

IMMIGRATION ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Appeals etc

Section 15: Right of appeal to First-tier Tribunal

84. Part 5 of the 2002 Act makes provision for statutory appeals to the Immigration and Asylum Chamber of the Tribunal. This section amends the decisions in respect of which an appeal lies to the Tribunal and the grounds that can be raised on appeal.
85. *Subsection (2)* substitutes a new section 82 of the 2002 Act. The new section 82 provides that a right of appeal to the Tribunal will arise where the Secretary of State has decided to refuse a protection claim, or a human rights claim, or to revoke previously granted protection status. A protection claim is defined as a claim that removal of the person from the UK would breach the UK's obligations under the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 ("the Refugee Convention") or in relation to those who are eligible for a grant of humanitarian protection. Protection status is defined as the grant of leave to an individual as a refugee or a person eligible for humanitarian protection. This right of appeal is subject to the exceptions and limitations set out in Part 5 of the 2002 Act (such as the place from which an appeal must be brought).
86. Section 3C of the 1971 Act provides for the extension of leave until an application is decided and any appeal against the refusal of that application is determined where the application in question was made while the individual had leave and that leave expires without the application having been decided. Section 3D of the 1971 Act provides for the extension of leave until any appeal is determined where a person's leave is varied so that no leave remains or is revoked.
87. Where an application is refused and there is not a right of appeal, the applicant may be able to apply for an administrative review. The Immigration Rules will set out when an applicant may seek an administrative review. In Schedule 9, Part 4 extends the effect of sections 3C and 3D where an administrative review can be sought or is pending. The question of whether an administrative review is pending will be determined in accordance with the Immigration Rules. The Government has published a statement of intent on how administrative review will operate.¹
88. *Subsection (3)* repeals sections 83 and 83A of the 2002 Act. Section 83 provides for an appeal right to arise where asylum has been refused but other leave to enter or remain in the UK of at least 12 months' duration has been granted. Section 83A provides for an appeal right to arise following revocation of refugee status where, following that revocation, the individual concerned has limited leave to remain in the UK. Sections 83 and 83A are no longer necessary because the changes to section 82 in subsection (2)

¹ *Immigration Bill Statement of Intent – administrative review in lieu of appeals*, <https://www.gov.uk/government/publications/immigration-bill-part-2-appeals>.

provide for a right of appeal against the refusal or revocation of asylum or humanitarian protection.

89. *Subsection (4)* substitutes section 84 of the 2002 Act with a new provision specifying the grounds on which an appeal can be brought under section 82. Where an appeal is brought against the refusal of a protection claim, the appeal must be brought on one or more of the following grounds: that removal would breach the UK's obligations under the Refugee Convention, removal would breach the UK's obligations to those eligible for a grant of humanitarian protection, or removal would be unlawful under section 6 of the Human Rights Act 1998. An appeal against the refusal of a human rights claim may only be brought on the ground that the decision is unlawful under section 6 of the Human Rights Act 1998. An appeal against the revocation of refugee status or humanitarian protection may only be brought on the grounds that removal would breach the UK's obligations under the Refugee Convention or the UK's obligations to those eligible for a grant of humanitarian protection.
90. *Subsection (5)* substitutes a new section 85(5) of the 2002 Act which provides that the Tribunal may not consider a new matter unless the Secretary of State has given the Tribunal consent to do so. "New matter" is defined in new section 85(6) as being a ground of appeal within section 84 that the Secretary of State has not previously considered in the context of a decision under section 82(1) or a statement made under section 120 of the 2002 Act. This is to prevent appellants from raising new grounds before the Tribunal before the Secretary of State has had a chance to consider them.
91. Part 4 of Schedule 9 also substitutes a new section 120 of the 2002 Act. The new section 120(2) allows the Secretary of State or an immigration officer to serve a notice on a person who has made a protection or human rights claim, or who has made an application for leave to enter or remain, or who may be removed or deported. Once served with such a notice, the person must provide a statement to the Secretary of State of their reasons and grounds for being permitted to enter or remain in the UK or grounds as to why removal from the UK should not take place. This is the same duty as arose under the previous version of this section. The new version of this section also provides that where an individual requires but does not have leave to enter or remain in the UK or has leave only as a result of it having been extended under section 3C or 3D of the 1971 Act (as amended by Schedule 9 to this Act), this duty is an ongoing duty to raise any such grounds as soon as reasonably practicable. The scope of the duty to raise grounds is restricted to grounds that will, if refused, result in a right of appeal, e.g. protection or human rights grounds.

Section 16: Report by Chief Inspector on administrative review

92. The Immigration Rules will set out when an applicant may be able to seek an administrative review where an application is refused. *Subsection (1)* requires the Secretary of State to commission a report from the Chief Inspector on administrative review within a period of 12 months from when section 15 comes into force, addressing in particular the effectiveness of administrative review in identifying and correcting case working errors and the independence of persons conducting the administrative review. *Subsections (2) and (3)* require the Chief Inspector to send the report to the Secretary of State and the Secretary of State to lay a copy before Parliament. *Subsection (4)* defines "administrative review," "case working error," "Chief Inspector" and "immigration rules" used in this section.

