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**CHAPTER 12  
SECTION 1****RIGHTS OF APPEAL****1. SUMMARY OF THE APPEALS SYSTEM**

The legislative framework for the appeals system is found in Part 5 of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act'). One of the central principles behind the provisions in Part 5 is the idea that there should be a one stop appeal at which all relevant issues can be considered by the relevant appellate body. (In most cases, the relevant appellate body will be the Asylum and Immigration Tribunal ('the AIT'), but certain appeals are heard by the Special Immigration Appeals Commission (SIAC) -see paragraph 6.4 below). The one stop system was designed to prevent people from lodging a series of appeals purely to extend their stay in the country.

If someone is the subject of an immigration decision they have a right of appeal to the AIT. Section 82(2) of the Nationality, Immigration and Asylum Act 2002 lists those decisions which are defined as 'immigration decisions'. It is also possible to appeal to the AIT where a right of appeal arises under sections 83 and 83A of the 2002 Act or under the provisions of the Immigration (European Economic Area) Regulations 2006 ('the EEA Regulations').

Some immigration decisions attract a right of appeal which may be brought while the person is in the United Kingdom, while others may only be exercised from abroad. If an appeal may be brought while the appellant is in the UK the right of appeal is often referred to as having 'suspensive' effect- i.e. that it suspends any action to enforce the appellant's departure from the UK. If the appellant must leave before appealing the right of appeal may be referred to as 'non-suspensive'.

The grounds of appeal that an appellant may raise are listed in section 84 of the 2002 Act. The general position is that an appeal may be brought on any one or more of these ground, however, the grounds of appeal may be limited in certain circumstances depending upon the nature of the application.. Where the grounds which can be advanced during an appeal are limited in this way the right of appeal is sometimes referred to as a 'residual' right of appeal. The grounds of appeal also have a bearing on whether an appeal is suspensive or non-suspensive.

**2. THE ONE-STOP SYSTEM SUMMARISED**

The Nationality, Immigration and Asylum Act 2002 superseded all previous legislation on appeals. Part 5 of the Act is a revised version of earlier legislation, which introduced the principle of a 'one-stop' system designed to prevent appellants from extending their stay simply by mounting a series of appeals. Part 5 was amended by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. The principle effect of the changes in the 2004 Act was to restructure the Tribunal system charged with determining immigration appeals. Only minor changes were made to the scope and availability of rights of appeal.

The one-stop system applies in all cases where there is, or may be, a right of appeal

from within the UK. In other words, it does **not** apply in entry clearance and non-suspensive appeal cases. The one-stop system covers the whole process from application to the grant of leave or removal. One stop is not just an important part of the appeals system: technically, an applicant can only have one application running at a time. Anything he or she says to add to it or change it until such time as we make a decision is a variation of the application. An application will attract only one decision and one appeal, however many times it is varied.

At any time following an application, IND may serve on an applicant a written one-stop warning notice. This notice will require the applicant to state all the reasons, outside the scope of the original application, why he or she wishes to enter or remain in the UK. It will also warn the applicant of the penalties for non-compliance with this requirement. The warning will often be served when an application is made, and will almost always be served if the application is refused and can bring a right of appeal from within the UK. There is no limit to the number of times a person may be served with a one-stop warning, but there is also no obligation to serve the warning at all. A one stop warning may also be given to someone who has not actually made an application, for example someone who we propose to remove as an overstayer or illegal entrant.

Where an application is refused and the refusal attracts an in-country right of appeal, the notice of refusal letter may contain a paragraph giving the one-stop warning. A separate notice is not required in this case. There is a box on the appeal form where additional grounds can be stated in response.

If additional grounds are raised after the decision has been taken, and the decision is to be maintained, a supplementary letter should be issued, giving further reasons. Note the distinction between additional grounds and grounds of appeal. IND will always endeavour to respond to additional grounds which raise new issues. Where it is not possible to formally respond in this way the original decision should be treated as if it has been maintained in the absence of any clear contrary indication. Grounds of appeal, which comment on our reasons for refusing the application, can usually be left to be considered by the Asylum and Immigration Tribunal (AIT).

