

SUPPLEMENTARY BENEFIT

Persons from abroad—extent of tribunal's jurisdiction on question of patriality.

The claimant, a widow, entered the United Kingdom on 11 July 1982. She was granted limited leave on entry on condition that she did not have recourse to public funds. (Persons granted limited leave to remain in the United Kingdom on the condition that they do not have recourse to public funds cannot obtain supplementary benefit because they are treated as having requirements which are NIL). Subsequently on 3 May 1984 she made a claim for supplementary benefit for the period starting on 12 July 1982. The basis of the claim was that as a patriotic she had the right of abode in the United Kingdom and should not have been subject to immigration control when she arrived in the country. Following confirmation from the Home Office on 3 January 1985 that there were now no longer any restrictions on the period for which the claimant could remain in the United Kingdom, the adjudication officer decided to award supplementary benefit but only from a present date. On appeal the tribunal decided that the claimant had the right of abode in the United Kingdom and was entitled to supplementary benefit from 1982. The adjudication officer appealed to a Social Security Commissioner.

Held that:

1. the term 'without leave' in regulation 10(6) and paragraph 10 of Schedule 3 to the Requirements Regulations 1983 refers to persons for whom leave is required but has not been obtained. These provisions cannot apply to a person who is in fact a patriotic (paragraph 19);
2. a tribunal has jurisdiction, for supplementary benefit purposes to decide whether a claimant is a patriotic so as to require no leave to enter in the terms of regulation 10(6) and paragraph 10 of Schedule 3 to the Requirements Regulations (paragraph 20(2) and (5));
3. supplementary benefit should be refused (except under any applicable Urgent Cases Regulations) until a claimant's patriality or right of abode in the United Kingdom has been established. In establishing this the Home Office should be the first avenue of approach (paragraph 20(4));
4. in the claimant's circumstances, her ignorance of the fact that she did not require leave to enter the United Kingdom and could have obtained a certificate of patriality (thus demonstrating that regulation 10(6) and paragraph 10 of Schedule 3 to the Requirements Regulations did not apply to her) constituted good cause for her late claim (paragraph 25).

The appeal was dismissed.

Decision

1. This appeal by the adjudication officer fails. My decision is that the decision of the social security appeal tribunal dated 4 September 1985 is not erroneous in point of law. If, however, I am wrong in this decision, my decision is that, on the basis of the additional facts found and reasons given in this decision, the decision of the tribunal is confirmed.

Representation

2. I held an oral hearing of this appeal by the adjudication officer. The adjudication officer was represented by Mr. E. O. F. Stocker, instructed by the Solicitor's Office, Department of Health and Social Security. The claimant, who was not present, was represented by Mr. Andrew Tucker of counsel, instructed by Mr. V. Jones, Solicitor, of the Leicester Rights Centre.

Nature of the Appeal

3. The issue in this appeal is whether the claim for supplementary benefit made on behalf of the claimant on 3 May 1984 for the period from 12 July 1982 and awarded by an adjudication officer from 7 January 1985 should, as decided by the appeal tribunal, be backdated to the first payment date after 11 July 1982.

4. The claimant (a widow) entered the country on 11 July 1982. She was granted limited leave on entry on condition that she did not have recourse to public funds. A person with limited leave in terms of regulation 10(6) of the Supplementary Benefit (Requirements) Regulations 1981, as amended, is treated, by virtue of paragraph 10(b) of Schedule 3 to those regulations, as having requirements which are Nil. She therefore obtains no supplementary benefit.

5. It is not now in dispute that the claimant was in fact a patrial who, under the law in force at her time of entry, did not require leave to enter this country. The Home Office has expressly confirmed that the original grant of limited leave was erroneous.

