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## SCHEDULES

### SCHEDULE 14

#### CONSEQUENTIAL AMENDMENTS

*The Special Immigration Appeals Commission Act 1997 (c. 68)*

- 118 The Special Immigration Appeals Commission Act 1997 is amended as follows.
- 119 In section 2 (appellate jurisdiction of the Commission), for subsection (1) substitute—
- “(1) A person may appeal to the Special Immigration Appeals Commission against a decision which he would be entitled to appeal against under any provision (other than section 59(2)) of Part IV of the Immigration and Asylum Act 1999 (“the 1999 Act”) or the Immigration (European Economic Area) Order 1994 (“the 1994 Order”) but for a public interest provision.
- (1A) “Public interest provision” means any of—
- (a) sections 60(9), 62(4), 64(1) or (2) or 70(1) to (6) of the 1999 Act; or
- (b) paragraphs (b), (c) or (d) of Article 20(2) of the 1994 Order.”
- 120 In section 2(2) for “subsection (2) of section 13 of the Immigration Act 1971, but for subsection (5) of that section” substitute “section 59(2) of the 1999 Act but for section 60(9) of that Act”.
- 121 After section 2 insert—

**“2A Jurisdiction: human rights**

- (1) A person who alleges that an authority has, in taking an appealable decision, acted in breach of his human rights may appeal to the Commission against that decision.
- (2) For the purposes of this section, an authority acts in breach of a person’s human rights if he acts, or fails to act, in relation to that other person in a way which is made unlawful by section 6(1) of the Human Rights Act 1998.
- (3) Subsections (4) and (5) apply if, in any appellate proceedings being heard by the Commission, a question arises as to whether an authority has, in taking a decision which is the subject of the proceedings, acted in breach of the appellant’s human rights.
- (4) The Commission has jurisdiction to consider the question.
- (5) If the Commission decides that the authority concerned acted in breach of the appellant’s human rights, the appeal may be allowed on that ground.
- (6) “Authority” means—
- (a) the Secretary of State;

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- (b) an immigration officer;
  - (c) a person responsible for the grant or refusal of entry clearance.
- (7) “Appealable decision” means a decision against which a person would be entitled to appeal under Part IV of the 1999 Act or the 1994 Order but for a public interest provision.
- (8) “The 1999 Act”, “the 1994 Order” and “public interest provision” have the same meaning as in section 2.”
- 122 In section 4 (determination of appeals), after subsection (1) insert—
- “(1A) If a certificate under section 70(4)(b) of the Immigration and Asylum Act 1999 has been issued, the Commission on an appeal to it under this Act may, instead of determining the appeal, quash the certificate and remit the appeal to an adjudicator.”
- 123 In section 7 (appeals from Commission), omit subsection (4).
- 124 After section 7, insert—

**“7A Pending appeals**

- (1) For the purposes of this Act, an appeal to the Commission is to be treated as pending during the period beginning when notice of appeal is given and ending when the appeal is finally determined, withdrawn or abandoned.
  - (2) An appeal is not to be treated as finally determined while a further appeal may be brought.
  - (3) If a further appeal is brought, the original appeal is not to be treated as finally determined until the further appeal is determined, withdrawn or abandoned.
  - (4) A pending appeal to the Commission is to be treated as abandoned if the appellant leaves the United Kingdom.
  - (5) A pending appeal to the Commission is to be treated as abandoned if the appellant is granted leave to enter or remain in the United Kingdom.
  - (6) But subsection (5) does not apply to an appeal brought under section 2(1) as a result of section 70(4) of the Immigration and Asylum Act 1999.
  - (7) A pending appeal brought under section 2(1) as a result of section 62(3) of that Act is to be treated as abandoned if a deportation order is made against the appellant.”
- 125 In Schedule 1 (supplementary provision as to Commission), in paragraph 5(b)—
- (a) in sub-paragraph (i), for “paragraph 1 of Schedule 5 to the Immigration Act 1971” substitute “section 57(2) of the Immigration and Asylum Act 1999”; and
  - (b) in sub-paragraph (ii), for “paragraph 7 of that Schedule” substitute “paragraph 1(3) of Schedule 2 to that Act”.
- 126 In Schedule 2 (supplementary provisions as to appeals) for paragraphs 1 to 3 substitute—

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*“Stay on directions for removal*

- 1 If a person in the United Kingdom appeals under section 2(1) above 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 so long as the appeal is pending.
- 2 If a person in the United Kingdom appeals under section 2(1) above against any directions given under Part I of Schedule 2 or Schedule 3 to the 1971 Act for his removal from the United Kingdom, those directions except in so far as they have already been carried out, have no effect while the appeal is pending.
- 3 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 2(1) above 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.
- 3A In calculating the period of two months limited by paragraph 8(2) of Schedule 2 to the 1971 Act for the giving of directions under that paragraph for the removal of a person from the United Kingdom and for the giving of a notice of intention to give such directions, any period during which there is pending an appeal by him under section 2(1) above is to be disregarded.
- 3B If directions are given under Part I of Schedule 2 or Schedule 3 to the 1971 Act for anyone’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 2(1) above, the appeal has the same effect under paragraphs 1 to 3A 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*

- 3C A variation is not to take effect while an appeal is pending under section 2(1) above against the variation.

*Continuation of leave*

- 3D (1) While an appeal under section 2(1) above 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 2(1), in calculating whether, as a result of a decision, a person may be required to leave the United Kingdom within

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twenty-eight days, a continuation of leave under this paragraph is to be disregarded.

*Deportation orders*

- 3E 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 2(1) above against the decision to make it is pending.
- 3F In calculating the period of eight 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, there is to be disregarded any period during which an appeal under section 2(1) above against the decision to make the order is pending.

*Appeals under section 2A*

- 3G (1) A person is not to be required to leave, or be removed from, the United Kingdom if an appeal under section 2A 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.”
- 127 In Schedule 2, in paragraph 4, for “the Immigration Act 1971 as applied by paragraphs 1 to 3 above” substitute “this Schedule”
- 128 In Schedule 2, omit paragraph 5.
- 129 In Schedule 2, for paragraphs 6 and 7 substitute—

*“Notice of appealable decision and statement of appeal rights etc.*

- 6 Paragraph 1 of Schedule 4 to the Immigration and Asylum Act 1999 has effect as if section 2 of this Act were contained in Part IV of that Act.

*Financial support for organisations helping persons with rights of appeal*

- 7 Section 81 of the Immigration and Asylum Act 1999 shall have effect as if section 2 above were contained in Part IV of that Act.”