

# IMMIGRATION ACT 2014

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## EXPLANATORY NOTES

### BACKGROUND

#### Part 2: Appeals etc

19. Currently a right of appeal to the Tribunal exists against any of the 14 different immigration decisions listed in section 82 of the 2002 Act. These include refusals of entry, refusals to vary leave to enter and remain and decisions to remove and deport. There are two further rights of appeal in section 83 and 83A of the 2002 Act against decisions to reject an asylum claim or revoke refugee status in certain circumstances. The Act restructures rights of appeal to the Tribunal, providing an appeal against refusal of a human rights claim, a protection claim (humanitarian protection and asylum) and revocation of refugee or humanitarian protection status. It will also continue to be possible to bring an appeal, as is currently the case, against a decision to refuse an application based on a right under Community Treaties – provided for by regulations<sup>1</sup> under section 109 of the 2002 Act.
20. Currently a person may not bring an appeal while in the UK when the Secretary of State has certified an asylum or human rights claim as clearly unfounded under section 94 of the 2002 Act. A power also exists in section 97A of the 2002 Act to prevent a person bringing an appeal while in the UK when the Secretary of State certifies that removal would be in the interests of national security. This latter power also allows the Secretary of State to certify in national security cases that the temporary removal of the appellant pending the outcome of an appeal would not breach the UK's human rights obligations (this provision was added by section 54 of the Crime and Courts Act 2013). The Act makes provision equivalent to the section 97A power to enable certification of a human rights claim where it is considered that the temporary removal of persons liable to deportation pending the outcome of an appeal would not breach the UK's human rights obligations, including where removal would not create a real risk of serious irreversible harm.
21. In July 2011 the Home Office published a consultation paper on *Family Migration*.<sup>2</sup> On 11 June 2012 the Government published its response to the consultation setting out that Immigration Rules would be made to reflect the Government's and Parliament's view of how the balance should be struck between the right to respect for private and family life under Article 8 of the ECHR and the public interest, including safeguarding the economic well-being of the UK, enforcing immigration controls and protecting the public from foreign criminals.<sup>3</sup> New Immigration Rules came into force on 9 July 2012.<sup>4</sup> The Act gives the force of primary legislation to the principles reflected in those rules by requiring a court or tribunal, when determining whether a decision is in breach of Article 8 ECHR, to have regard to the public interest considerations as set out in the Act.

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<sup>1</sup> SI 2006/1003 (as amended)

<sup>2</sup> <https://www.gov.uk/government/consultations/family-migration-consultation>

<sup>3</sup> <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/news/cons-fam-mig.pdf>

<sup>4</sup> Statement of Changes in Immigration Rules, HC194, published 13 June 2012