

Crime and Courts Bill

Fact Sheet: Restriction on right of appeal from within the United Kingdom

1. The Secretary of State (in practice, the Home Secretary) has a non-statutory power to direct that an individual's exclusion from the United Kingdom would be conducive to the public good. Such decisions are taken by the Secretary of State personally. When taking such a decision, it may be necessary to give an accompanying direction cancelling an individual's existing immigration status, such as leave to enter or remain in the United Kingdom. The Secretary of State's decision to exclude is not in itself an appealable decision but the accompanying decision to cancel leave attracts an automatic appeal right under existing immigration legislation (the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act")).
2. In March 2011, the Court of Appeal held, in the case of the Secretary of State for the Home Department v MK (Tunisia), that existing immigration legislation allowed for an in-country right of appeal against a cancellation of leave, even when the cancellation was accompanied by the Secretary of State using her non-statutory power to direct that an individual's exclusion from the United Kingdom would be conducive to the public good. As a result of this decision, an individual excluded from the UK is allowed to re-enter the country to appeal a decision to cancel leave, in contravention to the exclusion decision by the Secretary of State.
3. Clause 35 provides for a power by which the Secretary of State may remove an in-country right of appeal to the cancellation of an individual's immigration leave, when the Secretary of State certifies that such a decision was taken on the grounds that the person's presence in the UK was non-conducive to the public good. In effect, the certification on non-conducive grounds will be accompanied by an exclusion decision by the Secretary of State.
4. A person served with such a certificate would continue to be able to exercise their right of appeal against the cancellation of leave from outside the UK. This change ensures that the integrity of the Secretary of State's decision to exclude is maintained but leaves in place the appeal right that allows the individual to challenge the cancellation of leave from outside of the country.
5. This provision applies to non European Economic Area (EEA) foreign nationals only. The exclusion of EEA nationals is covered under separate legislation – The Immigration (European Economic Area) (Amendment) Regulations 2009. There is no provision to exclude UK nationals.