

IMMIGRATION DIRECTORATES' INSTRUCTIONS
CHAPTER 13
SECTION 3 - APPEALS

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1. GENERAL

The Immigration and Asylum Act 1999 introduced provisions under which certain categories of people will normally be subject to section 10 administrative removal procedures (See **Chapter 13 Section 2**) rather than deportation.

Subject to transitional arrangements contained in the 1999 Act, including people dealt with under the Regularisation Scheme for Overstayers (section 9 of the 1999 Act and the Immigration (Regularisation Period for Overstayers) Regulations 2000), deportation is reserved for those cases where the deportation of the person concerned is deemed to be conducive to the public good, or where a court has recommended that the person concerned should be deported. The family members of such people are also liable to deportation.

2. DEPORTATION APPEALS

Section 82(1) of the Nationality, Immigration and Asylum Act 2002 provides for a right of appeal where an immigration decision is made in respect of a person. For people who are subject to deportation action this includes a right of appeal from within the United Kingdom against a decision to make a deportation order (section 82(2)(j) 2002 Act). It is important to stress that the *decision* to make a deportation order is separate to the formal *making* of the order. It is the *decision* to make a deportation order that gives rise to a right of appeal under section 82(2)(j). The order cannot be formally made while any appeal under this section is pending.

Where a deportation order has been made against a person he may apply to have the order revoked. If that application for revocation is refused the person will be entitled to appeal against the refusal decision (section 82(2)(k)). (See **Chapter 13 Section 5** Revocation of deportation orders for further information). Applications to revoke a deportation order will ordinarily be made from outside the United Kingdom (as the affected party will have been removed pursuant to the order) and the right of appeal against a refusal to revoke can ordinarily only be brought from overseas.

3. APPEAL AGAINST SECTION 10 REMOVAL

A person subject to administrative removal under section 10 will normally have a right of appeal exercisable from outside the United Kingdom only. However if he has made an asylum or human rights claim while in the United Kingdom then by virtue of section 92(4)(a) of the 2002 Act the person may appeal while he is in the United Kingdom. The exception to this is where the Secretary of State certifies that the asylum or human rights claim which has been made is clearly unfounded (see the API on Certification for further guidance).

Where an EEA national or the family member of an EEA national does not have or has ceased to have a right to reside under the Immigration (European Economic Area) Regulations 2006 (2006 Regulations) and is to be removed by way of directions under section 10 of the 1999 Act,

the right of appeal will be under the 2006 Regulations. Further information on EEA cases can be obtained from the European Casework Instructions available on the BIA website.

4. EFFECT OF APPEALS

4.1. Deportation orders

A deportation order may not be made against a person while an appeal against the decision to make it may be brought (within the time prescribed for doing so), or is pending.

4.2. Removal

Where a person is entitled to bring an appeal under section 82(1) while he is in United Kingdom and that appeal is pending he may not be removed or required to leave the United Kingdom. However, the detention provisions in Schedule 2 and 3 of the Immigration Act 1971 may still be applied where appropriate.