Chapter 20 – Appeals

20. Introduction

The appeals process contained in part 5 of the Nationality, Immigration & Asylum Act 2002 was given effect on 1 April 2003 and applies to all appealable decisions taken after that date. It repealed and replaced the previous provisions set out in Part IV of the 1999 Act. Appeals against decisions taken between 2 October 2000 and 1 April 2003 are still dealt with under the 1999 Act provisions. Appeal rights prior to 2 October 2000 are set out later in this chapter.

20.1 Appeal rights from 1 April 2003

Part 5 of the 2002 Act simplifies the appeals system by including almost all appeal rights into one section – section 82(1), and grounds of appeal into another – section 84. As a consequence, the IS151 series of forms, the one-stop forms, and the appeal notices were changed with effect from 1st April 2003.

20.1.1 Appeal triggers

Appeal triggers are 'immigration decisions'. The making, giving or serving of removal directions is not considered to be an 'immigration decision'. A new notice of decision to remove must be given following service of the IS151A. It is this new notice which triggers a right of appeal.

The following list includes those 'immigration decisions' which are most likely to apply to enforcement work:

- Section 82(2)(g) - Decision that a Section 10 1999 Act case is to be removed;
- Section 82(2)(h) - Decision that an illegal entrant is to be removed;
- Section 82(2)(i) - Decision that the family of an illegal entrant is to be removed;
- Section 82(2) (j) - Decision to make a deportation order (including when a court has recommended deportation).
- Section 82(2) (k) - Refusal to revoke a deportation order.

20.1.2 Grounds of appeal

- Section 84 sets out all possible grounds of appeal against any of the immigration decisions listed in Section 82:

- Section 84(1)(a) - Decision is not in accordance with immigration rules, for example where the appellant argues he satisfies the rule;
- Section 84(1)(b) - Decision is unlawful under the Race Relations Act 1976; - a public authority must not act in contravention of the Race Relations Act;
- Section 84(1)(c) - Decision unlawful under s6 Human Rights Act 1998; - a public authority must not act in contravention of the obligations under the European Convention of Human Rights;
- Section 84(1)(d) - Decision breaches Community treaty rights of EEA National or family member;
- Section 84(1)(e) - Decision "otherwise not in accordance with the law"; - Where an appellant claims the benefit of a policy that is not within the rules;

- Section 84(1)(f) - Discretion under the Immigration Rules should have been exercised differently; For example, the discretion that is to be exercised under the general grounds for refusal in paragraph 320 of the immigration rules;
- Section 84(1) (g) - Removal in consequence of immigration decision would breach our obligation under Refugee Convention or would be unlawful under s6 Human Rights Act 1998. For example a decision to remove will send them to a country where the appellant has a well founded fear of persecution or removal would breach their human rights.

20.2. No destination appeal

The notice of the immigration decision (e.g. IS151B) **must** state the country or territory to which it is proposed to remove the person. (It is possible to state more than one country – see relevant guidance). Under section 82 and section 84 of 2002 Act there is no appeal against destination. A person with a strong objection to destination could claim that such a removal would breach the Refugee Convention or the Human Rights Act.

20.2.1. Suspensive appeals

Some appeals may be brought in the United Kingdom and others may only be brought from abroad.

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 while an appeal is pending.

Section 92 of the 2002 Act sets out when an appeal is suspensive. Some appeals are always suspensive including appeals against: refusal of leave to enter **only if** the applicant holds a valid entry clearance at the time of arrival and was attempting to enter for the same purpose entry clearance was issued for;

- refusal of a certificate of entitlement;
- refusal to vary existing leave to enter or remain where the result is that the applicant has no leave remaining;
- variation of leave to enter or remain so that a person has no leave (curtailment);
- revocation of indefinite leave to enter or remain under section 76 of the 2002 Act; and

- A decision to make a deportation order.

- Other appeals are only suspensive if:

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

The most prevalent suspensive decisions that are likely to be found in Enforcement are:

- deportation decisions; and
- Decisions to remove under section 10 of the 1999 Act where an asylum or human rights claim is made which is not clearly unfounded.

- Race discrimination grounds are not included in section 92 and an appeal brought solely on race discrimination grounds does not of itself attract an in-country right of appeal.

