



Asylum and Immigration Appeals Act 1993

CHAPTER 23

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Asylum and Immigration Appeals Act 1993

1993 CHAPTER 23

An Act to make provision about persons who claim asylum in the United Kingdom and their dependants; to amend the law with respect to certain rights of appeal under the Immigration Act 1971; and to extend the provisions of the Immigration (Carriers' Liability) Act 1987 to transit passengers. [1st July 1993]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Introductory

1. In this Act—

“the 1971 Act” means the Immigration Act 1971;

“claim for asylum” means a claim made by a person (whether before or after the coming into force of this section) that it would be contrary to the United Kingdom's obligations under the Convention for him to be removed from, or required to leave, the United Kingdom; and

“the Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and the Protocol to that Convention.

Interpretation.

1971 c. 77.

2. Nothing in the immigration rules (within the meaning of the 1971 Act) shall lay down any practice which would be contrary to the Convention.

Primacy of
Convention.

Treatment of persons who claim asylum

3.—(1) Where a person (“the claimant”) has made a claim for asylum, an immigration officer, constable, prison officer or officer of the Secretary of State authorised for the purposes of this section may—

Fingerprinting.

- (a) take such steps as may be reasonably necessary for taking the claimant's fingerprints; or
 - (b) by notice in writing require the claimant to attend at a place specified in the notice in order that such steps may be taken.
- (2) The powers conferred by subsection (1) above may be exercised not only in relation to the claimant but also in relation to any dependant of his; but in the exercise of the power conferred by paragraph (a) of that subsection, fingerprints shall not be taken from a person under the age of sixteen ("the child") except in the presence of a person of full age who is—
- (a) the child's parent or guardian; or
 - (b) a person who for the time being takes responsibility for the child and is not an immigration officer, constable, prison officer or officer of the Secretary of State.
- (3) Where the claimant's claim for asylum has been finally determined or abandoned—
- (a) the powers conferred by subsection (1) above shall not be exercisable in relation to him or any dependant of his; and
 - (b) any requirement imposed on him or any dependant of his by a notice under subsection (1)(b) above shall no longer have effect.
- (4) A notice given to any person under paragraph (b) of subsection (1) above—
- (a) shall give him a period of at least seven days within which he is to attend as mentioned in that paragraph; and
 - (b) may require him so to attend at a specified time of day or between specified times of day.
- (5) Any immigration officer or constable may arrest without warrant a person who has failed to comply with a requirement imposed on him by a notice under subsection (1)(b) above (unless the requirement no longer has effect) and, where a person is arrested under this subsection,—
- (a) he may be removed to a place where his fingerprints may conveniently be taken, and
 - (b) (whether or not he is so removed) there may be taken such steps as may be reasonably necessary for taking his fingerprints,
- before he is released.
- (6) Fingerprints of a person which are taken by virtue of this section must be destroyed not later than the earlier of—
- (a) the end of the period of one month beginning with any day on which he is given indefinite leave under the 1971 Act to enter or remain in the United Kingdom; and
 - (b) the end of the period of ten years beginning with the day on which the fingerprints are taken.
- (7) Where fingerprints taken by virtue of this section are destroyed—
- (a) any copies of the fingerprints shall also be destroyed; and
 - (b) if there are any computer data relating to the fingerprints, the Secretary of State shall, as soon as it is practicable to do so, make it impossible for access to be gained to the data.

(8) If—

- (a) subsection (7)(b) above falls to be complied with, and
- (b) the person to whose fingerprints the data relate asks for a certificate that it has been complied with,

such a certificate shall be issued to him by the Secretary of State not later than the end of the period of three months beginning with the day on which he asks for it.

(9) In this section—

- (a) “immigration officer” means an immigration officer appointed for the purposes of the 1971 Act; and
- (b) “dependant”, in relation to the claimant, means a person—
 - (i) who is his spouse or a child of his under the age of eighteen; and
 - (ii) who has neither a right of abode in the United Kingdom nor indefinite leave under the 1971 Act to enter or remain in the United Kingdom.

(10) Nothing in this section shall be taken to limit the power conferred by paragraph 18(2) of Schedule 2 to the 1971 Act.

4.—(1) If a person (“the applicant”) makes an application under the homelessness legislation for accommodation or assistance in obtaining accommodation and the housing authority who are dealing with his case are satisfied—

Housing of
asylum-seekers
and their
dependants.

- (a) that he is an asylum-seeker or the dependant of an asylum-seeker, and
- (b) that he has or has available for his occupation any accommodation, however temporary, which it would be reasonable for him to occupy,

nothing in the homelessness legislation shall require the housing authority to secure that accommodation is made available for his occupation.

(2) In determining for the purposes of subsection (1)(b) above whether it would be reasonable for the applicant to occupy accommodation, regard may be had to the general circumstances prevailing in relation to housing in the district of the housing authority who are dealing with the applicant’s case.

