



Nationality, Immigration and Asylum Act 2002

2002 CHAPTER 41

PART 5

IMMIGRATION AND ASYLUM APPEALS

Appeal to adjudicator

81 Adjudicators

- (1) The Lord Chancellor shall appoint adjudicators for the purposes of this Part.
- (2) A person is eligible for appointment as an adjudicator only if he—
 - (a) has a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41),
 - (b) is an advocate or solicitor in Scotland of at least seven years' standing,
 - (c) is a member of the Bar of Northern Ireland, or a solicitor of the Supreme Court of Northern Ireland, of at least seven years' standing, or
 - (d) has legal or other experience which in the Lord Chancellor's opinion makes him suitable for appointment.
- (3) The Lord Chancellor—
 - (a) shall appoint one of the adjudicators as Chief Adjudicator,
 - (b) may appoint one of the adjudicators as Deputy Chief Adjudicator,
 - (c) may appoint one or more adjudicators as Regional Adjudicator, and
 - (d) may appoint one or more adjudicators as Deputy Regional Adjudicator.
- (4) The Chief Adjudicator shall perform such functions as the Lord Chancellor may assign to him.
- (5) The Deputy Chief Adjudicator—
 - (a) may act for the Chief Adjudicator if he is unable to act or unavailable, and

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- (b) shall perform such other functions as the Chief Adjudicator may delegate or assign to him.
- (6) A Regional Adjudicator shall perform such functions as the Chief Adjudicator may assign to him.
- (7) A Deputy Regional Adjudicator—
 - (a) may act for the Regional Adjudicator whose deputy he is if the Regional Adjudicator is unable to act or unavailable, and
 - (b) shall perform such other functions as may be delegated or assigned to him by the Regional Adjudicator whose deputy he is or assigned to him by the Chief Adjudicator.
- (8) Schedule 4 (which makes further provision about adjudicators) shall have effect.

82 Right of appeal: general

- (1) Where an immigration decision is made in respect of a person he may appeal to an adjudicator.
- (2) In this Part “immigration decision” means—
 - (a) refusal of leave to enter the United Kingdom,
 - (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 section 10(1)(a), (b) 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),
 - (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),
 - (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) A variation or revocation of the kind referred to in subsection (2)(e) or (f) shall not have effect while an appeal under subsection (1) against that variation or revocation—
 - (a) could be brought (ignoring any possibility of an appeal out of time with permission), or
 - (b) is pending.
- (4) The right of appeal under subsection (1) is subject to the exceptions and limitations specified in this Part.

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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\(3\)](#) applied (with modifications) (1.4.2003) by [1997 c. 68, s. 2\(2\)\(d\)](#) (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 (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](#)))

83 Appeal: asylum claim

- (1) This section applies where a person has made an asylum claim and—
- (a) his claim has been rejected by the Secretary of State, but
 - (b) 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 to an adjudicator against the rejection of his asylum claim.

Modifications etc. (not altering text)

- C3** 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\(3\)](#)
- C4** [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\(9\)](#))

VALID FROM 31/08/2006

[^{F1}83A Appeal: variation of limited leave

- (1) This section applies where—
- (a) a person has made an asylum claim,
 - (b) he was granted limited leave to enter or remain in the United Kingdom as a refugee within the meaning of the Refugee Convention,
 - (c) a decision is made that he is not a refugee, and
 - (d) following the decision specified in paragraph (c) he has limited leave to enter or remain in the United Kingdom otherwise than as a refugee.
- (2) The person may appeal to the Tribunal against the decision to curtail or to refuse to extend his limited leave.]

Textual Amendments

- F1** [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](#))

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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) [^{F2}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.

Textual Amendments

- F2** 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**

Modifications etc. (not altering text)

- C5** 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](#)))
- C6** 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](#)))
- C7** 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)**

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85 Matters to be considered

- (1) An appeal under section 82(1) against a decision shall be treated by the adjudicator 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, the adjudicator 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) or 83(2) against a decision an adjudicator may consider evidence about any matter which he 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) the adjudicator may consider only the circumstances appertaining at the time of the decision to refuse.

Modifications etc. (not altering text)

- C8** 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))
- C9** 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

^{F3}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),

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- (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)
^{F4}(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.]]

Textual Amendments

- F3** S. 85A inserted (prosp.) by [UK Borders Act 2007 \(c. 30\)](#), **ss. 19(2)**, 59(2)
- F4** 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) or 83.
- (2) The adjudicator 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 him to consider.
- (3) The adjudicator must allow the appeal in so far as he 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, the adjudicator 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).

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Modifications etc. (not altering text)

C10 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**)
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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))

87 Successful appeal: direction

- (1) If an adjudicator allows an appeal under section 82 or 83 he may give a direction for the purpose of giving effect to his decision.
- (2) A person responsible for making an immigration decision shall act in accordance with any relevant direction under subsection (1).
- (3) But a direction under this section shall not have effect while an appeal under section 101 or a further appeal—
 - (a) could be brought (ignoring any possibility of an appeal out of time with permission), or
 - (b) has been brought and has not been finally determined.
- (4) A direction under subsection (1) shall be treated as part of the determination of the appeal for the purposes of section 101.

Modifications etc. (not altering text)

C11 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**)
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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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