



# Nationality, Immigration and Asylum Act 2002

## 2002 CHAPTER 41

### PART 5

#### IMMIGRATION AND ASYLUM APPEALS

#### *[<sup>F1</sup>Appeal to Tribunal]*

##### Textual Amendments

- F1** S. 81 and preceding cross-heading substituted (4.4.2005) by virtue of [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), **ss. 26(1), 48(1)-(3)** (with transitional provisions in Sch. 2); S.I. 2005/565, **art. 2** (with savings in arts. 3-9)

#### **[<sup>F2</sup>81 Meaning of “the Tribunal**

In this Part “the Tribunal” means the First-tier Tribunal.]

##### Textual Amendments

- F2** S. 81 substituted (15.2.2010) by [The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 \(S.I. 2010/21\)](#), **art. 1, Sch. 1 para. 22** (with Sch. 4)

#### **82 Right of appeal: general**

- (1) Where an immigration decision is made in respect of a person he may appeal [<sup>F3</sup>to the Tribunal] .
- (2) In this Part “immigration decision” means—
  - (a) refusal of leave to enter the United Kingdom,

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- (b) refusal of entry clearance,
  - (c) refusal of a certificate of entitlement under section 10 of this Act,
  - (d) refusal to vary a person's leave to enter or remain in the United Kingdom if the result of the refusal is that the person has no leave to enter or remain,
  - (e) variation of a person's leave to enter or remain in the United Kingdom if when the variation takes effect the person has no leave to enter or remain,
  - (f) revocation under section 76 of this Act of indefinite leave to enter or remain in the United Kingdom,
  - (g) a decision that a person is to be removed from the United Kingdom by way of directions under [<sup>F4</sup>section 10(1)(a), (b), (ba) or (c)] of the Immigration and Asylum Act 1999 (c. 33) (removal of person unlawfully in United Kingdom),
  - (h) a decision that an illegal entrant is to be removed from the United Kingdom by way of directions under paragraphs 8 to 10 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry: removal),
  - [<sup>F5</sup>(ha) a decision that a person is to be removed from the United Kingdom by way of directions under section 47 of the Immigration, Asylum and Nationality Act 2006 (removal: persons with statutorily extended leave),]
  - (i) a decision that a person is to be removed from the United Kingdom by way of directions given by virtue of paragraph 10A of that Schedule (family),
  - [<sup>F6</sup>(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),]
  - [<sup>F7</sup>(ib) a decision to make an order under section 2A of that Act (deprivation of right of abode),]
  - (j) a decision to make a deportation order under section 5(1) of that Act, and
  - (k) refusal to revoke a deportation order under section 5(2) of that Act.
- (3) <sup>F8</sup> .....
- [<sup>F9</sup>(3A) Subsection (2)(j) does not apply to a decision to make a deportation order which states that it is made in accordance with section 32(5) of the UK Borders Act 2007; but—
- (a) a decision that section 32(5) applies is an immigration decision for the purposes of this Part, and
  - (b) a reference in this Part to an appeal against an automatic deportation order is a reference to an appeal against a decision of the Secretary of State that section 32(5) applies.]
- (4) The right of appeal under subsection (1) is subject to the exceptions and limitations specified in this Part.

#### Textual Amendments

- F3** Words in s. 82(1) substituted (4.4.2005) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\), ss. 26\(2\), 48\(1\)-\(3\)](#) (with transitional provisions in Sch. 2); S.I. 2005/565, **art. 2** (with savings in arts. 3-9)
- F4** Words in s. 82(2)(g) substituted (31.8.2006) by [Immigration, Asylum and Nationality Act 2006 \(c. 13\), ss. 2, 62](#); S.I. 2006/2226, **art. 3, Sch. 1** (subject to transitional provisions in art. 4)
- F5** S. 82(2)(ha) inserted (1.4.2008) by [Immigration, Asylum and Nationality Act 2006 \(c. 13\), ss. 47\(6\), 62\(1\)\(2\)](#); S.I. 2008/310, art. 3(c)
- F6** S. 82(2)(ia) inserted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\), ss. 31, 48\(1\)-\(3\)](#); S.I. 2004/2523, **art. 2** Sch.

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- F7** S. 82(2)(ib) inserted (16.6.2006) by Immigration, Asylum and Nationality Act 2006 (c. 13), **ss. 57(2), 62**; S.I. 2006/1497, **art. 3, Sch.**
- F8** S. 82(3) repealed (31.8.2006) by Immigration, Asylum and Nationality Act 2006 (c. 13), ss. 11(6), 61, **62, Sch. 3**; S.I. 2006/2226, **art. 3, Sch. 1** (subject to transitional provisions in art. 4)
- F9** S. 82(3A) inserted (1.8.2008 for specified purposes) by UK Borders Act 2007 (c. 30), **ss. 35(3), 59(2)**; S.I. 2008/1818, **art. 2(a), Sch.**

#### Modifications etc. (not altering text)

- C1** Ss. 82-99 restricted (14.3.2003) by The Nationality, Immigration and Asylum Act 2002 (Commencement No. 4) Order 2003 (S.I. 2003/754), arts. 3, 4 (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by S.I. 2003/1040, S.I. 2003/1339 and S.I. 2003/2993))
- C2** S. 82(1) restricted (30.4.2006) by The Immigration (European Economic Area) Regulations 2006 (S.I. 2006/1003), **reg. 30, Sch. 2 para. 4(2)**
- C3** S. 82(2) restricted (30.4.2006) by The Immigration (European Economic Area) Regulations 2006 (S.I. 2006/1003), **reg. 30, Sch. 2 para. 4(1)**

### 83 Appeal: asylum claim

- (1) This section applies where a person has made an asylum claim and—
- his claim has been rejected by the Secretary of State, but
  - he has been granted leave to enter or remain in the United Kingdom for a period exceeding one year (or for periods exceeding one year in aggregate).
- (2) The person may appeal [<sup>F10</sup>to the Tribunal] against the rejection of his asylum claim.

#### Textual Amendments

- F10** Words in s. 83(2) substituted (4.4.2005) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 26(3), 48(1)-(3)** (with transitional provisions in Sch. 2); S.I. 2005/565, **art. 2** (with savings in arts. 3-9)

#### Modifications etc. (not altering text)

- C4** Ss. 82-99 restricted (14.3.2003) by The Nationality, Immigration and Asylum Act 2002 (Commencement No. 4) Order 2003 (S.I. 2003/754), arts. 3, 4 (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by S.I. 2003/1040, S.I. 2003/1339 and S.I. 2003/2993))  
S. 83 modified (30.4.2006) by The Immigration (European Economic Area) Regulations 2006 (S.I. 2006/1003), **art. 30, Sch. 2 para. 4(3)**
- C5** S. 83(2) applied (1.4.2003) by S.I. 2000/2326, **reg. 33(1)** (as inserted by The Immigration (European Economic Area) (Amendment) Regulations 2003 (S.I. 2003/549), **art. 2(9)**)

### [<sup>F11</sup>83A Appeal: variation of limited leave

- (1) This section applies where—
- a person has made an asylum claim,
  - he was granted limited leave to enter or remain in the United Kingdom as a refugee within the meaning of the Refugee Convention,
  - a decision is made that he is not a refugee, and
  - following the decision specified in paragraph (c) he has limited leave to enter or remain in the United Kingdom otherwise than as a refugee.

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- (2) The person may appeal to the Tribunal against the decision to curtail or to refuse to extend his limited leave.]

#### Textual Amendments

- F11** S. 83A inserted (31.8.2006) by [Immigration, Asylum and Nationality Act 2006 \(c. 13\)](#), **ss. 1, 62**; [S.I. 2006/2226](#), **art. 3**, **Sch. 1** (subject to transitional provisions in **art. 4**)

## 84 Grounds of appeal

- (1) An appeal under section 82(1) against an immigration decision must be brought on one or more of the following grounds—
- (a) that the decision is not in accordance with immigration rules;
  - (b) that the decision is unlawful by virtue of section 19B of the Race Relations Act 1976 (c. 74) (discrimination by public authorities) [<sup>F12</sup>or Article 20A of the Race Relations (Northern Ireland) Order 1997] ;
  - (c) that the decision is unlawful under section 6 of the Human Rights Act 1998 (c. 42) (public authority not to act contrary to Human Rights Convention) as being incompatible with the appellant’s Convention rights;
  - (d) that the appellant is an EEA national or a member of the family of an EEA national and the decision breaches the appellant’s rights under the Community Treaties in respect of entry to or residence in the United Kingdom;
  - (e) that the decision is otherwise not in accordance with the law;
  - (f) that the person taking the decision should have exercised differently a discretion conferred by immigration rules;
  - (g) that removal of the appellant from the United Kingdom in consequence of the immigration decision would breach the United Kingdom’s obligations under the Refugee Convention or would be unlawful under section 6 of the Human Rights Act 1998 as being incompatible with the appellant’s Convention rights.
- (2) In subsection (1)(d) “EEA national” means a national of a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as it has effect from time to time).
- (3) An appeal under section 83 must be brought on the grounds that removal of the appellant from the United Kingdom would breach the United Kingdom’s obligations under the Refugee Convention.
- [<sup>F13</sup>(4) An appeal under section 83A must be brought on the grounds that removal of the appellant from the United Kingdom would breach the United Kingdom’s obligations under the Refugee Convention.]

