



Crime and Courts Act 2013

2013 CHAPTER 22

PART 3

MISCELLANEOUS AND GENERAL

Border control

51 Immigration cases: appeal rights; and facilitating combined appeals

- (1) In section 84(1)(b) of the Nationality, Immigration and Asylum Act 2002 (grounds of appeal: decision unlawful because of race discrimination etc by Northern Ireland public authority) after “1997” insert “or by virtue of section 29 of the Equality Act 2010 (discrimination in the exercise of public functions etc) so far as relating to race as defined by section 9(1) of that Act”.
- (2) In section 99 of that Act (pending appeals lapse on issue of certificates)—
 - (a) in subsection (1) (list of provisions under which certificates may be issued) omit “96(1) or (2),” and
 - (b) in the title, for “96 to” substitute “97 and”.
- (3) For section 47(1) of the Immigration, Asylum and Nationality Act 2006 (decision that person is to be removed from the United Kingdom may be made while person can bring appeal) substitute—
 - (1) Where the Secretary of State gives written notice of a pre-removal decision to the person affected, the Secretary of State may—
 - (a) in the document containing that notice,
 - (b) in a document enclosed in the same envelope as that document,
 - (c) otherwise on the occasion when that notice is given to the person, or
 - (d) at any time after that occasion but before an appeal against the pre-removal decision is brought under section 82(1) of the Nationality, Immigration and Asylum Act 2002,

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also give the person written notice that the person is to be removed from the United Kingdom under this section in accordance with directions given by an immigration officer if and when the person's leave to enter or remain in the United Kingdom expires.

- (1A) In subsection (1) “pre-removal decision” means—
- (a) a decision on an application—
 - (i) for variation of limited leave to enter or remain in the United Kingdom, and
 - (ii) made before the leave expires,
 - (b) a decision to revoke a person's leave to enter or remain in the United Kingdom, or
 - (c) a decision to vary a person's leave to enter or remain in the United Kingdom where the variation will result in the person having no leave to enter or remain in the United Kingdom.”

52 Appeals against refusal of entry clearance to visit the UK

- (1) Section 88A of the Nationality, Immigration and Asylum Act 2002 as inserted by the 2006 Act (appeals against refusal of entry clearance) is amended in accordance with subsections (3) to (5).
- (2) In section 4(1) of the 2006 Act, the section 88A to be inserted into the Nationality, Immigration and Asylum Act 2002 is amended in accordance with subsections (3) to (5).
- (3) In section 88A(1) omit paragraph (a) (power to allow the making of appeals by certain visitors).
- (4) In section 88A(2) omit paragraph (a) (provision supplementing subsection (1)(a)).
- (5) In section 88A(2)(c) (provision supplementing subsection (1)(a) and (b)) for “circumstances of the applicant, of the person whom the applicant seeks to visit or” substitute “circumstances of the applicant or of the person”.
- (6) In section 4(3)(e) of the 2006 Act for “88A(1)(a) or (b)” substitute “88A(1)(b)”.
- (7) After the coming into force of this subsection, the power under section 62 of the 2006 Act (power to make commencement orders) so far as exercisable in relation to section 4(1) of the 2006 Act is power to provide for the coming into force of section 4(1) of the 2006 Act as amended by this section.
- (8) In this section “the 2006 Act” means the Immigration, Asylum and Nationality Act 2006.

53 Restriction on right of appeal from within the United Kingdom

- (1) The Nationality, Immigration and Asylum Act 2002 is amended as follows.
- (2) In section 92 (appeals from within the United Kingdom: general), after subsection (2) insert—
 - “(2A) So far as it relates to an immigration decision of a kind specified in section 82(2)(e), subsection (2) is subject to section 97B.”

(3) After section 97A insert—

“97B Variation of leave on grounds of public good: rights of appeal

- (1) This section applies to an immigration decision of a kind referred to in section 82(2)(e) if the Secretary of State, acting in person, certifies that the decision is or was taken wholly or partly on the ground that it is no longer conducive to the public good for the person to have leave to enter or remain in the United Kingdom.
- (2) If the person concerned is outside the United Kingdom when the immigration decision is taken, an appeal under section 82(1) against that decision may be brought only from outside the United Kingdom.
- (3) Accordingly, the person concerned may not enter the United Kingdom for the purposes of an appeal against that decision and the person’s appeal against that decision is not one of a kind to which section 92 applies.”

