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STATUTORY INSTRUMENTS

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**2005 No. 565 (C.25)**

**IMMIGRATION**

**The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (Commencement No. 5 and Transitional Provisions) Order 2005**

*Made* - - - - *7th March 2005*

The Lord Chancellor, in exercise of the powers conferred upon him by section 48(3)(a), (4), (5) and (6) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004(1), makes the following Order:

**Citation and interpretation**

1.—(1) This Order may be cited as the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (Commencement No. 5 and Transitional Provisions) Order 2005.

(2) In this Order—

“the 2002 Act” means the Nationality, Immigration and Asylum Act 2002(2);

“the 2004 Act” means the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004;

“adjudicator” means an adjudicator appointed, or treated as if appointed, under section 81 of the 2002 Act;

“appropriate appellate court” has the meaning given in section 103B(5) of the 2002 Act;

“appropriate court” has the meaning given in section 103A(9) of the 2002 Act;

“commencement” means the commencement date in article 2 of this Order;

“the old appeals provisions” means the following provisions, insofar as they continued to have effect immediately before commencement in relation to a pending appeal(3)—

(i) Part IV of, and Schedule 4 to, the Immigration and Asylum Act 1999(4);

(ii) section 8(1) to (4) of the Asylum and Immigration Act 1993(5);

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(1) 2004 c. 19.

(2) 2002 c. 41.

(3) By virtue of the Nationality, Immigration and Asylum Act 2002 (Commencement No. 4) Order 2003 (S.I. 2003/754), articles 3 and 4 and Schedule 2.

(4) 1999 c. 33.

(5) 1993 c. 23.

(iii) sections 13 to 17 of the Immigration Act 1971(6).

(3) In this Order, references to a section by number alone are to the section so numbered in the 2002 Act.

### **Commencement provisions**

2. The following provisions of the 2004 Act shall come into force on 4th April 2005—
- (a) section 26(1) to (5) and (7) to (10),
  - (b) section 26(6), except that the insertion of section 103D into the 2002 Act shall not come into force in Northern Ireland;
  - (c) Schedule 1; and
  - (d) Schedule 2.

### **Transitional provisions: general**

3.—(1) Where, immediately before commencement, an adjudicator or the Immigration Appeal Tribunal—

- (a) has completed the hearing of an appeal, but has not produced his or its written determination; or
- (b) has produced a written determination of an appeal but that determination has not been served on all the parties,

the appeal shall continue after commencement as an appeal to an adjudicator or the Immigration Appeal Tribunal, as the case may be, until the determination has been served on all the parties.

(2) A member of the Asylum and Immigration Tribunal who, immediately before commencement was—

- (a) an adjudicator; or
- (b) a member of the Immigration Appeal Tribunal,

shall, notwithstanding section 26(1), (4) and (5) of the 2004 Act, be deemed to remain an adjudicator or member of the Immigration Appeal Tribunal after commencement, to the extent necessary for the purpose of completing the determination of an appeal in the circumstances specified in paragraph (1) of this article.

4. Subject to article 3—

- (a) any appeal or application to an adjudicator which is pending immediately before commencement shall continue after commencement as an appeal or application to the Asylum and Immigration Tribunal; and
- (b) any appeal to the Immigration Appeal Tribunal which is pending immediately before commencement shall continue after commencement as an appeal to the Asylum and Immigration Tribunal.

5.—(1) This article applies, subject to article 3, in relation to any appeal which immediately before commencement is—

- (a) pending before an adjudicator, having been remitted to an adjudicator by a court or the Immigration Appeal Tribunal; or
- (b) pending before the Immigration Appeal Tribunal.

(2) The Asylum and Immigration Tribunal shall, after commencement, subject to rules under section 106 of the 2002 Act deal with the appeal in the same manner as if it had originally decided the appeal and it was reconsidering its decision .

- (3) Following the determination of the appeal by the Asylum and Immigration Tribunal, a party—
- (a) may not apply to the appropriate court under section 103A(1); but
  - (b) may, subject to section 103B(3), bring a further appeal on a point of law to the appropriate appellate court under section 103B(1).

