



Special Immigration Appeals Commission Act 1997

1997 CHAPTER 68

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:—

Annotations:

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 transitional provisions in arts. 3, 4)
Act amended (22.5.2000 for specified purposes and otherwise 2.10.2000) by 1999 c. 33, s. 74; S.I. 2000/1282, art. 2, Sch.; S.I. 2000/2444, art. 2, Sch. 1 (with transitional provisions in 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 transitional provisions in arts. 3, 4)
Act modified (14.12.2001) by 2001 c. 24, s. 24(3)
Act: power to apply conferred (*prosp.*) by 2002 c. 41, ss.109(2)(a), 162(2)(with s. 159)

1 Establishment of the Commission.

- (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.
- [^{F1}(3) The Commission shall be a superior court of record.
- (4) A decision of the Commission shall be questioned in legal proceedings only in accordance with—

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Special Immigration Appeals Commission Act 1997. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (a) section 7, or
- (b) section 30(5)(a) of the Anti-terrorism, Crime and Security Act 2001 (derogation).]

Annotations:

Amendments (Textual)

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

2 Jurisdiction: appeals.

[^{F2}(1) A person may appeal to the Special Immigration Appeals Commission against a decision which he would be entitled to appeal against under Part IV of the Immigration and Asylum Act 1999 (“the 1999 Act”) but for a public interest provision.

(1A) Subsection (1) does not apply to an appeal under section 59(2) of the 1999 Act.

(1B) “Public interest provision” means any of sections 60(9), 62(4), 64(1) or (2) or 70(1) to (6) of the 1999 Act.

(1C) A reference in this Act to an appeal under this section includes a reference to an appeal under regulation 29(1) of the Immigration (European Economic Area) Regulations 2000 (other than on the ground mentioned in paragraph (2) of that regulation) which lies to the Commission as a result of regulation 31 of those Regulations.]

(2) A person may appeal to the Special Immigration Appeals Commission against the refusal of an entry clearance if he would be entitled to appeal against the refusal under [^{F3}section 59(2) of the 1999 Act but for section 60(9) of that Act] (exclusion conducive to public good), and—

- (a) he seeks to rely on an enforceable Community right or any provision made under section 2(2) of the ^{M1}European Communities Act 1972, or
- (b) he seeks to enter the United Kingdom under immigration rules making provision about entry—
 - (i) to exercise rights of access to a child resident there,
 - (ii) as the spouse or fiancé of a person present and settled there, or
 - (iii) as the parent, grandparent or other dependent relative of a person present and settled there.

(3) Schedule 2 to this Act (which makes supplementary provision relating to appeals under this section) shall have effect.

(4) In this section, “immigration rules” has the same meaning as in the Immigration Act 1971.

Annotations:

Amendments (Textual)

F2 S. 2(1)(1A)(1B)(1C) substituted (2.10.2000) for s. 2(1) by S.I. 2000/2326, **reg. 32(2)** (subject to transitional provision in **reg. 36**)

F3 Words in s. 2(2) substituted (2.10.2000) by 1999 c. 33, s. 169(1), **Sch. 14 paras. 118, 120**; S.I. 2000/2444, **art. 2, Sch. 1** (with transitional provisions in **arts. 3, 4, Sch. 2 para. 5**)

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Modifications etc. (not altering text)

- C2** S. 2: power to amend conferred (22.5.2000) by 1999 c. 33, s. 80(8)(a); S.I. 2000/1282, art. 2, Sch.
C3 S. 2(1) amended (2.10.2000) by 1999 c. 33, s. 78(3)(4)(5); S.I. 2000/2444, art. 2, Sch. 1 (with transitional provisions in arts. 3, 4)

Marginal Citations

- M1** 1972 c. 68.

[^{F4}2A Jurisdiction: [^{F5}racial discrimination and]human rights.