20.2.2 Non-suspensive appeals (NSA)

Under section 94 of the 2002 Act, asylum and human rights claims made in the UK after 8 November 2002 can be certified such that the claim cannot be relied upon to make an otherwise non-suspensive right of appeal into a suspensive appeal. Claims may only be certified if they are “clearly unfounded”. Such claims will normally be dealt with by the fast-track decision process already established at the Oakington Reception Centre where, upon receipt of a NSA decision, removal directions will be set and the claimant removed to their country of origin, or the country in which they reside, from where they can appeal.

20.3. Pending appeals

Section 104 of the Nationality, Immigration and Asylum Act 2002 explains the circumstances in which an appeal is "pending." This is important because a person cannot be removed from the UK while an appeal that may be brought in-country is pending. The definition only applies to appeals under section 82 of the Act.

The start of the period

Where an appellant is in the UK, many enforcement decisions cannot take effect as long as an appeal is pending. An appeal is pending while the time limit for appealing is running (i.e. from the

point when the refusal notice is served), and, if an appeal is instituted, from the point when the appellant serves a formal notice of appeal. If there is no in-time appeal, the fact that someone may appeal out of time does not make the appeal pending unless and until they do so. A person who does not appeal within the time limit may be removed unless they put in an out-of-time appeal which is accepted by the Tribunal.

The end of the period

An appeal ceases to be pending when it is finally determined or, in other words, when the appellant runs out of options for appealing further. As soon as the time limit for appealing to the higher court expires, the appeal ceases to be pending unless and until the appellant seeks the court's permission to appeal out of time. If a higher court decides to remit a case back to the AIT, the remittal decision is not a final determination of the appeal and therefore the appeal continues to be pending.

Other circumstances in which an appeal ceases to be pending

- An appeal will also cease to be pending when:
- the appeal is withdrawn
- the appeal is abandoned
- the appellant is granted leave to enter or remain in the UK
- the appellant leaves the UK
- a deportation order is made (unless the appeal is against the decision to make a deportation order, in which case the appeal continues to be pending)
- A certificate is issued under section 97 or 98 (i.e. a one-stop certificate or a certificate that the decision was taken on grounds of national security or the public good).

20.3.1. Obtaining travel documents while an appeal is pending

Sections 77, 78 & 79 of the 2002 Act prevent removal while asylum claims, appeals and appeals against deportation orders are pending. However, while removal cannot proceed it is possible to take preparatory action.

It is possible to begin gathering information, bio-data, and supporting evidence that may assist in documenting a person before refusal and while an appeal is pending. All information gathered in order to process a travel document application, together with any completed documentation application forms, should be placed in a sealed envelope on file, which can then be forwarded as part of any document application package that is subsequently required. It is important that the case-worker making the asylum decision is not influenced by a suggestion that the person

concerned is likely to be removed. This material must therefore be kept separate from those parts of the file that form part of the asylum decision making process.

Only once any outstanding asylum application has been refused may a travel document application be actually submitted to the authorities concerned. During the passage of the 2002 Act the Government gave reassurances that any preparatory action taken including applications for travel documents would not endanger the applicant on return.

The fact that someone has claimed asylum must not be disclosed to the country to which a person is being removed. Information about an individual's asylum claim must not be submitted to a foreign government. Additionally, fingerprints must not be submitted as part of any identification data submitted with a travel documentation application while an appeal is pending.

If as a consequence of a travel document application sent to a foreign government, the applicant is invited to attend an interview at that government's embassy, it is only possible to require the applicant to attend the interview once appeal rights are exhausted.

20.4. Notices - Service of basic enforcement notices

Some notices have been changed to reflect the new appeal procedures. The IS 151A remains the same and sets out the offender's immigration status. A new form IS 151A part 2 is the decision that a person is to be removed. The IS 151B is now the **decision** that a person who has made an asylum/human rights claim is to be removed. Both of these forms detail the person's appeal rights. The IS 151D notifies the person of the removal directions.

There is no longer a need for forms IS151C and IS151E because persons who have entered in breach of a DO no longer have separate appeal rights to other illegal entrants. There is also no need to serve TBN RDs, as removal directions no longer trigger appeal rights. There is also no need for separate forms for third country cases as TCU have agreed that the new forms suffice.