6. Four questions arise, the first two of which have not, so far as I am aware, been the subject of any previous decision of the Commissioner:

- (1) If limited leave (under section 33 of the Immigration Act 1971) is given by an immigration officer to a person who because she is a patrial in fact does not require leave at all, does regulation 10(6)(a) of the Requirements Regulations operate to disentitle the claimant to supplementary benefit?
- (2) Has a social security appeal tribunal jurisdiction to conclude, for the purposes of their appeal, that the claimant is a patrial?
- (3) Was the tribunal's decision that there was good cause for the delay in claiming correct in law?
- (4) If their decision was erroneous, what decision should I give?

The relevant statutory provisions

7. The relevant statutory provisions are set out in the Appendix to this decision.

The claim for benefit

8. On 3 May 1984 the claimant wrote to the Coventry DHSS manager that she wished to claim supplementary benefit from 12 July 1982. After referring to regulation 5(2) of the Supplementary Benefit (Claims and Payments) Regulations 1981 and a decision on what constitutes "good cause" (decision R(SB) 6/(83), the letter continued:

"I entered the country on 11th July 1982. The Immigration Officer mistakedly subjected me to immigration control when he should not have, as I have patrial status and the right of abode in the U.K. under the terms of the Immigration Act 1971 and the British Nationality Act 1981. I was allowed into the country on the understanding that I would never have "recourse to public funding" i.e. never claim any state benefits. In March 1983 a solicitor wrote on my behalf to the Home Office enquiring whether I may be given "indefinite leave to remain in the U.K." This was refused by the Secretary of State on 1 September 1983, and one of the grounds for refusal was that my son, Avtar Singh, could not support me without "recourse to public funding." My son was at that time claiming supplementary benefit. On receiving the Secretary of State's refusal I appealed and since have been involved in a lengthy Immigration Appeal."

During the whole of this period I had an entitlement to claim state benefits as I was theoretically free from immigration control and for supplementary benefit purposes I could not be classed as a person from abroad.

In my case the delay in not claiming supplementary benefit at an earlier date can be held to be "a mistaken belief reasonably held" with regard

to the mistakes made by the immigration control machinery and secondly, by the solicitor who wrote on my behalf to the Home Office but who neglected to confirm my immigration status.

State of health and age can also constitute "good cause". I am over 68 years of age and illiterate. I have thus had to lay my trust on representatives. Furthermore, because of illness on two occasions—29/3/1984 and 27/4/1984, I had to request adjournments to an Immigrations Appeals Adjudicator. The Adjudicator was furnished with medical certificates on each occasion which he accepted and adjourned the respective hearings.

The Commissioner held in R(SB) 6/83 that the expression "reasonably practicable" in the context of regulation 5(2)(b) of the Claims and Payments Regulations allows good cause to be shown where a claimant makes the appropriate enquiries but is insufficiently advised. It is submitted that I have claimed supplementary benefit as soon as "reasonably practicable" with regard to the situation already outlined. I have been involved in a lengthy immigration appeal and now it is just an administrative matter when the Home Office stamps my passport with "indefinite leave to remain in the U.K."

Please forward me the appropriate forms to claim my entitlements to my representative, Mr. M. Singh at the Asian Resource Centre so he can help me complete them."

9. (1) On 3 January 1985 the Home Office wrote to the claimant that:

"...there are no longer any restrictions on the period for which you may remain in the United Kingdom. An appropriate endorsement has been placed in your passport which is enclosed.

You are now free to remain indefinitely in the United Kingdom. You do not require permission from a Government Department to take or change employment and you may engage in business or a profession provided you comply with any general regulations governing the business or professional activity".

(2) On 26 February 1985, Leicester Rights Centre wrote to the local office of the DHSS in respect of the claimant:

"This is to inform you that the Home Office have accepted that [the claimant] is a patriotic citizen and therefore was free from any immigration restrictions when she arrived in the United Kingdom. Her passport has accordingly been endorsed with a certificate of entitlement.

Please award [the claimant] her supplementary benefit entitlement and backdate her claim from 12 July 1982 as per our letter dated 3rd May 1984.

The Adjudication Officer's Decision

10. (1) By a decision issued on 4 March 1985 an adjudication officer decided that the claimant "is entitled to Supplementary Benefit from 7 January 1985".