- (1) A person who alleges that an authority has, in taking an appealable decision, [^{F6}racially discriminated against him or] acted in breach of his human rights may appeal to the Commission against that decision.
- (2) For the purposes of this section, [^{F7}—
 - (a) an authority racially discriminates against a person if he acts, or fails to act, in relation to that other person in a way which is unlawful by virtue of section 19B of the ^{M2}Race Relations Act 1976; and
 - (b)] an authority acts in breach of a person's human rights if he acts, or fails to act, in relation to that other person in a way which is made unlawful by section 6(1) of the ^{M3}Human Rights Act 1998.
- (3) Subsections (4) and (5) apply if, in any appellate proceedings being heard by the Commission, a question arises as to whether an authority has, in taking a decision which is the subject of the proceedings, [^{F8}racially discriminated against the appellant or] acted in breach of the appellant's human rights.
- (4) The Commission has jurisdiction to consider the question.
- (5) If the Commission decides that the authority concerned [^{F9}—
 - (a) racially discriminated against the appellant; or
 - (b)] acted in breach of the appellant's human rights, the appeal may be allowed on [^{F10}the ground in question].
- (6) "Authority" means—
 - (a) the Secretary of State;
 - (b) an immigration officer;
 - (c) a person responsible for the grant or refusal of entry clearance.]
- [^{F11}(7) "Appealable decision" means a decision against which a person would be entitled to appeal under Part IV of the 1999 Act but for a public interest provision.
- (8) "The 1999 Act" and "public interest provision" have the same meaning as in section 2.
- (9) A reference in this Act to an appeal under this section includes a reference to an appeal under regulation 29(1) of the Immigration (European Economic Area) Regulations 2000, on the ground mentioned in paragraph (2) of that regulation, which lies to the Commission as a result of regulation 31 of those Regulations.]

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Annotations:

Amendments (Textual)

- 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** 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))
- F6** Words in s. 2A(1) inserted (2.4.2001) by 2000 c. 34, s. 9(1), **Sch. 2 para. 23** (with s. 10(5)); S.I. 2001/566, **art. 2(1)** (subject to art. 2(2))
- F7** S. 2A(2)(a) “(b)” and the preceding “-” inserted (2.4.2001) by 2000 c. 34, s. 9(1), **Sch. 2 para. 24** (with s. 10(5)); S.I. 2001/566, **art. 2(1)** (subject to art. 2(2))
- F8** Words in s. 2A(3) inserted (2.4.2001) by 2000 c. 34, s. 9(1), **Sch. 2 para. 25** (with s. 10(5)); S.I. 2001/566, **art. 2(1)** (subject to art. 2(2))
- F9** S. 2A(5)(a) “(b)” and the preceding “-” inserted (2.4.2001) by 2000 c. 34, s. 9(1), **Sch. 2 para. 26** (with s. 10(5)); S.I. 2001/566, **art. 2(1)** (subject to art. 2(2))
- F10** Words in s. 2A(5) substituted (2.4.2001) by 2000 c. 34, s. 9(1), **Sch. 2 para. 26(b)** (with s. 10(5)); S.I. 2001/566, **art. 2(1)** (subject to art. 2(2))
- F11** S. 2A(7)(8)(9) inserted (2.10.2000) by S.I. 2000/2326, **reg. 32(3)**

Modifications etc. (not altering text)

- C4** S. 2A: power to amend conferred (22.5.2000) by 1999 c. 33, s. **80(8)(a)**; S.I. 2000/1282, art. 2, **Sch. 2A** amended (2.10.2000) by 1999 c. 33, s. **78(3)(4)(5)**; S.I. 2000/2444, art. 2, **Sch. 1** (with transitional provisions in arts. 3, 4)

Marginal Citations

- M2** 1976 c. 74.
M3 1998 c. 42

PROSPECTIVE

[^{F12}**2B**

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).]

Annotations:

Amendments (Textual)

- F12** S. 2B inserted (*prosp.*) by 2002 c. 41, **ss. 4(2)**, 162; (with s. 159)

3 Jurisdiction: bail.

- (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.

- (1) The Special Immigration Appeals Commission on an appeal to it under this Act—
 - (a) shall allow the appeal if it 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.

[^{F13}(1A) If a certificate under section 70(4)(b) of the Immigration and Asylum Act 1999 has been issued, the Commission on an appeal to it under this Act may, instead of determining the appeal, quash the certificate and remit the appeal to an adjudicator.]

- (2) Where an appeal is allowed, the Commission shall give such directions for giving effect to the determination as it thinks requisite, and may also make recommendations with respect to any other action which it considers should be taken in the case under the ^{M4}Immigration Act 1971; and 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.

- (3) In this section, “immigration rules” has the same meaning as in the Immigration Act 1971.

