



Special Immigration Appeals Commission Act 1997

CHAPTER 68

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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:—

1.—(1) There shall be a commission, known as the Special Immigration Appeals Commission, for the purpose of exercising the jurisdiction conferred by this Act. Establishment of the Commission.

(2) Schedule 1 to this Act shall have effect in relation to the Commission.

2.—(1) A person may appeal to the Special Immigration Appeals Commission against— Jurisdiction: appeals.

- (a) any matter in relation to which he would be entitled to appeal under subsection (1) of section 13 of the Immigration Act 1971 (appeal to an adjudicator against refusal of leave to enter), but for subsection (5) of that section (exclusion conducive to public good), 1971 c. 77.
- (b) any matter in relation to which he would be entitled to appeal under subsection (1) of section 14 of that Act (appeal to an adjudicator against variation of limited leave or any refusal to vary it), but for subsection (3) of that section (departure conducive to public good),
- (c) any matter in relation to which he would be entitled to appeal under subsection (1)(a) of section 15 of that Act (appeal to an adjudicator or the Appeal Tribunal against a decision to make a deportation order), but for subsection (3) of that section (deportation conducive to public good),

- (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.—(1) The Special Immigration Appeals Commission on an appeal to it under this Act—

Determination of appeals.

(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.

(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 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.

1971 c. 77.

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

5.—(1) The Lord Chancellor may make rules—

Procedure in relation to jurisdiction under sections 2 and 3.

(a) for regulating the exercise of the rights of appeal conferred by section 2 above,

(b) for prescribing the practice and procedure to be followed on or in connection with appeals under that section, including the mode and burden of proof and admissibility of evidence on such appeals, and

(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 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—

(4) A person appointed under subsection (1) above shall not be responsible to the person whose interests he is appointed to represent.

7.—(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.

Appeals from the Commission.

(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.

(4) In section 33(4) of the Immigration Act 1971, after “1993” there shall be inserted “or section 7 of the Special Immigration Appeals Commission Act 1997”.

1971 c. 77.

8.—(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.

Procedure on applications to the Commission for leave to appeal.

(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.

9.—(1) This Act may be cited as the Special Immigration Appeals Commission Act 1997.

Short title, commencement and extent.

(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.

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

Suspension of variation of limited leave pending appeal

1. The limitation on the taking effect of a variation and on a requirement to leave the United Kingdom contained in section 14(1) of the Immigration Act 1971 shall have effect as if appeals under any of the following provisions of section 2(1) above were appeals under section 14(1) of the 1971 Act—

- (a) paragraph (b),
- (b) paragraph (f), and
- (c) paragraph (g), so far as relating to section 8(2) of the Asylum and Immigration Appeals Act 1993.

Deportation order not to be made while appeal pending

2. In section 15(2) of the Immigration Act 1971 references to an appeal against a decision to make a deportation order shall include references to an appeal against such a decision under any of the following provisions of section 2(1) above—

- (a) paragraph (c),
- (b) paragraph (e), and
- (c) paragraph (g), so far as relating to section 8(3)(a) of the Asylum and Immigration Appeals Act 1993.

Stay of removal directions pending appeal and bail

3.—(1) Part II of Schedule 2 to the Immigration Act 1971 shall have effect as if the references to appeals under section 13(1) of that Act included appeals under any of the following provisions of section 2(1) above—

- (a) paragraph (a),
- (b) paragraph (d), and
- (c) paragraph (g), so far as relating to section 8(1) of the Asylum and Immigration Appeals Act 1993,

and as if sub-paragraph (5) of paragraph 28 of Schedule 2 were omitted.

(2) Paragraph 3 of Schedule 3 to the Immigration Act 1971 shall have effect as if the reference to appeals under section 15(1)(a) of the 1971 Act included appeals under any of the following provisions of section 2(1) above—

- (a) paragraph (c),
- (b) paragraph (e), and
- (c) paragraph (g), so far as relating to section 8(3)(a) of the Asylum and Immigration Appeals Act 1993.

Construction of references to pending appeal

4. For the purposes of the Immigration Act 1971 as applied by paragraphs 1 to 3 above, an appeal under section 2 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

- (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”.
- (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”.

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