

CRIME AND COURTS ACT 2013

EXPLANATORY NOTES

BACKGROUND

Part 3: Miscellaneous and General

Section 52: Appeals against refusal of entry clearance to visit the UK

67. Section 4 of the Immigration Asylum and Nationality Act 2006 substituted a new version of section 88A for sections 88A, 90 and 91 of the Nationality Immigration and Asylum Act 2002 (“the 2002 Act”). Under section 88A(1)(a), which was commenced on 9 July 2012, a person may not appeal against a refusal of an application for entry clearance as a visitor unless the application was made for the purpose of visiting a person of a class or description prescribed in regulations. The Immigration Appeals (Family Visitor) Regulations 2012¹ prescribes the class or description of family members and includes, for example, where the applicant is the spouse, civil partner, father, mother, son or daughter of the person in the UK being visited. In July 2011, the Home Office published a consultation document entitled “Family Migration: A Consultation”². The consultation sought views on a wide range of family migration proposals, including whether the full right of appeal for family visitors should be retained. The response to the consultation was published on 13 June 2012³. In regards to full appeal rights for family visitors it was decided first to restrict (by narrowing the description of the person to be visited and introducing a sponsor status requirement) and then to remove the full right of appeal altogether. Applicants continue to be able to appeal on European Convention on Human Rights (“ECHR”) and race discrimination grounds. The first stage was implemented through regulations made under section 88A of the 2002 Act⁴, which was further commenced for this purpose⁵; section 52 of the Act gives effect to the second stage of these proposals.

¹ S.I. 2012/1532

² <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/family-migration/consultation.pdf?view=Binary>

³ <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/news/cons-fam-mig.pdf>

⁴ The Immigration Appeals (Family Visitor) Regulations 2012 (S.I. 2012/1532)

⁵ The Immigration, Asylum and Nationality Act 2006 (Commencement No. 8 and Transitional and Saving Provisions) (Amendment) Order 2012 (S.I. 2012/1531)