

SCHEDULES

SCHEDULE 4

Section 58(2) to (4).

APPEALS

PART I

PROCEDURE

Notice of appealable matters

- 1 (1) The Secretary of State may by regulations provide—
- (a) for written notice to be given to a person of any such decision or action taken in respect of him as is appealable under Part IV (whether or not in his particular case he is entitled to appeal) or would be so appealable but for the ground on which it was taken;
 - (b) for any such notice to include a statement of the reasons for the decision or action and, where the action is the giving of directions for the removal of the person from the United Kingdom, of the country to which he is to be removed;
 - (c) for any such notice to be accompanied by a statement containing particulars of the rights of appeal available under Part IV and of the procedure by which those rights may be exercised;
 - (d) for the form of any such notice or statement and the way in which a notice is to be, or may be, given.
- (2) For the purpose of any proceedings under Part IV, a statement included in a notice in accordance with the regulations is conclusive as to the person by whom and the ground on which any decision or action was taken.

Service of notices

- 2 If a notice given under regulations made under paragraph 1 is sent by first class post, addressed to the person to whom the notice is required to be given, it is to be taken to have been received by that person on the second day after the day on which it was posted unless the contrary is proved.

Lord Chancellor's rules of procedure

- 3 The Lord Chancellor may make rules—
- (a) for regulating the exercise of the rights of appeal conferred by Part IV;
 - (b) for prescribing the practice and procedure to be followed on or in connection with appeals under Part IV, including the mode and burden of proof and admissibility of evidence on such an appeal; and

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- (c) for other matters preliminary or incidental or arising out of such appeals, including proof of the decisions of the adjudicator or the Immigration Appeal Tribunal.

- 4 (1) The rules may include provision—
 - (a) enabling appeals to be determined without a hearing;
 - (b) enabling an adjudicator or the Tribunal to allow or dismiss an appeal without considering its merits—
 - (i) if there has been a failure by one of the parties to comply with a provision of the rules or with a direction given under the rules: or
 - (ii) if one of the parties has failed to attend at a hearing;
 - (c) enabling or requiring an adjudicator or the Tribunal to treat an appeal as abandoned in specified circumstances;
 - (d) enabling the Tribunal, on an appeal from an adjudicator, to remit the appeal to an adjudicator for determination by him in accordance with any directions of the Tribunal, or for further evidence to be obtained with a view to determination by the Tribunal;
 - (e) as to the circumstances in which—
 - (i) a decision of an adjudicator may be set aside by an adjudicator; or
 - (ii) a decision of the Tribunal may be set aside by the Tribunal;
 - (f) conferring on adjudicators or the Tribunal such ancillary powers as the Lord Chancellor thinks necessary for the purposes of the exercise of their functions;
 - (g) as to the procedure to be followed on applications to the Tribunal for leave to appeal under paragraph 23.
- (2) The rules must provide that any appellant is to have the right to be legally represented at any hearing of his appeal.
- (3) Nothing in this paragraph affects the scope of the power conferred by paragraph 3.
- (4) In this Schedule “rules” means rules under this paragraph.

Practice directions

- 5 (1) The President of the Tribunal may give directions as to the practice and procedure to be followed by the Tribunal in relation to appeals and applications to it.
- (2) The Chief Adjudicator may give directions as to the practice and procedure to be followed by adjudicators in relation to appeals and applications to them.

Hearings in private

- 6 (1) Sub-paragraph (2) applies if, on an appeal under Part IV, it is alleged—
 - (a) that a passport or other travel document, certificate of entitlement, entry clearance or work permit (or any part of it or entry in it) on which a party relies is a forgery, and
 - (b) that the disclosure to that party of any matters relating to the method of detection would be contrary to the public interest.
- (2) The adjudicator or Tribunal must arrange—

- (a) for the proceedings to take place in the absence of that party and his representatives while the allegation mentioned in sub-paragraph (1)(b) is inquired into by the adjudicator or Tribunal; and
- (b) if it appears to the adjudicator or Tribunal that the allegation is made out, for such further period as appears necessary in order to ensure that those matters can be presented to the adjudicator or Tribunal without any disclosure being directly or indirectly made contrary to the public interest.

Leave to appeal

- 7 If, under the rules, leave to appeal to the Tribunal is required in cases in which an adjudicator dismisses an appeal under section 59, the authority having power to grant leave must grant it—
- (a) if the appeal was against a decision that the appellant required leave to enter the United Kingdom and the authority is satisfied that at the time of the decision he held a certificate of entitlement; and
 - (b) if the appeal was against a refusal of leave to enter and the authority is satisfied that—
 - (i) at the time of the refusal the appellant held an entry clearance; and
 - (ii) the dismissal of the appeal was not required by paragraph 24.

Offences

- 8 A person who is required under or in accordance with the rules to attend and give evidence or produce documents before an adjudicator or the Tribunal, and fails without reasonable excuse to comply with the requirement is guilty of an offence and liable on summary conviction to a fine not exceeding level three on the standard scale.