(2) The claimant appealed against that decision saying:

"...You make no mention in your letter of the right of appeal [the claimant] has against your decision not to backdate her claim for supplementary benefit from 12 July 1982. [The claimant's] initial claim for supplementary

benefit (letter dated 3 May 1984) requested that her claim be backdated to this date...”

11. In giving the reasons for his decision, on form AT2, the adjudication officer stated that he had taken note of the fact that the claimant was admitted into the U.K. on 11 July 1982 on the understanding that she would never have recourse to public funds and that unlimited leave to remain in the U.K. was not granted by the Home Office until 3 January 1985. He therefore decided that for the period prior to 3 January 1985, paragraph 10 of Schedule 3 to the Requirements Regulations applied to her and that the amount payable in respect of her normal requirements should accordingly be NIL. He also decided that as paragraph 10 of Schedule 3 applied to the claimant, she was not entitled to any additional requirements or housing requirements. Her total requirements for the period prior to 3 January 1985 were accordingly NIL. He accordingly awarded supplementary benefit to the claimant from 7 January 1985 i.e. the first pay day following the Home Office decision that there were no longer any restrictions on the claimant's stay in the United Kingdom.

Decision of the Appeal Tribunal

12. (1) The tribunal heard the appeal on 4 September 1985. Their recorded findings of fact were:—

“We find that [the claimant] is illiterate and is unable to speak English. We find that [the claimant] is the widow of Mr. S who had lived in the United Kingdom for a period of more than five years before the Immigration Act of 1971 came into force. We find that Mr. S was a Commonwealth Citizen. We find that [the claimant] had the right to come into the United Kingdom and that she should not have had her passport stamped with any limitations. We find that [the claimant] had good cause for not submitting her claim for Supplementary Benefits earlier than the date on which she did.”

- (2) The tribunal's decision was:—

“The decision of the Benefit Officer should be revised and [the claimant] should be entitled to Supplementary Benefit at the rate appropriate for a single non-householder as from the first payment day after the 11th July 1982.

- (3) The tribunal's recorded reasons for decision were:—

“It is clear from the Immigration Act 1971 that [the claimant] had a right to enter the United Kingdom without let or hindrance in accordance with Section 1 of the Immigration Act 1971 as she was a person to whom section 2(2) of the Immigration Act 1971 applied. As a result of this the Provisions of Regulation 10(6) of the Requirements Regulations do not apply as [the claimant] is not a person present in the United Kingdom with limited leave or without leave to enter or remain in the United Kingdom.

In view of [the claimant's] age illiteracy and inability to speak English and the complexity of the legislation surrounding Immigration control [the claimant] had good cause for failing to claim Benefit earlier than the date on which she did so.”

13. The adjudication officer appealed against this decision on the grounds that the tribunal's decision was erroneous in point of law in that they acted outside their jurisdiction in determining a question regarding the claimant's status under the Immigration Act 1971 which under Section 4 of

the said Act is a matter for the Secretary of State and that they further erred in law by the finding that the provisions of Regulation 10(6) of the Requirements Regulations did not apply to the claimant. It was further submitted that they made no findings of fact to justify the status of the claimant as a householder or non-householder. (This last mentioned point was not pursued before me). It was further submitted that the tribunal's determination was made without adequate evidence on the claimant's immigrant status.

14. I gave leave to appeal against the tribunal's decision. Subsequently, the claimant's representative received a letter, from the Home Office dated 14 July 1986, which states:

"[The claimant] entered the United Kingdom on 11 July 1982, and was granted leave as a visitor. Her son applied on her behalf for an extension of her stay on 23 September 1982, and her conditions were varied to expire on 11 April 1983.