54 Deportation on national security grounds: appeals

(1) Section 97A of the Nationality, Immigration and Asylum Act 2002 (deportation on national security grounds: appeal rights) is amended as follows.

(2) After subsection (1) insert—

“(1A) This section also applies where the Secretary of State certifies, in the case of a person in respect of whom a deportation order has been made which states that it is made in accordance with section 32(5) of the UK Borders Act 2007, that the person’s removal from the United Kingdom would be in the interests of national security.”

(3) For subsection (2)(c) substitute—

“(c) section 2(5) of the Special Immigration Appeals Commission Act 1997 (whether appeals brought against decisions certified under section 97 may be brought from within the United Kingdom) does not apply, but see instead the following provisions of this section.”

(4) After subsection (2) insert—

“(2A) The person while in the United Kingdom may not bring or continue an appeal under section 2 of the Special Immigration Appeals Commission Act 1997—

- (a) against the decision to make the deportation order, or
- (b) against any refusal to revoke the deportation order,

unless the person has made a human rights claim while in the United Kingdom.

(2B) Subsection (2A) does not allow the person while in the United Kingdom to bring or continue an appeal if the Secretary of State certifies that removal of the person—

- (a) to the country or territory to which the person is proposed to be removed, and
- (b) despite the appeals process not having been begun or not having been exhausted,

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would not breach the United Kingdom’s obligations under the Human Rights Convention.

- (2C) The grounds upon which a certificate may be given under subsection (2B) include (in particular)—
- (a) that the person would not, before the appeals process is exhausted, face a real risk of serious irreversible harm if removed to the country or territory to which the person is proposed to be removed;
 - (b) that the whole or part of any human rights claim made by the person is clearly unfounded.
- (2D) Subsection (2A) does not allow the person while in the United Kingdom to bring an appeal on a non-human-rights ground, or to continue an appeal so far as brought on non-human-rights grounds, if the Secretary of State certifies that removal of the person—
- (a) to the country or territory to which the person is proposed to be removed, and
 - (b) despite the appeals process, so far as relating to appeal on non-human-rights grounds, not having been begun or not having been exhausted,
- would not breach the United Kingdom’s obligations under the Human Rights Convention.
- (2E) In subsection (2D) “non-human-rights ground” means any ground other than the ground that removal of the person from the United Kingdom in consequence of the decision to make the deportation order would be unlawful under section 6 of the Human Rights Act 1998 as being incompatible with a person’s Convention rights.
- (2F) If a certificate in respect of a person is given under subsection (2B), the person may apply to the Special Immigration Appeals Commission to set aside the certificate.
- (2G) If a person makes an application under subsection (2F) then the Commission, in determining whether the certificate should be set aside, must apply the principles that would be applied in judicial review proceedings.
- (2H) The Commission’s determination of a review under subsection (2F) is final.
- (2J) The Commission may direct that a person who has made and not withdrawn an application under subsection (2F) is not to be removed from the United Kingdom at a time when the review has not been finally determined by the Commission.
- (2K) Sections 5 and 6 of the Special Immigration Appeals Commission Act 1997 apply in relation to reviews under subsection (2F) (and to applicants for such reviews) as they apply in relation to appeals under section 2 or 2B of that Act (and to persons bringing such appeals).
- (2L) Any exercise of power to make rules under section 5 of that Act in relation to reviews under subsection (2F) is to be with a view to securing that proceedings on such reviews are handled expeditiously.”
- (5) In subsection (3) (appeal against certificate under subsection (2)(c)(iii)) for “(2)(c)(iii)” substitute “(2D)”.