All matters raised before an appeal is determined **should** be taken into account and all matters raised in a statement of additional grounds **must** be taken into account by the AIT in considering whether to allow or dismiss the appeal. Additional grounds raised after a final decision on the appeal may be certified under section 96, as long as they could have been raised at the appeal, or have been raised to delay removal and for no other legitimate purpose. The effect of a certificate is to prevent the applicant from appealing against a further refusal. See section 2 of this chapter on one-stop certification.

### 3. RIGHTS OF APPEAL

Section 82(2) of the Nationality, Immigration and Asylum Act 2002 (as amended) lists 13 decisions which are defined as 'immigration decisions'. Note that decisions relating to EEA law also carry appeal rights and these are dealt with in the **European Casework Instructions**. A right of appeal can also arise under sections 83 and 83A. See section 3.14 below.

The following decisions are immigration decisions:

### 3.1 Refusal of leave to enter – s82(2)(a)

Leave to enter may be refused at port. The immigration officer or caseworker will serve a refusal if not satisfied that the applicant qualifies for leave to enter under any category of the Rules or on human rights grounds or asylum grounds. Where an applicant has been refused leave to enter a decision can be made to enforce removal without giving rise to a further immigration decision. An appeal under section 82(2)(a) may not normally be brought from within the United Kingdom unless certain claims have been made (see ‘Suspensive and non-Suspensive appeals’ below).

### 3.2 Refusal of entry clearance – s82(2)(b)

Entry clearance may be refused at visa issuing post overseas. Entry clearance is not covered by the one stop process, so applicants for entry clearance should **not** be served with a one-stop warning notice. When considering an appeal against a refusal of entry clearance the AIT can only consider the circumstances as they stood at the time of the decision to refuse entry clearance. This contrasts with the position in relation to most other immigration decisions. As an application for entry clearance is made overseas the right of appeal against such a decision can only be exercised from outside the UK.

### 3.3 Refusal of a certificate of entitlement under section 10 – s82(2)(c)

Refusal of a certificate of entitlement to right of abode in the United Kingdom carries a right of appeal. When considering an appeal against a refusal of a certificate of entitlement the AIT can only consider the circumstances as they stood at the time of the decision to refuse. This contrasts with the position in relation to most other immigration decisions. An appeal under this section may normally be brought in the UK, subject to certain exceptions and limitations.

### 3.4 Refusal to vary a person's leave to enter or remain in the UK if the result of the refusal is that the person has no leave to enter or remain – s82(2)(d)

The right of appeal is triggered by the refusal to vary existing leave to enter or remain if, following the decision, the applicant has no leave. This means that two criteria have to be met:

- i. The application must be made while the applicant has leave to enter or remain (in-time)
- ii. By the time the applicant is notified of the decision to refuse him further leave, his leave has expired.

Therefore, there is no right of appeal under section 82 against the refusal of an in-time application if the applicant still has leave when the refusal decision is notified. [N.B. The one exception to this rule is that there may be a right of appeal on asylum grounds only under section 83 if an asylum claim has been refused (see the API on rights of appeal for further instructions on section 83)].

Also, there is no right of appeal against refusal if the applicant does not have leave to enter or remain at the date of application. This is because it is not possible to vary leave that a person no longer has. An out of time application will never attract a right

of appeal under section 82(2)(d).

An appeal under this section may normally be brought in the UK, subject to certain exceptions and limitations.

**3.5 Variation of a person's leave to enter or remain in the UK if, when the variation takes effect, the person has no leave – s82(2)(e)**

There is a right of appeal against a decision to vary a person's leave to enter or remain so that they have no leave. This is generally known as 'curtailment of leave'. The right of appeal under section 82(2)(e) may usually be exercised in the UK, subject to certain exceptions and limitations.

**3.6 Revocation under section 76 of indefinite leave to enter or remain – s82(2)(f)**

Indefinite leave to enter or remain may be revoked under section 76 of the 2002 Act. An appeal against revocation of indefinite leave may generally be brought in the United Kingdom, subject to certain exceptions and limitations.