#### Textual Amendments

- F12** Words after "1976" inserted (N.I.) (19.7.2003) by virtue of the [Race Relations Order \(Amendment\) Regulations \(Northern Ireland\) 2003 \(S.R. 2003/341\)](#), **reg. 60**
- F13** S. 84(4) added (31.8.2006) by [Immigration, Asylum and Nationality Act 2006 \(c. 13\)](#), **ss. 3, 62**; [S.I. 2006/2226](#), **art. 3**, **Sch. 1** (subject to transitional provisions in **art. 4**)

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#### Modifications etc. (not altering text)

- C6** S. 84 applied (with modifications) by 1997 c. 68, **s. 2(2)(e)** (as substituted (1.4.2003) by 2002 c. 41, ss. 114, 162(2), **Sch. 7 para. 20** (with s. 159); S.I. 2003/754, art. 2(1), **Sch. 1**)  
Ss. 82-99 restricted (14.3.2003) by The Nationality, Immigration and Asylum Act 2002 (Commencement No. 4) Order 2003 (S.I. 2003/754), arts. 3, 4 (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by S.I. 2003/1040, S.I. 2003/1339 and S.I. 2003/2993))
- C7** S. 84(1)(2) applied in part (1.4.2003) by S.I. 2000/2326, **Sch. 2** (as substituted by The Immigration (European Economic Area) (Amendment) Regulations 2003 (S.I. 2003/549), **reg. 2(10)** (with transitional provisions in reg. 3))
- C8** S. 84(1)(d) modified (1.4.2003) by S.I. 2000/2326, **reg. 33(2)** (as inserted by The Immigration (European Economic Area) (Amendment) Regulations 2003 (S.I. 2003/549), **reg. 2(9)**)  
S. 84(1)(d) modified (30.4.2006) by The Immigration (European Economic Area) Regulations 2006 (S.I. 2006/1003), **reg. 30, Sch. 2 para. 4(6)**

## 85 Matters to be considered

- (1) An appeal under section 82(1) against a decision shall be treated by <sup>F14</sup>the Tribunal] as including an appeal against any decision in respect of which the appellant has a right of appeal under section 82(1).
- (2) If an appellant under section 82(1) makes a statement under section 120, <sup>F14</sup>the Tribunal] shall consider any matter raised in the statement which constitutes a ground of appeal of a kind listed in section 84(1) against the decision appealed against.
- (3) Subsection (2) applies to a statement made under section 120 whether the statement was made before or after the appeal was commenced.
- (4) On an appeal under section 82(1) [<sup>F15</sup>, 83(2) or 83A(2)] against a decision [<sup>F16</sup>the Tribunal] may consider evidence about any matter which [<sup>F17</sup>it] thinks relevant to the substance of the decision, including evidence which concerns a matter arising after the date of the decision.
- (5) But in relation to an appeal under section 82(1) against refusal of entry clearance or refusal of a certificate of entitlement under section 10—
  - (a) subsection (4) shall not apply, and
  - (b) <sup>F14</sup>the Tribunal] may consider only the circumstances appertaining at the time of the decision to refuse.

#### Textual Amendments

- F14** Words in s. 85 substituted (4.4.2005) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 26, 48(1)-(3), **Sch. 2 para. 18(1)(2)**; S.I. 2005/565, **art. 2** (with savings in arts. 3-9)
- F15** Words in s. 85(4) substituted (31.8.2006) by Immigration, Asylum and Nationality Act 2006 (c. 13), ss. 14, 62, **Sch. 1 para. 3**; S.I. 2006/2226, **art. 3**, Sch. 1 (subject to transitional provisions in art. 4)
- F16** Words in s. 85(4) substituted (4.4.2005) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 26, 48(1)-(3), **Sch. 2 para. 18(1)(2)**; S.I. 2005/565, **art. 2** (with savings in arts. 3-9)
- F17** Word in s. 85(4) substituted (4.4.2005) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 26, 48(1)-(3), **Sch. 2 para. 18(1)(2)**; S.I. 2005/565, **art. 2** (with savings in arts. 3-9)

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**Modifications etc. (not altering text)**

- C9** S. 85 applied (with modifications) by 1997 c. 68, **s. 2(2)(f)** (as substituted (1.4.2003) by 2002 c. 41, ss. 114, 162(2), **Sch. 7 para. 20** (with s. 159); S.I. 2003/754, art. 2(1), **Sch. 1**)  
 Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), arts. 3, 4 (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by S.I. 2003/1040, S.I. 2003/1339 and S.I. 2003/2993))  
 Ss. 85-87 applied (1.4.2003) by S.I. 2000/2326, **Sch. 2** (as substituted by [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2003 \(S.I. 2003/549\)](#), **reg. 2(10)** (with transitional provisions in reg. 3))
- C10** S. 85(4) applied (with modifications) by 1997 c. 68, **s. 2(3)(a)** (as substituted (1.4.2003) by 2002 c. 41, ss. 114, 162(2), **Sch. 7 para. 20** (with s. 159); S.I. 2003/754, art. 2(1), **Sch. 1**)

PROSPECTIVE

VALID FROM 23/05/2011

**[<sup>F18</sup>85A Matters to be considered: new evidence: exceptions**

- (1) This section sets out the exceptions mentioned in section 85(5).
- (2) Exception 1 is that in relation to an appeal under section 82(1) against an immigration decision of a kind specified in section 82(2)(b) or (c) the Tribunal may consider only the circumstances appertaining at the time of the decision.
- (3) Exception 2 applies to an appeal under section 82(1) if—
  - (a) the appeal is against an immigration decision of a kind specified in section 82(2)(a) or (d),
  - (b) the immigration decision concerned an application of a kind identified in immigration rules as requiring to be considered under a “Points Based System”, and
  - (c) the appeal relies wholly or partly on grounds specified in section 84(1)(a), (e) or (f).
- (4) Where Exception 2 applies the Tribunal may consider evidence adduced by the appellant only if it—
  - (a) was submitted in support of, and at the time of making, the application to which the immigration decision related,
  - (b) relates to the appeal in so far as it relies on grounds other than those specified in subsection (3)(c),
  - (c) is adduced to prove that a document is genuine or valid, or
  - (d) is adduced in connection with the Secretary of State's reliance on a discretion under immigration rules, or compliance with a requirement of immigration rules, to refuse an application on grounds not related to the acquisition of “points” under the “Points Based System”.

[ Tribunal Procedure Rules may make provision, for the purposes of subsection (4)  
<sup>F19</sup>(5) (a), about the circumstances in which evidence is to be treated, or not treated, as submitted in support of, and at the time of making, an application. ]]

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### Textual Amendments

- F18** S. 85A inserted (prosp.) by UK Borders Act 2007 (c. 30), **ss. 19(2)**, 59(2)  
**F19** S. 85A(5) inserted (15.2.2010) by The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (S.I. 2010/21), art. 1, **Sch. 1 para. 23** (with Sch. 4)

## 86 Determination of appeal

- (1) This section applies on an appeal under section 82(1) [<sup>F20</sup>, 83 or 83A.]
- (2) [<sup>F21</sup>The Tribunal] must determine—
  - (a) any matter raised as a ground of appeal (whether or not by virtue of section 85(1)), and
  - (b) any matter which section 85 requires [<sup>F22</sup>it] to consider.
- (3) [<sup>F21</sup>The Tribunal] must allow the appeal in so far as [<sup>F23</sup>it] thinks that—
  - (a) a decision against which the appeal is brought or is treated as being brought was not in accordance with the law (including immigration rules), or
  - (b) a discretion exercised in making a decision against which the appeal is brought or is treated as being brought should have been exercised differently.
- (4) For the purposes of subsection (3) a decision that a person should be removed from the United Kingdom under a provision shall not be regarded as unlawful if it could have been lawfully made by reference to removal under another provision.
- (5) In so far as subsection (3) does not apply, [<sup>F21</sup>the Tribunal] shall dismiss the appeal.
- (6) Refusal to depart from or to authorise departure from immigration rules is not the exercise of a discretion for the purposes of subsection (3)(b).

### Textual Amendments

- F20** Words in s. 86(1) substituted (31.8.2006) by Immigration, Asylum and Nationality Act 2006 (c. 13), **ss. 14, 62, Sch. 1 para. 4**; S.I. 2006/2226, **art. 3**, Sch. 1 (subject to transitional provisions in art. 4)  
**F21** Words in s. 86 substituted (4.4.2005) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 26, 48(1)-(3), Sch. 2 para. 18(1)(2)**; S.I. 2005/565, **art. 2** (with savings in arts. 3-9)  
**F22** Word in s. 86 substituted (4.4.2005) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 26, 48(1)-(3), Sch. 2 para. 18(1)(2)**; S.I. 2005/565, **art. 2** (with savings in arts. 3-9)  
**F23** Word in s. 86 substituted (4.4.2005) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 26, 48(1)-(3), Sch. 2 para. 18(1)(2)**; S.I. 2005/565, **art. 2** (with savings in arts. 3-9)

### Modifications etc. (not altering text)

- C11** S. 86 applied (with modifications) by 1997 c. 68, **s. 2(2)(g)(3)(b)** (as substituted (1.4.2003) by 2002 c. 41, **ss. 114, 162(2), Sch. 7 para. 20** (with s. 159); S.I. 2003/754, **art. 2(1), Sch. 1**)  
Ss. 82-99 restricted (14.3.2003) by The Nationality, Immigration and Asylum Act 2002 (Commencement No. 4) Order 2003 (S.I. 2003/754), **arts. 3, 4** (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by S.I. 2003/1040, S.I. 2003/1339 and S.I. 2003/2993))  
Ss. 85-87 applied (1.4.2003) by S.I. 2000/2326, **Sch. 2** (as substituted by The Immigration (European Economic Area) (Amendment) Regulations 2003 (S.I. 2003/549), **reg. 2(10)** (with transitional provisions in reg. 3))

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## 87 Successful appeal: direction

- (1) If <sup>F24</sup>the Tribunal] allows an appeal under section 82 <sup>F25</sup>, 83 or 83A] <sup>F26</sup>it] may give a direction for the purpose of giving effect to <sup>F27</sup>its] decision.
- (2) A person responsible for making an immigration decision shall act in accordance with any relevant direction under subsection (1).
- <sup>F28</sup>(3) But a direction under this section shall not have effect while—
  - (a) an application for permission to appeal under section 11 or 13 of the Tribunals, Courts and Enforcement Act 2007 could be made or is awaiting determination,
  - (b) permission to appeal to the Upper Tribunal or a court under either of those sections has been granted and the appeal is awaiting determination, or
  - (c) an appeal has been remitted under section 12 or 14 of that Act and is awaiting determination.]
- (4) A direction under subsection (1) shall be treated <sup>F29</sup>as part of the Tribunal’s decision on the appeal for the purposes of section <sup>F30</sup>11 of the Tribunals, Courts and Enforcement Act 2007]] .

