



Immigration Act 1971

1971 CHAPTER 77

PART II

APPEALS

The appellate authorities

12 Immigration Appeal Tribunal and adjudicators

The Immigration Appeal Tribunal and adjudicators provided for by the Immigration Appeals Act 1969 shall continue for purposes of this Act, and—

- (a) members of the Tribunal shall continue to be appointed by the Lord Chancellor and adjudicators by the Secretary of State; and
- (b) the provisions of Schedule 1 to that Act shall continue to apply, as set out in Schedule 5 to this Act with the required adaptation of references to that Act, but with the substitution also of references to the Minister for the Civil Service for references to the Treasury.

Appeals to adjudicator or Tribunal in first instance

13 Appeals against exclusion from United Kingdom

- (1) Subject to the provisions of this Part of this Act, a person who is refused leave to enter the United Kingdom under this Act may appeal to an adjudicator against the decision that he requires leave or against the refusal.
- (2) Subject to the provisions of this Part of this Act, a person who, on an application duly made, is refused a certificate of patriality or an entry clearance may appeal to an adjudicator against the refusal.
- (3) A person not holding a certificate of patriality shall not be entitled to appeal on the ground that he is patial by virtue of section 2(1)(c) or (d) or section 2(2) above against a decision that he requires leave to enter the United Kingdom unless in the case of a

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woman who is a citizen of the United Kingdom and Colonies the ground of appeal is that she is patrial by virtue of section 2(2) apart from any reference therein to section 2(1)(c) or (d); and a person shall not be entitled to appeal against a refusal of leave to enter so long as he is in the United Kingdom, unless he was refused leave at a port of entry and at a time when he held a current entry clearance or was a person named in a current work permit.

- (4) An appeal against a refusal of leave to enter shall be dismissed by the adjudicator if he is satisfied that the appellant was at the time of the refusal an illegal entrant, and an appeal against a refusal of an entry clearance shall be dismissed by the adjudicator if he is satisfied that a deportation order was at the time of the refusal in force in respect of the appellant.
- (5) A person shall not be entitled to appeal against a refusal of leave to enter, or against a refusal of an entry clearance, if the Secretary of State certifies that directions have been given by the Secretary of State (and not by a person acting under his authority) for the appellant not to be given entry to the United Kingdom on the ground that his exclusion is conducive to the public good, or if the leave to enter or entry clearance was refused in obedience to any such directions.

14 Appeals against conditions

- (1) Subject to the provisions of this Part of this Act, a person who has a limited leave under this Act to enter or remain in the United Kingdom may appeal to an adjudicator against any variation of the leave (whether as regards duration or conditions), or against any refusal to vary it; and a variation shall not take effect so long as an appeal is pending under this subsection against the variation, nor shall an appellant be required to leave the United Kingdom by reason of the expiration of his leave so long as his appeal is pending under this subsection against a refusal to enlarge or remove the limit on the duration of the leave.
- (2) Subject to the provisions of this Part of this Act, a person who, on ceasing to be entitled to an exemption under any provision of section 8 above other than section 8(1), or on ceasing while in the United Kingdom to be patrial, is given a limited leave to remain may appeal to an adjudicator against any provision limiting the duration of the leave or attaching a condition to it; and so long as an appeal is pending under this subsection against any provision, effect shall not be given to that provision.
- (3) A person shall not be entitled to appeal under subsection (1) above against any variation of his leave which reduces its duration, or against any refusal to enlarge or remove the limit on its duration, if the Secretary of State certifies that the appellant's departure from the United Kingdom would be conducive to the public good, as being in the interests of national security or of the relations between the United Kingdom and any other country or for other reasons of a political nature, or the decision questioned by the appeal was taken on that ground by the Secretary of State (and not by a person acting under his authority).
- (4) A person shall not be entitled to appeal under subsection (1) above against any variation made by statutory instrument, or against any refusal of the Secretary of State to make a statutory instrument.

