



# Special Immigration Appeals Commission Act 1997

## 1997 CHAPTER 68

An Act to establish the Special Immigration Appeals Commission; to make provision with respect to its jurisdiction; and for connected purposes. [17th December 1997]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### **1 Establishment of the Commission**

- (1) There shall be a commission, known as the Special Immigration Appeals Commission, for the purpose of exercising the jurisdiction conferred by this Act.
- (2) Schedule 1 to this Act shall have effect in relation to the Commission.

### **2 Jurisdiction: appeals**

- (1) A person may appeal to the Special Immigration Appeals Commission against—
  - (a) any matter in relation to which he would be entitled to appeal under subsection (1) of section 13 of the Immigration Act 1971 (appeal to an adjudicator against refusal of leave to enter), but for subsection (5) of that section (exclusion conducive to public good),
  - (b) any matter in relation to which he would be entitled to appeal under subsection (1) of section 14 of that Act (appeal to an adjudicator against variation of limited leave or any refusal to vary it), but for subsection (3) of that section (departure conducive to public good),
  - (c) any matter in relation to which he would be entitled to appeal under subsection (1)(a) of section 15 of that Act (appeal to an adjudicator or the Appeal Tribunal against a decision to make a deportation order), but for subsection (3) of that section (deportation conducive to public good),

- (d) any matter in relation to which he would be entitled to appeal under Article 15(1) of the Immigration (European Economic Area) Order 1994 (appeal against refusal of admission), but for Article 20(2)(b) of that Order (exclusion conducive to public good),
  - (e) any matter in relation to which he would be entitled to appeal under Article 15(2) of that Order (appeal against decision to remove), but for Article 20(2)(d) of that Order (removal conducive to public good),
  - (f) any matter in relation to which he would be entitled to appeal under Article 18 of that Order (appeal against refusal or withdrawal of residence permit or residence document), but for Article 20(2)(c) of that Order (departure conducive to public good), and
  - (g) any matter in relation to which he would be entitled to appeal under section 8(1), (2) or (3) of the Asylum and Immigration Appeals Act 1993 (appeal to special adjudicator in cases involving claim to asylum), but for paragraph 6 of Schedule 2 to that Act (exclusion, departure or deportation in the interests of national security).
- (2) A person may appeal to the Special Immigration Appeals Commission against the refusal of an entry clearance if he would be entitled to appeal against the refusal under subsection (2) of section 13 of the Immigration Act 1971, but for subsection (5) of that section (exclusion conducive to public good), and—
- (a) he seeks to rely on an enforceable Community right or any provision made under section 2(2) of the European Communities Act 1972, or
  - (b) he seeks to enter the United Kingdom under immigration rules making provision about entry—
    - (i) to exercise rights of access to a child resident there,
    - (ii) as the spouse or fiancé of a person present and settled there, or
    - (iii) as the parent, grandparent or other dependent relative of a person present and settled there.
- (3) Schedule 2 to this Act (which makes supplementary provision relating to appeals under this section) shall have effect.
- (4) In this section, “immigration rules” has the same meaning as in the Immigration Act 1971.

### **3 Jurisdiction: bail**

- (1) In the case of a person to whom subsection (2) below applies, the provisions of Schedule 2 to the Immigration Act 1971 specified in Schedule 3 to this Act shall have effect with the modifications set out there.
- (2) This subsection applies to a person who is detained under the Immigration Act 1971 if—
- (a) the Secretary of State certifies that his detention is necessary in the interests of national security,
  - (b) he is detained following a decision to refuse him leave to enter the United Kingdom on the ground that his exclusion is in the interests of national security, or
  - (c) he is detained following a decision to make a deportation order against him on the ground that his deportation is in the interests of national security.

#### **4 Determination of appeals**

- (1) The Special Immigration Appeals Commission on an appeal to it under this Act—
  - (a) shall allow the appeal if it considers—
    - (i) that the decision or action against which the appeal is brought was not in accordance with the law or with any immigration rules applicable to the case, or
    - (ii) where the decision or action involved the exercise of a discretion by the Secretary of State or an officer, that the discretion should have been exercised differently, and
  - (b) in any other case, shall dismiss the appeal.
- (2) Where an appeal is allowed, the Commission shall give such directions for giving effect to the determination as it thinks requisite, and may also make recommendations with respect to any other action which it considers should be taken in the case under the Immigration Act 1971; and it shall be the duty of the Secretary of State and of any officer to whom directions are given under this subsection to comply with them.
- (3) In this section, “immigration rules” has the same meaning as in the Immigration Act 1971.