### Textual Amendments

- F24** Words in s. 87 substituted (4.4.2005) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 26, 48(1)-(3), **Sch. 2 para. 18(1)(2)**; S.I. 2005/565, **art. 2** (with savings in arts. 3-9)
- F25** Words in s. 87(1) substituted (31.8.2006) by Immigration, Asylum and Nationality Act 2006 (c. 13), ss. 14, 62, **Sch. 1 para. 5**; S.I. 2006/2226, **art. 3**, Sch. 1 (subject to transitional provisions in art. 4)
- F26** Word in s. 87 substituted (4.4.2005) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 26, 48(1)-(3), **Sch. 2 para. 18(1)(2)**; S.I. 2005/565, **art. 2** (with savings in arts. 3-9)
- F27** Word in s. 87 substituted (4.4.2005) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 26, 48(1)-(3), **Sch. 2 para. 18(1)(2)**; S.I. 2005/565, **art. 2** (with savings in arts. 3-9)
- F28** S. 87(3) substituted (15.2.2010) by The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (S.I. 2010/21), art. 1, **Sch. 1 para. 24(a)** (with Sch. 4 para. 19)
- F29** Words in s. 87(4) substituted (4.4.2005) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 26, 48(1)-(3), **Sch. 2 para. 19(b)**; S.I. 2005/565, **art. 2** (with savings in arts. 3-9)
- F30** Words in s. 87(4) substituted (15.2.2010) by The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (S.I. 2010/21), art. 1, **Sch. 1 para. 24(b)** (with Sch. 4 para. 19)

### Modifications etc. (not altering text)

- C12** S. 87 applied (with modifications) by 1997 c. 68, s. 2(2)(h)(3)(c) (as substituted (1.4.2003) by 2002 c. 41, ss. 114, 162(2), **Sch. 7 para. 20** (with s. 159); S.I. 2003/754, art. 2(1), **Sch. 1**)  
 Ss. 82-99 restricted (14.3.2003) by The Nationality, Immigration and Asylum Act 2002 (Commencement No. 4) Order 2003 (S.I. 2003/754), arts. 3, 4 (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by S.I. 2003/1040, S.I. 2003/1339 and S.I. 2003/2993))  
 Ss. 85-87 applied (1.4.2003) by S.I. 2000/2326, Sch. 2 (as substituted by The Immigration (European Economic Area) (Amendment) Regulations 2003 (S.I. 2003/549), **reg. 2(10)** (with transitional provisions in reg. 3))



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### Exceptions and limitations

## 88 Ineligibility

- (1) This section applies to an immigration decision of a kind referred to in section 82(2) (a), (b), (d) or (e).
- (2) A person may not appeal under section 82(1) against an immigration decision which is taken on the grounds that he or a person of whom he is a dependant—
  - (a) does not satisfy a requirement as to age, nationality or citizenship specified in immigration rules,
  - (b) does not have an immigration document of a particular kind (or any immigration document),
  - [<sup>F31</sup>(ba) has failed to supply a medical report or a medical certificate in accordance with a requirement of immigration rules,]
  - (c) is seeking to be in the United Kingdom for a period greater than that permitted in his case by immigration rules, or
  - (d) is seeking to enter or remain in the United Kingdom for a purpose other than one for which entry or remaining is permitted in accordance with immigration rules.
- (3) In subsection (2)(b) “immigration document” means—
  - (a) entry clearance,
  - (b) a passport,
  - (c) a work permit or other immigration employment document within the meaning of section 122, and
  - (d) a document which relates to a national of a country other than the United Kingdom and which is designed to serve the same purpose as a passport.
- (4) Subsection (2) does not prevent the bringing of an appeal on any or all of the grounds referred to in section 84(1)(b), (c) and (g).

#### Textual Amendments

**F31** S. 88(2)(ba) inserted (31.8.2006) by [Immigration, Asylum and Nationality Act 2006 \(c. 16\)](#), **ss. 5, 62**; [S.I. 2006/2226](#), **art. 3, Sch. 1** (subject to transitional provisions in [art. 4](#))

#### Modifications etc. (not altering text)

**C13** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), **arts. 3, 4** (with transitional provisions in [arts. 3, 4, Sch. 2](#) (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))

## [<sup>F32</sup>88A Entry clearance

- (1) A person may not appeal under section 82(1) against refusal of an application for entry clearance unless the application was made for the purpose of—
  - (a) visiting a person of a class or description prescribed by regulations for the purpose of this subsection, or
  - (b) entering as the dependant of a person in circumstances prescribed by regulations for the purpose of this subsection.

**Status:** Point in time view as at 03/03/2010. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Nationality, Immigration and Asylum Act 2002, Part 5 is up to date with all changes known to be in force on or before 17 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (2) Regulations under subsection (1) may, in particular—
- (a) make provision by reference to whether the applicant is a member of the family (within such meaning as the regulations may assign) of the person he seeks to visit;
  - (b) provide for the determination of whether one person is dependent on another;
  - (c) make provision by reference to the circumstances of the applicant, of the person whom the applicant seeks to visit or on whom he depends, or of both (and the regulations may, in particular, include provision by reference to—
    - (i) whether or not a person is lawfully settled in the United Kingdom within such meaning as the regulations may assign;
    - (ii) the duration of two individuals' residence together);
  - (d) make provision by reference to an applicant's purpose in entering as a dependant;
  - (e) make provision by reference to immigration rules;
  - (f) confer a discretion.
- (3) 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.]

#### Textual Amendments

**F32** S. 88A substituted for ss. 88A, 90, 91 (1.4.2008) by [Immigration, Asylum and Nationality Act 2006 \(c. 13\)](#), [ss. 4\(1\), 62\(1\)\(2\)](#); [S.I. 2008/310](#), [art. 3\(a\)](#) (with [art. 4](#)) (as amended (9.7.2012) by [S.I. 2012/1531](#), [art. 2](#) (with [art. 3](#)))

#### [<sup>F33</sup>89 Refusal of leave to enter

- (1) A person may not appeal under section 82(1) against refusal of leave to enter the United Kingdom unless—
- (a) on his arrival in the United Kingdom he had entry clearance, and
  - (b) the purpose of entry specified in the entry clearance is the same as that specified in his application for leave to enter.
- (2) Subsection (1) does not prevent the bringing of an appeal on any or all of the grounds referred to in section 84(1)(b), (c) and (g).]

#### Textual Amendments

**F33** S. 89 substituted (31.8.2006) by [Immigration, Asylum and Nationality Act 2006 \(c. 13\)](#), [ss. 6, 62](#); [S.I. 2006/2226](#), [art 3](#), [Sch. 1](#) (subject to transitional provisions in [art. 4](#))

#### Modifications etc. (not altering text)

**C14** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), [arts. 3, 4](#) (with transitional provisions in [arts. 3, 4](#), [Sch. 2](#) (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))

**Status:** Point in time view as at 03/03/2010. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Nationality, Immigration and Asylum Act 2002, Part 5 is up to date with all changes known to be in force on or before 17 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## F32 90 Non-family visitor

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### Textual Amendments

- F32** S. 88A substituted for ss. 88A, 90, 91 (1.4.2008) by [Immigration, Asylum and Nationality Act 2006 \(c. 13\)](#), [ss. 4\(1\), 62\(1\)\(2\)](#); [S.I. 2008/310](#), [art. 3\(a\)](#) (with [art. 4](#)) (as amended (9.7.2012) by [S.I. 2012/1531](#), [art. 2](#) (with [art. 3](#)))

## F32 91 Student

.....

### Textual Amendments

- F32** S. 88A substituted for ss. 88A, 90, 91 (1.4.2008) by [Immigration, Asylum and Nationality Act 2006 \(c. 13\)](#), [ss. 4\(1\), 62\(1\)\(2\)](#); [S.I. 2008/310](#), [art. 3\(a\)](#) (with [art. 4](#)) (as amended (9.7.2012) by [S.I. 2012/1531](#), [art. 2](#) (with [art. 3](#)))

## 92 Appeal from within United Kingdom: general

- (1) A person may not appeal under section 82(1) while he is in the United Kingdom unless his appeal is of a kind to which this section applies.
- (2) This section applies to an appeal against an immigration decision of a kind specified in section 82(2)(c), (d), (e), (f) [F34, (ha)] and (j).
- [F35](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))—

**Status:** Point in time view as at 03/03/2010. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Nationality, Immigration and Asylum Act 2002, Part 5 is up to date with all changes known to be in force on or before 17 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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.]
- (4) This section also applies to an appeal against an immigration decision if the appellant—
- (a) has made an asylum claim, or a human rights claim, while in the United Kingdom, or
  - (b) is an EEA national or a member of the family of an EEA national and makes a claim to the Secretary of State that the decision breaches the appellant’s rights under the Community Treaties in respect of entry to or residence in the United Kingdom.

#### Textual Amendments

**F34** Word in s. 92(2) inserted (1.4.2008) by [Immigration, Asylum and Nationality Act 2006 \(c. 13\)](#), [ss. 47\(7\)](#), [62\(1\)\(2\)](#); [S.I. 2008/310](#), [art. 3\(c\)](#)

**F35** S. 92(3)-(3D) substituted (1.10.2004) for s. 92(3) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), [ss. 28](#), [48\(1\)-\(3\)](#); [S.I. 2004/2523](#), [art. 2](#), [Sch.](#)

#### Modifications etc. (not altering text)

**C15** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), [arts. 3](#), [4](#) (with transitional provisions in [arts. 3](#), [4](#), [Sch. 2](#) (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))

### 93 Appeal from within United Kingdom: “third country” removal

<sup>F36</sup> .....

#### Textual Amendments

**F36** S. 93 repealed (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), [ss. 33\(3\)\(b\)](#), [47](#), [48\(1\)-\(3\)](#), [Sch. 4](#); [S.I. 2004/2523](#), [art. 2](#), [Sch.](#)

#### Modifications etc. (not altering text)

**C16** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), [arts. 3](#), [4](#) (with transitional provisions in [arts. 3](#), [4](#), [Sch. 2](#) (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))

### 94 Appeal from within United Kingdom: unfounded human rights or asylum claim

- (1) This section applies to an appeal under section 82(1) where the appellant has made an asylum claim or a human rights claim (or both).