20.4.1. Procedures to follow when dealing with enforcement cases

- Serve form IS151A as usual (illegal entrants and section 10 cases)
- Serve immigration decision to remove, either:

- IS151A part 2 (where the appeal right is 'out-of-country'); or IS151B (where asylum or Human Rights claim has been refused)If asylum or HR is claimed after serving the IS151a part 2 , withdraw this notice, prepare an **undated** IS151B for the file ready to be served with the RFRL if the claim is refused.
- These forms can be served, having given due consideration to the case, after service of the IS151A
- Serve form IS151D. In most cases 72 hours must be allowed between the service of removal directions and the removal itself

- If the subject then makes a Human Rights or asylum claim, suspend RDs and refer to OSCU.

20.4.2. Notifying decisions

The Immigration (Notices) Regulations 2003 require us to serve a notice of decision in all cases where an appealable decision is made. This covers: immigration decisions (within the meaning of section 82);
EEA decisions; decisions to grant leave which result in a right of appeal on asylum grounds under section 83; decisions to withdraw recognition as a refugee but grant alternative leave which results in a right of appeal on asylum grounds under section 83A.

The Regulations also apply to decisions to make a deportation order in Overstayers Regularisation Scheme cases, which still attract a right of appeal under the 1971 Act. For more information about notifying decisions see chapter 12 of the IDIs.

20.4.3. Service of decisions

Where a decision cannot be served on the individual or representative, either by hand, fax or recorded delivery post, the notice may be served on file but the circumstances must be clearly noted, the original notice signed, dated and attached to the file. It is important to take every opportunity to advise applicants that if they do not keep in touch, a negative decision will be served on file. For more information on service of decisions see Chapter 12 of IDIs.

20.5 New appeal notices

IS87 (UK) [also known as form AIT-1] – notice of an appeal to the Asylum and Immigration Tribunal, suspensive. Date when appeal should be returned should be completed wherever

possible. Contains box for reasons for late return of form, which forms basis of OOT consideration.

IS87 (non-UK) [also known as form AIT-3] – notice of an appeal to the Asylum and Immigration Tribunal, non-suspensive. Appeal date and reasons for lateness to be completed as above.

20.6. Procedures for appeals from abroad

There are two appeal forms, IS87 (UK) for use with an in-country right of appeal, and IS87 (Non UK) where the right of appeal is from outside the UK. These inform the appellant of where to send the notice of appeal. A notice of appeal should be sent by post directly to Asylum and Immigration Tribunal, PO Box 7866, Loughborough, LE11 2XZ, or they can be faxed to +44 (0)1509 221699. The appeal must be made not more than 28 working days after departure from the UK.

20.7 Continuing Leave

Section 118 of the 2002 Act amends section 3C of the 1971 Act. As before, when a person with limited leave applies in time for a variation of that leave, and that leave expires before a decision is made, the leave is automatically extended for as long as the application remains outstanding. If the application is refused, the leave expires when the period for appealing in time runs out. If an appeal is lodged, the leave expires when the appeal ceases to be pending.

Leave under section 3C now expires automatically if the applicant leaves the United Kingdom or if the application for variation is withdrawn. If a non-appealable decision is taken, leave expires when notice of the decision is given. (I.e. by hand or posted).

20.8. Overstayers' Regularisation Scheme

Prior to 2 October 2000 a person who "overstayed" the period of his limited leave in the United Kingdom would have been liable to deportation. On 2 October 2000 section 10 of the Immigration and Asylum Act 1999 came into force. This made provision for those overstayers, not previously served with a notice of a decision to make a deportation order, to be administratively removed from the United Kingdom by way of directions given under section 10. Deportation was expensive and time-consuming process, which carries with it both a bar on return for at least

three years and a right of appeal before removal. The system that replaced it ensured overstayers were removed with no right to appeal the decision in the UK unless they made an asylum or human rights claim whilst in the United Kingdom, or in the case of an EEA national or family member of an EEA national, he claims that the decision would breach his Treaty rights in respect of entry to or residence in the United Kingdom.

Section 9 of the 1999 Act allowed arrangements to be made under which overstayers could apply to regularise their stay i.e. to apply for leave to remain. Applications had to be made within a specified period (8 February to 1 October 2000 inclusive). The main consequence of the Regularisation Scheme for Overstayers is that where any application made under the scheme is refused, the applicant remains subject to deportation action and will continue to have a separate right of appeal from within the United Kingdom against the decision to make a deportation order.

20.9 Appeal rights from 2/10/00 – 1/04/03

- From 2 October 2000 – 1 April 2003 separate rights of appeal were triggered by separate immigration decisions, or the service of removal directions.

