

SCHEDULES

SCHEDULE 4

APPEALS

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.

Status: This is the original version (as it was originally enacted).

- (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.