On 11 March 1983 Messrs Coopers, Solicitors, applied on [the claimant's] behalf for indefinite leave to remain in the United Kingdom. The application was refused on 12 September that year. After [the claimant's] appeal was lodged against this decision, Messrs Holyoak and Co, Solicitors, made representations on her behalf. They claimed that their client had the right of abode in the United Kingdom on the grounds of her marriage. The claim was considered, and it was eventually agreed that [the claimant] did have the right of abode under Section 2(2)(b)(i) of the Immigration Act 1971, as in force prior to 1 January 1983. It is a right your client has had at least since her husband's death on 13 July 1973. She certainly had it when she arrived in the United Kingdom in 1982, and the conditions attached to her stay at that time are, therefore, considered to have been erroneously imposed".

The arguments on appeal

15. Mr. Stocker submitted on behalf of the adjudication officer eight propositions:

- (1) The adjudication officer must look first at the relevant supplementary benefit provisions, bearing in mind that supplementary benefit is intended to meet day to day requirements.
- (2) The adjudication officer should next consider the facts as to the exercise of immigration control.
- (3) To the extent to which any question of fact arises as to such exercise or as to immigrant status the adjudicating body should rely exclusively on information provided by the Home Office and decisions of adjudicating bodies dealing with immigration.
- (4) Only if the Home Office assents or advises some purported exercise of control or some purported decision of an immigration appeal tribunal is null and void may or should supplementary benefit adjudicating bodies find this as fact.
- (5) Where the Home Office lifts immigration control (e.g. by certificate under section 3(9) of the Immigration Act 1971) this has effect from the date which is on the passport (3 January 1985 in the present case—the certificate of entitlement in this case is dated later, namely 14 January 1985).
- (6) In the present case the claimant was a Commonwealth citizen who sought and was allowed entry as such. Whether she also has rights

not proved by certificate of entitlement or patriality is irrelevant: see section 3(9) of the Immigration Act 1971.

- (7) The correctness of the tribunal decision cannot be judged on the basis of evidence not before the tribunal.
- (8) The later Home Office letter does not give rise to grounds for review.

In Mr. Stocker's submission, the claimant had not in any case established good cause for late claim. She should have sought and obtained a certificate of patriality before entering this country.

16. On behalf of the claimant, Mr. Tucker submitted that the Immigration Act 1971 divided persons entering this country into those of the right of abode in the United Kingdom (patrials: see section 2(6)) and those who were not patrials: see section 1(1) and 2 of the Act. In the form in which it stood prior to its amendment by the British Nationality Act 1981, if a claimant does not need leave, because he has the right of abode in the United Kingdom, regulation 10(6) of the Requirements Regulations does not apply. The claimant in the present case had the right of abode in this country by reason of the provisions of section 2(2)(b)(i) of the Immigration Act 1971. The immigration officer had no jurisdiction to give leave or limited leave if the claimant was a patrional. The question whether the claimant was a patrional was in issue before the adjudication officer. The immigration officer's decision was sufficiently valid for it to be set aside. But the adjudication officer should have considered whether leave was needed at all. This is what the appeal tribunal did and concluded that it was not. The adjudication officer had the certificate of entitlement before him. Decisions of the immigration appeal tribunal were not binding on the Commissioner but were of persuasive authority. In *Frousoulla Stavrou Christodoulidou against Secretary of State of the Home Department* [1985] Imm. A.R. 179, the immigration appeal tribunal held that the right of abode was a statutory right which an applicant either had or had not depending on whether the applicant satisfied the statutory conditions. It could not be acquired by the exercise of a discretion or by the erroneous acknowledgement that it existed. Neither the Secretary of State nor an immigration officer had power to confer the right of abode on an individual who did not satisfy the statutory conditions and no question of estoppel could arise. A certificate of entitlement was not the only way of establishing that one had the right of abode: see *R. v. Secretary of State for the Home Department Ex Parte Phansopkar* [1975] 3 All. E.R. 497 at page 509 letter G. Whether the claimant was a patrional was not a matter for decision by the Home Office. With non-patrials, the Home Office can give leave and a letter from the Home Office is good evidence as to whether they have leave or not. But whether the claimant was a patrional was a question of law not of fact. The claimant had a certificate of entitlement. On the evidence she was a Commonwealth citizen and it was not in dispute that she was a widow of a Commonwealth citizen. Good cause had been shown within the principles set out in paragraph 12 of Decision R(S) 2/63.

