

# NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 5: Immigration and Asylum Appeals**

##### **Appeal to adjudicator**

##### *Section 96: Earlier right of appeal*

245. Sections 96 and 120 set out the "one-stop" arrangements which prevent a person from seeking to appeal when they have already had an opportunity to put their case to an adjudicator. In all cases, the person will have been required to state any grounds for their application. The earlier legislation (section 73 of the 1999 Act) has been extended in a number of respects. This section covers situations where a person chooses not to appeal a decision but nevertheless makes a further claim or application; where a person withdraws or abandons an appeal but makes a further claim or application; and where a person chooses not to make a claim in response to a requirement under section 120 which would give rise to a right of appeal but has no right of appeal in respect of the matters he has actually put forward. The section also makes it clearer that certification powers are, where the relevant conditions are met, also applicable where a further claim or application is made after leaving and returning to the United Kingdom.
246. Under subsection (1) no appeal can be brought on any ground against an otherwise appealable decision if the Secretary of State or immigration officer certifies that the person was notified of a right of appeal against another decision - whether or not any appeal was lodged or completed - and that in his opinion the person made their claim or application in order to delay removal, or the removal of a family member, and that in his opinion the person had no other legitimate purpose for making the claim or application. If an appeal has already been brought, the appeal may not be continued if a certificate is issued.
247. Subsection (2) prevents an appeal being brought if the Secretary of State or immigration officer certifies that a new decision relates to a ground which was raised on an earlier appeal, or should have been declared in response to an earlier requirement under section 120, or could have been raised at an appeal had the applicant chosen to exercise a right of appeal. If an appeal has already been brought, the appeal may not be continued if a certificate is issued.
248. Under subsection (3), where a further appeal right does arise, the Secretary of State or immigration officer may certify that certain grounds of appeal were already considered in an earlier appeal. The appellant is not then allowed to rely on those grounds.
249. Subsection (4) indicates that the word "notified" in subsection (1) means notified in accordance with regulations made under section 105. These "Notices" Regulations will

*These notes refer to the Nationality, Immigration and Asylum Act  
2002 (c.41) which received Royal Assent on 7 November 2002*

set out the circumstances when rights of appeal are to be notified and require that information be given as to how to appeal and the assistance available.

250. Subsection (5) indicates that a claim or application or grounds of appeal can be certified if the person has left the United Kingdom and subsequently returned.
251. Subsection (6) ensures that appeals, or potential appeals, to the Special Immigration Appeals Commission are counted as appeals or potential appeals for the purposes of this section.