#### **5 Procedure in relation to jurisdiction under sections 2 and 3**

- (1) The Lord Chancellor may make rules—
  - (a) for regulating the exercise of the rights of appeal conferred by section 2 above,
  - (b) for prescribing the practice and procedure to be followed on or in connection with appeals under that section, including the mode and burden of proof and admissibility of evidence on such appeals, and
  - (c) for other matters preliminary or incidental to or arising out of such appeals, including proof of the decisions of the Special Immigration Appeals Commission.
- (2) Rules under this section shall provide that an appellant has the right to be legally represented in any proceedings before the Commission on an appeal under section 2 above, subject to any power conferred on the Commission by such rules.
- (3) Rules under this section may, in particular—
  - (a) make provision enabling proceedings before the Commission to take place without the appellant being given full particulars of the reasons for the decision which is the subject of the appeal,
  - (b) make provision enabling the Commission to hold proceedings in the absence of any person, including the appellant and any legal representative appointed by him,
  - (c) make provision about the functions in proceedings before the Commission of persons appointed under section 6 below, and
  - (d) make provision enabling the Commission to give the appellant a summary of any evidence taken in his absence.
- (4) Rules under this section may also include provision—
  - (a) enabling any functions of the Commission which relate to matters preliminary or incidental to an appeal, or which are conferred by Part II of Schedule 2 to the Immigration Act 1971, to be performed by a single member of the Commission, or

- (b) conferring on the Commission such ancillary powers as the Lord Chancellor thinks necessary for the purposes of the exercise of its functions.
- (5) The power to make rules under this section shall include power to make rules with respect to applications to the Commission under paragraphs 22 to 24 of Schedule 2 to the Immigration Act 1971 and matters arising out of such applications.
- (6) In making rules under this section, the Lord Chancellor shall have regard, in particular, to—
  - (a) the need to secure that decisions which are the subject of appeals are properly reviewed, and
  - (b) the need to secure that information is not disclosed contrary to the public interest.
- (7) Section 9(1) of the Interception of Communications Act 1985 (exclusion of evidence) shall not apply to proceedings before the Commission.
- (8) The power to make rules under this section shall be exercisable by statutory instrument.
- (9) No rules shall be made under this section unless a draft of them has been laid before and approved by resolution of each House of Parliament.

## **6 Appointment of person to represent the appellant's interests**

- (1) The relevant law officer may appoint a person to represent the interests of an appellant in any proceedings before the Special Immigration Appeals Commission from which the appellant and any legal representative of his are excluded.
- (2) For the purposes of subsection (1) above, the relevant law officer is—
  - (a) in relation to proceedings before the Commission in England and Wales, the Attorney General,
  - (b) in relation to proceedings before the Commission in Scotland, the Lord Advocate, and
  - (c) in relation to proceedings before the Commission in Northern Ireland, the Attorney General for Northern Ireland.
- (3) A person appointed under subsection (1) above—
  - (a) if appointed for the purposes of proceedings in England and Wales, shall have a general qualification for the purposes of section 71 of the Courts and Legal Services Act 1990,
  - (b) if appointed for the purposes of proceedings in Scotland, shall be—
    - (i) an advocate, or
    - (ii) a solicitor who has by virtue of section 25A of the Solicitors (Scotland) Act 1980 rights of audience in the Court of Session and the High Court of Justiciary, and
  - (c) if appointed for the purposes of proceedings in Northern Ireland, shall be a member of the Bar of Northern Ireland.
- (4) A person appointed under subsection (1) above shall not be responsible to the person whose interests he is appointed to represent.

## **7 Appeals from the Commission**

- (1) Where the Special Immigration Appeals Commission has made a final determination of an appeal, any party to the appeal may bring a further appeal to the appropriate appeal court on any question of law material to that determination.
- (2) An appeal under this section may be brought only with the leave of the Commission or, if such leave is refused, with the leave of the appropriate appeal court.
- (3) In this section “the appropriate appeal court” means—
  - (a) in relation to a determination made by the Commission in England and Wales, the Court of Appeal,
  - (b) in relation to a determination made by the Commission in Scotland, the Court of Session, and
  - (c) in relation to a determination made by the Commission in Northern Ireland, the Court of Appeal in Northern Ireland.
- (4) In section 33(4) of the Immigration Act 1971, after “1993” there shall be inserted “or section 7 of the Special Immigration Appeals Commission Act 1997”.

## **8 Procedure on applications to the Commission for leave to appeal**

- (1) The Lord Chancellor may make rules regulating, and prescribing the procedure to be followed on, applications to the Special Immigration Appeals Commission for leave to appeal under section 7 above.
- (2) Rules under this section may include provision enabling an application for leave to appeal to be heard by a single member of the Commission.
- (3) The power to make rules under this section shall be exercisable by statutory instrument.
- (4) No rules shall be made under this section unless a draft of them has been laid before and approved by resolution of each House of Parliament.