6.—(1) Where an application for permission to appeal to the Immigration Appeal Tribunal against an adjudicator’s decision is pending immediately before commencement, it shall be treated after commencement as an application under section 103A(1) (subject to paragraph (4) and to article 9(4) below) for an order requiring the Asylum and Immigration Tribunal to reconsider the adjudicator’s decision on the appeal.

- (2) Where—
- (a) an adjudicator has determined an appeal; and
  - (b) no application for permission to appeal to the Immigration Appeal Tribunal is pending immediately before commencement,

a party to the appeal may after commencement apply under section 103A(1) (as modified by paragraph (4) below) for an order requiring the Asylum and Immigration Tribunal to reconsider the adjudicator’s decision on the appeal.

(3) Where, in a case to which paragraph (2) applies, a time period specified in rules under section 106 for applying for permission to appeal to the Immigration Appeal Tribunal has started to run before 4th April 2005, an application under section 103A(1) may, notwithstanding section 103A(3), be made at any time before the expiry of that time period.

(4) In relation to an application which, by virtue of this article, is made or treated as made under section 103A, that section shall apply with the modifications that—

- (a) references to the Tribunal, except for the second such reference in section 103A(1), shall be interpreted as referring to the adjudicator who determined the appeal;
- (b) references to the Tribunal’s decision shall be interpreted as referring to the adjudicator’s decision.

(5) Section 103D shall not apply in relation to a pending application which is treated as an application under section 103A by virtue of paragraph (1) of this article.

7.—(1) An application to a court under section 101(2) (review of Immigration Appeal Tribunal’s decision upon application for permission to appeal) which is pending immediately before commencement shall continue after commencement as if that section had not been repealed.

(2) A party who, immediately before commencement, was entitled to make an application to a court under section 101(2), may make such an application after commencement as if that section had not been repealed.

(3) Where, by virtue of this article, an application under section 101(2) is made or continues after commencement—

- (a) paragraphs (a) and (c) of section 101(3) shall apply in relation to the application, as if they had not been repealed; and
- (b) the judge determining the application may—
  - (i) affirm the Immigration Appeal Tribunal’s decision to refuse permission to appeal;
  - (ii) reverse the Immigration Appeal Tribunal’s decision to grant permission to appeal; or

- (iii) order the Asylum and Immigration Tribunal to reconsider the adjudicator's decision on the appeal.

**8.—(1)** An appeal to the Court of Appeal or Court of Session under section 103 (appeal from Immigration Appeal Tribunal), or an application to the Court of Appeal or Court of Session for permission to appeal under section 103, which is pending immediately before commencement shall continue after commencement as if that section had not been repealed.

(2) Where, immediately before commencement, an application to the Immigration Appeal Tribunal for permission to appeal under section 103 is pending—

- (a) the application shall, following commencement, be determined by the Asylum and Immigration Tribunal; and
- (b) section 103 shall continue to apply in relation to the application as if it had not been repealed, but with the modification in paragraph (5) below.

(3) A party who—

- (a) is granted permission to appeal under section 103; or
- (b) immediately before commencement, was entitled to apply to the Court of Appeal or Court of Session for permission to appeal under section 103,

may, after commencement, appeal or apply for permission to appeal under section 103 (as the case may be) as if that section had not been repealed.

(4) A party who, immediately before commencement, was entitled to apply to the Immigration Appeal Tribunal for permission to appeal under section 103, may apply to the Asylum and Immigration Tribunal for permission to appeal under that section; and section 103 shall continue to apply in relation to the application as if it had not been repealed, but with the modification in paragraph (5) below.

(5) In relation to an application for permission to appeal under section 103 which is made to or determined by the Asylum and Immigration Tribunal pursuant to paragraph (2) or (4), section 103 shall apply with the modification that the references to the Tribunal in section 103(2) shall be interpreted as referring to the Asylum and Immigration Tribunal.

(6) Where, after commencement, the Court of Appeal or Court of Session determines an appeal under section 103, section 103B(4) shall apply in relation to the appeal as it would in relation to an appeal under section 103B(1), but with the modification that the references to the Tribunal in paragraphs (a), (b) and (f) shall be interpreted as references to the Immigration Appeal Tribunal.