15 Appeals in respect of deportation orders

- (1) Subject to the provisions of this Part of this Act, a person may appeal to an adjudicator against—
 - (a) a decision of the Secretary of State to make a deportation order against him by virtue of section 3(5) above; or
 - (b) a refusal by the Secretary of State to revoke a deportation order made against him.
- (2) A deportation order shall not be made against a person by virtue of section 3(5) above so long as an appeal may be brought against the decision to make it nor, if such an appeal is duly brought, so long as the appeal is pending; but, in calculating the period of eight weeks limited by section 5(3) above for making a deportation order against a person as belonging to the family of another person, there shall be disregarded any period during which there is pending an appeal against the decision to make it.
- (3) A person shall not be entitled to appeal against a decision to make a deportation order against him if the ground of the decision was that his deportation is conducive to the public good as being in the interests of national security or of the relations between the United Kingdom and any other country or for other reasons of a political nature.
- (4) A person shall not be entitled to appeal under this section against a refusal to revoke a deportation order, if the Secretary of State certifies that the appellant's exclusion from the United Kingdom is conducive to the public good or if revocation was refused on that ground by the Secretary of State (and not by a person acting under his authority).
- (5) A person shall not be entitled to appeal under this section against a refusal to revoke a deportation order so long as he is in the United Kingdom, whether because he has not complied with the requirement to leave or because he has contravened the prohibition on entering.
- (6) On an appeal against a decision to make a deportation order against a person as belonging to the family of another person, or an appeal against a refusal to revoke a deportation order so made, the appellant shall not be allowed, for the purpose of showing that he does not or did not belong to another person's family, to dispute any statement made with a view to obtaining leave for the appellant to enter or remain in the United Kingdom (including any statement made to obtain an entry clearance) unless the appellant shows that the statement was not so made by him or by any person acting with his authority and that, when he took the benefit of the leave, he did not know any such statement had been made to obtain it or, if he did know, was under the age of eighteen.
- (7) An appeal under this section shall be to the Appeal Tribunal in the first instance, instead of to an adjudicator, if—
 - (a) it is an appeal against a decision to make a deportation order and the ground of the decision was that the deportation of the appellant is conducive to the public good; or
 - (b) it is an appeal against a decision to make a deportation order against a person as belonging to the family of another person, or an appeal against a refusal to revoke a deportation order so made; or
 - (c) there is pending a related appeal to which paragraph (b) above applies.
- (8) Where an appeal to an adjudicator is pending under this section, and before the adjudicator has begun to hear it a related appeal is brought, the appeal to the adjudicator

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shall be dealt with instead by the Appeal Tribunal and be treated as an appeal duly made to the Tribunal in the first instance.

- (9) In relation to an appeal under this section in respect of a deportation order against any person (whether an appeal against a decision to make or against a refusal to revoke the order), any other appeal under this section is a "related appeal" if it is an appeal in respect of a deportation order against another person as belonging to the family of the first-mentioned person.

16 Appeals against validity of directions for removal

- (1) Subject to the provisions of this Part of this Act, where directions are given under this Act for a person's removal from the United Kingdom either—

- (a) on the ground that he is an illegal entrant or on the ground specifically that he has entered the United Kingdom in breach of a deportation order; or
- (b) under the special powers conferred by Schedule 2 to this Act in relation to members of the crew of a ship or aircraft or persons coming to the United Kingdom to join a ship or aircraft as a member of the crew;

then he may appeal to an adjudicator against those directions on the ground that in the facts of his case there was in law no power to give them on the ground on which they were given.

- (2) A person shall not be entitled to appeal under this section so long as he is in the United Kingdom, unless he is appealing against directions given by virtue of a deportation order (whether on the ground specifically that he has returned in breach of that order or on the ground that he is an illegal entrant) and is appealing on the ground that he is not the person named in that order.
- (3) Where a person appeals under this section against directions given by virtue of a deportation order, he shall not be allowed to dispute the original validity of that order.
- (4) An appeal under this section against directions given as mentioned in subsection (1) (b) shall be dismissed by the adjudicator, notwithstanding that the ground of appeal may be made out, if he is satisfied that there was power to give the like directions on the ground that the appellant was an illegal entrant.

17 Appeals against removal on objection to destination

- (1) Subject to the provisions of this Part of this Act, where directions are given under this Act for a person's removal from the United Kingdom either—

- (a) on his being refused leave to enter ; or
- (b) on a deportation order being made against him; or
- (c) on his having entered the United Kingdom in breach of a deportation order;

he may appeal to an adjudicator against the directions on the ground that he ought to be removed (if at all) to a different country or territory specified by him.