55 Powers of immigration officers

- (1) In the Police Act 1997, in section 93 (authorisations to interfere with property etc: authorising officers), in subsection (5), after paragraph (h) insert—
 - “(ha) an immigration officer who is a senior official within the meaning of the Regulation of Investigatory Powers Act 2000 and who is designated for the purposes of this paragraph by the Secretary of State;”.
- (2) In the Regulation of Investigatory Powers Act 2000, in section 32(6) (authorisation of intrusive surveillance: senior authorising officers), after paragraph (m) insert—
 - “(ma) a senior official in the department of the Secretary of State by whom functions relating to immigration are exercisable who is designated for the purposes of this paragraph by the Secretary of State; and”.
- (3) The Proceeds of Crime Act 2002 is amended in accordance with subsections (4) and (5).
- (4) In the 2002 Act—
 - (a) in section 47A (search and seizure powers under sections 47B to 47S: meaning of “appropriate officer”), in subsection (1), after paragraph (a) insert—
 - “(aa) an immigration officer;”;
 - (b) in section 127A (search and seizure powers in Scotland under sections 127B to 127R: meaning of “appropriate officer”), in subsection (1), after paragraph (a) insert—
 - “(aa) an immigration officer, or”;
 - (c) in section 195A (search and seizure powers in Northern Ireland under sections 195B to 195S: meaning of “appropriate officer”), in subsection (1), after paragraph (a) insert—
 - “(aa) an immigration officer, or”.
- (5) In section 378 of the 2002 Act (appropriate officers and senior appropriate officers for the purposes of investigations under Part 8 of that Act)—
 - (a) in subsection (1) (appropriate officers for confiscation investigations), after paragraph (d) insert—
 - “(e) an immigration officer.”;
 - (b) in subsection (2) (senior appropriate officers for confiscation investigations), after paragraph (c) insert—
 - “(ca) an immigration officer who is not below such grade as is designated by the Secretary of State as equivalent to that rank;”;
 - (c) in subsection (3A) (appropriate officers for detained cash investigations), after paragraph (b) insert—
 - “(c) an immigration officer.”;
 - (d) in subsection (4) (appropriate officers for money laundering investigations), after paragraph (c) insert—
 - “(d) an immigration officer.”;
 - (e) in subsection (6) (senior appropriate officers in relation to money laundering investigations), after paragraph (b) insert—

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- “(ba) an immigration officer who is not below such grade as is designated by the Secretary of State as equivalent to that rank;”.
- (6) In the UK Borders Act 2007, in section 24 (seizure of cash by immigration officers under Proceeds of Crime Act 2002)—
- (a) in subsection (2), for paragraphs (a) and (b) substitute—
- “(a) unlawful conduct”, in or in relation to section 289, means conduct which—
- (i) relates to the entitlement of one or more persons who are not nationals of the United Kingdom to enter, transit across, or be in, the United Kingdom (including conduct which relates to conditions or other controls on any such entitlement), or
- (ii) is undertaken for the purposes of, or otherwise in relation to, a relevant nationality enactment,
- and (in either case) constitutes an offence;”;
- (b) after subsection (2) insert—
- “(2A) In subsection (2)(a)(ii) “relevant nationality enactment” means any enactment in—
- (a) the British Nationality Act 1981,
- (b) the Hong Kong Act 1985,
- (c) the Hong Kong (War Wives and Widows) Act 1996,
- (d) the British Nationality (Hong Kong) Act 1997,
- (e) the British Overseas Territories Act 2002, or
- (f) an instrument made under any of those Acts.”.
- (7) Sections 136 to 139 of the Criminal Justice and Public Order Act 1994 (execution of warrants and powers of arrest and search) apply to an immigration officer as they apply to a constable (but subject to subsection (8) below and paragraphs 41 to 43 of Schedule 21).
- (8) An immigration officer may exercise a power under sections 136 to 139 of the 1994 Act only—
- (a) in the exercise of a function which relates to the entitlement of one or more persons who are not nationals of the United Kingdom to enter, transit across, or be in, the United Kingdom (including a function which relates to conditions or other controls on any such entitlement),
- (b) in exercising a function under, or for the purposes of—
- (i) the British Nationality Act 1981,
- (ii) the Hong Kong Act 1985,
- (iii) the Hong Kong (War Wives and Widows) Act 1996,
- (iv) the British Nationality (Hong Kong) Act 1997,
- (v) the British Overseas Territories Act 2002,
- (vi) an instrument made under any of those Acts, or
- (c) in connection with the prevention, investigation or prosecution of any of the following offences (insofar as that does not involve the exercise of a function which falls within paragraph (a) or (b))—