#### **Further transitional provisions: appeals under the old appeals provisions**

**9.—(1)** Where, immediately before commencement, an appeal to an adjudicator is pending to which any of the old appeals provisions apply, those provisions shall continue to apply to the appeal after commencement, subject (except where article 3 applies) to the modification that any reference in those provisions to an adjudicator shall be treated as a reference to the Asylum and Immigration Tribunal.

(2) Subject to paragraphs (3) to (5), any provision in the old appeals provisions about appeals or applications to the Immigration Appeal Tribunal or to a court shall not have effect after commencement, and instead sections 103A to 103E shall have effect in relation to appeals decided under the old appeals provisions.

(3) Where sections 103A to 103E have effect by virtue of paragraph (2), they shall do so with the modification that references to section 82 or 83 shall be treated as including a reference to the old appeals provisions.

(4) Where an appeal or application for permission to appeal to the Immigration Appeal Tribunal under the old appeals provisions is pending immediately before commencement—

- (a) articles 4(b) and 5, or article 6(1), of this Order (as appropriate) shall apply; but
- (b) if, under the old appeals provisions, the appeal or application was not restricted to the ground that the adjudicator made an error of law, then it shall not be so restricted following commencement.

(5) In relation to an appeal which has been determined by the Immigration Appeal Tribunal under the old appeals provisions before commencement, article 8 of this Order shall apply with the references to section 103 being treated as including references to corresponding provisions in the old appeals provisions.

7th March 2005

*Falconer of Thoroton, C.*

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order commences section 26 (unification of appeal system) of and Schedules 1 and 2 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 on 4th April 2005, with the exception that the insertion by section 26(6) of section 103D into the Nationality, Immigration and Asylum Act 2002 shall not come into force in Northern Ireland.

This Order also contains transitional provisions in relation to pending appeals which were made to an adjudicator before 4th April 2005, and in relation to further appeals and applications in such cases.

In particular, it provides that a pending appeal to an adjudicator shall continue after commencement as an appeal to the Asylum and Immigration Tribunal, and a pending appeal to the Immigration Appeal Tribunal shall be dealt with after commencement by the Asylum and Immigration Tribunal, subject to procedure rules, in the same manner as if it had originally decided the appeal and was reconsidering its own decision.

Provision is also made in relation to further appeals, applications for permission to appeal, and applications for review, which immediately before commencement are pending or could be brought.

## NOTE AS TO EARLIER COMMENCEMENT ORDERS

*(This note is not part of the Order)*

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 1 (assisting unlawful immigration)	1st October 2004	<a href="#">2004/2523</a>
Section 3 (immigration documents: forgery)	1st October 2004	<a href="#">2004/2999</a>
Section 4 (trafficking people for exploitation)	1st December 2004	<a href="#">2004/2999</a>
Section 5 (section 4: supplemental)	1st December 2004	<a href="#">2004/2999</a>
Section 6 (employment)	1st October 2004	<a href="#">2004/2523</a>
Section 7 (advice of Director of Public Prosecutions)	1st December 2004	<a href="#">2004/2999</a>
Section 8(7), (10) and (11) (claimant's credibility) (for the purpose of enabling the Secretary of State to exercise the power to make subordinate legislation under section 8(7))	1st October 2004	<a href="#">2004/2523</a>
Section 8, insofar as it was not already in force	1st January 2005	<a href="#">2004/3398</a>