(3) Where, on an application made as mentioned in subsection (1) above, the housing authority are satisfied that the applicant is an asylum-seeker or the dependant of an asylum-seeker, but are not satisfied as mentioned in paragraph (b) of that subsection, then, subject to subsection (4) below,—

- (a) any duty under the homelessness legislation to secure that accommodation is made available for the applicant’s occupation shall not continue after he ceases to be an asylum-seeker or a dependant of an asylum-seeker; and
- (b) accordingly, so long as the applicant remains an asylum-seeker or the dependant of an asylum-seeker, any need of his for accommodation shall be regarded as temporary only.

(4) If, immediately before he ceases to be an asylum-seeker or the dependant of an asylum-seeker, the applicant is occupying accommodation (whether temporary or not) made available in pursuance of the homelessness legislation, that legislation shall apply as if, at that time—

- (a) he were not occupying that accommodation; and
- (b) he had made an application under that legislation for accommodation or assistance in obtaining accommodation to the housing authority who secured that accommodation was made available.

(5) Schedule 1 to this Act (which makes supplementary provision with respect to housing of asylum-seekers and their dependants) shall have effect.

Housing:
interpretative
provisions.

5.—(1) The provisions of this section have effect for the purposes of section 4 above and Schedule 1 to this Act; and that section and Schedule are in the following provisions of this section referred to as “the housing provisions”.

(2) For the purposes of the housing provisions a person who makes a claim for asylum—

- (a) becomes an asylum-seeker at the time when his claim is recorded by the Secretary of State as having been made; and
- (b) ceases to be an asylum-seeker at the time when his claim is recorded by the Secretary of State as having been finally determined or abandoned.

(3) For the purposes of the housing provisions, a person—

- (a) becomes a dependant of an asylum-seeker at the time when he is recorded by the Secretary of State as being a dependant of the asylum-seeker; and
- (b) ceases to be a dependant of an asylum-seeker at the time when the person whose dependant he is ceases to be an asylum-seeker or, if it is earlier, at the time when he is recorded by the Secretary of State as ceasing to be a dependant of the asylum-seeker.

(4) References in subsections (2) and (3) above to a time when an event occurs include references to a time before as well as after the passing of this Act.

(5) In relation to an asylum-seeker, “dependant” means a person—

- (a) who is his spouse or a child of his under the age of eighteen; and
- (b) who has neither a right of abode in the United Kingdom nor indefinite leave under the 1971 Act to enter or remain in the United Kingdom.

(6) Except in their application to Northern Ireland, in the housing provisions—

- (a) “the homelessness legislation” means, in relation to England and Wales, Part III of the Housing Act 1985 and, in relation to Scotland, Part II of the Housing (Scotland) Act 1987;
- (b) “housing authority” means—

(i) in relation to England and Wales, any authority which is a local housing authority for the purposes of Part III of the Housing Act 1985; and

1985 c. 68.

(ii) in relation to Scotland, any authority which is a local authority for the purposes of Part II of the Housing (Scotland) Act 1987;

1987 c. 26.

and references to a housing authority who are dealing with an applicant's case shall be construed as references to the authority to whom the application is made or (as the case may be) the authority who under the homelessness legislation are the notified authority in relation to the applicant.

(7) In the application of the housing provisions to Northern Ireland—

- (a) "the homelessness legislation" means Part II of the Housing (Northern Ireland) Order 1988;
- (b) "housing authority" means the Northern Ireland Housing Executive and references to a housing authority who are dealing with an applicant's case shall be construed as references to that Executive; and
- (c) references to the district of a housing authority shall be construed as references to Northern Ireland.

S.I. 1988/1990 (N.I.23).

(8) For the purposes of the housing provisions accommodation shall be regarded as available for the applicant's occupation only if it is available for occupation both by him and by any other person who might reasonably be expected to reside with him and references to securing accommodation for his occupation shall be construed accordingly.

6. During the period beginning when a person makes a claim for asylum and ending when the Secretary of State gives him notice of the decision on the claim, he may not be removed from, or required to leave, the United Kingdom.

Protection of claimants from deportation etc.

7.—(1) Where—

- (a) a person who has limited leave under the 1971 Act to enter or remain in the United Kingdom claims that it would be contrary to the United Kingdom's obligations under the Convention for him to be required to leave the United Kingdom after the time limited by the leave, and
- (b) the Secretary of State has considered the claim and given to the person notice in writing of his rejection of it,

Curtailment of leave to enter or remain.

the Secretary of State may by notice in writing, given to the person concurrently with the notice under paragraph (b) above, curtail the duration of the leave.

(2) No appeal may be brought under section 14 of the 1971 Act or section 8(2) below against the curtailment of leave under subsection (1) above.

(3) The power conferred by subsection (1) above is without prejudice to sections 3(3) and 4 of the 1971 Act and the immigration rules (within the meaning of that Act).

