

# **IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006**

---

## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### *Appeals*

##### *Section 1: Variation of leave to enter or remain*

14. [Section 1](#) inserts a new section 83A into the Immigration, Nationality and Asylum Act 2002 to introduce a new right of appeal for people who are no longer recognised as refugees but who are permitted to stay in the UK on another basis.

##### *Section 2: Removal*

15. A decision to revoke a person's indefinite leave to enter or remain in the United Kingdom under section 76 of the Nationality, Immigration and Asylum Act 2002 is an "immigration decision" as defined in section 82(2)(f) of the 2002 Act which gives rise to an in-country right of appeal under section 82(1). The removal from the United Kingdom of persons whose leave has been revoked under 76(3) is provided for by section 10(1)(ba) of the Immigration and Asylum Act 1999, which was inserted by section 76(7) of the 2002 Act. However no corresponding provision was made in section 82(2)(g) of the 2002 Act for a person to have a right of appeal against a decision to remove by way of directions under section 10(1)(ba).
16. [Section 2](#) amends section 82(2)(g) of the 2002 Act to provide a right of appeal against a decision to remove under section 10(1)(ba) of the 1999 Act. This will give the person a separate right of appeal at each of the two decision stages; the first at the revocation stage and the second at the stage the decision to remove is taken. This separation of appeal rights is considered necessary in light of the importance of Refugee Status. No decision to remove will be taken while an appeal against revocation is pending.

##### *Section 3: Grounds of appeal*

17. [Section 3](#) amends section 84 of the Nationality, Immigration and Asylum Act. It provides that an appeal under the new section 83A may only be brought on the ground that removal would breach the United Kingdom's obligations under the Refugee Convention.

##### *Section 4: Entry clearance*

18. Sections 88A, 90 and 91 of the 2002 Act restrict rights of appeal against refusal of entry clearance in respect of some visitors and students and categories of case specified in an order of the Secretary of State. Section 4 substitutes for these sections one provision which limits all appeals against refusal of entry clearance to limited grounds (human rights and race discrimination), with the exception of those in the categories listed. The categories of applicant who will retain a full right of appeal

are family visitors and people wishing to join dependents in the United Kingdom (new Section 88A(1)). Provision is also made for regulations which will define in detail the relationships, degree of dependency and circumstances which count for these categories. In particular, the regulations may specify that the UK sponsor should be lawfully settled here, or that the individuals involved should have resided together for a certain length of time (new Section 88A(2)). For applicants who are refused entry clearance in any other category there will remain a right of appeal on both human rights and race discrimination grounds (new Section 88A(3)).

19. Section 23(1) of the Immigration and Asylum Act 1999 is amended by section 4(2) to provide that the Secretary of State may appoint a person to monitor refusals of entry clearance that carry only a limited right of appeal.
20. [Section 4\(3\)](#) provides that the Secretary of State must lay a report before Parliament on the entry clearance operation of the entry clearance system and the effect of removing rights of appeal. This report must be laid within three years of section 4 being commenced.

### ***Section 5: Failure to provide documents***

21. [Section 5](#) inserts a new subsection (ba) into section 88 (2) of the Nationality, Asylum and Immigration Act 2002, which will limit the right of appeal against refusal of entry clearance to human rights and race discrimination grounds if the reason for refusal is that the applicant failed to provide a medical report or medical certificate when required to do so by the immigration rules.

### ***Section 6: Refusal of leave to enter***

22. Section 89 of the 2002 Act restricts rights of appeal against refusal of permission to enter at the port of visitors and students who do not hold an entry clearance. The restriction limits the grounds of appeal to human rights and race discrimination and, where the appeal is exercised in the UK, asylum. Section 6 substitutes a provision which applies the restriction to all appeals against refusal of permission to enter at the port, unless the applicant has an entry clearance at the time of refusal which was issued for the specific purpose for which the person seeks entry. A right of appeal remains in all cases on both human rights and race discrimination grounds.

### ***Section 7: Deportation***

23. [Section 7](#) inserts a new section 97A into the Nationality, Immigration and Asylum Act 2002. The section requires that an appeal against a decision to make a deportation order which has been certified as having been made on national security grounds should normally only be able to be brought from outside the United Kingdom. Where the appellant makes a human rights claim, the section allows for this to be brought in country unless the Secretary of State certifies that removal would not breach the United Kingdom's obligations under the European Convention on Human Rights (ECHR). However the section provides for an in-country appeal against this certificate to the Special Immigration Appeals Commission (SIAC).

### ***Section 8: Legal aid***

24. [Section 8](#) amends section 103D(2) and 103D(3) of the 2002 Act to provide that subsection (3) applies where the Tribunal has been ordered to reconsider its decision on an appeal rather than where it has decided the appeal following reconsideration. This amendment allows representatives to be granted Community Legal Service funding by the appropriate court for work done in preparation for a reconsideration hearing that does not then proceed because the Home Office concedes the appeal, the appeal has to be treated as abandoned or where the appellant withdraws the appeal. The previous drafting of section 103D did not cater for the situation where an appeal is withdrawn, abandoned or conceded after reconsideration has been ordered but before it takes place,

and the appellant's representative has already carried out some preparatory work for the reconsideration.