Annotations:

Amendments (Textual)

F13 S. 4(1A) inserted (2.10.2000) by 1999 c. 33, s. 169(1), Sch. 14 paras. 118, 122; S.I. 2000/2444, art. 2, Sch. 1 (with transitional provisions in arts. 3, 4)

Marginal Citations

M4 1971 c. 77.

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

- (1) The Lord Chancellor may make rules—
 - (a) for regulating the exercise of the rights of appeal conferred by section 2 [^{F14}or 2A]above,
 - (b) for prescribing the practice and procedure to be followed on or in connection with appeals under that section [^{F15}section 2 or 2A above], including the mode and burden of proof and admissibility of evidence on such appeals, and

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- (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 [F14 or 2A] above, subject to any power conferred on the Commission by such 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—
 - (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 M5 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.
- F16(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.

Annotations:

Amendments (Textual)

F14 Words in s. 5(1)(a)(2) inserted (2.4.2001) by 2000 c. 34, s. 9(1), **Sch. 2 para. 28(a)(c)** (with s. 10(5)); S.I. 2001/566, **art. 2(1)** (subject to art. 2(2))

F15 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))

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F16 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)

C5 S. 5 extended (*prosp.*) by 1999 c. 33, **ss. 44(13)**, 170(4)

C6 S. 5 modified (14.12.2001) by 2001 c. 24, **s. 27(5)**

C7 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

M5 1971 c. 77.

6 Appointment of person to represent the appellant's interests.

- (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,
 - (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 ^{M6}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 ^{M7}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.

Annotations:

Modifications etc. (not altering text)

C8 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)**

Marginal Citations

M6 1990 c. 41.

M7 1980 c. 46.

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7 Appeals from the Commission.

- (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.

^{F17}(4)

Annotations:

Amendments (Textual)

^{F17} 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)

^{C9} S. 7 applied (14.12.2001) by 2001 c. 24, s. 27(1)(b)

[^{F18}7A Pending appeals.

- (1) For the purposes of this Act, an appeal to the Commission is to be treated as pending during the period beginning when notice of appeal is given and ending when the appeal is finally determined, withdrawn or abandoned.
- (2) An appeal is not to be treated as finally determined while a further appeal may be brought.
- (3) If a further appeal is brought, the original appeal is not to be treated as finally determined until the further appeal is determined, withdrawn or abandoned.
- (4) A pending appeal to the Commission is to be treated as abandoned if the appellant leaves the United Kingdom.
- (5) A pending appeal to the Commission is to be treated as abandoned if the appellant is granted leave to enter or remain in the United Kingdom.
- (6) But subsection (5) does not apply to an appeal brought under section 2(1) as a result of section 70(4) of the Immigration and Asylum Act 1999.
- (7) A pending appeal brought under section 2(1) as a result of section 62(3) of that Act is to be treated as abandoned if a deportation order is made against the appellant.]

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Annotations:

Amendments (Textual)

F18 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)

Modifications etc. (not altering text)

C10 S. 7A applied (14.12.2001) by 2001 c. 24, s. 27(1)(c)

C11 S. 7A(7) modified (2.10.2000) by S.I. 2000/2326, reg. 36(4)

8 Procedure on applications to the Commission for leave to appeal.

- (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.

Annotations:

Modifications etc. (not altering text)

C12 S. 8 modified (14.12.2001) by 2001 c. 24, s. 27(5)

9 Short title, commencement and extent.

- (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.
- (4) This Act extends to Northern Ireland.

Annotations:

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

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 ^{M8}Appellate Jurisdiction Act 1876), and
 - (b) at least one is or has been—

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- (i) appointed as chief adjudicator under [^{F19}section 57(2) of the Immigration and Asylum Act 1999], or
- (ii) a member of the Immigration Appeal Tribunal qualified as mentioned in [^{F20}paragraph 1(3) of Schedule 2 to that Act].

Annotations:

Amendments (Textual)

- F19** Words in Sch. 1 para. 5(b)(i) substituted (14.2.2000) by 1999 c. 33, s. 169(1), Sch. 14 paras. 118, **125(a)**; S.I. 2000/168, art. 2, **Sch.** (with transitional provisions in art. 3)
- F20** 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)

Marginal Citations

- M8** 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.

SCHEDULE 2

Section 2.