[<sup>F37</sup>(1A) A person may not bring an appeal against an immigration decision of a kind specified in section 82(2)(c), (d) [<sup>F38</sup>(e) or (ha)] 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.]

*Status:* Point in time view as at 03/03/2010. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation:* Nationality, Immigration and Asylum Act 2002, Part 5 is up to date with all changes known to be in force on or before 17 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (2) A person may not bring an appeal to which this section applies [<sup>F39</sup>in reliance on section 92(4)(a)] if the Secretary of State certifies that the claim or claims mentioned in subsection (1) is or are clearly unfounded.
- (3) If the Secretary of State is satisfied that an asylum claimant or human rights claimant is entitled to reside in a State listed in subsection (4) he shall certify the claim under subsection (2) unless satisfied that it is not clearly unfounded.
- (4) Those States are—
  - (a) <sup>F40</sup> .....
  - (b) <sup>F40</sup> .....
  - (c) <sup>F40</sup> .....
  - (d) <sup>F40</sup> .....
  - (e) <sup>F40</sup> .....
  - (f) <sup>F40</sup> .....
  - (g) <sup>F40</sup> .....
  - (h) <sup>F40</sup> .....
  - (i) <sup>F40</sup> .....
  - (j) <sup>F40</sup> .....
  - [<sup>F41</sup>(k) the Republic of Albania,
    - (l) <sup>F42</sup> .....
    - (m) <sup>F43</sup> .....
    - (n) Jamaica,
    - (o) Macedonia,
    - (p) the Republic of Moldova, and
    - (q) <sup>F42</sup> .....]
  - [<sup>F44</sup>(r) <sup>F45</sup> .....
  - (s) Bolivia,
  - (t) Brazil,
  - (u) Ecuador,
  - (v) <sup>F46</sup> .....
  - (w) South Africa, and
  - (x) Ukraine.]
  - [<sup>F47</sup>(y) India.]
  - [<sup>F48</sup>(z) Mongolia,
    - (aa) Ghana (in respect of men),
    - (bb) Nigeria (in respect of men).]]
  - [<sup>F49</sup>(cc) Bosnia-Herzegovina,
    - (dd) Gambia (in respect of men),
    - (ee) Kenya (in respect of men),
    - (ff) Liberia (in respect of men),
    - (gg) Malawi (in respect of men),
    - (hh) Mali (in respect of men),
    - (ii) Mauritius,
    - (jj) Montenegro,
    - (kk) Peru,]

*Status: Point in time view as at 03/03/2010. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Nationality, Immigration and Asylum Act 2002, Part 5 is up to date with all changes known to be in force on or before 17 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (ll) Serbia,
  - (mm) Sierra Leone (in respect of men).]
  - [<sup>F50</sup>(nn) Kosovo,
  - (oo) South Korea.]
- (5) The Secretary of State may by order add a State, or part of a State, to the list in subsection (4) if satisfied that—
- (a) there is in general in that State or part no serious risk of persecution of persons entitled to reside in that State or part, and
  - (b) removal to that State or part of persons entitled to reside there will not in general contravene the United Kingdom’s obligations under the Human Rights Convention.
- [<sup>F51</sup>(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.
- [ In deciding whether the statements in subsection (5) (a) and (b) are true of a State or
- <sup>F52</sup>(5D) part of a State, the Secretary of State –
- (a) shall have regard to all the circumstances of the State or part (including its laws and how they are applied), and
  - (b) shall have regard to information from any appropriate source (including other member States and international organisations).]
- [<sup>F53</sup>(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.]
- [<sup>F54</sup>(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,

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- (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.]
- (7) A person may not bring an appeal to which this section applies in reliance on section 92(4) if the Secretary of State certifies that—
- (a) it is proposed to remove the person to a country of which he is not a national or citizen, and
  - (b) there is no reason to believe that the person’s rights under the Human Rights Convention will be breached in that country.
- (8) In determining whether a person in relation to whom a certificate has been issued under subsection (7) may be removed from the United Kingdom, the country specified in the certificate is to be regarded as—
- (a) a place where a person’s life and liberty is not threatened by reason of his race, religion, nationality, membership of a particular social group, or political opinion, and
  - (b) a place from which a person will not be sent to another country otherwise than in accordance with the Refugee Convention.
- (9) Where a person in relation to whom a certificate is issued under this section subsequently brings an appeal under section 82(1) while outside the United Kingdom, the appeal shall be considered as if he had not been removed from the United Kingdom.

#### Textual Amendments

- F37** S. 94(1A) inserted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), [ss. 27\(2\)](#), [48\(1\)-\(3\)](#); S.I. 2004/2523, [art. 2](#), Sch.
- F38** Words in s. 94(1A) substituted (1.4.2008) by [Immigration, Asylum and Nationality Act 2006 \(c. 13\)](#), [ss. 47\(8\)](#), [62\(1\)\(2\)](#); S.I. 2008/310, [art. 3\(c\)](#)
- F39** Words in s. 94(2) substituted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), [ss. 27\(3\)](#), [48\(1\)-\(3\)](#); S.I. 2004/2523, [art. 2](#), Sch.
- F40** S. 94(4)(a)-(j) repealed (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), [ss. 27\(4\)](#), [47](#), [48\(1\)-\(3\)](#), [Sch. 4](#); S.I. 2004/2523, [art. 2](#), Sch.
- F41** S. 94(4)(k)-(q) added (1.4.2003) by [The Asylum \(Designated States\) Order 2003 \(S.I. 2003/970\)](#), [art. 3](#)
- F42** S. 94(4)(l)(q) omitted (1.1.2007) by virtue of [The Asylum \(Designated States\) \(Amendment\) Order 2006 \(S.I. 2006/3215\)](#), [art. 2](#)
- F43** S. 94(4)(m) omitted (27.7.2007) by virtue of [The Asylum \(Designated States\) Order 2007 \(S.I. 2007/2221\)](#), [art. 3](#) (with [art. 1](#))
- F44** S. 94(4)(r)-(x) added (23.7.2003) by [The Asylum \(Designated States\) \(No. 2\) Order 2003 \(S.I. 2003/1919\)](#), [art. 2](#)
- F45** S. 94(4)(r) omitted (22.4.2005) by virtue of [The Asylum \(Designated States\) \(Amendment\) Order 2005 \(S.I. 2005/1016\)](#), [art. 2](#)
- F46** S. 94(4)(v) omitted (13.12.2006) by virtue of [The Asylum \(Designated States\) \(Amendment\) \(No. 2\) Order 2006 \(S.I. 2006/3275\)](#), [art. 2](#)
- F47** S. 94(4)(y) added (15.2.2005) by [The Asylum \(Designated States\) Order 2005 \(S.I. 2005/330\)](#), [art. 2](#) (with [art. 1](#))
- F48** S. 94(4)(z)-(bb) added (2.12.2005) by [The Asylum \(Designated States\) \(No. 2\) Order 2005 \(S.I. 2005/3306\)](#), [art. 2](#)

**Status:** Point in time view as at 03/03/2010. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Nationality, Immigration and Asylum Act 2002, Part 5 is up to date with all changes known to be in force on or before 17 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- F49** S. 94(4)(cc)-(mm) added (27.7.2007) by [The Asylum \(Designated States\) Order 2007 \(S.I. 2007/2221\)](#), [art. 2](#) (with [art. 1](#))
- F50** S. 94(4)(nn)(oo) inserted (3.3.2010) by [The Asylum \(Designated States\) Order 2010 \(S.I. 2010/561\)](#), [arts. 2, 3](#) (with [art. 2](#))
- F51** S. 94(5A)-(5C) inserted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), [ss. 27\(5\)](#), [48\(1\)-\(3\)](#); [S.I. 2004/2523](#), [art. 2](#), [Sch.](#)
- F52** S. 94(5D) inserted (1.12.2007) by [The Asylum \(Procedures\) Regulations 2007 \(S.I. 2007/3187\)](#), [reg. 3](#)
- F53** S. 94(6) substituted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), [ss. 27\(6\)](#), [48\(1\)-\(3\)](#); [S.I. 2004/2523](#), [art. 2](#), [Sch.](#)
- F54** S. 94(6A) inserted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), [ss. 27\(7\)](#), [48\(1\)-\(3\)](#); [S.I. 2004/2523](#), [art. 2](#), [Sch.](#)

#### Modifications etc. (not altering text)

- C17** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), [arts. 3, 4](#) (with transitional provisions in [arts. 3, 4](#), [Sch. 2](#) (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))

#### Commencement Information

- II** S. 94 wholly in force at 1.4.2003; s. 94 not in force at Royal Assent see s. 162(2); s. 94(5) in force for certain purposes at 10.2.2003 by [S.I. 2003/249](#), [art. 2](#), [Sch.](#); s. 94 in force at 1.4.2003 insofar as not already in force by virtue of [S.I. 2003/754](#), [art. 2](#), [Sch. 1](#)

### [<sup>F55</sup>94A European Common List of Safe Countries of Origin

- (1) The Secretary of State shall by order prescribe a list of States to be known as the “European Common List of Safe Countries of Origin”.
- (2) Subsections (3) and (4) apply where a person makes an asylum claim or a human rights claim (or both) and that person is –
  - (a) a national of a State which is listed in the European Common List of Safe Countries of Origin, or
  - (b) a Stateless person who was formerly habitually resident in such a State.
- (3) The Secretary of State shall consider the claim or claims mentioned in subsection (2) to be unfounded unless satisfied that there are serious grounds for considering that the State in question is not safe in the particular circumstances of the person mentioned in that subsection.
- (4) The Secretary of State shall also certify the claim or claims mentioned in subsection (2) under section 94(2) unless satisfied that the claim or claims is or are not clearly unfounded.
- (5) An order under subsection (1) –
  - (a) may be made only if the Secretary of State thinks it necessary for the purpose of complying with the United Kingdom's obligations under Community law,
  - (b) may include transitional, consequential or incidental provision,
  - (c) shall be made by statutory instrument, and
  - (d) shall be subject to annulment in pursuance of a resolution of either House of Parliament.]