17. In reply Mr. Stocker accepted that the immigration officer had no power to decide patriality. But he did have power to say whether the claimant could come into this country or not. *Christodoulidou* was concerned with the procedure of determining patriality. It was undesirable for a social security appeal tribunal to go into the question of patriality and it was an error of law for them to make their own investigation: see decision CSB 159/83.

Is the Tribunal's Decision erroneous in law?

18. In my judgment the tribunal's decision was not erroneous in law. If, however, I am wrong in this conclusion, I have jurisdiction to give the decision that should have been given; because, under the jurisdiction that on and after 6 April 1987 I now have in respect of existing proceedings, I can examine and make findings on the further evidence now available. My conclusion is the same as that arrived at by the tribunal.

Does a patrial fall within regulation 10(6): see paragraph 6(1) above

19. (1) The tribunal were concerned with a claimant who entered the country on 11 July 1982, when the British Nationality Act 1982 was not in force. That Act came into force on 1 January 1983.
- (2) The question before them was whether regulation 10(6)(a) (set out in the Appendix) operated to disentitle the claimant to supplementary benefit. In order to answer that question it was necessary for them to ask themselves whether the claimant required leave to enter. It was specifically in issue before the present tribunal as to whether she did not require such leave because she was a patrial.
- (3) If the claimant required no leave to enter the United Kingdom, regulation 10(6) has no application. If this were not so, every patrial with the right of abode in this country and who, under section 1(1) of the Immigration Act 1971, had a right to enter the United Kingdom without leave, would fall within the opening words of regulation 10(6) which refer to a person "without leave". The provisions of regulation 10(6) and paragraph 10 of Schedule 3 to the Requirements Regulations, where they refer to a person "without leave", are referring to persons for whom leave is required but has not been obtained. Regulation 10(6) and Schedule 3, paragraph 10, of the Requirements Regulations cannot apply to a person who is in fact a patrial.

Did the tribunal have jurisdiction to decide that the claimant was patrial for the purposes of the appeal before them?

20. (1) The authorities cited on behalf of the adjudication officer in this connection, namely decisions R(SB) 2/85, R(SB) 25/85 and CSB 159/1983 were all concerned with cases where it was beyond question that the claimant was *not* patrial and had no right of abode in the United Kingdom. In other words, leave to enter and remain was required in all those cases. The present case is different. The tribunal had before them a certificate of entitlement to the right of abode by virtue of section 2(2)(b) dated 14 January 1985 and they knew that leave to remain in the United Kingdom for an indefinite period was stamped on the claimant's passport and dated 3 January 1985. The question before the tribunal was whether the claimant needed limited leave to enter this country when she arrived as a visitor in 1982. No such point was in issue in any decided case that has been cited to me. The nature of the leave that a person without the right of abode has obtained is clearly a matter on which a tribunal must inquire of the Home Office, since ultimately it is the Home Secretary who can grant or refuse leave. The question whether or not a person is a patrial who does not need leave is a matter over which the Home Office has no jurisdiction. Either the claimant did, or did not satisfy the statutory conditions: see

the *Christodoulidou* case referred to in paragraph 16 above, the reasoning of which I adopt.