APPEALS: SUPPLEMENTARY

Annotations:

Modifications etc. (not altering text)

- C13** Sch. 2 modified (2.10.2000) by S.I. 2000/2326, **reg. 36(5)**

[^{F21} Stay on directions for removal]

Annotations:

Amendments (Textual)

- F21** Sch. 2 para. 1 and crossheading substituted (2.10.2000) by 1999 c. 33, s. 169(1), Sch. 14 paras. 118, **126**; S.I. 2000/2444, art. 2, **Sch. 1** (with transitional provisions in arts. 3, 4)

- [^{F22}1 If a person in the United Kingdom appeals under section 2(1) above on being refused leave to enter, any directions previously given by virtue of the refusal for

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his removal from the United Kingdom cease to have effect, except in so far as they have already been carried out, and no directions may be so given so long as the appeal is pending.]

Annotations:

Amendments (Textual)

F22 Sch. 2 para. 1 substituted (2.10.2000) by 1999 c. 33, s. 169(1), Sch. 14 paras. 118, **126**; S.I. 2000/2444, art. 2, **Sch. 1** (with transitional provisions in arts. 3, 4)

Deportation order not to be made while appeal pending

[^{F23}2 If a person in the United Kingdom appeals under section 2(1) above against any directions given under Part I of Schedule 2 or Schedule 3 to the 1971 Act for his removal from the United Kingdom, those directions except in so far as they have already been carried out, have no effect while the appeal is pending.]

Annotations:

Amendments (Textual)

F23 Sch. 2 para. 2 substituted (2.10.2000) by 1999 c. 33, s. 169(1), Sch. 14 paras. 118, **126**; S.I. 2000/2444, art. 2, **Sch. 1** (with transitional provisions in arts. 3, 4)

Stay of removal directions pending appeal and bail

[^{F24}3 But the provisions of Part I of Schedule 2 or, as the case may be, Schedule 3 to the 1971 Act with respect to detention and persons liable to detention apply to a person appealing under section 2(1) above as if there were in force directions for his removal from the United Kingdom, except that he may not be detained on board a ship or aircraft so as to compel him to leave the United Kingdom while the appeal is pending.]

Annotations:

Amendments (Textual)

F24 Sch. 2 paras. 3-3G substituted for Sch. 2 para. 3 (2.10.2000) by 1999 c. 33, s. 169(1), Sch. 14 paras. 118, **126**; S.I. 2000/2444, art. 2, **Sch. 1** (with transitional provisions in arts. 3, 4)

[^{F25}3A In calculating the period of two months limited by paragraph 8(2) of Schedule 2 to the 1971 Act for the giving of directions under that paragraph for the removal of a person from the United Kingdom and for the giving of a notice of intention to give such directions, any period during which there is pending an appeal by him under section 2(1) above is to be disregarded.]

Annotations:

Amendments (Textual)

F25 Sch. 2 paras. 3-3G substituted for Sch. 2 para. 3 (2.10.2000) by 1999 c. 33, s. 169(1), Sch. 14 paras. 118, **126**; S.I. 2000/2444, art. 2, **Sch. 1** (with transitional provisions in arts. 3, 4)

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[^{F26}3B If directions are given under Part I of Schedule 2 or Schedule 3 to the 1971 Act for anyone's removal from the United Kingdom, and directions are also so given for the removal with him of persons belonging to his family, then if any of them appeals under section 2(1) above, the appeal has the same effect under paragraphs 1 to 3A in relation to the directions given in respect of each of the others as it has in relation to the directions given in respect of the appellant.]

Annotations:

Amendments (Textual)

F26 Sch. 2 paras. 3-3G substituted for Sch. 2 para. 3 (2.10.2000) by 1999 c. 33, s. 169(1), Sch. 14 paras. 118, 126; S.I. 2000/2444, art. 2, Sch. 1 (with transitional provisions in arts. 3, 4)

[^{F27} Suspension of variation of limited leave]

Annotations:

Amendments (Textual)

F27 Sch. 2 paras. 3-3G substituted for Sch. 2 para. 3 (2.10.2000) by 1999 c. 33, s. 169(1), Sch. 14 paras. 118, 126; S.I. 2000/2444, art. 2, Sch. 1 (with transitional provisions in arts. 3, 4)

[^{F28}3C A variation is not to take effect while an appeal is pending under section 2(1) above against the variation.]