**Status:** Point in time view as at 03/03/2010. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Nationality, Immigration and Asylum Act 2002, Part 5 is up to date with all changes known to be in force on or before 17 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

### Textual Amendments

**F55** S. 94A inserted (1.12.2007) by [The Asylum \(Procedures\) Regulations 2007 \(S.I. 2007/3187\)](#), [reg. 4](#)

## 95 Appeal from outside United Kingdom: removal

A person who is outside the United Kingdom may not appeal under section 82(1) on the ground specified in section 84(1)(g) (except in a case to which section 94(9) applies).

### Modifications etc. (not altering text)

**C18** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), [arts. 3, 4](#) (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))

## 96 Earlier right of appeal

[<sup>F56</sup>(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.]

(4) In subsection (1) “notified” means notified in accordance with regulations under section 105.

(5) [<sup>F57</sup>Subsections (1) and (2) apply to prevent] a person’s right of appeal whether or not he has been outside the United Kingdom since an earlier right of appeal arose or since a requirement under section 120 was imposed.

*Status: Point in time view as at 03/03/2010. This version of this part contains provisions that are not valid for this point in time.*

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(6) In this section a reference to an appeal under section 82(1) includes a reference to an appeal under section 2 of the Special Immigration Appeals Commission Act 1997 (c. 68) which is or could be brought by reference to an appeal under section 82(1).

[<sup>F58</sup>(7) A certificate under subsection (1) or (2) shall have no effect in relation to an appeal instituted before the certificate is issued.]

#### Textual Amendments

- F56** S. 96(1)(2) substituted (1.10.2004) for s. 96(1)-(3) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\), ss. 30\(2\)](#), 48(1)-(3); S.I. 2004/2523, [art. 2](#), Sch.
- F57** Words in s. 96(5) substituted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\), ss. 30\(3\)](#), 48(1)-(3); S.I. 2004/2523, [art. 2](#), Sch.
- F58** S. 96(7) added (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\), ss. 30\(4\)](#), 48(1)-(3); S.I. 2004/2523, [art. 2](#), Sch.

#### Modifications etc. (not altering text)

- C19** S. 96 applied (with modifications) by 1997 c. 68, [s. 2\(2\)\(i\)](#) (as substituted (1.4.2003) by 2002 c. 41, ss. 114, 162(2), [Sch. 7 para. 20](#) (with s. 159); S.I. 2003/754, [art. 2\(1\)](#), [Sch. 1](#)))  
 Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), [art. 3, 4](#) (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by S.I. 2003/1040 and S.I. 2003/1339))
- C20** S. 96(1)(a) modified (1.4.2003) by S.I. 2000/2326, [reg. 33\(3\)](#) (as inserted by [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2003 \(S.I. 2003/549\)](#), [reg. 2\(9\)](#))  
 S. 96(1)(a) modified (30.4.2006) by [The Immigration \(European Economic Area\) Regulations 2006 \(S.I. 2006/1003\)](#), [reg. 31\(2\)](#), [Sch. 2 para. 4\(7\)](#)
- C21** S. 96(2)(a)(c) modified (1.4.2003) by S.I. 2000/2326, [reg. 33\(3\)](#) (as inserted by [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2003 \(S.I. 2003/549\)](#), [reg. 2\(9\)](#))

## 97 National security, &c.

(1) An appeal under section 82(1) [<sup>F59</sup>, 83(2) or 83A(2)] against a decision in respect of a person may not be brought or continued if the Secretary of State certifies that the decision is or was taken—

- (a) by the Secretary of State wholly or partly on a ground listed in subsection (2), or
- (b) in accordance with a direction of the Secretary of State which identifies the person to whom the decision relates and which is given wholly or partly on a ground listed in subsection (2).

(2) The grounds mentioned in subsection (1) are that the person's exclusion or removal from the United Kingdom is—

- (a) in the interests of national security, or
- (b) in the interests of the relationship between the United Kingdom and another country.

(3) An appeal under section 82(1) [<sup>F60</sup>, 83(2) or 83A(2)] against a decision may not be brought or continued if the Secretary of State certifies that the decision is or was taken wholly or partly in reliance on information which in his opinion should not be made public—

- (a) in the interests of national security,

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- (b) in the interests of the relationship between the United Kingdom and another country, or
  - (c) otherwise in the public interest.
- (4) In subsections (1)(a) and (b) and (3) a reference to the Secretary of State is to the Secretary of State acting in person.

#### Textual Amendments

- F59** Words in s. 97(1)(3) substituted (31.8.2006) by [Immigration, Asylum and Nationality Act 2006 \(c. 13\)](#), ss. 14, 62, [Sch. 1 para. 6](#); S.I. 2006/2226, [art. 3](#), Sch. 1 (subject to transitional provisions in [art. 4](#))
- F60** Words in s. 97(1)(3) substituted (31.8.2006) by [Immigration, Asylum and Nationality Act 2006 \(c. 13\)](#), ss. 14, 62, [Sch. 1 para. 6](#); S.I. 2006/2226, [art. 3](#), Sch. 1 (subject to transitional provisions in [art. 4](#))

#### Modifications etc. (not altering text)

- C22** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), [arts. 3, 4](#) (with transitional provisions in [arts. 3, 4](#), Sch. 2 (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))

### [<sup>F61</sup>97A National security: deportation

- (1) This section applies where the Secretary of State certifies that the decision to make a deportation order in respect of a person was taken on the grounds that his removal from the United Kingdom would be in the interests of national security.
- (2) Where this section applies—
- (a) section 79 shall not apply,
  - (b) the Secretary of State shall be taken to have certified the decision to make the deportation order under section 97, and
  - (c) for the purposes of section 2(5) of the Special Immigration Appeals Commission Act 1997 (c. 68) (appeals from within United Kingdom) it shall be assumed that section 92 of this Act—
    - (i) would not apply to an appeal against the decision to make the deportation order by virtue of section 92(2) to (3D),
    - (ii) would not apply to an appeal against that decision by virtue of section 92(4)(a) in respect of an asylum claim, and
    - (iii) would be capable of applying to an appeal against that decision by virtue of section 92(4)(a) in respect of a human rights claim unless the Secretary of State certifies that the removal of the person from the United Kingdom would not breach the United Kingdom's obligations under the Human Rights Convention.
- (3) A person in respect of whom a certificate is issued under subsection (2)(c)(iii) may appeal to the Special Immigration Appeals Commission against the issue of the certificate; and for that purpose the Special Immigration Appeals Commission Act 1997 shall apply as to an appeal against an immigration decision to which section 92 of this Act applies.
- (4) The Secretary of State may repeal this section by order.]

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### Textual Amendments

**F61** S. 97A inserted (31.8.2006) by [Immigration, Asylum and Nationality Act 2006 \(c. 13\)](#), **ss. 7(1)**, 62; [S.I. 2006/2226](#), **art. 3**, **Sch. 1** (subject to transitional provisions in [art. 4](#))

## 98 Other grounds of public good

- (1) This section applies to an immigration decision of a kind referred to in section 82(2) (a) or (b).
- (2) An appeal under section 82(1) against an immigration decision may not be brought or continued if the Secretary of State certifies that the decision is or was taken—
  - (a) by the Secretary of State wholly or partly on the ground that the exclusion or removal from the United Kingdom of the person to whom the decision relates is conducive to the public good, or
  - (b) in accordance with a direction of the Secretary of State which identifies the person to whom the decision relates and which is given wholly or partly on that ground.
- (3) In subsection (2)(a) and (b) a reference to the Secretary of State is to the Secretary of State acting in person.
- (4) Subsection (2) does not prevent the bringing of an appeal on either or both of the grounds referred to in section 84(1)(b) and (c).
- (5) Subsection (2) does not prevent the bringing of an appeal against an immigration decision of the kind referred to in section 82(2)(a) on the grounds referred to in section 84(1)(g).

### Modifications etc. (not altering text)

**C23** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), **arts. 3, 4** (with transitional provisions in **arts. 3, 4**, **Sch. 2** (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))

## 99 Sections 96 to 98: appeal in progress

- (1) This section applies where a certificate is issued under section 96(1) or (2), 97 or 98 in respect of a pending appeal.
- (2) The appeal shall lapse.

### Modifications etc. (not altering text)

**C24** Ss. 82-99 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), **arts. 3, 4** (with transitional provisions in **arts. 3, 4**, **Sch. 2** (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))

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## Appeal from adjudicator

### 100 Immigration Appeal Tribunal

[<sup>F62</sup>(1) There shall continue to be an Immigration Appeal Tribunal.

(2) Schedule 5 (which makes provision about the Tribunal) shall have effect.]

#### Textual Amendments

**F62** Ss. 100-103 cease to have effect (4.4.2005) and repealed (prosp.) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), **ss. 26(5)(a)**, 47, 48(1)-(3), **Sch. 4**; S.I. 2005/565, **art. 2(a)** (with savings in **arts. 3-9**)

### 101 Appeal to Tribunal

[<sup>F63</sup>(1) A party to an appeal to an adjudicator under section 82 or 83 may, with the permission of the Immigration Appeal Tribunal, appeal to the Tribunal against the adjudicator's determination on a point of law.

(2) A party to an application to the Tribunal for permission to appeal under subsection (1) may apply to the High Court or, in Scotland, to the Court of Session for a review of the Tribunal's decision on the ground that the Tribunal made an error of law.

(3) Where an application is made under subsection (2)—

- (a) it shall be determined by a single judge by reference only to written submissions,
- (b) the judge may affirm or reverse the Tribunal's decision,
- (c) the judge's decision shall be final, and
- (d) if, in an application to the High Court, the judge thinks the application had no merit he shall issue a certificate under this paragraph (which shall be dealt with in accordance with Civil Procedure Rules).

(4) The Lord Chancellor may by order repeal subsections (2) and (3).]