20. 10. Definitions – 1999 Act

Section 63 of the 1999 Act provided for an in-country right of appeal to an Immigration Judge against a decision, of the Secretary of State, to make a deportation order. There was also a right of appeal against a refusal, by the Secretary of State, to revoke an order. A deportation order cannot be made against a person whilst an appeal against the decision to make it is pending or may still be brought.

Section 63(4) also gave a right of objection to destination. The applicant can claim that he should be removed (if at all) to an alternative country specified by him. However, if he is not a national or citizen of the country specified he must show that the country specified will admit him, in accordance with Section 68(3).

Section 64 states that there is no right of appeal under section 63 against a decision to make a deportation order if the grounds are that it would be conducive to the public good as being in the interests of national security or of the relations between another country and the UK or for other reasons of a political nature. Similarly, there is no right of appeal under that section against a refusal to revoke a deportation order if the Secretary of State has certified that exclusion is

conducive to the public good or revocation was refused on that ground by the Secretary of State personally. Appeals in such cases are considered by the Special Immigration Appeals Commission (SIAC).

Section 65 provides an in-country right of appeal on racial discrimination or human rights grounds, where someone alleges that a decision under the Immigration Acts relating to their entitlement to enter or remain in the United Kingdom racially discriminated against him, or was made in breach of his human rights.

Section 66 provides for a right of appeal against directions for removal from the United Kingdom (a) under section 10, (b) on the ground that the person is an illegal entrant, and (c) under the special powers conferred by Schedule 2 to the 1971 Act in relation to members of the crew of a ship or aircraft. That person may appeal to an Immigration Judge against the directions on the ground that in the facts of his case there was no power in law to give them on the grounds quoted. An appeal under this section may not be exercised in the United Kingdom **unless** the person has an in-country appeal under the asylum or new human rights/racial discrimination provisions. Where this is the case, he may dispute the validity of the directions at the same time.

Section 67 confers a right of appeal against directions for removal on the grounds that removal should be to a specified country other than the one in the directions, where a deportation order has been made or where a person has entered the UK in breach of a deportation order.

Section 68 sets out limitations on the right of appeal under Section 67. If a person who has a right of appeal under Section 63 did not object to the destination or his objection was not upheld, he is not entitled to appeal under Section 67 against any subsequent direction given for removal to the same country. Furthermore, a person who claims he should be removed to an alternative country, must show (if he is not a national or citizen of that country) that the country will admit him.

Section 69 sets out the in-country rights of appeal of persons who are refused asylum. Subsection (4) states that if the Secretary of State has decided to make a DO against a person, or has refused to revoke such an order; the person may appeal to an Immigration Judge on the ground that his removal in pursuance of the directions would be contrary to the Convention.

Section 70(7) states that a claim for asylum must have been made before the time of the making of directions, if the person wishes to appeal against the removal directions on asylum grounds. (If

asylum is claimed for the first time only after removal directions have been given, these should be cancelled, a section 75 notice should be served and the case should be referred to asylum case-workers for the claim to be considered.)

Section 70(8) states that a person may not appeal against a decision to refuse to revoke a DO under section 69(4) (b) if he has had the right to appeal against the decision to make the DO under section (69(4) (a) (whether or not he has exercised it).

Section 73 applies when an appeal has already been finally determined. It prevents applicants from bringing additional appeals on grounds, which could have been brought forward earlier. Under section 73(8) if, following an application of the appellant an IO or the Secretary of State makes a decision in relation to the appellant, the IO or the Secretary of State may certify that any further application is being made to delay removal and for no other legitimate purpose. If certified, no appeal can be brought. (Note: In enforcement cases, such decisions will be taken by a case-worker.)

Section 74 provides for a "one-stop notice" (form IS74) to be sent to any applicant where leave to enter or remain has been refused and the applicant has an in-country right of appeal, e.g. asylum/human rights/racial discrimination applicants, or persons liable to deportation. This notice requires him to state any additional grounds (using form IS76) he has for wanting to enter or remain in the UK. A one-stop notice must be served on **all** members of the appellant's family, even though they may not be entitled to appeal in their own right.

Section 75 introduces the one-stop procedure into certain enforcement **cases at the time of application**. Those liable to be removed under section 10 and illegal entrants **must** be given a one-stop notice (forms IS75 and IS76) if they claim asylum or allege that an immigration decision was taken in breach of their human rights. So must any members of their family. If a subsequent decision is made against them with an in-country right of appeal, they and their family members must be given **another** one-stop notice, this time under section 74 (forms IS 74 and IS76) as above.

