Immigration Act 2014

2014 CHAPTER 22

PART 2 U.K.

APPEALS ETC

15 Right of appeal to First-tier Tribunal U.K.

(1) Part 5 of the Nationality, Immigration and Asylum Act 2002 (immigration and asylum appeals) is amended as follows.

(2) For section 82 substitute—

"**82 Right of appeal to the Tribunal**

(1) A person ("P") may appeal to the Tribunal where—

(a) the Secretary of State has decided to refuse a protection claim made by P,

(b) the Secretary of State has decided to refuse a human rights claim made by P, or

(c) the Secretary of State has decided to revoke P's protection status.

(2) For the purposes of this Part—

(a) a "protection claim" is a claim made by a person ("P") that removal of P from the United Kingdom—

(i) would breach the United Kingdom's obligations under the Refugee Convention, or

(ii) would breach the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection;

(b) P's protection claim is refused if the Secretary of State makes one or more of the following decisions—

(i) that removal of P from the United Kingdom would not breach the United Kingdom's obligations under the Refugee Convention;

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(ii) that removal of P from the United Kingdom would not breach the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection;

(c) a person has "protection status" if the person has been granted leave to enter or remain in the United Kingdom as a refugee or as a person eligible for a grant of humanitarian protection;

(d) "humanitarian protection" is to be construed in accordance with the immigration rules;

(e) "refugee" has the same meaning as in the Refugee Convention.

(3) The right of appeal under subsection (1) is subject to the exceptions and limitations specified in this Part."

(3) Sections 83 and 83A (appeal rights in respect of asylum claims) are repealed.

(4) For section 84 substitute—

"**84 Grounds of appeal**

(1) An appeal under section 82(1)(a) (refusal of protection claim) must be brought on one or more of the following grounds—

(a) that removal of the appellant from the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention;

(b) that removal of the appellant from the United Kingdom would breach the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection;

(c) that removal of the appellant from the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Human Rights Convention).

(2) An appeal under section 82(1)(b) (refusal of human rights claim) must be brought on the ground that the decision is unlawful under section 6 of the Human Rights Act 1998.

(3) An appeal under section 82(1)(c) (revocation of protection status) must be brought on one or more of the following grounds—

(a) that the decision to revoke the appellant's protection status breaches the United Kingdom's obligations under the Refugee Convention;

(b) that the decision to revoke the appellant's protection status breaches the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection."

(5) In section 85 (matters to be considered), for subsection (5) substitute—

"(5) But the Tribunal must not consider a new matter unless the Secretary of State has given the Tribunal consent to do so.

(6) A matter is a "new matter" if—

(a) it constitutes a ground of appeal of a kind listed in section 84, and

(b) the Secretary of State has not previously considered the matter in the context of—

(i) the decision mentioned in section 82(1), or

(ii) a statement made by the appellant under section 120."

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Commencement Information

I1 S. 15 in force at 20.10.2014 by S.I. 2014/2771, **art. 2(b)** (with arts. 9-11) (as amended (2.3.2015 and 6.4.2015) by S.I. 2015/371, arts. 1(2)(3), 7, 8; and with transitional provisions and savings in S.I. 2014/2928, art. 2 (which S.I. is revoked (6.4.2015) by S.I. 2015/371, arts. 1(3), 9))

16 Report by Chief Inspector on administrative review U.K.

(1) Before the end of the period of 12 months beginning on the day on which section 15 comes into force, the Secretary of State must commission from the Chief Inspector a report that addresses the following matters—

(a) the effectiveness of administrative review in identifying case working errors;

(b) the effectiveness of administrative review in correcting case working errors;

(c) the independence of persons conducting administrative review (in terms of their separation from the original decision-maker).

(2) On completion of the report, the Chief Inspector must send it to the Secretary of State.

(3) The Secretary of State must lay before Parliament a copy of the report received under subsection (2).

(4) In this section—

"administrative review" means review conducted under the immigration rules;

"case working error" has the meaning given in the immigration rules;

the "Chief Inspector" means the Chief Inspector established under section 48 of the UK Borders Act 2007;

"immigration rules" has the same meaning as in the Immigration Act 1971.

Commencement Information

I2 S. 16 in force at 20.10.2014 by S.I. 2014/2771, **art. 4(a)**

17 Place from which appeal may be brought or continued U.K.

(1) Part 5 of the Nationality, Immigration and Asylum Act 2002 (immigration and asylum appeals) is amended as follows.

(2) For section 92 substitute—

"**92 Place from which an appeal may be brought or continued**

(1) This section applies to determine the place from which an appeal under section 82(1) may be brought or continued.