Convention cases

- 9 (1) This paragraph applies to an appeal under Part IV of this Act by a person who claims that it would be contrary to the Convention for him to be removed from, or to be required to leave, the United Kingdom, if the Secretary of State has certified that, in his opinion, that claim is one to which—
- (a) sub-paragraph (3), (4), (5) or (6) applies; and
 - (b) sub-paragraph (7) does not apply.
- (2) If, on an appeal to which this paragraph applies, the adjudicator agrees that the claim is one to which this paragraph applies, paragraph 22 does not confer on the appellant any right to appeal to the Immigration Appeal Tribunal.
- (3) This sub-paragraph applies to a claim if, on his arrival in the United Kingdom, the appellant was required by an immigration officer to produce a valid passport and—
- (a) he failed to do so, without giving a reasonable explanation for his failure; or
 - (b) he produced an invalid passport and failed to inform the officer that it was not valid.
- (4) This sub-paragraph applies to a claim under the Refugee Convention if—
- (a) it does not show a fear of persecution by reason of the appellant's race, religion, nationality, membership of a particular social group, or political opinion; or

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- (b) it shows a fear of such persecution, but the fear is manifestly unfounded or the circumstances which gave rise to the fear no longer subsist.
- (5) This sub-paragraph applies to a claim under the Human Rights Convention if—
 - (a) it does not disclose a right under the Convention; or
 - (b) it does disclose a right under the Convention, but the claim is manifestly unfounded.
- (6) This sub-paragraph applies to a claim if—
 - (a) it is made at any time after the appellant—
 - (i) has been refused leave to enter the United Kingdom under the 1971 Act;
 - (ii) has been recommended for deportation by a court empowered by that Act to do so;
 - (iii) has been notified of the Secretary of State’s decision to make a deportation order against him under section 5(1) of the 1971 Act as a result of his liability to deportation; or
 - (iv) has been notified of his liability to removal under paragraph 9 of Schedule 2 to that Act;
 - (b) it is manifestly fraudulent, or any of the evidence adduced in its support is manifestly false; or
 - (c) it is frivolous or vexatious.
- (7) This sub-paragraph applies to a claim if the evidence adduced in its support establishes a reasonable likelihood that the appellant has been tortured in the country to which he is to be sent.
- (8) “Contrary to the Convention” means contrary to the United Kingdom’s obligations under the Refugee Convention or the Human Rights Convention.

PART II

EFFECT OF APPEALS

Stay on directions for removal

- 10 If a person in the United Kingdom appeals under section 59 or 69(1) on being refused leave to enter, any directions previously given by virtue of the refusal for his removal from the United Kingdom cease to have effect, except in so far as they have already been carried out, and no directions may be so given while the appeal is pending.
- 11 If a person in the United Kingdom appeals under section 66, 67 or 69(5) against any directions given under—
 - (a) section 10,
 - (b) Part I of Schedule 2 to the 1971 Act, or
 - (c) Schedule 3 to that Act,
 for his removal from the United Kingdom, those directions except in so far as they have already been carried out, are to have no effect while the appeal is pending.
- 12 But the provisions of Part I of Schedule 2 or, as the case may be, Schedule 3 to the 1971 Act with respect to detention and persons liable to detention apply to a person

appealing under section 59, 66, 67 or 69(1) or (5), as if there were in force directions for his removal from the United Kingdom, except that he may not be detained on board a ship or aircraft so as to compel him to leave the United Kingdom while the appeal is pending.

13 In calculating the period of two months limited by paragraph 8(2) of Schedule 2 to the 1971 Act for—

(a) the giving of directions under that paragraph for the removal of a person from the United Kingdom, and

(b) the giving of a notice of intention to give such directions,

any period during which there is pending an appeal by him under section 59, 67 or 69(1) of this Act is to be disregarded.

14 For the purposes of paragraphs 10 to 12 (but not for purposes of paragraph 13), except in so far as those paragraphs apply to appeals under section 69, where an appeal to an adjudicator is dismissed, an appeal is not to be regarded as pending unless immediately after the dismissal—

(a) the appellant gives notice of appeal against the determination of the adjudicator; or

(b) in a case in which leave to appeal against that determination is required and the adjudicator has power to grant leave, the appellant applies for and obtains the leave of the adjudicator.

15 If directions are given under Part I of Schedule 2 or Schedule 3 to the 1971 Act for a person's removal from the United Kingdom, and directions are also so given for the removal with him of persons belonging to his family, then if any of them appeals under section 59, 63, 66, 67 or 69(1) or (5), the appeal is to have the same effect under paragraphs 10 to 14 in relation to the directions given in respect of each of the others as it has in relation to the directions given in respect of the appellant.