Annotations:

Amendments (Textual)

F28 Sch. 2 paras. 3-3G substituted for Sch. 2 para. 3 (2.10.2000) by 1999 c. 33, s. 169(1), Sch. 14 paras. 118, 126; S.I. 2000/2444, art. 2, Sch. 1 (with transitional provisions in arts. 3, 4)

[^{F29} Continuation of leave]

Annotations:

Amendments (Textual)

F29 Sch. 2 paras. 3-3G substituted for Sch. 2 para. 3 (2.10.2000) by 1999 c. 33, s. 169(1), Sch. 14 paras. 118, 126; S.I. 2000/2444, art. 2, Sch. 1 (with transitional provisions in arts. 3, 4)

[^{F30}3D (1) While an appeal under section 2(1) above is pending, the leave to which the appeal relates, and any conditions subject to which it was granted continue to have effect.

(2) A person may not make an application for a variation of his leave to enter or remain while that leave is treated as continuing to have effect as a result of sub-paragraph (1).

(3) For the purposes of section 2(1), in calculating whether, as a result of a decision, a person may be required to leave the United Kingdom within twenty-eight days, a continuation of leave under this paragraph is to be disregarded.]

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Annotations:

Amendments (Textual)

F30 Sch. 2 paras. 3-3G substituted for Sch. 2 para. 3 (2.10.2000) by 1999 c. 33, s. 169(1), Sch. 14 paras. 118, 126; S.I. 2000/2444, art. 2, Sch. 1 (with transitional provisions in arts. 3, 4)

[^{F31} Deportation orders]

Annotations:

Amendments (Textual)

F31 Sch. 2 paras. 3-3G substituted for Sch. 2 para. 3 (2.10.2000) by 1999 c. 33, s. 169(1), Sch. 14 paras. 118, 126; S.I. 2000/2444, art. 2, Sch. 1 (with transitional provisions in arts. 3, 4)

[^{F32}3E A deportation order is not to be made against a person under section 5 of the 1971 Act while an appeal duly brought under section 2(1) above against the decision to make it is pending.]

Annotations:

Amendments (Textual)

F32 Sch. 2 paras. 3-3G substituted for Sch. 2 para. 3 (2.10.2000) by 1999 c. 33, s. 169(1), Sch. 14 paras. 118, 126; S.I. 2000/2444, art. 2, Sch. 1 (with transitional provisions in arts. 3, 4)

[^{F33}3F In calculating the period of eight weeks set by section 5(3) of the 1971 Act for making a deportation order against a person as belonging to the family of another person, there is to be disregarded any period during which an appeal under section 2(1) above against the decision to make the order is pending.]

Annotations:

Amendments (Textual)

F33 Sch. 2 paras. 3-3G substituted for Sch. 2 para. 3 (2.10.2000) by 1999 c. 33, s. 169(1), Sch. 14 paras. 118, 126; S.I. 2000/2444, art. 2, Sch. 1 (with transitional provisions in arts. 3, 4)

[^{F34} Appeals under section 2A]

Annotations:

Amendments (Textual)

F34 Sch. 2 paras. 3-3G substituted for Sch. 2 para. 3 (2.10.2000) by 1999 c. 33, s. 169(1), Sch. 14 paras. 118, 126; S.I. 2000/2444, art. 2, Sch. 1 (with transitional provisions in arts. 3, 4)

[^{F35}3G(1) A person is not to be required to leave, or be removed from, the United Kingdom if an appeal under section 2A is pending against the decision on which that requirement or removal would otherwise be based.

(2) That does not prevent—

(a) directions for his removal being given during that period;

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(b) a deportation order being made against him during that period.

(3) But no such direction or order is to have effect during that period.]

Annotations:

Amendments (Textual)

F35 Sch. 2 paras. 3-3G substituted for Sch. 2 para. 3 (2.10.2000) by 1999 c. 33, s. 169(1), Sch. 14 paras. 118, 126; S.I. 2000/2444, art. 2, **Sch. 1** (with transitional provisions in arts. 3, 4)

Construction of references to pending appeal

4 For the purposes of [^{F36}this Schedule], an appeal under section 2 [^{F37}or 2A] above shall be treated as pending during the period beginning when notice of appeal is duly given and ending when the appeal is finally determined or withdrawn; and an appeal shall not be treated as finally determined so long as a further appeal can be brought by virtue of section 7 above, nor, if such an appeal is duly brought, until it is determined or withdrawn.

