

SCHEDULES

SCHEDULE 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—

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- (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.