## **9 Short title, commencement and extent**

- (1) This Act may be cited as the Special Immigration Appeals Commission Act 1997.
- (2) This Act, except for this section, shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be so appointed for different purposes.
- (3) Her Majesty may by Order in Council direct that any of the provisions of this Act shall extend, with such modifications as appear to Her Majesty to be appropriate, to any of the Channel Islands or the Isle of Man.
- (4) This Act extends to Northern Ireland.

## SCHEDULES

### SCHEDULE 1

Section 1.

#### THE COMMISSION

##### *Members*

- 1 (1) The Special Immigration Appeals Commission shall consist of such number of members appointed by the Lord Chancellor as he may determine.
- (2) A member of the Commission shall hold and vacate office in accordance with the terms of his appointment and shall, on ceasing to hold office, be eligible for re-appointment.
- (3) A member of the Commission may resign his office at any time by notice in writing to the Lord Chancellor.

##### *Chairman*

- 2 The Lord Chancellor shall appoint one of the members of the Commission to be its chairman.

##### *Payments to members*

- 3 (1) The Lord Chancellor may pay to the members of the Commission such remuneration and allowances as he may determine.
- (2) The Lord Chancellor may, if he thinks fit in the case of any member of the Commission pay such pension, allowance or gratuity to or in respect of the member, or such sums towards the provision of such pension, allowance or gratuity, as he may determine.
- (3) If a person ceases to be a member of the Commission and it appears to the Lord Chancellor that there are special circumstances which make it right that the person should receive compensation, he may pay to that person a sum of such amount as he may determine.

##### *Proceedings*

- 4 The Commission shall sit at such times and in such places as the Lord Chancellor may direct and may sit in two or more divisions.
- 5 The Commission shall be deemed to be duly constituted if it consists of three members of whom—
- (a) at least one holds or has held high judicial office (within the meaning of the Appellate Jurisdiction Act 1876), and
  - (b) at least one is or has been—

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- (i) appointed as chief adjudicator under paragraph 1 of Schedule 5 to the Immigration Act 1971, or
- (ii) a member of the Immigration Appeal Tribunal qualified as mentioned in paragraph 7 of that Schedule.

6 The chairman or, in his absence, such other member of the Commission as he may nominate, shall preside at sittings of the Commission and report its decisions.

#### *Staff*

7 The Lord Chancellor may appoint such officers and servants for the Commission as he thinks fit.

#### *Expenses*

8 The Lord Chancellor shall defray the remuneration of persons appointed under paragraph 7 above and such expenses of the Commission as he thinks fit.

## SCHEDULE 2

Section 2.

### APPEALS: SUPPLEMENTARY

#### *Suspension of variation of limited leave pending appeal*

1 The limitation on the taking effect of a variation and on a requirement to leave the United Kingdom contained in section 14(1) of the Immigration Act 1971 shall have effect as if appeals under any of the following provisions of section 2(1) above were appeals under section 14(1) of the 1971 Act—

- (a) paragraph (b),
- (b) paragraph (f), and
- (c) paragraph (g), so far as relating to section 8(2) of the Asylum and Immigration Appeals Act 1993.

#### *Deportation order not to be made while appeal pending*

2 In section 15(2) of the Immigration Act 1971 references to an appeal against a decision to make a deportation order shall include references to an appeal against such a decision under any of the following provisions of section 2(1) above—

- (a) paragraph (c),
- (b) paragraph (e), and
- (c) paragraph (g), so far as relating to section 8(3)(a) of the Asylum and Immigration Appeals Act 1993.

#### *Stay of removal directions pending appeal and bail*

3 (1) Part II of Schedule 2 to the Immigration Act 1971 shall have effect as if the references to appeals under section 13(1) of that Act included appeals under any of the following provisions of section 2(1) above—

- (a) paragraph (a),
- (b) paragraph (d), and

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(c) paragraph (g), so far as relating to section 8(1) of the Asylum and Immigration Appeals Act 1993,

and as if sub-paragraph (5) of paragraph 28 of Schedule 2 were omitted.

(2) Paragraph 3 of Schedule 3 to the Immigration Act 1971 shall have effect as if the reference to appeals under section 15(1)(a) of the 1971 Act included appeals under any of the following provisions of section 2(1) above—

- (a) paragraph (c),
- (b) paragraph (e), and
- (c) paragraph (g), so far as relating to section 8(3)(a) of the Asylum and Immigration Appeals Act 1993.

*Construction of references to pending appeal*

4 For the purposes of the Immigration Act 1971 as applied by paragraphs 1 to 3 above, an appeal under section 2 above shall be treated as pending during the period beginning when notice of appeal is duly given and ending when the appeal is finally determined or withdrawn; and an appeal shall not be treated as finally determined so long as a further appeal can be brought by virtue of section 7 above, nor, if such an appeal is duly brought, until it is determined or withdrawn.