**3.7 A decision that a person is to be removed from the UK by way of directions under section 10(1)(a), (b), (ba) or (c) of the Immigration and Asylum Act 1999 (c.33) (removal of person unlawfully in United Kingdom) – s82(2)(g)**

A person may be removed under section 10(1) of the 1999 Act:

- Where he had limited leave and either failed to observe the conditions attached to that leave or over-stayed the time limit of the leave.
- Where he used deception (whether successful or not) in seeking leave to remain.
- Where his indefinite leave to enter or remain has been revoked under section 76(3) of the 2002 Act.
- Where he is the family member of someone who is being removed under section 10(1).

Each of the four removal decisions listed above carry a right of appeal. Note that it is the **decision** to remove that confers a right of appeal: removal **directions** are not appealable. An appeal under section 82(2)(g) may not normally be brought from within the United Kingdom unless certain claims have been made (see Suspensive and non-Suspensive appeals below).

**3.8 A decision that an illegal entrant is to be removed from the United Kingdom by way of directions under paragraphs 8 to 10 of Schedule 2 to the Immigration Act 1971 (c.77) (control of entry: removal) – s82(2)(h)**

Someone who is an illegal entrant may be removed under the powers in paragraphs 8 to 10 of Schedule 2 to the 1971 Act. Note that it is the **decision** to remove that confers a right of appeal: removal **directions** are not appealable. An appeal under section 82(2)(h) may not normally be brought from within the United Kingdom unless certain claims have been made (see Suspensive and non-Suspensive appeals below).

**3.9 A decision that a person is to be removed from the United Kingdom by way of directions given by virtue of paragraph 10A of that Schedule (family) – s82(2)(i)**

A person who is the family member of a person who is to be removed under paragraphs 8 to 10 of Schedule 2 to the 1971 Act may be the subject of a decision to remove him from the UK. . Note that it is the **decision** to remove that confers a right of appeal: removal **directions** are not appealable. An appeal under section 82(2)(i) may not normally be brought from within the United Kingdom unless certain claims have been made (see Suspensive and non-Suspensive appeals below).

**3.10 A decision that a person is to be removed from the United Kingdom by way of directions under paragraph 12(2) of Schedule 2 to the Immigration Act 1971 (c.77) (seamen and aircrews) – s82(2)(ia)**

Where a person is given leave to enter the United Kingdom as a crew member of a ship or aircraft and then remains beyond his limited leave, or intends to do so, he may be the subject of a decision to remove him from the UK. Note that it is the **decision** to remove that confers a right of appeal: removal **directions** are not appealable. An appeal under section 82(2)(ia) may not normally be brought from within the United Kingdom unless certain claims have been made (see Suspensive and non-Suspensive appeals below).

**3.11 A decision to make an order under section 2A of the Immigration Act 1971 (deprivation of right of abode) – s82(2)(ib)**

Under section 2A of the 1971 Act a decision can be made to remove someone's right of abode in the United Kingdom where such a right derived from possession of citizenship of another Commonwealth country and it is conducive to the public good to remove or exclude the person from the United Kingdom. An appeal under section 82(2)(ib) may not normally be brought from within the United Kingdom unless certain claims have been made (see Suspensive and non-Suspensive appeals below).

**3.12 A decision to make a deportation order under s5(1) of the 1971 Act – s82(2)(j)**

A right of appeal under s82(2)(j) is triggered by the service of a notice of intention to deport (i.e. where the Secretary of State has decided to make a deportation order against a person under section 5(1) of the 1971 Act). A notice of the Secretary of State's intention to make a deportation order would be issued in cases where the applicant is not being removed as an illegal entrant or under section 10. The deportation process only applies:

- where the Secretary of State decides that deportation would be conducive to the public good or a person who is a family member of someone who is to be deported (s3(5)(a) and (b) of the 1971 Act).; and
- to people who are being dealt with under the Regularisation Scheme for Overstayers (section 9 of the 1999 Act and the Immigration (Regularisation Period for Overstayers) Regulations 2000).
- where deportation has been recommended by a criminal court, under section 3(6) of the 1971 Act.

