

# UK BORDERS ACT 2007

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3: Treatment of claimants**

##### ***Section 19: Points-based applications: no new evidence on appeal***

63. Section 85(4) of the Nationality, Immigration and Asylum Act 2002 allows the Asylum and Immigration Tribunal (AIT) to consider any evidence that is relevant to the substance of the decision, including any evidence which arises after the date of decision. This does not apply to an appeal against the refusal of an entry clearance or a certificate of entitlement: in these cases the AIT can only consider the circumstances as they were at the time of the decision to refuse.
64. This section inserts a new section 85A into the 2002 Act which lists the exceptions to the general rule that the AIT can consider any evidence that is relevant to the substance of the decision, including any evidence which arises after the date of decision. It re-enacts the existing evidential restriction in appeals against the refusal of an entry clearance or a certificate of entitlement (*subsection (2)*), and adds a new restriction in relation to appeals against a refusal of leave to enter or a variation of leave to enter or remain. In appeals against a refusal of leave to enter or a variation of leave to enter or remain the AIT will be prevented from considering evidence adduced by the appellant which was not submitted at the time of making the original application, where that application was one made under a Points-based immigration rule. The point in time during the application process after which further evidence is excluded will be defined in the AIT Procedure Rules. This exclusionary rule will not, however, apply insofar as the appeal is brought on the grounds that the decision was racially discriminatory or in breach of the appellant's rights under the Community Treaties, the Refugee Convention or section 6 of the Human Rights Act 1998. Additionally, evidence which was not submitted with the original application may still be adduced to rebut any reason for refusing an application which does not relate to the attainment of points under a Points-based immigration rule or in order to prove that a document is genuine or valid.