Annotations:

Amendments (Textual)

F36 Words in Sch. 2 para. 4 substituted (2.10.2000) by 1999 c. 33, s. 169(1), Sch. 14 paras. 118, 127; S.I. 2000/2444, art. 2, **Sch. 1** (with transitional provisions in arts. 3, 4)
F37 Words in Sch. 2 para. 4 inserted (2.4.2001) by 2000 c. 34, s. 9(1), **Sch. 2 para. 29(a)** (with s. 10(5)); S.I. 2001/566, **art. 2(1)** (subject to art. 2(2))

Appeals involving asylum

^{F38}5

Annotations:

Amendments (Textual)

F38 Sch. 2 para. 5 repealed (2.10.2000) by 1999 c. 33, s. 169(1)(3), Sch. 14 paras. 118, 128, **Sch. 16**; S.I. 2000/2444, art. 2, **Sch. 1** (with transitional provisions in arts. 3, 4)

[^{F39} Notice of appealable decision and statement of appeal rights etc.]

Annotations:

Amendments (Textual)

F39 Sch. 2 para. 6 and crossheading substituted (1.8.2000 for specified purposes and otherwise 2.10.2000) by 1999 c. 33, s. 169(1), Sch. 14 paras. 118, 129; S.I. 2000/1985, art. 2, **Sch. 1**; S.I. 2000/2444, art. 2, **Sch. 1** (with transitional provisions in arts. 3, 4)

[^{F40}6 Paragraph 1 of Schedule 4 to the Immigration and Asylum Act 1999 has effect as if section 2 [^{F41}and 2A] of this Act were contained in Part IV of that Act.]

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Annotations:

Amendments (Textual)

- F40** Sch. 2 para. 6 substituted (1.8.2000 for specified purposes and otherwise 2.10.2000) by 1999 c. 33, s. 169(1), Sch. 14 paras. 118, **129**; S.I. 2000/1985, art. 2, **Sch. 1** (with transitional provisions in art. 3); S.I. 2000/2444, art. 2, **Sch. 1** (with transitional provisions in arts. 3, 4)
- F41** Words in Sch. 2 para. 6 inserted (2.4.2001) by 2000 c. 34, s. 9(1), **Sch. 2 para. 29(b)** (with s. 10(5)); S.I. 2001/566, **art. 2(1)** (subject to art. 2(2))

[^{F42} Financial support for organisations helping persons with rights of appeal]

Annotations:

Amendments (Textual)

- F42** Sch. 2 para. 7 and crossheading substituted (1.8.2000 for specified purposes and otherwise 2.10.2000) by 1999 c. 33, s. 169(1), Sch. 14 paras. 118, **129**; S.I. 2000/1985, art. 2, **Sch. 1**; S.I. 2000/2444, art. 2, **Sch. 1** (with transitional provisions in arts. 3, 4)

^{F437} Section 81 of the Immigration and Asylum Act 1999 shall have effect as if section 2 ^{F44}and 2A] above were contained in Part IV of that Act.]

Annotations:

Amendments (Textual)

- F43** Sch. 2 para. 7 substituted (1.8.2000 for specified purposes and otherwise 2.10.2000) by 1999 c. 33, s. 169(1), Sch. 14 paras. 118, **129**; S.I. 2000/1985, art. 2, **Sch. 1**; S.I. 2000/2444, art. 2, **Sch. 1** (with transitional provisions in arts. 3, 4)
- F44** Words in Sch. 2 para. 7 inserted (2.4.2001) by 2000 c. 34, s. 9(1), **Sch. 2 para. 29(b)** (with s. 10(5)); S.I. 2001/566, **art. 2(1)** (subject to art. 2(2))

SCHEDULE 3

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 ”.
- (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

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- (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.
- 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 ”.

