

## Crime and Courts Bill

### Fact Sheet: Section 47 of the Immigration, Asylum and Nationality Act 2006

1. Section 47 of the Immigration, Asylum and Nationality Act 2006 provides a power to make an immigration removal decision where a migrant has statutorily extended leave to remain in the United Kingdom. Statutorily extended leave occurs where a person has made an 'in-time' application to vary leave to remain or where the UK Border Agency is curtailing leave to remain. It extends leave until any appeal against the variation or curtailment decision is determined.
2. The intention behind section 47 was to speed up the removal process by allowing any appeal against removal to be heard simultaneously with the appeal against the variation or curtailment decision, rather than hearing these two appeals consecutively. Section 47 decisions are therefore served at the same time as the decision to refuse to vary leave to remain, or to curtail leave.
3. In a couple of recent judgments the Upper Tribunal concluded, in the cases of *Ahmad*<sup>1</sup> and *Adamally and Jaferi*<sup>2</sup> that section 47 cannot work as it was intended, on the grounds that secondary legislation<sup>3</sup> prevents the Secretary of State from making, in the same decision letter, a decision to refuse a variation of leave to remain and a decision to remove a person from the United Kingdom. In the Upper Tribunal's judgment the removal decision cannot be made until written notice of the decision to refuse to vary a person's leave to remain has been given to that person. In effect, a decision to refuse to vary leave or curtail leave and a decision to remove have to be taken consecutively rather than concurrently.
4. In the absence of section 47, the UK Border Agency must wait for persons refused leave to remain to exhaust any appeal rights and become overstayers, at which point a removal decision may be made under an alternative power in section 10 of the Immigration and Asylum Act 1999<sup>4</sup>. Having to proceed in this way creates delay, additional administration and may also generate a second right of appeal.
5. The Secretary of State is appealing the Upper Tribunal's judgement before the Court of Appeal, but at the same time is clarifying in the Crime and Courts Bill when a decision under section 47 can be made and how it can be given to a person in relation to the decision either to refuse to vary leave, to curtail leave or to revoke leave, thereby ensuring that notice of both decisions can be served simultaneously.

**Home Office  
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<sup>1</sup> [http://www.bailii.org/uk/cases/UKUT/IAC/2012/00147\\_ukut\\_iac\\_2012\\_ja\\_afghanistan.html](http://www.bailii.org/uk/cases/UKUT/IAC/2012/00147_ukut_iac_2012_ja_afghanistan.html)

<sup>2</sup> [http://www.bailii.org/uk/cases/UKUT/IAC/2012/00414\\_ukut\\_iac\\_2012\\_ma\\_sj\\_srilanka.html](http://www.bailii.org/uk/cases/UKUT/IAC/2012/00414_ukut_iac_2012_ma_sj_srilanka.html)

<sup>3</sup> The Immigration (Continuation of Leave) (Notices) Regulations 2006 [2006 No 2170] <http://www.legislation.gov.uk/uksi/2006/2170/contents/made>

<sup>4</sup> S.10 IAA 1999 provides that the following persons may be removed from the UK: those who breach a condition of their limited leave; those who overstay their limited leave; those who use deception in seeking leave to remain (but not leave to enter – to which paragraph 9 Schedule 2 would apply); those whose indefinite leave to remain has been revoked under section 76(3) of the Nationality, Immigration and Asylum Act 2002 (ceased to be a refugee); family members of the above.