(2) In the case of an appeal under section 82(1)(a) (protection claim appeal), the appeal must be brought from outside the United Kingdom if—

(a) the claim to which the appeal relates has been certified under section 94(1) or (7) (claim clearly unfounded or removal to safe third country), or

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(b) paragraph 5(3)(a), 10(3), 15(3) or 19(b) of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (removal of asylum seeker to safe third country) applies.

Otherwise, the appeal must be brought from within the United Kingdom.

(3) In the case of an appeal under section 82(1)(b) (human rights claim appeal) where the claim to which the appeal relates was made while the appellant was in the United Kingdom, the appeal must be brought from outside the United Kingdom if—

(a) the claim to which the appeal relates has been certified under section 94(1) or (7) (claim clearly unfounded or removal to safe third country) or section 94B (certification of human rights claims made by persons liable to deportation), or

(b) paragraph 5(3)(b) or (4), 10(4), 15(4) or 19(c) of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (removal of asylum seeker to safe third country) applies.

Otherwise, the appeal must be brought from within the United Kingdom.

(4) In the case of an appeal under section 82(1)(b) (human rights claim appeal) where the claim to which the appeal relates was made while the appellant was outside the United Kingdom, the appeal must be brought from outside the United Kingdom.

(5) In the case of an appeal under section 82(1)(c) (revocation of protection status) —

(a) the appeal must be brought from within the United Kingdom if the decision to which the appeal relates was made while the appellant was in the United Kingdom;

(b) the appeal must be brought from outside the United Kingdom if the decision to which the appeal relates was made while the appellant was outside the United Kingdom.

(6) If, after an appeal under section 82(1)(a) or (b) has been brought from within the United Kingdom, the Secretary of State certifies the claim to which the appeal relates under section 94(1) or (7) or section 94B, the appeal must be continued from outside the United Kingdom.

(7) Where a person brings or continues an appeal under section 82(1)(a) (refusal of protection claim) from outside the United Kingdom, for the purposes of considering whether the grounds of appeal are satisfied, the appeal is to be treated as if the person were not outside the United Kingdom.

(8) Where an appellant brings an appeal from within the United Kingdom but leaves the United Kingdom before the appeal is finally determined, the appeal is to be treated as abandoned unless the claim to which the appeal relates has been certified under section 94(1) or (7) or section 94B.”

(3) After section 94A, insert—

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"94B Appeal from within the United Kingdom: certification of human rights claims made by persons liable to deportation

(1) This section applies where a human rights claim has been made by a person ("P") who is liable to deportation under—

(a) section 3(5)(a) of the Immigration Act 1971 (Secretary of State deeming deportation conducive to public good), or

(b) section 3(6) of that Act (court recommending deportation following conviction).

(2) The Secretary of State may certify the claim if the Secretary of State considers that, despite the appeals process not having been begun or not having been exhausted, removal of P to the country or territory to which P is proposed to be removed, pending the outcome of an appeal in relation to P's claim, would not be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Human Rights Convention).

(3) The grounds upon which the Secretary of State may certify a claim under subsection (2) include (in particular) that P 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 P is proposed to be removed."

Commencement Information

I3 S. 17(1)(3) in force at 28.7.2014 by S.I. 2014/1820, **art. 3(n)**

I4 S. 17(2) in force at 20.10.2014 by S.I. 2014/2771, **art. 2(c)** (with arts. 9-11, 15) (as amended (2.3.2015 and 6.4.2015) by S.I. 2015/371, arts. 1(2)(3), 7, 8; and with transitional provisions and savings in S.I. 2014/2928, art. 2 (which S.I. is revoked (6.4.2015) by S.I. 2015/371, arts. 1(3), 9))

18 Review of certain deportation decisions by Special Immigration Appeals Commission U.K.

In the Special Immigration Appeals Commission Act 1997, after section 2D insert—

"2E Jurisdiction: review of certain deportation decisions

(1) Subsection (2) applies in relation to a relevant deportation decision which has been certified under section 97 or 97A(1) of the Nationality, Immigration and Asylum Act 2002 (certification on grounds of national security etc).

(2) The person to whom the decision relates may apply to the Special Immigration Appeals Commission to set aside the decision.

(3) In determining whether the decision should be set aside, the Commission must apply the principles which would be applied in judicial review proceedings.

(4) If the Commission decides that the decision should be set aside, it may make any such order, or give any such relief, as may be made or given in judicial review proceedings.

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(5) In this section "relevant deportation decision" means a decision of the Secretary of State about the deportation of a person from the United Kingdom, if and to the extent that—
  (a) the decision is not subject to a right of appeal, or
  (b) the decision (being subject to a right of appeal) gives rise to issues which may not be raised on such an appeal."