Suspension of variation of limited leave

16 A variation is not to take effect while an appeal against the variation is pending under section 61 or 69(2).

Continuation of leave

17 (1) While an appeal under section 61 or 69(2) is pending, the leave to which the appeal relates and any conditions subject to which it was granted continue to have effect.

(2) A person may not make an application for a variation of his leave to enter or remain while that leave is treated as continuing to have effect as a result of sub-paragraph (1).

(3) For the purposes of section 61 or 69(2), in calculating whether, as a result of a decision, a person may be required to leave the United Kingdom within 28 days, a continuation of leave under this paragraph is to be disregarded.

Deportation orders

18 A deportation order is not to be made against a person under section 5 of the 1971 Act while an appeal duly brought under section 63(1)(a) or 69(4)(a) against the decision to make it is pending.

19 In calculating the period of 8 weeks set by section 5(3) of the 1971 Act for making a deportation order against a person as belonging to the family of another person,

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there is to be disregarded any period during which an appeal under section 63(1)(a) or 69(4)(a) against the decision to make the order is pending.

Appeals under section 65

- 20 (1) A person is not to be required to leave, or be removed from, the United Kingdom if an appeal under section 65 is pending against the decision on which that requirement or removal would otherwise be based.
- (2) That does not prevent—
- (a) directions for his removal being given during that period;
 - (b) a deportation order being made against him during that period.
- (3) But no such direction or order is to have effect during that period.

PART III

DETERMINATION OF APPEALS

Determination of appeals

- 21 (1) On an appeal to him under Part IV, an adjudicator must allow the appeal if he considers—
- (a) that the decision or action against which the appeal is brought was not in accordance with the law or with any immigration rules applicable to the case, or
 - (b) if the decision or action involved the exercise of a discretion by the Secretary of State or an officer, that the discretion should have been exercised differently,
- but otherwise must dismiss the appeal.
- (2) Sub-paragraph (1) is subject to paragraph 24 and to any restriction on the grounds of appeal.
- (3) For the purposes of sub-paragraph (1), the adjudicator may review any determination of a question of fact on which the decision or action was based.
- (4) For the purposes of sub-paragraph (1)(b), no decision or action which is in accordance with the immigration rules is to be treated as having involved the exercise of a discretion by the Secretary of State by reason only of the fact that he has been requested by or on behalf of the appellant to depart, or to authorise an officer to depart, from the rules and has refused to do so.
- (5) If an appeal is allowed, the adjudicator—
- (a) must give such directions for giving effect to the determination as he thinks are required; and
 - (b) may also make recommendations with respect to any other action which he considers should be taken in the case under any of the Immigration Acts.
- (6) The duty to comply with directions given under this paragraph is subject to paragraph 22.

Appeals to Immigration Appeal Tribunal

- 22 (1) Subject to any requirement of rules made under paragraph 3 as to leave to appeal, any party to an appeal, other than an appeal under section 71, to an adjudicator may, if dissatisfied with his determination, appeal to the Immigration Appeal Tribunal.
- (2) The Tribunal may affirm the determination or make any other determination which the adjudicator could have made.
- (3) Sub-paragraphs (4) to (6) apply if directions have been given by an adjudicator under paragraph 21.
- (4) The directions need not be complied with—
- (a) so long as an appeal can be brought against his determination; and
 - (b) if such an appeal is duly brought, so long as the appeal is pending.
- (5) If the Tribunal affirm the adjudicator's determination allowing the appeal, they may alter or add to his directions and recommendations under paragraph 21 or replace them with their own directions and recommendations.
- (6) The provisions of paragraph 21 are to apply accordingly.
- (7) If an appeal is dismissed by an adjudicator but allowed by the Tribunal, paragraph 21 applies with the substitution of references to the Tribunal for references to the adjudicator.

Appeals from Immigration Appeal Tribunal

- 23 (1) If the Immigration Appeal Tribunal has made a final determination of an appeal brought under Part IV, any party to the appeal may bring a further appeal to the appropriate appeal court on a question of law material to that determination.
- (2) An appeal under this section may be brought only with the leave of the Immigration Appeal Tribunal or, if such leave is refused, of the appropriate appeal court.
- (3) "Appropriate appeal court" means—
- (a) if the appeal is from the determination of an adjudicator made in Scotland, the Court of Session; and
 - (b) in any other case, the Court of Appeal.

Appeals which must be dismissed

- 24 (1) An appeal against a refusal of leave to enter the United Kingdom must be dismissed by the adjudicator if he is satisfied that the appellant was at the time of the refusal an illegal entrant.
- (2) An appeal against a refusal of an entry clearance must be dismissed by the adjudicator if he is satisfied that a deportation order was at the time of the refusal in force in respect of the appellant.
- (3) An appeal under section 66 against directions given as mentioned in subsection (1) (c) of that section must be dismissed by the adjudicator, even though the ground of appeal is made out, if he is satisfied that there was power to give the same directions on the ground that the appellant was an illegal entrant.