- (2) In my judgment, the tribunal did have jurisdiction to decide whether the claimant was patrial, so as to require no leave to enter in terms of regulation 10(6) and paragraph 10 of Schedule 3 of the Requirements Regulations. It was not in dispute before the tribunal that the claimant was a Commonwealth citizen and the tribunal found, correctly, on the evidence before them that she was a widow of a Commonwealth citizen. She was, accordingly, patrial, she did have a right of abode in the U.K. and leave to enter was not required.
- (3) Reference was made at the hearing before me, to *Phansopkar's* case, on the question whether, in order to enter the country as a patrial, it was necessary to obtain a certificate of patriality. The Court of Appeal was concerned with the mechanics of obtaining physical entry into the country rather than the determination of status. Lord Justice Lawton thought that section 3(9) of the Immigration Act 1971 (which provides for certificates of patriality) was declaratory not mandatory. Lord Justice Scarman assumed, for the purposes of argument only, that it was mandatory. The Court was concerned in *Phansopkar's case* with the question whether mandamus should go against the Home Secretary who had refused to consider whether a certificate should be granted, saying that the claimant should go back and join the queue from the country from which he came. There was evidence that that would take 14 months. The unanimous Court decided that mandamus must go. *Phansopkar's case* does not assist me.
- (4) The convenient and sensible approach where a claimant has no certificate of entitlement or patriality covering the period in issue, and an appeal tribunal is concerned to decide, for supplementary benefit purposes, whether a claimant was patrial or (now) had the right of abode in the UK during that period is to ask the Home Office as to the position. Benefit should be refused (except under any applicable Urgent Cases Regulations) until the claimant's right has been established and in establishing this the Home Office should be the first avenue of approach.
- (5) Nevertheless, for the reasons already given, and notwithstanding her failure to approach the Home Office the tribunal did have jurisdiction to decide the question, for the purposes of regulation 10(6) and paragraph 10 of Schedule 3 of the Requirements Regulations whether the claimant was patrial. Their decision is not erroneous in point of law on the basis that they had no jurisdiction so to decide.

Was the tribunal's decision on "good cause" for late claim correct?

21. Yes it was. Mr. Stocker argued before me that the claimant should have obtained a certificate of patriality or entitlement before she entered the country at all. This would be so if she had known she was patrial. But it is clear from the tribunal's findings that they considered that she was ignorant of her patriality and her right to enter the country without leave. The question is whether that ignorance was reasonable. The tribunal decided it was, for the reasons that they gave. I agree with them.

The Commissioner's jurisdiction to find further facts

22. If I am wrong in holding that the decision of the tribunal was not erroneous in law, I have jurisdiction, on and after 6 April 1987, (the appointed day under regulation 2(1) of the Social Security Act 1986 (Commencement No. 3 Order 1986)) in a case where I have held a tribunal's decision to be erroneous in law, and if I consider it expedient, to make fresh or further findings of fact and to give such decision as I consider appropriate in the light of them: see section 52 and Schedule 5, part 1, paragraph 7(3) of the Social Security Act 1986. Regulation 2(2) of the above-mentioned Commencement Order provides that the new subsection (5A) substituted by paragraph 7(3) of the above-mentioned schedule is not to have effect in relation to any decisions of social security appeal tribunals which are recorded in writing before the appointed day (6 April 1987). But my jurisdiction to make fresh or further findings of fact is contained in the new subsection (5) (not 5A). It is accordingly clear that I can now exercise this new power in respect of decisions of social security appeal tribunals whose decisions have been recorded in writing (as has the decision now under appeal) before the appointed day. For this decision is given after the appointed day.

My decision if the tribunal's decision was (contrary to my view) erroneous in law

23. In the exercise of my fresh jurisdiction, I can take account of the letter from the Home Office dated 14 July 1986. In that letter the Home Office states that the claimant did have the right of abode under section 2(2)(b)(i) of the Immigration Act 1971, as in force prior to 1 January 1983, that she had had this right at least since her husband's death on 13 July 1973 and certainly had it when she arrived in the United Kingdom in 1982 and that the conditions attached to her stay at that time were therefore considered by the Home Office to have been erroneously imposed. I accept the above as correctly stating the position. It follows from that letter that the limitations attached to the claimant's stay were erroneously imposed and leave was not necessary at all.

24. It follows that neither regulation 10(6) nor paragraph 10 of Schedule 3 of the Requirements Regulations applied to the claimant in respect of the period of when she entered the country in 1982 and the date when she obtained a certificate of entitlement.