#### Textual Amendments

**F63** Ss. 100-103 cease to have effect (4.4.2005) and repealed (prosp.) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), **ss. 26(5)(a)**, 47, 48(1)-(3), **Sch. 4**; S.I. 2005/565, **art. 2(a)** (with savings in **arts. 3-9**)

#### Modifications etc. (not altering text)

**C25** Ss. 101-103 applied (1.4.2003) by [S.I. 2000/2326, Sch. 2](#) (as substituted by [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2003 \(S.I. 2003/549\)](#), **reg. 2(10)** (with transitional provisions in **reg. 3**))

Ss. 101-103 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), **arts. 3, 4** (with transitional provisions in **arts. 3, 4, Sch. 2** (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))

**C26** S. 101(1) extended (9.6.2003) by [S.I. 2003/754, Sch. 2 para. 1\(4A\)](#) (as amended by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) \(Amendment\) \(No. 2\) Order 2003 \(S.I. 2003/1339\)](#), **art. 4**)

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- C27** S. 101(2)(3) applied (with modifications) (9.6.2003) by S.I. 2003/754, Sch. 2 para. 1(4B)(a) (as amended by The Nationality, Immigration and Asylum Act 2002 (Commencement No. 4) (Amendment) (No. 2) Order 2003 (S.I. 2003/1339), **art. 4**)

## 102 Decision

- [<sup>F64</sup>(1) On an appeal under section 101 the Immigration Appeal Tribunal may—
- (a) affirm the adjudicator’s decision;
  - (b) make any decision which the adjudicator could have made;
  - (c) remit the appeal to an adjudicator;
  - (d) affirm a direction given by the adjudicator under section 87;
  - (e) vary a direction given by the adjudicator under that section;
  - (f) give any direction which the adjudicator could have given under that section.
- (2) In reaching their decision on an appeal under section 101 the Tribunal may consider evidence about any matter which they think relevant to the adjudicator’s decision, including evidence which concerns a matter arising after the adjudicator’s decision.
- (3) But where the appeal under section 82 was against refusal of entry clearance or refusal of a certificate of entitlement—
- (a) subsection (2) shall not apply, and
  - (b) the Tribunal may consider only the circumstances appertaining at the time of the decision to refuse.
- (4) In remitting an appeal to an adjudicator under subsection (1)(c) the Tribunal may, in particular—
- (a) require the adjudicator to determine the appeal in accordance with directions of the Tribunal;
  - (b) require the adjudicator to take additional evidence with a view to the appeal being determined by the Tribunal.]

### Textual Amendments

- F64** Ss. 100-103 cease to have effect (4.4.2005) and repealed (prosp.) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 26(5)(a)**, 47, 48(1)-(3), **Sch. 4**; S.I. 2005/565, **art. 2(a)** (with savings in **arts. 3-9**)

### Modifications etc. (not altering text)

- C28** Ss. 101-103 applied (1.4.2003) by S.I. 2000/2326, **Sch. 2** (as substituted by The Immigration (European Economic Area) (Amendment) Regulations 2003 (S.I. 2003/549), **reg. 2(10)** (with transitional provisions in **reg. 3**))
- Ss. 101-103 restricted (14.3.2003) by The Nationality, Immigration and Asylum Act 2002 (Commencement No. 4) Order 2003 (S.I. 2003/754), **arts. 3, 4** (with transitional provisions in **arts. 3, 4**, **Sch. 2** (as amended by S.I. 2003/1040, S.I. 2003/1339 and S.I. 2003/2993))
- S. 102 applied (with modifications) (9.6.2003) by S.I. 2003/754, **Sch. 2 para. 1(4B)(a)** (as amended by The Nationality, Immigration and Asylum Act 2002 (Commencement No. 4) (Amendment) (No. 2) Order 2003 (S.I. 2003/1339), **art. 4**)

## 103 Appeal from Tribunal

**Status:** Point in time view as at 03/03/2010. This version of this part contains provisions that are not valid for this point in time.

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- [<sup>F65</sup>(1) Where the Immigration Appeal Tribunal determines an appeal under section 101 a party to the appeal may bring a further appeal on a point of law—
- (a) where the original decision of the adjudicator was made in Scotland, to the Court of Session, or
  - (b) in any other case, to the Court of Appeal.
- (2) An appeal under this section may be brought only with the permission of—
- (a) the Tribunal, or
  - (b) if the Tribunal refuses permission, the court referred to in subsection (1)(a) or (b).
- (3) The remittal of an appeal to an adjudicator under section 102(1)(c) is not a determination of the appeal for the purposes of subsection (1) above.]

#### Textual Amendments

**F65** Ss. 100-103 cease to have effect (4.4.2005) and repealed (prosp.) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), **ss. 26(5)(a)**, 47, 48(1)-(3), **Sch. 4**; S.I. 2005/565, **art. 2(a)** (with savings in **arts. 3-9**)

#### Modifications etc. (not altering text)

**C29** Ss. 101-103 applied (1.4.2003) by [S.I. 2000/2326](#), **Sch. 2** (as substituted by [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2003 \(S.I. 2003/549\)](#), **reg. 2(10)** (with transitional provisions in **reg. 3**))

Ss. 101-103 restricted (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), **arts. 3, 4** (with transitional provisions in **arts. 3, 4**, **Sch. 2** (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))

S. 103 applied (with modifications) (9.6.2003) by [S.I. 2003/754](#), **Sch. 2 para. 1(4B)(a)** (as amended by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) \(Amendment\) \(No. 2\) Order 2003 \(S.I. 2003/1339\)](#), **art. 4**)

### Procedure

#### <sup>F66</sup>103A Review of Tribunal's decision

.....

#### Textual Amendments

**F66** Ss. 103A-103E omitted (15.2.2010) by virtue of [The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 \(S.I. 2010/21\)](#), **art. 1**, **Sch. 1 para. 25** (with **Sch. 4 paras. 2-13**, 1920)

#### <sup>F66</sup>103B Appeal from Tribunal following reconsideration

.....

*Status: Point in time view as at 03/03/2010. This version of this part contains provisions that are not valid for this point in time.*

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#### Textual Amendments

**F66** Ss. 103A-103E omitted (15.2.2010) by virtue of [The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 \(S.I. 2010/21\)](#), art. 1, **Sch. 1 para. 25** (with Sch. 4 paras. 2-13, 1920)

### <sup>F66</sup>103C Appeal from Tribunal instead of reconsideration

.....

#### Textual Amendments

**F66** Ss. 103A-103E omitted (15.2.2010) by virtue of [The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 \(S.I. 2010/21\)](#), art. 1, **Sch. 1 para. 25** (with Sch. 4 paras. 2-13, 1920)

### <sup>F66</sup>103D Reconsideration: legal aid

.....

#### Textual Amendments

**F66** Ss. 103A-103E omitted (15.2.2010) by virtue of [The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 \(S.I. 2010/21\)](#), art. 1, **Sch. 1 para. 25** (with Sch. 4 paras. 2-13, 1920)

### <sup>F66</sup>103E Appeal from Tribunal sitting as panel

.....

#### Textual Amendments

**F66** Ss. 103A-103E omitted (15.2.2010) by virtue of [The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 \(S.I. 2010/21\)](#), art. 1, **Sch. 1 para. 25** (with Sch. 4 paras. 2-13, 1920)

## 104 Pending appeal

- (1) An appeal under section 82(1) is pending during the period—
- (a) beginning when it is instituted, and
  - (b) ending when it is finally determined, withdrawn or abandoned (or when it lapses under section 99).

- [<sup>F67</sup>(2) An appeal under section 82(1) is not finally determined for the purpose of subsection (1)(b) while—
- (a) an application for permission to appeal under section 11 or 13 of the Tribunals, Courts and Enforcement Act 2007 could be made or is awaiting determination,
  - (b) permission to appeal under either of those sections has been granted and the appeal is awaiting determination, or
  - (c) an appeal has been remitted under section 12 or 14 of that Act and is awaiting determination.]



**Status:** Point in time view as at 03/03/2010. This version of this part contains provisions that are not valid for this point in time.

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- (3) <sup>F68</sup> .....
- [<sup>F69</sup>(4) An appeal under section 82(1) brought by a person while he is in the United Kingdom shall be treated as abandoned if the appellant leaves the United Kingdom.
- (4A) An appeal under section 82(1) brought by a person while he is in the United Kingdom shall be treated as abandoned if the appellant is granted leave to enter or remain in the United Kingdom (subject to subsections (4B) and (4C)).
- (4B) Subsection (4A) shall not apply to an appeal in so far as it is brought on the ground relating to the Refugee Convention specified in section 84(1)(g) where the appellant—
- (a) is granted leave to enter or remain in the United Kingdom for a period exceeding 12 months, and
  - (b) gives notice, in accordance with [<sup>F70</sup>Tribunal Procedure Rules], that he wishes to pursue the appeal in so far as it is brought on that ground.
- (4C) Subsection (4A) shall not apply to an appeal in so far as it is brought on the ground specified in section 84(1)(b) where the appellant gives notice, in accordance with [<sup>F71</sup>Tribunal Procedure Rules], that he wishes to pursue the appeal in so far as it is brought on that ground.]
- (5) An appeal under section 82(2)(a), (c), (d), (e) or (f) shall be treated as finally determined if a deportation order is made against the appellant.