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- (i) an offence under section 26(1)(a), (b) or (g) of the Immigration Act 1971 (refusal or failure to submit to examination or to furnish information etc, or obstruction of immigration officer);
 - (ii) an offence under section 22 of the UK Borders Act 2007 (assaulting an immigration officer).
- (9) The Criminal Law (Consolidation) (Scotland) Act 1995 is amended in accordance with subsections (10) to (12).
- (10) In section 24 of the 1995 Act (detention and questioning at office of Revenue and Customs)—
 - (a) in subsection (1), in the words before paragraph (a), for the words from the beginning to “the officer may” substitute—
 - “(A1) The powers conferred by subsection (1) are exercisable—
 - (a) by an officer of Revenue and Customs where the officer has reasonable grounds for suspecting that a person has committed or is committing a Revenue and Customs offence punishable by imprisonment, or
 - (b) by an immigration officer where the officer has reasonable grounds for suspecting that a person has committed or is committing an immigration offence or nationality offence punishable by imprisonment.
 - (1) The officer may”;
 - (b) in subsection (1), in the words after paragraph (b)—
 - (i) after “Customs” (in the first place) insert “(in a case falling within subsection (A1)(a)) or police station (in a case falling within subsection (A1)(b))”;
 - (ii) after “premises” (in the first place) insert “(in either of those cases)”;
 - (iii) for “or, as the case may be,” substitute “or police station, or”;
 - (iv) at the end insert “(as the case may be)”.
- (11) In section 26A of the 1995 Act (power of arrest)—
 - (a) the existing provision becomes subsection (1) of section 26A;
 - (b) in subsection (1), for “an authorised officer” substitute “an authorised officer of Revenue and Customs”;
 - (c) after subsection (1) insert—
 - “(2) Where an authorised immigration officer has reasonable grounds for suspecting that an immigration offence or nationality offence or immigration enforcement offence has been or is being committed, the officer may arrest without warrant any person whom the officer has reasonable grounds for suspecting to be guilty of the offence.
 - (3) In this section—
 - (a) “authorised officer of Revenue and Customs” means an officer of Revenue and Customs acting with the authority (which may be general or specific) of the Commissioners for Her Majesty’s Revenue and Customs;
 - (b) “authorised immigration officer” means an immigration officer acting with the authority (which may be general or specific) of the Secretary of State.”

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(12) In section 26B of the 1995 Act (interpretation of Part 3 etc), in subsection (1), after the definition of “authorised officer” insert—

““immigration offence” means an offence involving conduct which relates to the entitlement of one or more persons who are not nationals of the United Kingdom to enter, transit across, or be in, the United Kingdom (including conduct which relates to conditions or other controls on any such entitlement);

“immigration enforcement offence” means any of the following offences (insofar as they are not immigration or nationality offences)—

- (a) an offence under section 26(1)(a), (b) or (g) of the Immigration Act 1971 (refusal or failure to submit to examination or to furnish information etc, or obstruction of immigration officer);
- (b) an offence under section 22 of the UK Borders Act 2007 (assaulting an immigration officer);

“nationality offence” means an offence involving conduct which is undertaken for the purposes of, or otherwise in relation to, an enactment in—

- (a) the British Nationality Act 1981,
- (b) the Hong Kong Act 1985,
- (c) the Hong Kong (War Wives and Widows) Act 1996,
- (d) the British Nationality (Hong Kong) Act 1997,
- (e) the British Overseas Territories Act 2002, or
- (f) an instrument made under any of those Acts.”

(13) In the Criminal Procedure (Scotland) Act 1995, in section 307 (interpretation)—

(a) in subsection (1), in the definition of “officer of law”, after paragraph (ba) insert—

“(bb) subject to subsection (1AA) below, an immigration officer acting with the authority (which may be general or specific) of the Secretary of State;”;

(b) after subsection (1A) insert—

“(1AA) The inclusion of immigration officers as “officers of law” shall have effect only in relation to immigration offences and nationality offences (within the meaning of Part 3 of the Criminal Law (Consolidation) (Scotland) Act 1995).”;

(c) in subsection (1B), for the words from “this Act” to “had the authority” substitute “this Act—

- (a) a certificate of the Commissioners for Her Majesty’s Revenue and Customs that an officer of Revenue of Customs, or
- (b) a certificate of the Secretary of State that an immigration officer,

had the authority”.

(14) Schedule 21 (powers of immigration officers: further provision) has effect.