Section 17: Place from which appeal may be brought or continued

93. *Subsection (2)* substitutes section 92 of the 2002 Act. This section governs which appeals can be brought or continued while the appellant remains in the UK. The Secretary of State has various powers of certification in relation to protection claims and human rights claims, and if a claim is certified, then an appeal in relation to it may not be brought or continued from within the UK. So, for example, the Secretary of State

may certify a protection or human rights claim under section 94(1) of the 2002 Act if the claim is clearly unfounded, or under section 94(7) if the person is to be removed to a third country where there is no reason to believe that their human rights will be breached. The Act provides an additional power of certification in new section 94B in relation to human rights claims made by persons liable to deportation. Under the existing law, a person is also prevented by Schedule 3 to the 2004 Act from bringing an asylum or human rights appeal from within the UK in certain circumstances where it is proposed to remove him or her to a safe third country. This regime is unchanged by the Act, but is referenced in new section 92.

94. In the case of a human rights claim made outside the UK, any appeal in relation to it must be brought from outside the UK. As for appeals against the revocation of protection status, these must be brought from outside the UK if the decision was made while the person was outside the UK.
95. Subsection (6) of new section 92 provides that where a protection claim appeal is brought or continued from outside the UK, for the purposes of considering whether the grounds of appeal are satisfied, the appeal will be treated as if the person were not outside the UK. This is necessary because the grounds are that the person's removal breaches the Refugee Convention or the UK's obligations in relation to persons eligible for a grant of humanitarian protection.
96. Subsection (7) of new section 92 provides that where an appellant brings an appeal from within the UK but leaves the UK before that appeal is finally determined, the appeal is treated as abandoned unless the claim to which the appeal relates has been certified (meaning that the appellant has to continue the appeal from outside the UK).
97. Part 4 of Schedule 9 amends the definition of "human rights claim" for the purposes of appeal rights as contained in section 113 of the 2002 Act. The definition is amended to include a claim that refusal of entry to the UK would be a breach of section 6 of the Human Rights Act 1998. This change makes it clear that there is a right of appeal against the refusal of a human rights claim made outside the UK.
98. *Subsection (3)* inserts a new section 94B into Part 5, which creates a new certification power for the Secretary of State in relation to a human rights claim made by a person liable to deportation where the Secretary of State considers that the temporary removal of the appellant pending the outcome of an appeal would not breach the UK's human rights obligations. When considering whether removal of the appellant while an appeal is pending would breach the UK's human rights obligations, the Secretary of State can, for example, consider that the appellant would not face a real risk of serious irreversible harm as a consequence. Where a claim is certified under this provision, an appeal may only be brought or continued from outside the UK. Deportation orders are used to remove from the UK foreign criminals and others whose presence in the UK is non-conducive to the public good. This provision will not apply to overstayers and illegal entrants who are subject to administrative removal under section 1 of this Act.

Section 18: Review of certain deportation decisions by Special Immigration Appeals Commission

99. **Section 18** inserts a new section 2E into the Special Immigration Appeals Commission Act 1997. This allows the Special Immigration Appeals Commission ("SIAC") to review a decision which has been certified under section 97 or 97A(1) of the 2002 Act (certification on grounds of national security etc) in cases where there is no right of appeal in respect of the decision. In cases where there is a right of appeal, the appeal would go to SIAC under section 2 of the SIAC Act 1997. This new provision is necessary because the changes to section 82 of the 2002 Act mean that in future there may be some cases where there is no right of appeal against a decision that has been certified under section 97 or 97A, and judicial review will be the only remedy. It is more appropriate for judicial reviews in national security cases to be conducted by SIAC.

Section 19: Article 8 of the ECHR: public interest considerations

100. This section inserts a new Part 5A into the 2002 Act which makes provision for public interest consideration under Article 8 of the ECHR.
101. In new section 117A, subsection (1) provides that Part 5A applies when a court or tribunal is required to determine whether a decision under the Immigration Acts breaches a person's right to respect for private and family life under Article 8 ECHR and as a result would be unlawful under section 6 of the Human Rights Act 1998.
102. Subsection (2) provides that, in considering the public interest question, the court or tribunal must, in particular, have regard to the considerations listed in new section 117B and, in cases concerning the deportation of foreign criminals, must also have regard to the considerations listed in new section 117C.
103. Subsection (3) defines the public interest question as meaning the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2) of the ECHR.
104. New section 117B lists the public interest considerations which are applicable in all cases.
105. New section 117C lists the additional public interest considerations applicable in cases involving foreign criminals.
106. New section 117D provides for the definition of terms used in Part 5A.