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- (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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Changes to legislation:

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Changes and effects yet to be applied to :

- s. 1(4)(b) and word repealed by 2005 c. 2 s. 16(2)(b)
- s. 2 restricted by S.I. 2006/1003 Sch. 1 para. 4(2)
- s. 2(1)(a)(b) text amended by 2006 c. 13 Sch. 1 para. 14(a)
- s. 2(2)(a) text amended by 2006 c. 13 Sch. 1 para. 14(b)
- s. 2(3) text amended by 2006 c. 13 Sch. 1 para. 14(c)
- s. 2B text amended by 2004 c. 19 Sch. 2 para. 11
- s. 3(2) text amended by S.I. 2003/1016 art. 3 Sch. para. 10
- s. 5(2A) text amended by S.I. 2010/21 Sch. 1 para. 15
- s. 6(2)(c) text amended by 2008 c. 28 s. 91(2)
- s. 7(2)(3) applied by 2001 c. 24 s. 24(5) (as added) by 2004 c. 19 s. 32(1)
- Sch. 1 para. 5(b) substituted by 2004 c. 19 Sch. 2 para. 12
- Sch. 1 para. 5(b) text amended by S.I. 2010/21 Sch. 1 para. 16
- Sch. 1 para. 5 words substituted by 2005 c. 4 Sch. 17 para. 28
- Sch. 3 para. 1(2) text amended by 2004 c. 19 Sch. 2 para. 13(2)
- Sch. 3 para. 1(3)(a) text amended by 2004 c. 19 Sch. 2 para. 13(3)
- Sch. 3 para. 1(3)(b) text amended by 2004 c. 19 Sch. 2 para. 13(4)
- Sch. 3 para. 1(4)(a)(b) text amended by 2004 c. 19 Sch. 2 para. 13(5)
- Sch. 3 para. 2(2)(a) text amended by 2004 c. 19 Sch. 2 para. 13(6)
- Sch. 3 para. 2(2)(b) text amended by 2004 c. 19 Sch. 2 para. 13(7)
- Sch. 3 para. 2(3)(a) text amended by 2004 c. 19 Sch. 2 para. 13(8)
- Sch. 3 para. 2(3)(b) text amended by 2004 c. 19 Sch. 2 para. 13(9)
- Sch. 3 para. 6(2)(a) text amended by 2004 c. 19 Sch. 2 para. 13(10)
- Sch. 3 para. 6(2)(b) text amended by 2004 c. 19 Sch. 2 para. 13(11)
- Sch. 3 para. 6(2)(c) text amended by 2004 c. 19 Sch. 2 para. 13(12)
- Sch. 3 para. 6(3)(a) text amended by 2004 c. 19 Sch. 2 para. 13(13)
- Sch. 3 para. 6(3)(b) text amended by 2004 c. 19 Sch. 2 para. 13(14)
- Sch. 3 para. 7(a) text amended by 2004 c. 19 Sch. 2 para. 13(15)
- Sch. 3 para. 7(b) text amended by 2004 c. 19 Sch. 2 para. 13(16)
- Sch. 3 para. 7(c) text amended by 2004 c. 19 Sch. 2 para. 13(17)
- Sch. 3 para. 1(3)(a)(b) text amended by S.I. 2010/21 Sch. 1 para. 17
- Sch. 3 para. 1(4)(a)(b) text amended by S.I. 2010/21 Sch. 1 para. 17
- Sch. 3 para. 2(2)(a)(b) text amended by S.I. 2010/21 Sch. 1 para. 17
- Sch. 3 para. 2(3)(a)(b) text amended by S.I. 2010/21 Sch. 1 para. 17

Changes and effects yet to be applied to the whole Act, associated Parts and Chapters:

- Act applied (with modifications) by SI 2000/2326 reg. 31(8) (as substituted) by S.I. 2003/549 reg. 2(8)
- Act continued by S.I. 2003/754 art. 4 Sch. 2 para. 5 (commencement order for 2002 c. 41. This SI is amended by SI 2003/1040 and SI 2003/1339 and SI 2003/2993)
- Blanket amendment text amended by S.I. 2011/1043 art. 3 4
- Blanket amendment text amended by S.I. 2011/1043 art. 3 6

Commencement Orders yet to be applied to the Special Immigration Appeals Commission Act 1997:

Commencement Orders bringing legislation that affects this Act into force:

- S.I. 2003/2 art. 2 Sch. commences (1999 c. 33)
- S.I. 2003/754 art. 2 commences (2002 c. 41)
- S.I. 2005/565 art. 2 commences (2004 c. 19)
- S.I. 2006/2226 art. 3 Sch. 1 commences (2006 c. 13)
- S.I. 2009/1604 art. 2 commences (2005 c. 4)