Note that it is the **decision** to make a deportation order that is the appealable decision: the deportation order itself may not be appealed. An appeal under this section may normally be brought in the UK.

### 3.13 **Refusal to revoke a deportation order under section 5(2) of the 1971 Act – s82(2)(k)**

A deportation order remains in force until it is revoked. A person may apply for revocation of a deportation order, and refusal to revoke carries a right of appeal. Where the person is not in the UK, the appellant must remain abroad during the appeal.

In some cases a person may apply for revocation of a deportation order while they are in the United Kingdom. The right of appeal is exercisable in-country in cases where a person has made an asylum or human rights claim or has alleged that the deportation order breaches his EC Treaty rights. The right to appeal while in the UK can only be triggered through the refusal to revoke a deportation order because the order that is in place cancels any leave that the person may have.

In previous legislation a person who had already had the right to appeal on asylum grounds against a decision to make a deportation order was prevented from appealing against a refusal to revoke it, while non-asylum cases could not appeal a refusal to revoke whilst in the United Kingdom. Now, the criteria for appealing in the United Kingdom are the making of an asylum or human rights claim here, or a claim that the decision breaches Community Treaty rights. But the application to revoke is likely to be certifiable under one-stop, whatever the nature of the case.

### 3.14 **Refusal of Asylum: Section 83**

Under this section, a person who has been refused asylum but granted leave to enter or remain can appeal against the asylum refusal, but only if the leave granted is for more than (or when combined with leave granted earlier adds up to more than) a year.

Note that 'leave' for the purposes of section 83 means any kind of leave that has been granted. It is not limited to leave outside of the Rules. For instance, a person granted leave to enter for 12 months as a student and then given an extension for 12 months as a foreign spouse would qualify at the time of the second grant, if they had been refused asylum. Indefinite leave to remain is also included under section 83. (see *API on Rights of Appeal*)

### 3.15 **Withdrawal of recognition as a refugee: Section 83A**

Under this section, where a decision is made that a person is no longer a refugee but they continue to enjoy limited leave on some other basis they may appeal against the decision that they are no longer entitled to Refugee status. An example would be where as a result of a significant and non temporary change of circumstances in the country origin it was decided that a former refugee was no longer entitled to be recognised as such, but was granted a period of leave as a student. (see *API on Rights of Appeal*)

## 4. **GROUNDINGS OF APPEAL**

An appeal must be brought on one or more of the grounds set out in section 84 of the

2002 Act. They are:

- Decision not in accordance with the immigration rules
- Decision unlawful under the Race Relations Act 1976 (i.e. because of race discrimination)
- Decision unlawful under section 6 of the Human Rights Act 1998 (ie because it breaches the applicant's human rights under the ECHR)
- Decision breaches the Community treaty rights of an EEA national or family member
- Decision is otherwise not in accordance with the law
- Discretion under the immigration rules should have been exercised differently (there is no right to appeal on the specific ground that discretion outside the rules should have been exercised differently, but there may be a human rights element to such a case)
- Removal in consequence of an immigration decision would breach our obligations under the Refugee Convention or would be unlawful under section 6 of the Human Rights Act

An appeal may generally be brought against an immigration decision on any one or more of the grounds listed above. Grounds may be raised at the appeal whether or not the relevant issues were previously raised with the Home Office. It follows that asylum may be raised as a ground of appeal against a non-asylum decision.

## **5. EXCEPTIONS AND LIMITATIONS**

### **5.1. Scheme of the Act**

Whenever there is a right of appeal to the AIT under section 82(2) the general position is that any of the grounds listed in section 84(1) can be raised. This broad proposition is, however, subject to the following exceptions: .

