

CRIME AND COURTS ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 54: Deportation on national security grounds: appeals

634. **Section 54** will allow the Secretary of State to remove an appellant's in-country right of appeal if the Secretary of State certifies that the removal of the appellant, prior to the appellant's appeal against a deportation order being exhausted, would not breach the UK's obligations under the European Convention on Human Rights (ECHR). The grounds on which the Secretary of State may reach this conclusion include one or both of the following: first, that all or part of the appellant's human rights claim is clearly unfounded; and, second, that removal from the UK pending the appeal being exhausted would not cause serious, irreversible harm. The section amends section 97A of the 2002 Act.
635. **Subsection (2)** inserts new subsection (1A) into section 97A of the 2002 Act. Section 97A 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 or her removal from the UK would be in the interests of national security. New subsection (1A) allows section 97A to apply to section 32(5) of the UK Border Act 2007 cases, which relate to the automatic deportation of foreign criminals, where the Secretary of State certifies that the removal would be in the interest of national security.
636. **Subsection (3)** replaces subsection (2)(c) of section 97A so that section 2(5) of the Special Immigration Appeals Commission Act 1997 will not apply where section 97A of the 2002 Act applies. Section 2(5) of the Special Immigration Appeals Commission Act 1997 provides for a person to bring or continue an appeal against an immigration decision while in the UK only if he or she would be able to bring or continue an appeal under section 82(1) of the 2002 Act: section 82(1) of that Act provides that where an immigration decision is made in respect of a person, he or she may appeal to the tribunal.
637. **Subsection (4)** creates the power for the Secretary of State to render an appeal out of country by certifying that the removal of the appellant, prior to the appellant's appeal against a deportation order being exhausted, would not breach the UK's obligations under the ECHR. It also creates a mechanism for an appellant to apply to the Special Immigration Appeals Commission to have a certificate given under section 97A as amended set aside.
638. In particular, subsection (4) inserts into section 97A the following provisions: New subsection (2A) removes the right of an appellant to bring or continue a suspensive (in-country) appeal against a deportation order or refusal to revoke a deportation order unless the appellant has made a human rights claim while in the UK. New subsection (2B) provides that an appeal may not be brought in the UK under new subsection (2A) if the Secretary of State certifies that the removal of an individual to the country or territory to which it is proposed to remove the individual, despite the individual's appeals process not having been begun or completed, would not breach the UK's obligations under the ECHR. New subsection (2C) provides that the grounds on which the Secretary of State may issue a certificate under section (2B) include one

or both of the following: first, that the person would not, before the appeals process is exhausted, face a real risk of serious irreversible harm if removed to the country or territory to which the person is proposed to be removed; second, that the whole or part of any human rights claim made by the person is clearly unfounded. New subsection (2D) provides that new subsection (2A) does not allow the person while in the UK to bring or continue an appeal on a non-human-rights ground if the Secretary of State certifies that removal of the person to the country or territory to which the person is proposed to be removed, despite the appeals process in relation to the non-human-rights ground not having been begun or exhausted, would not breach the UK's obligations under the ECHR. New subsection (2E) defines "non-human-rights ground" for the purposes of new subsection (2D).

639. New subsection (2F) provides that if a certificate in respect of a person is given under new subsection (2B), the person may apply to the Special Immigration Appeals Commission to set it aside. New subsection (2G) requires the Special Immigration Appeals Commission to decide an application made under new subsection (2F) by applying the principles that would be applied in judicial review proceedings. New subsection (2H) provides that the Commission's determination of a review under section (2F) is final, so that it may not be subject to an appeal. New subsection (2J) allows the Special Immigration Appeals Commission to direct that a person who has made and not withdrawn an application under subsection (2F) is not to be removed from the UK at a time when the review has not been finally determined by the Commission. New subsection (2K) provides that sections 5 and 6 of the Special Immigration Appeals Commission Act 1997 apply in relation to reviews under new subsection (2F) and to applicants for such reviews as they apply in relation to appeals under section 2 or 2B of that Act, and to people bringing such appeals. This means that the Lord Chancellor will be able to make rules in relation to reviews under new subsection (2F) and that special advocates may be appointed to represent a person who applies for a review under subsection (2F) in proceedings from which the person's legal representatives are excluded. New subsection (2L) requires that any exercise of the power to make rules under section 5 of the Special Immigration Appeals Commission Act 1997 must be with a view to securing that proceedings on such reviews are handled expeditiously.
640. *Subsection (5)* provides that a person in respect of whom a certificate is made under new section 97A(2D) may apply to the Special Immigration Appeals Commission to set the certificate aside.