25. As regards the question of good cause for late claim, there is no suggestion anywhere in the case papers nor was there any suggestion before me, that the claimant, when she applied for and obtained leave to enter as a visitor, had any idea that she was in fact a patrilineal who did not require leave to enter at all. It seems clear that the solicitors who originally acted for her and who are referred to in the letter to the Home Office did not appreciate that the claimant was a patrilineal. Nor did the immigration officer. It was only when Messrs Holyoak and Co., Solicitors, took over the case that it was appreciated that the claimant had the right of abode in the United Kingdom on the grounds of her marriage. Taking into account the fact that she was illiterate and ignorant of English and bearing in mind the above facts and the complexities of immigration law, I have no doubt at all that the claimant's ignorance of the fact that she did not require leave to enter and could have obtained a certificate of patrilineality under section 3(9) of the Immigration Act 1971 which would have resulted in her being able to show at the moment of entry into this country that regulation 10(6) and paragraph 10 of Schedule 3 did not apply to her was entirely reasonable. Good cause has accordingly been shown. It was expressly agreed before me

that the claimant was a non-householder. Accordingly the decision of the tribunal, if it was erroneous in point of law on any ground, is affirmed by me for the reasons now given.

26. My decision is set out in paragraph 1.

(Signed) V. G. H. Hallett
Commissioner

APPENDIX

Immigration Act 1971

Sections 1(1) and (2), 2(1) and 2(2), 2(6) and 3(9) of the Immigration Act 1971 provide as follows:—

- “1. (1) All those who are in this Act expressed to have the right of abode in the United Kingdom shall be free to live in, and to come and go into and from, the United Kingdom without let or hindrance except such as may be required under and in accordance with this Act to enable their right to be established or as maybe otherwise lawfully imposed on any person.
- (2) Those not having that right may live, work and settle in the United Kingdom by permission and subject to such regulation and control of their entry into, stay in and departure from the United Kingdom as imposed by this Act; and indefinite leave to enter or remain in the United Kingdom shall, by virtue of this provision, be treated as having been given under this Act to those in the United Kingdom at its coming into force, if they are then settled there (and not exempt under this Act from the provisions relating to leave to enter or remain).
2. (1) A person is under this Act to have the right of abode in the United Kingdom if—
- (a) he is a citizen of the United Kingdom and Colonies who has that citizenship by his birth, adoption, naturalisation or (except as mentioned below) registration in the United Kingdom or in any of the Islands; or
 - (b) he is a citizen of the United Kingdom and Colonies born to or legally adopted by a parent who had that citizenship at the time of the birth or adoption, and the parent either—
 - (i) then had that citizenship by his birth, adoption, naturalisation or (except as mentioned below) registration in the United Kingdom or in any of the Islands; or
 - (ii) had been born to or legally adopted by a parent who at the time of that birth or adoption so had it; or
 - (c) he is a citizen of the United Kingdom and Colonies who has at any time been settled in the United Kingdom and Islands and had at that time (and while such a citizen) been ordinarily resident there for the last 5 years or more); or
 - (d) he is a Commonwealth citizen born to or legally adopted by a parent who at the time of the birth or adoption had citizenship of the United Kingdom and Colonies by his birth in the United Kingdom or in any of the Islands.
- (2) A woman is under this Act also to have the right of abode in the United Kingdom if she is a Commonwealth citizen and either—
- (a) is the wife of any such citizen in the United Kingdom and Colonies as is mentioned in subsection 1(a), (b) or (c) above or any such Commonwealth citizen as is mentioned in subsection 1(d); or
 - (b) has any time been the wife—
 - (i) of a person then being such a citizen of the United Kingdom and Colonies or Commonwealth citizen; or