- (2) Where a person appeals under section 13(1) above on being refused leave to enter the United Kingdom, and either—
- (a) before he does so, directions have been given for his removal from the United Kingdom to any country or territory; or
 - (b) before or after he does so, the Secretary of State or an immigration officer serves on him notice that any directions which may be given for his removal

by virtue of the refusal will be for his removal to a country or territory or one of several countries or territories specified in the notice ;

then he may on that appeal object to the country or territory to which he would be removed in pursuance of the directions, or to that specified in the notice (or to one or more of those specified), and claim that he ought to be removed (if at all) to a different country or territory specified by him.

- (3) Where a person appeals under section 15 above against a decision to make a deportation order against him, and before or after he does so the Secretary of State serves on him notice that any directions which may be given for his removal by virtue of the deportation order will be for his removal to a country or territory or one of several countries or territories specified in the notice, then he may on that appeal object to the country or territory specified in the notice (or to one or more of those specified), and claim that he ought to be removed (if at all) to a different country or territory specified by him.
- (4) Where by virtue of subsection (2) or (3) above a person is able to object to a country or territory on an appeal under section 13(1) or 15, and either he does not object to it on that appeal or his objection to it on that appeal is not sustained, then he shall not be entitled to appeal under this section against any directions subsequently given by virtue of the refusal or order in question, if their effect will be his removal to that country or territory.
- (5) A person shall not be entitled to appeal under this section against any directions given on his being refused leave to enter the United Kingdom, unless either he is also appealing under section 13(1) against the decision that he requires leave to enter or he was refused leave at a port of entry and at a time when he held a current entry clearance or was a person named in a current work permit.

18 Notice of matters in respect of which there are rights of appeal

- (1) The Secretary of State may by regulations provide—
 - (a) for written notice to be given to a person of any such decision or action taken in respect of him as is appealable under this Part of this Act (whether or not he is in the facts of his case entitled to appeal) or would be so appealable but for the ground on which it is taken;
 - (b) for any such notice to include a statement of the reasons for the decision or action and, where the action is the giving of directions for the removal of any person from the United Kingdom, of the country or territory to which he is to be removed ;
 - (c) for any such notice to be accompanied by a statement containing particulars of the rights of appeal available under this Part of this Act and of the procedure by which those rights may be exercised;
 - (d) for the form of any such notice or statement and the way in which a notice is to be or may be given.
- (2) For the purpose of any proceedings under this Part of this Act a statement included in a notice in pursuance of regulations under this section shall be conclusive of the person by whom and of the ground on which any decision or action was taken.
- (3) The power to make regulations under this section shall be exercisable by statutory instrument, and any statutory instrument containing such regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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19 Determination of appeals by adjudicators

- (1) Subject to sections 13(4) and 16(4) above, and to any restriction on the grounds of appeal, an adjudicator on an appeal to him under this Part of this Act—
 - (a) shall allow the appeal if he 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) For the purposes of subsection (1)(a) above the adjudicator may review any determination of a question of fact on which the decision or action was based; and for the purposes of subsection (1)(a)(ii) no decision or action which is in accordance with the immigration rules shall be treated as having involved the exercise of a discretion by the Secretary of State by reason only of the fact that he has been requested by or on behalf of the appellant to depart, or to authorise an officer to depart, from the rules and has refused to do so.
- (3) Where an appeal is allowed, the adjudicator shall give such directions for giving effect to the determination as the adjudicator thinks requisite, and may also make recommendations with respect to any other action which the adjudicator considers should be taken in the case under this Act; and, subject to section 20(2) below, 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.
- (4) Where in accordance with section 15 above a person appeals to the Appeal Tribunal in the first instance, this section shall apply with the substitution of references to the Tribunal for references to an adjudicator.

Appeals from adjudicator to Tribunal, and review of decisions

20 Appeal to Tribunal from determination of adjudicator

- (1) Subject to any requirement of rules of procedure as to leave to appeal, any party to an appeal to an adjudicator may, if dissatisfied with his determination thereon, appeal to the Appeal Tribunal, and the Tribunal may affirm the determination or make any other determination which could have been made by the adjudicator.
- (2) Directions given by an adjudicator under section 19(3) above need not be complied with so long as an appeal can be brought against his determination and, if such an appeal is duly brought, so long as the appeal is pending; and if the Tribunal affirm his determination allowing the appeal, they may alter or add to his directions and recommendations under section 19(3) or replace them with their own directions and recommendations, and the provisions of that subsection shall apply to directions given by them accordingly.
- (3) Where an appeal is dismissed by an adjudicator but allowed by the Tribunal, section 19(3) above shall apply with the substitution of references to the Tribunal for references to the adjudicator.