### **5.2. Exceptions based on the grounds for refusal: Section 88 of the 2002 Act**

Section 88 of the 2002 Act provides that appeal rights shall be limited to residual grounds (see below) in certain circumstances. Section 88 can apply to the following immigration decisions:

- Refusal of leave to enter – s82(2)(a);
- Refusal of entry clearance – s82(2)(b);
- Refusal to vary leave to enter or remain where the result is that there is no leave remaining) s82(2)(d); and
- Variation of leave where the result is that the person has no leave to enter or remain (curtailment) – s82(2)(e).

Appeal rights will be limited to residual grounds if the decision is taken on the grounds that he (or a person on whom he is dependant):

- does not satisfy an age, nationality or citizenship requirement specified in the rules (s88(2)(a));
- does not have an immigration document of a particular kind or any immigration

document (entry clearance, passport, work permit or equivalent, travel document for non-UK nationals) (s88(2)(b));

- has failed to supply a medical report or a medical certificate in accordance with a requirement of the Immigration Rules (s88(2)(ba));
- is seeking to be in the United Kingdom for a longer period than is permitted under the rules (s88(2)(c)); or
- is seeking to enter or remain in for a purpose other than one permitted under the rules.

### 5.3. **Entry Clearance exceptions: Section 88A**

Section 88A of the 2002 Act provides a power to make secondary legislation to limit appeal rights to residual grounds by reference to the immigration rules. This power has never been used and will not apply to any refusal of entry clearance.

### 5.4. **Refusal of Leave to Enter: Section 89**

Under section 89(1) of the 2002 Act people refused leave to enter will only have a full appeal right if they:

- have entry clearance, and
- they are seeking leave to enter for the same purpose as that specified in the entry clearance.

If the person is refused leave to enter and cannot satisfy these requirements, his appeal rights will be limited to **residual** grounds only (see below).

### 5.5. **Applicants for Entry Clearance, Visitors and Family Visitors: Section 90**

If someone is refused entry clearance as a visitor then his appeal rights are limited to residual grounds only by section 90 of the 2002 Act. However, section 90 also makes provisions for people who apply to visit family members, who have a full right of appeal against refusal of entry clearance.

The term 'family member' is defined in the Immigration Appeals (Family Visitor) Regulations 2003:

- the applicant's spouse, father, mother, son, daughter, grandfather, grandmother, grandson, granddaughter, brother, sister, uncle, aunt, nephew, niece, or first cousin;
- the father, mother, brother or sister of the applicant's spouse;
- the spouse of the applicant's son or daughter;
- the applicant's stepfather, stepmother, stepson, stepdaughter, stepbrother, or stepsister; or
- a person with whom the applicant has lived as a member of an unmarried couple for at least two of the three years before the day on which the application for entry for clearance was made.

In this definition, "first cousin" means the son or daughter of the applicant's uncle or aunt.

### 5.6. Applicants for Entry Clearance, Short-Term and Prospective Students: Section 91

Section 91 of the 2002 Act limits a person's right of appeal to residual grounds only if entry clearance was sought:

- 91(1)(a) to follow a course of study that will last not longer than six months;
- 91(1)(b) to study without having being accepted on a course; or
- 91(1)(c) as a dependant of one of the above.

### 5.7. Asylum, human rights and race discrimination – 'residual' grounds

Even where one of the provisions referred to above applies there are certain grounds on which an appeal may always be brought. These are referred to as 'residual grounds' of appeal. For decisions taken in the UK, the residual grounds are asylum, human rights or race discrimination, while in entry clearance cases an appeal may not be brought on asylum grounds.

The following table lists the residual grounds of appeal which are available in relation to each type of immigration decision listed in section 82(2):