- (ii) of a British subject who but for his death would on the date of commencement of the British Nationality Act 1948 have been such a citizen of the United Kingdom and Colonies as is mentioned in subsection 1(a) or (b) but in subsection 1(a) and (b) above references to registration as a citizen of the United Kingdom and Colonies shall not in the case of a woman, include registration after the passing of this Act under or by virtue of section 6(2) (wives) of the British Nationality Act 1948 unless she is so registered by virtue of her marriage to a citizen of the United Kingdom and Colonies before the passing of this Act.
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- (6) In the following provisions of this Act the word “patrial” is used for persons having the right of abode in the United Kingdom. (Section 3(9))
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- (9) A person seeking to enter the United Kingdom and claiming to be patrial by virtue of section 2(1)(c) or (d) or section 2(2) above shall prove it by means of such certificate of patriality as may be specified in the immigration rules, unless in the case of a woman claiming to be patrial by virtue of section 2(2) she shows that she is a citizen of the United Kingdom and Colonies and is patrial by virtue of section 2(2) apart from any reference therein to section 2(1), (c) or (d).”

Requirements Regulations

Regulation 10(6) of the Social Security (Requirements Regulations 1983) provides:—

“For the purposes of paragraph 10 of Schedule 3 a person shall be treated as present with limited leave, or without leave, to enter or remain in the United Kingdom if—

- (a) he is a person, other than a national of a member State or a person to whom the European Convention of Social and Medical Assistance done in Paris of 11th December 1953 applies, who has a limited leave (as defined in section 33(1) of the Immigration Act 1971) to enter or remain in the United Kingdom which was given in accordance with any provision of immigration rules (as defined in section 33(1) of that Act) which refers to there being, or to there needing to be no recourse to public funds, or to there being no charge on public funds, during that limited leave; or
- (b) having [.....] a limited leave [(as defined in section 33(1) of the Immigration Act 1971)] to enter or remain in the United Kingdom he has remained [without further leave under the Act] beyond the time limited by the leave; or
- (c) he is the subject of a deportation order, that is to say an order within section 5(1) of the Immigration Act 1971 requiring him to leave and prohibiting him from entering the United Kingdom; or
- (d) he is an illegal entrant (as defined in section 33(1) of the Immigration Act 1971) who is not given leave under that Act to enter or remain in the United Kingdom.”

Paragraph 10 of Schedule 3 to those regulations provides:

“Person [as] defined in regulation 10(6) who is present with limited leave, or without leave, to enter or remain in the United Kingdom—

- (a) if one of a married or unmarried couple the other of whom is not also present (with limited leave or without leave);
- (b) in any other case”

Social Security Act 1986

Section 52(1) of the Social Security Act 1986 provides as follows:—

“Part 1 of Schedule 5 to this Act (which makes amendments of enactments relating to social security adjudication) shall have effect.”

Paragraph 7(3) of Part 1 of Schedule 5 of the Social Security Act 1986 provides as follows:—

(3) The following subsections shall be substituted for subsection (5) of that section—

“5. Where the Commissioner holds that the decision was erroneous in point of law—

(a) he shall have power—

(i) to give the decision which he considers the tribunal should have given, if he can do so without making fresh or further findings of fact; or

(ii) if he considers it expedient, to make such findings and to give such decision as he considers appropriate in the light of them; and

(b) in any other case he should refer the case to a tribunal with directions for its determination.

(5A) No appeal lies under this section without the leave—

(a) of the person who was the chairman of the tribunal when a decision was given or, in a case prescribed by regulations, leave of some other chairman of a social security appeal tribunal; or

(b) subject to and in accordance with regulations, of a Commissioner.

(5B) Regulations may make provision as to the manner in which, and the time within which, appeals are to be brought and applications made for leave to appeal.”

The Social Security Act 1986 (Commencement No. 3) Order 1986 provides by paragraph 2 as follows:—

“2(1) Subject to paragraph 2 of this article, the day appointed for the coming into force of section 52 and Schedule 5 (Adjudication) is 6 April 1987.

(2) The following provisions of paragraph 7 of Schedule 5 (appeal from social security appeal tribunals to Commissioners) shall not have effect in relation to any decisions of social security appeal tribunals which are recorded in writing before the appointed day:—

(a) paragraph 7(1);

(b) paragraph 7(3) in so far as it substitutes a new subsection (5A) for subsection 5 of section 101 of the Social Security Act 1975.”