21 Reference of cases for further consideration

- (1) Where in any case—
- (a) an adjudicator has dismissed an appeal, and there has been no further appeal to the Appeal Tribunal, or the Tribunal has dismissed an appeal made to them in the first instance by virtue of section 15 above; or
 - (b) the Appeal Tribunal has affirmed the determination of an adjudicator dismissing an appeal, or reversed the determination of an adjudicator allowing an appeal;
- the Secretary of State may at any time refer for consideration under this section any matter relating to the case which was not before the adjudicator or Tribunal.
- (2) Any reference under this section shall be to an adjudicator or to the Appeal Tribunal, and the adjudicator or Tribunal shall consider the matter which is the subject of the reference and report to the Secretary of State the opinion of the adjudicator or Tribunal thereon.

Supplementary

22 Procedure

- (1) The Secretary of State may make rules (in this Act referred to as " rules of procedure ")—
- (a) for regulating the exercise of the rights of appeal conferred by this Part of this Act;
 - (b) for prescribing the practice and procedure to be followed on or in connection with appeals thereunder, including the mode and burden of proof and admissibility of evidence on such an appeal; and
 - (c) for other matters preliminary or incidental to or arising out of such appeals, including proof of the decisions of adjudicators or the Appeal Tribunal.
- (2) Rules of procedure may include provision—
- (a) enabling the Tribunal, on an appeal from an adjudicator, to remit the appeal to an adjudicator for determination by him in accordance with any directions of the Tribunal, or for further evidence to be obtained with a view to determination by the Tribunal; or
 - (b) enabling any functions of the Tribunal which relate to matters preliminary or incidental to an appeal, or which are conferred by Part II of Schedule 2 to this Act, to be performed by a single member of the Tribunal; or
 - (c) conferring on adjudicators or the Tribunal such ancillary powers as the Secretary of State thinks necessary for the purposes of the exercise of their functions.
- (3) The rules of procedure shall provide that any appellant shall have the right to be legally represented.
- (4) Where on an appeal under this Part of this Act it is alleged—
- (a) that a passport or other travel document, certificate of patriality, entry clearance or work permit (or any part thereof or entry therein) on which a party relies is a forgery; and
 - (b) that the disclosure to that party of any matters relating to the method of detection would be contrary to the public interest;

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then (without prejudice to the generality of the power to make rules of procedure) the adjudicator or Tribunal shall arrange for the proceedings to take place in the absence of that party and his representatives while the allegation at (b) above is inquired into by the adjudicator or Tribunal and, if it appears to the adjudicator or Tribunal that the allegation is made out, for such further period as appears necessary in order to ensure that those matters can be presented to the adjudicator or Tribunal without any disclosure being directly or indirectly made contrary to the public interest.

- (5) If under the rules of procedure leave to appeal to the Tribunal is required in cases where an adjudicator dismisses an appeal under section 13 above, then the authority having power to grant leave to appeal shall grant it—
- (a) in any case where the appeal was against a decision that the appellant required leave to enter the United Kingdom, and the authority is satisfied that at the time of the decision he held a certificate of patriality; and
 - (b) in any case where the appeal was against a refusal of leave to enter, and the authority is satisfied that at the time of the refusal the appellant held an entry clearance and that the dismissal of the appeal was not required by section 13(4).
- (6) A person who is required under or in accordance with rules of procedure to attend and give evidence or produce documents before an adjudicator or the Tribunal, and fails without reasonable excuse to comply with the requirement, shall be guilty of an offence and liable on summary conviction to a fine not exceeding £100.
- (7) The power to make rules of procedure shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

23 Financial support for organisations helping persons with rights of appeal

The Secretary of State may with the consent of the Treasury make grants to any voluntary organisation which provides advice or assistance for, or other services for the welfare of, persons who have rights of appeal under this Part of this Act.