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 9 (failed asylum seekers: withdrawal of support)	1st December 2004	<a href="#">2004/2999</a>
Section 10(1), (2), (6) and (7) (failed asylum seekers: accommodation)	1st December 2004	<a href="#">2004/2999</a>
Section 10(3), (4) and (5) (failed asylum seekers: accommodation)	31st March 2005	<a href="#">2005/372</a>
Section 11 (accommodation for asylum seekers: local connection)	4th January 2005	<a href="#">2004/2999</a>
Section 14 (immigration officer: power of arrest)	1st December 2004	<a href="#">2004/2999</a>
Section 15 (fingerprinting)	1st October 2004	<a href="#">2004/2523</a>
Section 17 (retention of documents)	1st December 2004	<a href="#">2004/2999</a>
Section 18 (control of entry)	1st October 2004	<a href="#">2004/2523</a>
Section 19(2) and (3) (England and Wales) and section 20(3) and (4) (England and Wales: supplemental) (for the purpose of enabling the Secretary of State to exercise the powers to make subordinate legislation under section 19(2)(a) and (3) (c))	1st December 2004	<a href="#">2004/2999</a>
Section 19(4) (for the purpose of enabling the Registrar General to issue guidance under section 19(4)(d))	1st December 2004	<a href="#">2004/2999</a>
Sections 19 to 24, insofar as they were not already in force	1st February 2005	<a href="#">2004/3398</a>
Section 21(2) and (3) (Scotland) and section 22(2) and (3) (Scotland: supplemental) (for the purpose of enabling the Secretary of State to exercise the powers to make subordinate legislation under section 21(2)(a) and (3) (c))	1st December 2004	<a href="#">2004/2999</a>
Section 21(5) (Scotland) (for the purpose of enabling the Secretary of State to issue	1st December 2004	<a href="#">2004/2999</a>

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<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
guidance under section 21(5) and to consult with the Registrar General for Scotland for that purpose)		
Section 23(2) and (3) (Northern Ireland) and section 24(2) and (4) (Northern Ireland: supplemental) (for the purpose of enabling the Secretary of State to exercise the powers to make subordinate legislation under section 23(2)(a) and (b) and (3) (c))	1st December 2004	<a href="#">2004/2999</a>
Section 23(6) (Northern Ireland) for the purpose of enabling the Secretary of State to issue guidance under section 23(6)(d) and to consult with the Registrar General for Northern Ireland for that purpose)	1st December 2004	<a href="#">2004/2999</a>
Section 25 (application for permission under section 19(3) (b), 21(3)(b) or 23(3)(b))	1st December 2004	<a href="#">2004/2999</a>
Section 27 (unfounded human rights or asylum claim)	1st October 2004	<a href="#">2004/2523</a>
Section 28 (appeal from within the United Kingdom)	1st October 2004	<a href="#">2004/2523</a>
Section 29 (entry clearance)	1st October 2004	<a href="#">2004/2523</a>
Section 30 (earlier right of appeal)	1st October 2004	<a href="#">2004/2523</a>
Section 31 (seamen and aircrews: right of appeal)	1st October 2004	<a href="#">2004/2523</a>
Section 33 (removing asylum seeker to safe country) and Schedule 3 (removal of asylum seeker to safe country)	1st October 2004	<a href="#">2004/2523</a>
Section 34 (detention pending deportation)	1st October 2004	<a href="#">2004/2523</a>
Section 36 (electronic monitoring)	1st October 2004	<a href="#">2004/2523</a>
Section 37 (provision of immigration services)	1st October 2004	<a href="#">2004/2523</a>

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<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 38 (Immigration Services Commissioner: power of entry)	1st October 2004	<a href="#">2004/2523</a>
Section 39 (offence of advertising services)	1st October 2004	<a href="#">2004/2523</a>
Section 40 (appeal to Immigration Services Tribunal)	1st October 2004	<a href="#">2004/2523</a>
Section 41 (professional bodies)	1st October 2004	<a href="#">2004/2523</a>
Section 42 (amount of fees)	1st October 2004	<a href="#">2004/2523</a>
Section 43 (transfer of leave stamps)	1st October 2004	<a href="#">2004/2523</a>
Section 44 (interpretation: “the Immigration Acts”)	1st October 2004	<a href="#">2004/2523</a>
Section 45 (interpretation: immigration officer)	1st October 2004	<a href="#">2004/2523</a>
Section 46 (money)	1st October 2004	<a href="#">2004/2523</a>
Section 47 and Schedule 4 (repeals), the entries relating to section 8(9) of the Asylum and Immigration Act 1996, sections 11, 12, 85(1) and 87(3)(f) of the Immigration and Asylum Act 1999 and paragraph 1(1) of Schedule 6 to that Act and sections 80, 93 and 94(4)(a) to (j) of the Nationality, Immigration and Asylum Act 2002.	1st October 2004	<a href="#">2004/2523</a>