There is **no longer** a right of appeal against deportation on the grounds that a person is not the person named in the DO.

20.11. Appeal rights in deportation cases

A person was able to appeal against either a decision to make a deportation order (section 69(4) (a) of the 1999 Act) or to refuse to revoke a deportation order (section 69(4) (b) of the 1999 Act) on the basis that his removal would be contrary to the Convention. He could not appeal under section 69(4) (b) if he had the opportunity of appealing against the decision to make a deportation order (whether the appeal was under section 69(4) (a) of the 1999 Act or section 8(3) (a) of the 1993 Act).

20.11.1 Restricted right of appeal in deportation cases

The restricted right of appeal as set out below **only** applies to those cases where a notice of intention to deport was served before 2 October 2000, or to overstayers who made an application for leave to remain under the Regularisation Scheme for Overstayers and whose application has been refused.

Section 5(1) of the 1988 Act, as amended by the 1996 Act, provides that a person may only appeal under section 15 of the 1971 Act against a decision to make a DO under section 3(5) on the ground that there is no power in law to make the DO for the reasons stated in the notice of the decision. There is therefore a need for accuracy when writing the notice of intention to deport.

This restriction does not apply to a person last given leave to enter more than 7 years before the date of decision or any person otherwise exempted by an order made by the Secretary of State. A person is presumed to have been given leave to enter less than 7 years before the date of decision unless he proves the contrary.

20.12. Appeal rights prior to 2 October 2000

People who had a decision made before 2 October 2000 retain any right of appeal they may have had previously under the 1971 Act, the 1993 Act and the 1996 Act.
Section 8 of the 1993 Act provided appeal rights **before** removal for all asylum applicants refused asylum in the UK, whatever their immigration status. The Act did not create a right of appeal against the refusal of asylum itself - the appealable decision was the decision to remove that was taken under schedule 2 to the 1971 Act. It was therefore the service of removal directions that triggered the right of appeal.

Subsections (1) - (4) of section 8 established appeal rights against the different types of decision that can arise in asylum cases. Section 8(3) covered asylum cases where a deportation decision is made and section 8(4) covered asylum cases where directions for removal as an illegal entrant or seaman deserter were given.

20.13. Definitions - old appeal rights

Persons served with a notice of intention to deport **before** 2 October 2000 still retain their rights to deportation appeals under section 15 of the 1971 Act. The Immigration and Asylum Appeals (Procedure) Rules 2000 and also the later set of rules for these transitional cases govern the processing of these appeals.

Section 15 of the 1971 Act gives a right of appeal against a decision to make a DO under section 3(5) of the 1971 Act, **and also** a right of appeal against a refusal to revoke a DO (only exercisable from outside the UK. See below for asylum cases). Time limit is 28 days.

Section 17 of the 1971 Act gives a right of appeal against inter alia, the giving of directions for removal on a DO being made. It provides that, where an appellant under section 15 is served with directions for removal, he may on that appeal object to the proposed country of destination and claim that he ought to be removed (if at all) to different country. It also states that, where a person is able to object to a country on an appeal under section 15, and he does not object or his objection is not sustained, he is not entitled to appeal under section 17 against any directions subsequently given for removal to the same country.

Section 8 of the 1993 Act gives a right of appeal on asylum grounds against a decision to make a DO or against a refusal to revoke a DO.

20.14. Withdrawal of appeals

It is open to an appellant, or his authorised representative, to withdraw an appeal at any time before it is determined. Once an appeal is withdrawn, it ceases to exist and cannot be resuscitated. Except when an appeal is withdrawn orally before an Immigration Judge, withdrawal of an appeal **must be given in writing**, although no particular form of words is prescribed in the Procedure Rules. A letter from an appellant stating that he is withdrawing his appeal is acceptable as long as it is in unambiguous terms.

20.14.1 Procedures when notice of withdrawal of appeal is received

Where an Immigration Judge was never notified that a notice of appeal was received, no action is necessary in the event that a notice of withdrawal is received. Where an Immigration Judge has been notified that an appeal has been lodged, the withdrawal of the appeal is not effective until accepted by the Immigration Judge. Inform the relevant casework section who will notify the Immigration Judge and advise the appropriate action.

