

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

NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Immigration and Asylum Appeals

General

Section 109: European Union and European Economic Area

269. This section allows the Secretary of State to make regulations that may provide for an appeal against an immigration decision taken in respect of a person who has, or who claims to have, a right under any of the Community Treaties. Subsection (2) states that these Regulations may apply this Act or the Special Immigration Appeals Commission Act 1997, with or without modification. Subsection (3) defines that an immigration decision for this section is one about a person's entitlement to enter, remain or one about a person's removal from the United Kingdom.

Section 110: Grants

270. **Section 110** enables the Secretary of State to make grants to voluntary organisations which assist, advise or give other services with regard to the welfare of those who have a right of appeal under this Part of the Act. Grants may be conditional, including conditions as to repayment in certain circumstances.

Section 111: Monitor of certification of claims as unfounded

271. **Section 111** requires the Secretary of State to appoint a person to monitor the use of the powers under sections 94(2) and 115(1) (which relate to certifying asylum and human rights claims as clearly unfounded). The person appointed must produce a report once a year to the Secretary of State who must in turn lay a copy of that report before Parliament. The Secretary of State may also request the appointed person to make additional reports. The person may not be employed within a government department.

Section 112: Regulations, &c.

272. **Section 112** is a general provision regarding regulations and rules for this Part of the Act. They will be negative resolution statutory instruments, except orders made under sections 94(5), 101(4) and 115(8), which are affirmative orders.

Section 113: Interpretation

273. Subsection (1) defines certain common terms which are used throughout Part 5. The definitions of "asylum claim" and "human rights claim" reflect the intention that a claim can only be made in person at a designated place.

274. Subsection (2) ensures that references to varying leave to enter or remain do not cover decisions taken in relation to conditions of leave. For example, appeal rights do not accrue from a decision to refuse to allow a person to take employment if they are still permitted to remain here.

Section 114: Repeal

275. Subsection(1) repeals Part IV of the 1999 Act, which this Part replaces. Subsection (2) gives effect to Schedule 6 (transitional provisions). Subsection (3) gives effect to Schedule 7 (consequential amendments).

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

276. **Section 115** applies similar provisions to those in Section 94 to appeals against refusals of asylum and human rights claims which are clearly unfounded and which are made in the transitional period between the granting of Royal Assent to this Act and the coming into force of the rest of Part 5. It therefore applies to appeals under Part IV of the Immigration and Asylum Act 1999.
277. Subsection (1) provides that an appeal cannot be brought while in the United Kingdom under sections 65 or 69 of the 1999 Act if the Secretary of State certifies that the appeal relates to an asylum or human rights claim which is clearly unfounded and where the individual does not have another right of appeal while in the United Kingdom under Part IV of the 1999 Act.
278. Subsection (2) provides that a person may not bring an asylum appeal while in the United Kingdom under section 69 or raise a question at an appeal under section 77 of the 1999 Act, if the Secretary of State certifies that it is proposed to remove him to a third country of which he is not a national and where there is no reason to believe that his human rights will be breached. Subsection (3) provides that a person may not bring a human rights appeal under section 65 of the 1999 Act if the same criteria as in subsection (2) are met.
279. Subsection (4) states that, in deciding whether a person who has been issued with a certificate under subsections (2) or (3) may be removed from the United Kingdom, the country specified in the certificate is to be regarded as one where the individual's rights against persecution under the Refugee Convention will be met and one from where he will not be sent to another country other than in accordance with the Convention.
280. Subsection (5) provides that where a certificate is issued under this section, and an appeal or question under sections 65, 69 or 77 of the 1999 Act is made outside of the United Kingdom, the appeal will be considered as if the appellant had not been removed from this country.
281. Subsection (6) provides that when a person who is entitled to reside in any of the countries listed in subsection (7) makes an asylum or human rights claim, then the claim is to be certified unless the Secretary of State is satisfied that it is not clearly unfounded. The states listed are all "EU accession states": Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia.
282. Subsection (8) empowers the Secretary of State, by order, to add a State, or part of a State to the list in subsection (7) if he is satisfied that there is in general no serious risk of persecution in the State or part State of persons entitled to reside there and that removal to that State will not in general contravene our obligations under ECHR. Subsection (9) allows for a State or part State that has been added in accordance with subsection (8) to be removed, by order.

Section 116: Special Immigration Appeals Commission: Community Legal Service

283. **Section 116** brings proceedings before the Special Immigration Appeals Commission within the scope of the Community Legal Service, created under the Access to Justice Act 1999.

Section 117: Northern Ireland appeals: legal aid

284. This section amends 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) to bring proceedings before the Immigration Adjudicators, the Immigration Appeal Tribunal (the Immigration Appellate Authority) and the Special Immigration Appeals Commission (SIAC) within the scope of legal aid in Northern Ireland.