### ***Section 9: Abandonment of appeal***

25. Section 104(4) of the 2002 Act provides that when a person has an appeal pending the appeal shall be treated as abandoned if the person is granted leave to enter or remain in the United Kingdom or leaves the United Kingdom. Section 9 amends section 104 to ensure that neither of these events causes an appeal to be treated as abandoned if the appeal was not brought in the United Kingdom. This prevents anomalies such as an appeal against refusal of entry clearance being treated as abandoned if an entry clearance conferring leave to enter is later granted for a different purpose (new Section 104(4)).
26. A new section 104(4B) will allow an appeal on Refugee Convention grounds to continue if an appellant is granted leave for more than 12 months and gives notice that he wishes to continue the appeal on those grounds. A new section 104(4C) ensures that an appeal brought on race discrimination grounds will continue on those grounds if the appeal is otherwise treated as abandoned when leave is granted, provided the appellant gives notice that he wishes that aspect of his appeal to continue.

### ***Section 10: Grants***

27. **Section 10** provides that section 110 of the 2002 Act, which allowed grants to be made to organisations giving advice in relation to appeals, shall cease to have effect. The section has become redundant since funding for this purpose is now the responsibility of the Legal Services Commission.

### ***Section 11: Continuation of leave***

28. **Section 11** amends section 3C of the Immigration Act 1971 (the 1971 Act), which currently extends leave to enter or remain in the United Kingdom if it would expire while an application is being considered and for such time as an appeal against a decision to curtail or refuse to vary leave could be brought or is pending. The minor amendments to subsections (2) and (3) make it clear that leave shall only be continued when an in country appeal may be brought or is pending.
29. Section 3C(6) of the 1971 Act defines when an application is decided for the purposes of section 3C as when a notice of decision is given in accordance with regulations made under section 105 of the 2002 Act, but non-appealable decisions do not properly come within the terms of those Regulations. Subsection (3) replaces section 3C(6) with a provision enabling the Secretary of State to make regulations which will better define the types of notice which terminate leave extended by section 3C.
30. Subsection (5) creates a new section 3D in the Immigration Act 1971. This provides that leave shall be continued while an in country appeal against revocation or curtailment of leave may be brought or is pending. It also prevents the making of an application to vary leave while leave is continued in this way.. This replaces the provisions in section 82(3) of the Nationality, Immigration and Asylum Act, and accordingly that section is repealed.

### ***Section 12: Asylum and human rights claims: definition***

31. **Section 12** amends section 113 of the Nationality, Immigration and Asylum Act 2002. In particular it removes from the definitions of "asylum claim" and "human rights claim" the requirement for the claim to be made in person at a place designated by the Secretary of State. It is proposed instead to specify the circumstances where asylum and human rights claims would need to be made in person in Immigration Rules made under section 47.

*These notes refer to the Immigration, Asylum and Nationality Act 2006 (c.13) which received Royal Assent on 30 March 2006*

32. The section also clarifies that further submissions that follow the refusal of an asylum or human rights claim will only attract a right of appeal if the Secretary of State considers they amount to a fresh claim.

***Section 13: Appeal from within United Kingdom: certification of unfounded claims***

33. Section 94 of the Nationality, Immigration and Asylum Act 2002 provides that a clearly unfounded human rights or asylum claim may be certified, with the effect that any appeal against refusal to vary or curtailment of leave may only be brought once the appellant has left the United Kingdom. Section 13 provides a regulation making power to limit the scope to certify clearly unfounded claims. Under this section the Secretary of State may make regulations to limit his power to certify clearly unfounded claims on the basis of the type of leave that the person has when the claim is made.

***Section 14: Consequential amendments***

34. Section 14 causes the consequential amendments listed in Schedule 1 to have effect.

***Schedule 1: Immigration and Asylum Appeals: Consequential Amendments***

35. Paragraphs 2 through 10 amend sections 72(9); 85(4); 86(1); 87(1); 97(1); 97(3); 103A(1); 103E(1); 106(1)(a), 106(1)(b) and 108(1)(a) of the Nationality, Immigration and Asylum Act 2002 to include reference to the new right of appeal created by section 1. Paragraphs 13 and 14 similarly amend the British Nationality Act 1981 and the Special Immigration Appeals Commission Act 1997 to incorporate the new right of appeal. Paragraph 11 amends section 112 of the 2002 Act to incorporate the new regulation making power under section 13.
36. Paragraph 12 amends the Race Relations Act 1976 to update the definition of 'immigration appellate body' from 'Immigration Appeal Tribunal' to 'Asylum and Immigration Tribunal'.