

SCHEDULE 2

EFFECT ON OTHER LEGISLATION

Appeals under the 2002 Act and previous immigration Acts

4.—(1) The following EEA decisions shall not be treated as immigration decisions for the purpose of section 82(2) of the 2002 Act (right of appeal against an immigration decision)—

- (a) a decision that a person is to be removed under regulation 19(3)(a) by way of a direction under section 10(1)(a) of the 1999 Act (as provided for by regulation 24(2));
- (b) a decision to remove a person under regulation 19(3)(b) by making a deportation order under section 5(1) of the 1971 Act (as provided for by regulation 24(3));
- (c) a decision to remove a person mentioned in regulation 24(4) by way of directions under paragraphs 8 to 10 of Schedule 2 to the 1971 Act.

(2) A person who has been issued with a registration certificate, residence card, a document certifying permanent residence or a permanent residence card under these Regulations or a registration certificate under the Accession (Immigration and Worker Registration) Regulations 2004⁽¹⁾, or a person whose passport has been stamped with a family member residence stamp, shall have no right of appeal under section 2 of the Special Immigration Appeals Commission Act 1997 or section 82(1) of the 2002 Act. Any existing appeal under those sections of those Acts or under the Asylum and Immigration Appeals Act 1993⁽²⁾, the Asylum and Immigration Act 1996⁽³⁾ or the 1999 Act shall be treated as abandoned.

(3) Subject to paragraph (4), a person may appeal to the Asylum and Immigration Tribunal under section 83(2) of the 2002 Act against the rejection of his asylum claim where—

- (a) that claim has been rejected, but
- (b) he has a right to reside in the United Kingdom under these Regulations.

(4) Paragraph (3) shall not apply if the person is an EEA national and the Secretary of State certifies that the asylum claim is clearly unfounded.

(5) The Secretary of State shall certify the claim under paragraph (4) unless satisfied that it is not clearly unfounded.

(6) In addition to the national of a State which is a contracting party to the Agreement referred to in section 84(2) of the 2002 Act, a Swiss national shall also be treated as an EEA national for the purposes of section 84(1)(d) of that Act.

(7) An appeal under these Regulations against an EEA decision (including an appeal made on or after 1st April 2003 which is treated as an appeal under these Regulations under Schedule 4 but not an appeal made before that date) shall be treated as an appeal under section 82(1) of the 2002 Act against an immigration decision for the purposes of section 96(1)(a) of the 2002 Act.

(8) Section 120 of the 2002 Act shall apply to a person if an EEA decision has been taken or may be taken in respect of him and, accordingly, the Secretary of State or an immigration officer may by notice require a statement from that person under subsection (2) of that section and that notice shall have effect for the purpose of section 96(2) of the 2002 Act.

(9) In sub-paragraph (1), “family member residence stamp” means a stamp in the passport of a family member of an EEA national confirming that he is the family member of an accession State worker requiring registration with a right of residence under these Regulations as the family member of that worker; and in this sub-paragraph “accession State worker requiring registration” has the same

(1) S.I. 2004/1219, amended by S.I. 2004/1236 and S.I. 2005/2400.

(2) 1993 c. 23.

(3) 1996 c. 49.

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

meaning as in regulation 2 of the Accession (Immigration and Worker Registration) Regulations 2004.