Immigration Decision		Residual Grounds	
Statute	Description	Statute	Description
82(2)(a)	Refusal of leave to enter	84(1)(b) 84(1)(c) 84(1)(g)	Unlawful under Race Relations Act Unlawful under Human Rights Act Removal would be unlawful under Refugee Convention (asylum) or Human Rights Act
82(2)(b)	Refusal of entry clearance	84(1)(b) 84(1)(c)	Unlawful under Race Relations Act Unlawful under Human Rights Act
82(2)(c)	Refusal of a certificate of entitlement to right of abode	<b>Grounds of appeal may not be limited</b>	
82(2)(d)	Refusal to vary leave to enter or remain	84(1)(b) 84(1)(c) 84(1)(g)	Unlawful under Race Relations Act Unlawful under Human Rights Act Removal would be unlawful under Refugee Convention (asylum) or Human Rights Act
82(2)(e)	Variation of leave to enter or remain so that a person has no leave (curtailment)	84(1)(b) 84(1)(c) 84(1)(g)	Unlawful under Race Relations Act Unlawful under Human Rights Act Removal would be unlawful under Refugee Convention (asylum) or Human Rights Act
82(2)(f)	Revocation of indefinite leave to enter or remain	<b>Grounds of appeal may not be limited</b>	
82(2)(g)	Removal of a person under section 10(1) of the 1999 Act	<b>Grounds of appeal may not be limited</b>	

82(2)(h)	Removal of an illegal entrant under paragraphs 8 to 10 of Schedule 2 to the 1971 Act	<b>Grounds of appeal may not be limited</b>
82(2)(i)	Removal of a family member under section 10A of the 1971 Act	<b>Grounds of appeal may not be limited</b>
82(2)(ia)	Removal of a seaman or member of aircrew under Schedule 2 paragraph 12(2) of the 1971 Act.	<b>Grounds of appeal may not be limited</b>
82(2)(ib)	Deprivation of right of abode	<b>Grounds of appeal may not be limited</b>
82(2)(j)	Decision to make a deportation order under section 5(1) of the 1971 Act.	<b>Grounds of appeal may not be limited</b> Where the deportation decision is certified under section 97A(1) and section 97A(2)(c)(iii) of the 2002 Act, the in-country grounds of appeal are limited to challenging the decision to certify that removal will not breach the appellant's human rights. Unless this appeal is successful any other grounds of appeal will be considered only following removal or departure.
82(2)(k)	Refusal to revoke a deportation order under section 5(2) of the 1971 Act.	<b>Grounds of appeal may not be limited</b>

### **5.8 No appeal to the AIT on asylum grounds where the appellant is outside the UK (subject to s.94(9))**

No appeal from outside the UK can be brought on asylum grounds (section 95). This means that there can be no overseas appeal on asylum grounds against the refusal of entry clearance or any decision taken in the UK but which can only be appealed after removal. The main exception to this principle is where the appellant has made an asylum or human rights claim in the UK but this claim has been certified as clearly unfounded (see para.6.3 below). In this situation the appellant can only appeal the relevant immigration decision from outside the country, but when such an appeal is brought any asylum ground of appeal should be considered as if removal had not taken place (section 94(9)).

## **6. SUSPENSIVITY: IN COUNTRY AND OUT OF COUNTRY APPEAL RIGHTS**

Some appeals may be brought in the United Kingdom and others may only be brought from abroad. In certain circumstances, an appeal that may generally be brought from within the UK may only be brought once the appellant has departed. In other circumstances an appeal which could normally be brought only from overseas may be brought from within the UK.

Rights of appeal which allow appellants to remain in the UK while their appeal is heard are often referred to as 'suspensive', while appeals that may not be heard until after the appellant has left are often described as being 'non-suspensive'. Essentially, an appeal is suspensive when it prevents a person from being removed from the UK. Therefore, cases where the immigration decision has been made overseas – e.g. refusal of entry clearance – where the appeal may not be brought in the UK do not fit

within the definition of non-suspensive.