20.14.2 Where the appellant argues that a withdrawn appeal is still extant

Although a withdrawn appeal cannot be resuscitated, it is possible for an appellant to argue that his appeal was not withdrawn properly, and therefore is still extant. Only an Immigration Judge can consider re-opening the appeal if the earlier withdrawal has been seen and accepted by an Immigration Judge. Advise the appellant to contact the Clerk to the Immigration Judge if this is the case.

20.15. Decisions against which there is no right of appeal to the AIT

Decision to make a DO on the ground that deportation is conducive to the public good as being in the interests of national security or of relations between the UK and any other country or for reasons of a political nature if application certified by the Secretary of State.

Refusal to revoke a DO if the Secretary of State certified that the applicant's exclusion from the UK is conducive to the public good or if revocation is refused on that ground by the Secretary of State (and not a person acting under his authority).

20.16 Special Immigration Appeals Commission (SIAC) Cases

Sections 64(1) or (2) and 70(1) to (6) of the 1999 Act removed the respective rights of appeal conferred by sections 63(1) and 69 where the decisions were taken on the ground that the Secretary of State certified that a person's exclusion, departure or deportation was conducive to the public good. (In the case of variation of limited leave to enter or remain, or deportation it must be conducive to the public good in the interests of national security or of the relations between the UK and any other country or for other reasons of a political nature). (Regulation 29(4) of the EEA Regulations 2000 provides that the above provisions also apply equally to EEA nationals and

their family members). These sections were repealed with the implementation of the 2002 Act. Replacement provision is found in section 97 of the 2002 Act.

The Secretary of State can certify that a decision has been made by him personally, wholly or partly on grounds of national security in the interests of relations between the United Kingdom and another country, or in accordance with a direction given by him personally on those grounds. He can also certify cases where the decision was taken on the basis of information, which he considers should not be made public on those grounds or for other reasons of public interest (Section 97 (3)).

In the case of section 97 (1), certification can be done by an official, provided that the decision itself was taken by the Secretary of State acting in person. In the case of section 97 (3), certification has to be done by the Secretary of State himself.

In either case, the effect of certification is that if an appeal is then brought, it is heard by SIAC, and if one has already been lodged, it lapses, and the appeal switches to SIAC.

However, the Special Immigration Appeals Commission Act 1997 (as amended by the 1999 Act) provides a right of appeal to the Commission for those who would have had a right of appeal under Part IV of the 1999 Act but for a public interest provision. Non EEA nationals who are excluded have a right of appeal to the Commission only in very limited circumstances. (These are where they seek to rely on an enforceable Community right or any provision made under section 2(2) of the European Acts 1972 or where they seek entry to the UK to exercise rights of access to a child resident in the UK, as the spouse or fiancé of a person present and settled here or as the parent, grandparent or other dependant relative of a person present and settled here). The commission is able to consider sensitive material without it necessarily being disclosed to the appellant and his representative. In addition the commission also hears appeals against certification as a suspected international terrorist under Part 4 of the Anti-terrorism, Crime and Security Act 2001.

20.17. Time limits for appeals

- Notice of an in-country appeal to the Asylum and Immigration Tribunal shall be given no later than 10 working days after the notice of decision was received. (5 days if detained)
- A person who may not appeal while in the United Kingdom must give notice of their appeal not later than 28 days after departure from the United Kingdom.

- An application for reconsideration of the Tribunal's decision may be made no later than 5 working days after receipt of the written notice of the Tribunal's determination.
- When detained appellants give notice of appeal/application to a custody officer, that person must endorse date of service and forward to the AIT;
- Time limit for appealing starts when notice of decision is served, not when it is received;
- If the appellant knows the appeal is out of time he must give reasons and attach relevant evidence;
- The Tribunal may allow a late appeal to proceed "if satisfied that by reason of special circumstances it would be unjust not to do so".

Restricted – do not disclose – start of section
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Restricted – do not disclose – end of section

20.18 The "One-Stop" Appeal Process

The "one-stop" procedure, which came into force on 2 October 2000, was designed to ensure that applicants declared all additional grounds they had for wishing to remain in the United Kingdom at an early stage in the process. The aim was to prevent a person from prolonging his stay here by making one application, taking it through the entire appeals process and then, on the point of removal, making another application. The Nationality, Immigration & Asylum Act 2002 simplifies the one-stop process to the extent that there is now no such thing as an immigration appeal, an asylum appeal or a human rights appeal. There is just an appeal and a variety of grounds may be put forward.