#### Textual Amendments

- F67** S. 104(2) substituted (15.2.2010) by [The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 \(S.I. 2010/21\)](#), art. 1, **Sch. 1 para. 26(a)** (with Sch. 4)
- F68** S. 104(3) omitted (4.4.2005) and repealed (prosp.) by virtue of [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), ss. 26, 47, 48(1)-(3), Sch. 2 para. 20(b), **Sch. 4**; S.I. 2005/565, **art. 2** (with savings in arts. 3-9)
- F69** S. 104(4)-(4C) substituted (13.11.2006) for s. 104(4) by [Immigration, Asylum and Nationality Act 2006 \(c. 13\)](#), **ss. 9, 62**; S.I. 2006/2838, **art. 3**
- F70** Words in s. 104(4B)(b) substituted (15.2.2010) by [The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 \(S.I. 2010/21\)](#), art. 1, **Sch. 1 para. 26(b)** (with Sch. 4)
- F71** Words in s. 104(4C) substituted (15.2.2010) by [The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 \(S.I. 2010/21\)](#), art. 1, **Sch. 1 para. 26(b)** (with Sch. 4)

#### Modifications etc. (not altering text)

- C30** S. 104 applied (with modifications) by [1997 c. 68, s. 2\(2\)\(j\)](#) (as substituted (1.4.2003) by [2002 c. 41, ss. 114, 162\(2\)](#), **Sch. 7 para. 20** (with s. 159); S.I. 2003/754, art. 2(1), **Sch. 1**))

## 105 Notice of immigration decision

- (1) The Secretary of State may make regulations requiring a person to be given written notice where an immigration decision is taken in respect of him.
- (2) The regulations may, in particular, provide that a notice under subsection (1) of a decision against which the person is entitled to appeal under section 82(1) must state—
- (a) that there is a right of appeal under that section, and
  - (b) how and when that right may be exercised.
- (3) The regulations may make provision (which may include presumptions) about service.

**Status:** Point in time view as at 03/03/2010. This version of this part contains provisions that are not valid for this point in time.

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#### Modifications etc. (not altering text)

**C31** S. 105 applied (with modifications) by 1997 c. 68, **s. 2(2)(k)** (as substituted (1.4.2003) by 2002 c. 41, ss. 114, 162(2), **Sch. 7 para. 20** (with s. 159); S.I. 2003/754, art. 2(1), **Sch. 1**)

## 106 Rules

<sup>F72</sup>(1) .....

<sup>F73</sup>(1A) .....

<sup>F74</sup>(2) .....

[<sup>F75</sup>(t) may make provision about the number of members exercising the Tribunal's jurisdiction;

(u) may make provision about the allocation of proceedings among members of the Tribunal (which may include provision for transfer);

(v) may make provision about reconsideration of a decision pursuant to an order under section 103A(1) (which may, in particular, include provision about the action that may be taken on reconsideration and about the matters and evidence to which the Tribunal may have regard);

(w) shall provide that a party to an appeal is to be treated as having received notice of the Tribunal's decision, unless the contrary is shown, at such time as may be specified in, or determined in accordance with, the rules;

(x) may make provision about proceedings under paragraph 30 of Schedule 2 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (transitional filter of applications for reconsideration from High Court to Tribunal) (and may, in particular, make provision of a kind that may be made by rules of court under section 103A(5)(b));

(y) may make provision about the form and content of decisions of the Tribunal.]

[<sup>F76</sup>(3) In the case of an appeal under section 82, 83 or 83A or by virtue of section 109, Tribunal Procedure Rules may enable the Tribunal to certify that the appeal had no merit (and shall make provision for the consequences of the issue of a certificate).]

(4) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed in accordance with [<sup>F77</sup>Tribunal Procedure Rules in connection with proceedings under section 82, 83 or 83A or by virtue of section 109] to attend before <sup>F78</sup> . . . the Tribunal—

(a) to give evidence, or

(b) to produce a document.

(5) A person who is guilty of an offence under subsection (4) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### Textual Amendments

**F72** S. 106(1) omitted (15.2.2010) by virtue of [The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 \(S.I. 2010/21\)](#), art. 1, **Sch. 1 para. 27(a)** (with Sch. 4)

**F73** S. 106(1A) omitted (15.2.2010) by virtue of [The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 \(S.I. 2010/21\)](#), art. 1, **Sch. 1 para. 27(a)** (with Sch. 4)

**F74** S. 106(2) omitted (15.2.2010) by virtue of [The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 \(S.I. 2010/21\)](#), art. 1, **Sch. 1 para. 27(a)** (with Sch. 4)

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- F75** S. 106(2)(t)-(y) inserted (4.4.2005) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 26, 48(1)-(3), **Sch. 2 para. 21(o)**; S.I. 2005/565, **art. 2** (with savings in arts. 3-9)
- F76** S. 106(3) substituted (15.2.2010) by The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (S.I. 2010/21), art. 1, **Sch. 1 para. 27(b)** (with Sch. 4)
- F77** Words in s. 106(4) substituted (15.2.2010) by The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (S.I. 2010/21), art. 1, **Sch. 1 para. 27(c)** (with Sch. 4)
- F78** Words in s. 106(4) omitted (4.4.2005) by virtue of Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 26, 48(1)-(3), **Sch. 2 para. 21(t)** and words in said subprovision repealed (prosp.) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 47, 48(1)-(3), **Sch. 4** ; S.I. 2005/565, **art. 2** (with savings in arts. 3-9)

**Modifications etc. (not altering text)**

- C32** S. 106 extended by 1981 c. 61, **s. 40A(7)** (as substituted (1.4.2003) by 2002 c. 41, **ss. 4(1)**, 162(2) (with s. 159); S.I. 2003/754, art. 2(1), **Sch. 1**)

**107 Practice directions**

- F79**(1) .....
- F80**(1A) .....
- F81**(2) .....
- [F82**(3) In the case of proceedings under section 82, 83 or 83A or by virtue of section 109, or proceedings in the Upper Tribunal arising out of such proceedings, practice directions under section 23 of the Tribunals, Courts and Enforcement Act 2007—
  - (a) may require the Tribunal to treat a specified decision of the Tribunal or Upper Tribunal as authoritative in respect of a particular matter; and
  - (b) may require the Upper Tribunal to treat a specified decision of the Tribunal or Upper Tribunal as authoritative in respect of a particular matter.]
- [F83**(3A) In subsection (3) the reference to a decision of the Tribunal includes—
  - (a) a decision of the Asylum and Immigration Tribunal, and
  - (b) a decision of the Immigration Appeal Tribunal.]
- F84**(4) .....
- F84**(5) .....
- F84**(6) .....
- F84**(7) .....

**Textual Amendments**

- F79** S. 107(1) omitted (15.2.2010) by virtue of The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (S.I. 2010/21), art. 1, **Sch. 1 para. 28(a)** (with Sch. 4)
- F80** S. 107(1A) omitted (15.2.2010) by virtue of The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (S.I. 2010/21), art. 1, **Sch. 1 para. 28(a)** (with Sch. 4)
- F81** S. 107(2) omitted (4.4.2005) by virtue of Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 26, 48(1)-(3), **Sch. 2 para. 22(1)(b)** and said subprovision repealed (prosp.) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 47, 48(1)-(3), **Sch. 4** ; S.I. 2005/565, **art. 2** (with savings in arts. 3-9)

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- F82** S. 107(3) substituted (15.2.2010) by [The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 \(S.I. 2010/21\)](#), art. 1, **Sch. 1 para. 28(b)** (with Sch. 4)
- F83** S. 107(3A) inserted (15.2.2010) by [The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 \(S.I. 2010/21\)](#), art. 1, **Sch. 1 para. 28(c)** (with Sch. 4)
- F84** S. 107(4)-(7) omitted (15.2.2010) by virtue of [The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 \(S.I. 2010/21\)](#), art. 1, **Sch. 1 para. 28(a)** (with Sch. 4)

**Modifications etc. (not altering text)**

- C33** S. 107 extended by [1981 c. 61, s. 40A\(8\)](#) (as substituted (1.4.2003) by [2002 c. 41, ss. 4\(1\), 162\(2\)](#) (with s. 159); [S.I. 2003/754](#), art. 2(1), **Sch. 1**)

**108 Forged document: proceedings in private**

- (1) This section applies where it is alleged—
- (a) that a document relied on by a party to an appeal under section 82 [<sup>F85</sup>, 83 or 83A] is a forgery, and
  - (b) that disclosure to that party of a matter relating to the detection of the forgery would be contrary to the public interest.
- (2) [<sup>F86</sup>The Tribunal]—
- (a) must investigate the allegation in private, and
  - (b) may proceed in private so far as necessary to prevent disclosure of the matter referred to in subsection (1)(b).

**Textual Amendments**

- F85** Words in s. 108(1)(a) substituted (31.8.2006) by [Immigration, Asylum and Nationality Act 2006 \(c. 13\)](#), ss. 14, 62, **Sch. 1 para. 10**; [S.I. 2006/2226](#), art. 3, Sch. 1 (with transitional provisions in art. 4)
- F86** Words in s. 108(2) substituted (4.4.2005) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), ss. 26, 48(1)-(3), **Sch. 2 para. 23(b)**; [S.I. 2005/565](#), art. 2 (with savings in arts. 3-9)

*General*

**109 European Union and European Economic Area**

- (1) Regulations may provide for, or make provision about, an appeal against an immigration decision taken in respect of a person who has or claims to have a right under any of the Community Treaties.
- (2) The regulations may—
- (a) apply a provision of this Act or the Special Immigration Appeals Commission Act 1997 (c. 68) with or without modification;
  - (b) make provision similar to a provision made by or under this Act or that Act;
  - (c) disapply or modify the effect of a provision of this Act or that Act.
- (3) In subsection (1) “immigration decision” means a decision about—
- (a) a person’s entitlement to enter or remain in the United Kingdom, or
  - (b) removal of a person from the United Kingdom.

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## 110 Grants

- [<sup>F87</sup>(1) The Secretary of State may make a grant to a voluntary organisation which provides—
- (a) advice or assistance to persons who have a right of appeal under this Part;
  - (b) other services for the welfare of those persons.
- (2) A grant under this section may be subject to terms or conditions (which may include conditions as to repayment).]

### Textual Amendments

**F87** S. 110 ceases to have effect (16.6.2006) and it is repealed (prosp.) by [Immigration, Asylum and Nationality Act 2006 \(c. 13\)](#) {ss. 10}, 61, 62, {Sch. 3}; S.I. 2006/1497, [art. 3](#), Sch.