### 6.1 Appeal from within the United Kingdom, General: Section 92

Section 92 of the 2002 Act sets out which immigration decisions confer a suspensive right of appeal:

- refusal of leave to enter **only if** the applicant holds a valid entry clearance at the time of arrival and was in the UK at the time of the refusal – s82(2)(a)
- refusal of a certificate of entitlement – s82(2)(c)
- refusal to vary existing leave to enter or remain where the result is that the applicant has no leave remaining – s82(2)(d)
- variation of leave to enter or remain so that a person has no leave (curtailment) – s82(2)(e)
- revocation of indefinite leave to enter or remain under section 76 of the 2002 Act – s82(2)(f)
- a decision to make a deportation order – s82(2)(j)

This means that several immigration decisions do not confer an in-country right of appeal. For example, a decision to remove someone as an overstayer under section 10 of the 1999 Act does not attract an in country right of appeal. However, section 92 confers an in country right of appeal **against any immigration decision** if:

- the applicant has made an asylum and/or human rights claim while in the UK – s92(4)(a); or
- the applicant is an EEA national or family member who claims that the decision breaches Treaty rights.

Note that by submitting human rights, asylum or EEA grounds as part of an appeal, an appellant is deemed to have made a human rights or asylum claim, which would therefore confer an in country right of appeal under section 92. Race discrimination grounds are not included in section 92 and bringing an appeal solely on race discrimination grounds does not of itself attract an in-country right of appeal.

An appellant who is entitled to bring an appeal in the UK is free to leave first and lodge the appeal from abroad but if an appellant appeals first and then leaves, the appeal is deemed to be abandoned (section 104(4)).

### 6.2 Third country cases

An appeal cannot be lodged in the UK if a certificate has been issued under schedule 3 of the 2004 Act **AND** any human rights claim has been certified as clearly unfounded. It is possible to appeal from abroad on the ground, for instance, that the decision was unlawful, but it is not possible to appeal on asylum grounds as such.

### 6.3 Clearly Unfounded Human Rights and Asylum Claims: Section 94

Section 94 of the 2002 Act provides that a person whose asylum or human rights claim has been certified as clearly unfounded is not entitled to appeal before leaving the UK (and therefore cannot return to the UK to attend any appeal hearing). See the API entitled Certification under section 94 of the NIA Act 2002.. Section 94 applies to

any immigration decision under section 82 of the 2002 Act, see *Rights of Appeal* at Section 3 of this IDI above.

**In these cases**, any appeal on asylum grounds made from abroad is to be considered as if the appellant had not been removed from the UK (section 94(9)).

#### 6.4 **National Security, etc: Sections 97 and 97A**

Cases affected by the provisions of sections 97 and 97A will be handled by the Security Casework Unit in Special Cases Directorate. SCU will issue a certificate under section 97 where the Secretary of State **in person** has decided or directed that a person's exclusion or removal is:

- in the interests of national security; or
- in the interests of the relationship between the UK and another country

Or that the decision is or was based on information which should not be made public:

- for reasons of national security;
- in the interest of relations between the UK and another country; or
- to protect the public interest in some other way.

The effect of a certificate under **section 97** is that an appeal may not be brought to the Asylum and Immigration Tribunal (AIT), and any appeal that has already been lodged will lapse. There is, however, a full right of appeal to the Special Immigration Appeals Commission (SIAC).

SCU will also be responsible for certifications under **section 97A**.

Where a certificate is issued under section 97A(1), the deportation order can be made **before** any appeal has been disposed of. If it is then further certified under section 97A(2)(c)(iii) that removal of the deportee will not breach the United Kingdom's obligations under the ECHR any appeal against the decision to make the deportation order can only be brought from outside the UK. There is, however, an in country appeal against the decision to certify that removal would not breach the ECHR. Again, any such appeal will be heard by SIAC. Only if this appeal succeeds will the substantive appeal be heard in the UK.

#### 6.5 **Other Grounds of Public Good: Section 98**

Where the Secretary of State certifies that a decision to refuse an application for entry clearance or leave to enter has been taken wholly or partly on the grounds that the exclusion or removal of the applicant from the UK is conducive to the public good any appeal can only be brought on residual grounds. This appeal would ordinarily be to the AIT.

If the test for certification under section 97 is also satisfied then a certificate under that provision could also be issued. If certificates under both section 97 and section 98 were issued then there would be an in country appeal to SIAC on residual grounds.

**7. NOTIFICATION OF APPEAL RIGHTS**

Please see Section 2 of Chapter 12 of the IDIs for details on when and how to notify appealable decisions.