The 2002 Act widens the circumstances where a certificate may be issued, preventing a further right of appeal following a late claim and allowing removal to proceed.

20.18.1. One-stop notice

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, the Home Office may serve on an applicant a written one-stop 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 notice 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 notice, but there is also no obligation to serve the notice at all. A one stop notice 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 notice. 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. The Home Office 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.

There is no longer any limit on the category of person to whom a one-stop notice can be issued, or at the stage of the application when it can be issued. From 1st April 2003, a new IS75 'one-stop notice', replaced the existing IS75 form. In enforcement cases the new 'one-stop notice' should be served in the following circumstances: if the person concerned has not been served with a one-stop notice under this Act or the 1999 Act before **and**

- they have been encountered in the field but have not been detained pending imminent removal **and/or**
- They have made an asylum or Human Rights claim when encountered in the field.

It is important to keep a copy of the one-stop notice (IS75) on file with a note of when, where and how it was served. Where feasible, it would also be helpful to have on file an acknowledgement of service. **CID must be updated to show that the one-stop notice has been served and a copy of the notice should be forwarded to the HO file (where one exists) or to the file creation unit.**

- The person will have 10 working days in which to return the statement of additional grounds (IS76) to theICE team concerned. This should then be considered by the relevant case-worker.

- Transitional provisions ensure that 1999 Act one-stop notices, statements of additional grounds and appeals count for the purposes of the 2002 Act.

20.18.2. One-stop appeal procedures

The appeal form and one-stop statement can be returned by post or fax. The return address is given on the forms. It can also be delivered by hand, but if the appeal can only be made from outside the UK, a representative here must do this.

One-stop forms **must** be given to all dependants ("relevant family members") of a person with a right of appeal, even if the dependants themselves do not have a right of appeal. A relevant

family member is defined as a person who is subject to a decision and who is related, in one of the following ways, to a person who has a right of appeal under the 2002 Act:

- his spouse;
- a child of his spouse;
- a person who has been living with him as a member of an unmarried couple for at least two of the three years before the day on which the decision was made;
- a person who is dependant on him;
- A person on whom he is dependant.

On receipt of the statement of additional grounds (IS76), the Secretary of State will consider the additional grounds. If an asylum claim is made at that stage, for example, an interview needs to be conducted.

On receipt of the supplementary grounds of appeal, all the papers will be forwarded to the appellate authority.

If the one stop notice (IS75) prompts a family member to claim asylum, the normal procedures should be followed in respect of that application. This includes serving another notice (IS75) on the new asylum applicant and all family members (including the original asylum applicant). Obtaining a waiver from the applicant that they wish to make their own application and no longer wish to be a dependent on the application of the main applicant.

20.19. Certification under the Nationality Immigration and Asylum Act 2002

The 2002 Act widens the categories of those liable to certification. This is no longer restricted to cases in which a 1999 Act appeal has been fully determined. A certificate may now be issued so long as a 1999 or 2002 Act appeal right was notified, whether or not an appeal was lodged, or if lodged, whether or not it was determined. As before, although the legislation states that immigration officers can certify claims; this power must not be exercised.

20.19.1. Certification pre 2002 Act

Section 73 of the 1999 Act provided a power to limit further appeals by certifying them. This applies when an appeal has already been determined. Once certified, there is no right of appeal.

Where a person has already had the benefit of a one-stop appeal (i.e. one where a section 74 notice was served), and subsequently lodges another notice of appeal claiming racial discrimination or a breach of their human rights, the Secretary of State may certify that the claim could reasonably have been made before, is designed to delay removal and has no other legitimate purpose.

The Secretary of State may certify a case if an appeal is based on matters which were considered at an earlier appeal.

An IO or the Secretary of State may certify that in his opinion any further application is being made to delay removal and for no other legitimate purpose.

For enforcement cases, the only circumstances where an application will generate an in-country right of appeal are asylum applications or human rights claims. Such cases will need to be referred to the relevant casework section and **it will be for the relevant case-worker to decide whether or not to certify the claim.**

Revision History

Date change published	Officer/Unit	Specifics of change	Authorised by;	Version number after change (this chapter)
		OEM Revision		1
27 November 2013	EROP	1-Minor formatting changes 2-removal of flowchart at section 20.2.2 3-Review of restricted content. Restrictions apply at: 20.17	Kristian Armstrong, Director, IBPD	2