*Appeals involving asylum*

5 Where a person brings an appeal under section 2(1)(g) above, the Special Immigration Appeals Commission shall in the same proceedings deal with—

- (a) any appeal against the refusal, variation or decision (as the case may be) which the person is entitled to bring under—
  - (i) Part II of the Immigration Act 1971, or
  - (ii) the Immigration (European Economic Area) Order 1994,
 on any other ground on which he seeks to rely, and
- (b) any appeal brought by the person under that Part of that Act or that Order against any other decision or action.

*Notice of appealable decisions and statement of appeal rights etc*

6 Section 18 of the Immigration Act 1971 shall have effect as if section 2 above were contained in Part II of that Act.

*Financial support for organisations helping persons with rights of appeal*

7 Section 23 of the Immigration Act 1971 shall have effect as if section 2 above were contained in Part II of that Act.

SCHEDULE 3

Section 3.

BAIL: MODIFICATIONS OF SCHEDULE 2 TO THE IMMIGRATION ACT 1971

1 (1) Paragraph 22 shall be amended as follows.



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- (2) In sub-paragraph (1A), for the words from the beginning to “adjudicator” there shall be substituted “The Special Immigration Appeals Commission”.
  - (3) In sub-paragraph (2)—
    - (a) for the words “immigration officer or adjudicator” there shall be substituted “Special Immigration Appeals Commission”, and
    - (b) for the words “officer or adjudicator” there shall be substituted “Commission”.
  - (4) In sub-paragraph (3)—
    - (a) for “an immigration officer or adjudicator” there shall be substituted “the Special Immigration Appeals Commission”, and
    - (b) for “officer or adjudicator”, in both places, there shall be substituted “Commission”.
- 2 (1) Paragraph 23 shall be amended as follows.
- (2) In sub-paragraph (1)—
    - (a) for “an adjudicator” there shall be substituted “the Special Immigration Appeals Commission”, and
    - (b) for “the adjudicator”, in each place, there shall be substituted “the Commission”.
  - (3) In sub-paragraph (2)—
    - (a) for “an adjudicator” there shall be substituted “the Special Immigration Appeals Commission”, and
    - (b) for “the adjudicator” there shall be substituted “the Commission”.
- 3 (1) Paragraph 24 shall be amended as follows.
- (2) For sub-paragraph (2), there shall be substituted—

“(2) A person arrested under this paragraph shall be brought before the Special Immigration Appeals Commission within twenty-four hours.”
  - (3) In sub-paragraph (3), for the words from the beginning to “above” there shall be substituted “Where a person is brought before the Special Immigration Appeals Commission by virtue of sub-paragraph (2) above, the Commission—”.
- 4 (1) Paragraph 29 shall be amended as follows.
- (2) For sub-paragraphs (2) to (4) there shall be substituted—

“(2) The Special Immigration Appeals Commission may release an appellant on his entering into a recognizance or, in Scotland, bail bond conditioned for his appearance before the Commission at a time and place named in the recognizance or bail bond.”
  - (3) For sub-paragraph (6) there shall be substituted—

“(6) In any case in which the Special Immigration Appeals Commission has power to release an appellant on bail, the Commission may, instead of taking the bail, fix the amount and conditions of the bail (including the amount in which any sureties are to be bound) with a view to its being taken subsequently by any such person as may be specified by the

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Commission; and on the recognizance or bail bond being so taken the  
appellant shall be released.”

5 Paragraph 30(2) shall be omitted.

6 (1) Paragraph 31 shall be amended as follows.

(2) In sub-paragraph (1)—

- (a) for “an adjudicator or the Tribunal” there shall be substituted “the Special Immigration Appeals Commission”,
- (b) for “the adjudicator or the Tribunal, as the case may be,” there shall be substituted “the Commission”, and
- (c) for “the adjudicator or Tribunal”, in both places, there shall be substituted “the Commission”.

(3) In sub-paragraph (3)—

- (a) for “an adjudicator or the Tribunal” there shall be substituted “the Special Immigration Appeals Commission”, and
- (b) for “the adjudicator or Tribunal” there shall be substituted “it”.

7 Paragraph 32 shall be amended as follows—

- (a) for “an adjudicator or the Tribunal” there shall be substituted “the Special Immigration Appeals Commission”,
- (b) for “the adjudicator or Tribunal” there shall be substituted “the Commission”, and
- (c) for “the adjudicator or the Tribunal” there shall be substituted “the Commission”.

8 (1) Paragraph 33 shall be amended as follows.

(2) For sub-paragraph (2), there shall be substituted—

“(2) A person arrested under this paragraph shall be brought before the Special Immigration Appeals Commission within twenty-four hours.”

(3) In sub-paragraph (3), for the words from the beginning to “above” there shall be substituted “Where a person is brought before the Special Immigration Appeals Commission by virtue of sub-paragraph (2) above, the Commission—”.