Commencement Information
I5 S. 18 in force at 6.4.2015 by S.I. 2015/371, **art. 4(a)**

19 Article 8 of the ECHR: public interest considerations U.K.

After Part 5 of the Nationality, Immigration and Asylum Act 2002 insert—

"PART 5A U.K.

ARTICLE 8 OF THE ECHR: PUBLIC INTEREST CONSIDERATIONS

117A Application of this Part

(1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts—
  (a) breaches a person's right to respect for private and family life under Article 8, and
  (b) as a result would be unlawful under section 6 of the Human Rights Act 1998.

(2) In considering the public interest question, the court or tribunal must (in particular) have regard—
  (a) in all cases, to the considerations listed in section 117B, and
  (b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

(3) In subsection (2), "the public interest question" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).

117B Article 8: public interest considerations applicable in all cases

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
  (a) are less of a burden on taxpayers, and
  (b) are better able to integrate into society.

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(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
  (a) are not a burden on taxpayers, and
  (b) are better able to integrate into society.

(4) Little weight should be given to—
  (a) a private life, or
  (b) a relationship formed with a qualifying partner,

  that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
  (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
  (b) it would not be reasonable to expect the child to leave the United Kingdom.

117C **Article 8: additional considerations in cases involving foreign criminals**

(1) The deportation of foreign criminals is in the public interest.

(2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.

(3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.

(4) Exception 1 applies where—
  (a) C has been lawfully resident in the United Kingdom for most of C's life,
  (b) C is socially and culturally integrated in the United Kingdom, and
  (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

(6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

(7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.

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117D **Interpretation of this Part**

(1) In this Part—

"Article 8" means Article 8 of the European Convention on Human Rights;

"qualifying child" means a person who is under the age of 18 and who—

(a) is a British citizen, or

(b) has lived in the United Kingdom for a continuous period of seven years or more;

"qualifying partner" means a partner who—

(a) is a British citizen, or

(b) who is settled in the United Kingdom (within the meaning of the Immigration Act 1971 — see section 33(2A) of that Act).

(2) In this Part, "foreign criminal" means a person—

(a) who is not a British citizen,

(b) who has been convicted in the United Kingdom of an offence, and

(c) who—

(i) has been sentenced to a period of imprisonment of at least 12 months,

(ii) has been convicted of an offence that has caused serious harm, or

(iii) is a persistent offender.

(3) For the purposes of subsection (2)(b), a person subject to an order under—

(a) section 5 of the Criminal Procedure (Insanity) Act 1964 (insanity etc),

(b) section 57 of the Criminal Procedure (Scotland) Act 1995 (insanity etc), or

(c) Article 50A of the Mental Health (Northern Ireland) Order 1986 (insanity etc),

has not been convicted of an offence.

(4) In this Part, references to a person who has been sentenced to a period of imprisonment of a certain length of time—

(a) do not include a person who has received a suspended sentence (unless a court subsequently orders that the sentence or any part of it (of whatever length) is to take effect);

(b) do not include a person who has been sentenced to a period of imprisonment of that length of time only by virtue of being sentenced to consecutive sentences amounting in aggregate to that length of time;

(c) include a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders) for that length of time; and

(d) include a person who is sentenced to imprisonment or detention, or ordered or directed to be detained, for an indeterminate period, provided that it may last for at least that length of time.

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(5) If any question arises for the purposes of this Part as to whether a person is a British citizen, it is for the person asserting that fact to prove it."

Commencement Information

I6 S. 19 in force at 28.7.2014 by S.I. 2014/1820, **art. 3(o)**

Changes to legislation:
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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing S.I. 2014/2771 by S.I. 2015/371 art. 78
- specified provision(s) savings for earlier commencing SI 2014/2771 by S.I. 2014/2928 art. 2 (Amendment already reflected in Appended Commentary in EXTOES for 2014 SI2771.)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 21(4A) inserted by S.I. 2019/745 reg. 21(2)(b) (This amendment not applied to legislation.gov.uk. Reg. 21(2)(3) omitted immediately before IP completion day by virtue of S.I. 2020/1309, regs. 1(2)(a), 48)
- s. 27(7) inserted by S.I. 2019/745 reg. 21(3)(b) (This amendment not applied to legislation.gov.uk. Reg. 21(2)(3) omitted immediately before IP completion day by virtue of S.I. 2020/1309, regs. 1(2)(a), 48)
- s. 70A(6A) inserted by S.I. 2019/745 reg. 21(7)(c) (This amendment not applied to legislation.gov.uk. Reg. 21(7) omitted immediately before IP completion day by virtue of S.I. 2020/1309, regs. 1(2)(a), 48)
- Sch. 3 para. 8A inserted by 2016 c. 19 Sch. 12 para. 16