

CRIME AND COURTS ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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

626. **Section 52** amends section 88A of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”), and section 4 of the Immigration, Asylum and Nationality Act 2006 (“the 2006 Act”), so as to remove full rights of appeal for persons refused a visa for a family visit to the United Kingdom.
627. The original section 88A of the 2002 Act, as inserted by the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (“the 2004 Act”), restricted rights of appeal against refusal of entry clearance if the decision to refuse was taken on certain grounds specified by an order of the Secretary of State.
628. Sections 90 and 91 of the 2002 Act restrict rights of appeal against refusal of entry clearance by non-family visitors (those visiting family members, as specified in an order of the Secretary of State, retain an appeal right) and students respectively.
629. Section 4 of the 2006 Act was intended to substitute sections 88A, 90 and 91 of the 2002 Act with one provision (a new section 88A) which would restrict all appeals against refusal of entry clearance to limited grounds (human rights and race discrimination), with the exception of those in the categories listed. The categories of applicant who would retain a full right of appeal were certain family visitors (new section 88A(1)(a)) and dependants of persons in the United Kingdom (new section 88A(1)(b)) to be prescribed by regulations.
630. Section 4 of the 2006 Act has been commenced, so far as it relates to applications of a kind identified in immigration rules¹ as requiring to be considered under a “Points Based System”. That partial commencement resulted in the substitution of the original section 88A inserted by the 2004 Act, whilst sections 90 and 91 remained in force. Section 4 of the 2006 Act was further commenced, with effect from 9 July 2012, in so far as it relates to appeal rights for family visitors. The Immigration Appeals (Family Visitor) Regulations 2012 made under section 88A(1) specify the type of family member to be visited and the immigration status the person to be visited must have. That partial commencement for the purposes of family visitors superseded the existing section 90. Section 91 will be superseded when section 4 of the 2006 Act is further commenced in relation to appeal rights for dependants.
631. **Section 52** amends the partially commenced section 88A (*subsection (1)*) and the yet to be fully commenced section 4 of the 2006 Act (*subsection (2)*) by deleting paragraph (a) from both versions of section 88A(1), thus removing family visitors from the categories of applicant who retain a full right of appeal (*subsection (3)*). This section also removes from both of those sections the supplementary provisions to make regulations under section 88A(1)(a) contained in sections 88A(2)(a) and (c) (*subsections (4) and (5)*).

¹ <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/>

*These notes refer to the Crime and Courts Act 2013
(c.22) which received Royal Assent on 25 April 2013*

When commenced section 52 will replace the provisions of the Immigration Appeals (Family Visitor) Regulations 2012.

632. *Subsection (6)* ensures correct referencing across the 2006 Act and *subsection (7)* ensures that the power to make commencement orders under section 62 of the 2006 Act allows section 4(1) to be commenced as amended by this section.