### Modifications etc. (not altering text)

**C34** S. 110 applied (with modifications) by [1997 c. 68, s. 2\(2\)\(1\)\(3\)\(d\)](#) (as substituted (1.4.2003) by [2002 c. 41, ss. 114, 162\(2\), Sch. 7 para. 20](#) (with s. 159); S.I. 2003/754, [art. 2\(1\), Sch. 1](#)))

**C35** S. 110 extended by [2001 c. 24, s. 27\(10\)](#) (as substituted (1.4.2003) by [2002 c. 41, ss. 114, 162\(2\), Sch. 7 para. 30](#) (with s. 159); S.I. 2003/754, [art. 2\(1\), Sch. 1](#)))

## <sup>F88</sup>111 Monitor of certification of claims as unfounded

.....

### Textual Amendments

**F88** S. 111 repealed (1.4.2008) by [UK Borders Act 2007 \(c. 30\), ss. 54\(c\), 59\(2\)](#); S.I. 2008/309, [art. 4\(e\)](#)

## 112 Regulations, &c.

- (1) Regulations under this Part shall be made by the Secretary of State.
  - (2) Regulations <sup>F89</sup>... under this Part <sup>F89</sup>...—
    - (a) must be made by statutory instrument, and
    - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
  - (3) Regulations <sup>F90</sup>... under this Part—
    - (a) may make provision which applies generally or only in a specified case or in specified circumstances,
    - (b) may make different provision for different cases or circumstances,
    - (c) may include consequential, transitional or incidental provision, and
    - (d) may include savings.
- [<sup>F91</sup>(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.]

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- (4) An order under section 94(5) or 115(8)—
- (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.
- (5) An order under section [<sup>F92</sup>94(6) or (6B)] or 115(9)—
- (a) must be made by statutory instrument,
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament, and
  - (c) may include transitional provision.
- [<sup>F93</sup>(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.]

[<sup>F94</sup>(5B) An order under section 97A(4)—

    - (a) must be made by statutory instrument,
    - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament, and
    - (c) may include transitional provision.]

<sup>F95</sup>(6) .....

<sup>F95</sup>(7) .....

#### Textual Amendments

- F89** Words in s. 112(2) omitted (15.2.2010) by virtue of [The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 \(S.I. 2010/21\)](#), art. 1, **Sch. 1 para. 29(a)** (with Sch. 4)
- F90** Words in s. 112(3) omitted (15.2.2010) by virtue of [The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 \(S.I. 2010/21\)](#), art. 1, **Sch. 1 para. 29(b)** (with Sch. 4)
- F91** S. 112(3A) inserted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), **ss. 29(2)**, 48(1)-(3); S.I. 2005/2523, **art. 2**, Sch.
- F92** Words in s.112(5) substituted (31.8.2006) by [Immigration, Asylum and Nationality Act 2006 \(c. 13\)](#), **ss. 14, 62**, **Sch. 1 para. 11**; S.I. 2006/2226, **art. 3**, Sch. 1 (subject to transitional provisions in art. 4)
- F93** S. 112(5A) inserted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), **ss. 27(8)**, 48(1)-(3); S.I. 2005/2523, **art. 2**, Sch.
- F94** S. 112(5B) inserted (31.8.2006) by [Immigration, Asylum and Nationality Act 2006 \(c. 13\)](#), **ss. 7(2)**, 62; S.I. 2006/2226, **art. 3**, Sch. 1 (subject to transitional provisions in art. 4)
- F95** S. 112(6)(7) omitted (15.2.2010) by virtue of [The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 \(S.I. 2010/21\)](#), art. 1, **Sch. 1 para. 29(c)** (with Sch. 4)

## 113 Interpretation

- (1) In this Part, unless a contrary intention appears—

“asylum claim” means a claim made by a person to the Secretary of State at a place designated by the Secretary of State that to remove the person from or require him to leave the United Kingdom would breach the United Kingdom’s obligations under the Refugee Convention,

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“entry clearance” has the meaning given by section 33(1) of the Immigration Act 1971 (c. 77) (interpretation),

“human rights claim” means a claim made by a person to the Secretary of State at a place designated by the Secretary of State that to remove the person from or require him to leave the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998 (c. 42) (public authority not to act contrary to Convention) as being incompatible with his Convention rights,

“the Human Rights Convention” has the same meaning as “the Convention” in the Human Rights Act 1998 and “Convention rights” shall be construed in accordance with section 1 of that Act,

“illegal entrant” has the meaning given by section 33(1) of the Immigration Act 1971,

“immigration rules” means rules under section 1(4) of that Act (general immigration rules),

“prescribed” means prescribed by regulations,

“the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol,

“visitor” means a visitor in accordance with immigration rules, and

“work permit” has the meaning given by section 33(1) of the Immigration Act 1971 (c. 77) (interpretation).

- (2) A reference to varying leave to enter or remain in the United Kingdom does not include a reference to adding, varying or revoking a condition of leave.

## 114 Repeal

- (1) Part IV of the Immigration and Asylum Act 1999 (c. 33) (appeals) shall cease to have effect.
- (2) Schedule 6 (which makes transitional provision in connection with the repeal of Part IV of that Act and its replacement by this Part) shall have effect.
- (3) Schedule 7 (consequential amendments) shall have effect.

### Commencement Information

- I2** S. 114 wholly in force at 1.4.2003; s. 114 not in force at Royal Assent see s. 162(2); s. 114(3) in force at 10.2.2003 by [S.I. 2003/1](#), [art. 2](#), [Sch.](#); s. 114(1)(2) in force at 1.4.2003 by [S.I. 2003/754](#), [art. 2](#), [Sch. 1](#)

## 115 Appeal from within United Kingdom: unfounded human rights or asylum claim: transitional provision

- (1) A person may not bring an appeal under section 65 or 69 of the Immigration and Asylum Act 1999 (human rights and asylum) while in the United Kingdom if—
- (a) the Secretary of State certifies that the appeal relates to a human rights claim or an asylum claim which is clearly unfounded, and
- (b) the person does not have another right of appeal while in the United Kingdom under Part IV of that Act.

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- (2) A person while in the United Kingdom may not bring an appeal under section 69 of that Act, or raise a question which relates to the Human Rights Convention under section 77 of that Act, if the Secretary of State certifies that—
  - (a) it is proposed to remove the person to a country of which he is not a national or citizen, and
  - (b) there is no reason to believe that the person’s rights under the Human Rights Convention will be breached in that country.
- (3) A person while in the United Kingdom may not bring an appeal under section 65 of that Act (human rights) if the Secretary of State certifies that—
  - (a) it is proposed to remove the person to a country of which he is not a national or citizen, and
  - (b) there is no reason to believe that the person’s rights under the Human Rights Convention will be breached in that country.
- (4) In determining whether a person in relation to whom a certificate has been issued under subsection (2) or (3) may be removed from the United Kingdom, the country specified in the certificate is to be regarded as—
  - (a) a place where a person’s life and liberty is not threatened by reason of his race, religion, nationality, membership of a particular social group, or political opinion, and
  - (b) a place from which a person will not be sent to another country otherwise than in accordance with the Refugee Convention.
- (5) Where a person in relation to whom a certificate is issued under this section subsequently brings an appeal or raises a question under section 65, 69 or 77 of that Act while outside the United Kingdom, the appeal or question shall be considered as if he had not been removed from the United Kingdom.
- (6) If the Secretary of State is satisfied that a person who makes a human rights claim or an asylum claim is entitled to reside in a State listed in subsection (7), he shall issue a certificate under subsection (1) unless satisfied that the claim is not clearly unfounded.
- (7) Those States are—
  - (a) the Republic of Cyprus,
  - (b) the Czech Republic,
  - (c) the Republic of Estonia,
  - (d) the Republic of Hungary,
  - (e) the Republic of Latvia,
  - (f) the Republic of Lithuania,
  - (g) the Republic of Malta,
  - (h) the Republic of Poland,
  - (i) the Slovak Republic, and
  - (j) the Republic of Slovenia.
  - [<sup>F96</sup>(k) the Republic of Albania,
  - (l) Bulgaria,
  - (m) Serbia and Montenegro,
  - (n) Jamaica,
  - (o) Macedonia,
  - (p) the Republic of Moldova, and



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- (q) Romania.]
- (8) The Secretary of State may by order add a State, or part of a State, to the list in subsection (7) if satisfied that—
- (a) there is in general in that State or part no serious risk of persecution of persons entitled to reside in that State or part, and
  - (b) removal to that State or part of persons entitled to reside there will not in general contravene the United Kingdom’s obligations under the Human Rights Convention.
- (9) The Secretary of State may by order remove from the list in subsection (7) a State or part added under subsection (8).
- (10) In this section “asylum claim” and “human rights claim” have the meanings given by section 113 but—
- (a) a reference to a claim in that section shall be treated as including a reference to an allegation, and
  - (b) a reference in that section to making a claim at a place designated by the Secretary of State shall be ignored.

#### Textual Amendments

**F96** S. 115(7)(k)-(q) added (1.4.2003) by [The Asylum \(Designated States\) Order 2003 \(S.I. 2003/970\)](#), **art. 4**

#### Modifications etc. (not altering text)

**C36** S. 115 extended (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), **art. 3, Sch. 2 para. 1(5)** (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))

S. 115 continued (14.3.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), **art. 4(1)** (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by [S.I. 2003/1040](#), [S.I. 2003/1339](#) and [S.I. 2003/2993](#)))

### 116 Special Immigration Appeals Commission: Community Legal Service

In paragraph 2(1) of Schedule 2 to the Access to Justice Act 1999 (c. 22) (Community Legal Service: courts and tribunals in which advocacy may be funded) the following shall be inserted after paragraph (h) (and before the word “or” which appears immediately after that paragraph)—

“(ha) the Special Immigration Appeals Commission.”

### 117 Northern Ireland appeals: legal aid

- (1) In Part 1 of Schedule 1 to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (S.I. 1981/228 (N.I. 8)) (proceedings for which legal aid may be given under Part II of that Order) the following shall be inserted after paragraph 6—

“6A Proceedings before an adjudicator appointed for the purposes of Part 5 of the Nationality, Immigration and Asylum Act 2002, the Immigration Appeal Tribunal or the Special Immigration Appeals Commission.”

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- (2) The amendment made by subsection (1) is without prejudice to the power to make regulations under Article 10(2) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 amending or revoking the provision inserted by that subsection.

**Status:**

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**Changes to legislation:**

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