings in Northern Ireland.

## 27 **Unfounded human rights or asylum claim**

- (1) Section 94 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (no appeal from within United Kingdom for unfounded human rights or asylum claim) shall be amended as follows.
- (2) After subsection (1) insert—
- “(1A) A person may not bring an appeal against an immigration decision of a kind specified in section 82(2)(c), (d) or (e) in reliance on section 92(2) if the Secretary of State certifies that the claim or claims mentioned in subsection (1) above is or are clearly unfounded.”
- (3) In subsection (2) for “in reliance on section 92(4)” substitute “in reliance on section 92(4)(a)”.
- (4) In subsection (4) omit paragraphs (a) to (j).
- (5) After subsection (5) insert—
- “(5A) If the Secretary of State is satisfied that the statements in subsection (5) (a) and (b) are true of a State or part of a State in relation to a description of person, an order under subsection (5) may add the State or part to the list in subsection (4) in respect of that description of person.
- (5B) Where a State or part of a State is added to the list in subsection (4) in respect of a description of person, subsection (3) shall have effect in relation to a claimant only if the Secretary of State is satisfied that he is within that description (as well as being satisfied that he is entitled to reside in the State or part).
- (5C) A description for the purposes of subsection (5A) may refer to—
- (a) gender,

- (b) language,
- (c) race,
- (d) religion,
- (e) nationality,
- (f) membership of a social or other group,
- (g) political opinion, or
- (h) any other attribute or circumstance that the Secretary of State thinks appropriate.”

(6) For subsection (6) substitute—

“(6) The Secretary of State may by order amend the list in subsection (4) so as to omit a State or part added under subsection (5); and the omission may be—

- (a) general, or
- (b) effected so that the State or part remains listed in respect of a description of person.”

(7) After subsection (6) insert—

“(6A) Subsection (3) shall not apply in relation to an asylum claimant or human rights claimant who—

- (a) is the subject of a certificate under section 2 or 70 of the Extradition Act 2003 (c. 41),
- (b) is in custody pursuant to arrest under section 5 of that Act,
- (c) is the subject of a provisional warrant under section 73 of that Act,
- (d) is the subject of an authority to proceed under section 7 of the Extradition Act 1989 (c. 33) or an order under paragraph 4(2) of Schedule 1 to that Act, or
- (e) is the subject of a provisional warrant under section 8 of that Act or of a warrant under paragraph 5(1)(b) of Schedule 1 to that Act.”

(8) After section 112(5) of that Act (orders, &c.) insert—

“(5A) If an instrument makes provision under section 94(5) and 94(6)—

- (a) subsection (4)(b) above shall apply, and
- (b) subsection (5)(b) above shall not apply.”

## **28 Appeal from within United Kingdom**

For section 92(3) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (appeal from within United Kingdom: person with entry clearance or work permit) substitute—

“(3) This section also applies to an appeal against refusal of leave to enter the United Kingdom if—

- (a) at the time of the refusal the appellant is in the United Kingdom, and
- (b) on his arrival in the United Kingdom the appellant had entry clearance.

(3A) But this section does not apply by virtue of subsection (3) if subsection (3B) or (3C) applies to the refusal of leave to enter.

- (3B) This subsection applies to a refusal of leave to enter which is a deemed refusal under paragraph 2A(9) of Schedule 2 to the Immigration Act 1971 (c. 77) resulting from cancellation of leave to enter by an immigration officer—
- (a) under paragraph 2A(8) of that Schedule, and
  - (b) on the grounds specified in paragraph 2A(2A) of that Schedule.
- (3C) This subsection applies to a refusal of leave to enter which specifies that the grounds for refusal are that the leave is sought for a purpose other than that specified in the entry clearance.
- (3D) This section also applies to an appeal against refusal of leave to enter the United Kingdom if at the time of the refusal the appellant—
- (a) is in the United Kingdom,
  - (b) has a work permit, and
  - (c) is any of the following (within the meaning of the British Nationality Act 1981 (c. 61))—
    - (i) a British overseas territories citizen,
    - (ii) a British Overseas citizen,
    - (iii) a British National (Overseas),
    - (iv) a British protected person, or
    - (v) a British subject.”

## 29 Entry clearance

- (1) After section 88 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (appeal: ineligibility) insert—

### “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.”
- (2) In section 112 of that Act (regulations, &c.) after subsection (3) insert—
- “(3A) An order under section 88A—
- (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.”



### **30 Earlier right of appeal**

(1) Section 96 of the Nationality, Immigration and Asylum Act 2002 (earlier right of appeal) shall be amended as follows.

(2) For subsections (1) to (3) substitute—

“(1) An appeal under section 82(1) against an immigration decision (“the new decision”) in respect of a person may not be brought if the Secretary of State or an immigration officer certifies—

- (a) that the person was notified of a right of appeal under that section against another immigration decision (“the old decision”) (whether or not an appeal was brought and whether or not any appeal brought has been determined),
- (b) that the claim or application to which the new decision relates relies on a matter that could have been raised in an appeal against the old decision, and
- (c) that, in the opinion of the Secretary of State or the immigration officer, there is no satisfactory reason for that matter not having been raised in an appeal against the old decision.

(2) An appeal under section 82(1) against an immigration decision (“the new decision”) in respect of a person may not be brought if the Secretary of State or an immigration officer certifies—

- (a) that the person received a notice under section 120 by virtue of an application other than that to which the new decision relates or by virtue of a decision other than the new decision,
- (b) that the new decision relates to an application or claim which relies on a matter that should have been, but has not been, raised in a statement made in response to that notice, and
- (c) that, in the opinion of the Secretary of State or the immigration officer, there is no satisfactory reason for that matter not having been raised in a statement made in response to that notice.”

(3) In subsection (5) for “Subsections (1) to (3) apply to prevent or restrict” substitute “Subsections (1) and (2) apply to prevent”.

(4) At the end add—

“(7) A certificate under subsection (1) or (2) shall have no effect in relation to an appeal instituted before the certificate is issued.”

### **31 Seamen and aircrews: right of appeal**

In section 82(2) of the Nationality, Immigration and Asylum Act 2002 (c. 41) after paragraph (i) insert—

“(ia) a decision that a person is to be removed from the United Kingdom by way of directions under paragraph 12(2) of Schedule 2 to the Immigration Act 1971 (c. 77) (seamen and aircrews),”.

**32 Suspected international terrorist: bail**

- (1) At the end of section 24 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (suspected international terrorist: bail by Special Immigration Appeals Commission) add—
  - “(4) Where the Special Immigration Appeals Commission determines an application for bail, the applicant or a person who made representations to the Commission about the application may appeal on a question of law to the appropriate appeal court.
  - (5) Section 7(2) and (3) of the Special Immigration Appeals Commission Act 1997 (c. 68) (appeals from Commission) shall have effect for the purposes of an appeal under subsection (4) above.”
- (2) In section 27(5) and (6) of the Anti-terrorism, Crime and Security Act 2001 (suspected international terrorist: Special Immigration Appeals Commission: procedure) for “section 25 or 26 of this Act” substitute “section 24, 25 or 26 of this Act”.