(4) Where—

- (a) the duration of a person's leave under the 1971 Act to enter or remain in the United Kingdom has been curtailed under subsection (1) above, and
- (b) the Secretary of State has decided to make a deportation order against him by virtue of section 3(5) of that Act,

he may be detained under the authority of the Secretary of State pending the making of the deportation order; and the references to sub-paragraph (2) of paragraph 2 of Schedule 3 to that Act in sub-paragraphs (3), (4) and (6) of that paragraph (provisions about detention under sub-paragraph (2)) shall include references to this subsection.

Rights of appeal

Appeals to special
adjudicator.

8.—(1) A person who is refused leave to enter the United Kingdom under the 1971 Act may appeal against the refusal to a special adjudicator on the ground that his removal in consequence of the refusal would be contrary to the United Kingdom's obligations under the Convention.

(2) A person who has limited leave under the 1971 Act to enter or remain in the United Kingdom may appeal to a special adjudicator against any variation of, or refusal to vary, the leave on the ground that it would be contrary to the United Kingdom's obligations under the Convention for him to be required to leave the United Kingdom after the time limited by the leave.

(3) Where the Secretary of State—

- (a) has decided to make a deportation order against a person by virtue of section 3(5) of the 1971 Act, or
- (b) has refused to revoke a deportation order made against a person by virtue of section 3(5) or (6) of that Act,

the person may appeal to a special adjudicator against the decision or refusal on the ground that his removal in pursuance of the order would be contrary to the United Kingdom's obligations under the Convention; but a person may not bring an appeal under both paragraph (a) and paragraph (b) above.

(4) Where directions are given as mentioned in section 16(1)(a) or (b) of the 1971 Act for a person's removal from the United Kingdom, the person may appeal to a special adjudicator against the directions on the ground that his removal in pursuance of the directions would be contrary to the United Kingdom's obligations under the Convention.

(5) The Lord Chancellor shall designate such number of the adjudicators appointed for the purposes of Part II of the 1971 Act as he thinks necessary to act as special adjudicators for the purposes of this section and may from time to time vary that number and the persons who are so designated.

(6) Schedule 2 to this Act (which makes supplementary provision about appeals under this section) shall have effect; and the preceding provisions of this section shall have effect subject to that Schedule.

9.—(1) Where the Immigration Appeal Tribunal has made a final determination of an appeal brought under Part II of the 1971 Act (including that Part as it applies by virtue of Schedule 2 to this Act) any party to the appeal may bring a further appeal to the appropriate appeal court on any question of law material to that determination.

Appeals from
Immigration
Appeal Tribunal.

(2) An appeal under this section may be brought only with the leave of the Immigration Appeal Tribunal or, if such leave is refused, with the leave of the appropriate appeal court.

(3) In this section “the appropriate appeal court” means—

- (a) if the appeal is from the determination of an adjudicator or special adjudicator and that determination was made in Scotland, the Court of Session; and
- (b) in any other case, the Court of Appeal.

(4) Rules of procedure under section 22 of the 1971 Act may include provision regulating, and prescribing the procedure to be followed on, applications to the Immigration Appeal Tribunal for leave to appeal under this section.

(5) In section 33(4) of the 1971 Act—

- (a) for the words “in the case of an appeal to an adjudicator, the” there shall be substituted “an”; and
- (b) after the words “section 20” there shall be inserted “or section 9 of the Asylum and Immigration Appeals Act 1993”.

10. In section 13 of the 1971 Act (appeals against exclusion from United Kingdom), after subsection (3) there shall be inserted—

Visitors, short-term and prospective students and their dependants.

“(3A) A person who seeks to enter the United Kingdom—

- (a) as a visitor, or
- (b) in order to follow a course of study of not more than six months duration for which he has been accepted, or
- (c) with the intention of studying but without having been accepted for any course of study, or
- (d) as a dependant of a person within paragraph (a), (b) or (c) above,

shall not be entitled to appeal against a refusal of an entry clearance and shall not be entitled to appeal against a refusal of leave to enter unless he held a current entry clearance at the time of the refusal.

(3AA) The Secretary of State shall appoint a person, not being an officer of his, to monitor, in such manner as the Secretary of State may determine, refusals of entry clearance in cases where there is, by virtue of subsection (3A) above, no right of appeal; and the person so appointed shall make an annual report on the discharge of his functions to the Secretary of State who shall lay a copy of it before each House of Parliament.

(3AB) The Secretary of State may pay to a person appointed under subsection (3AA) above such fees and allowances as he may with the approval of the Treasury determine.”

Refusals which are mandatory under immigration rules.

11.—(1) In section 13 of the 1971 Act, after subsection (3AB) (which is inserted by section 10 above) there shall be inserted—

“(3B) A person shall not be entitled to appeal against a refusal of an entry clearance if the refusal is on the ground that—

- (a) he or any person whose dependant he is does not hold a relevant document which is required by the immigration rules; or
- (b) he or any person whose dependant he is does not satisfy a requirement of the immigration rules as to age or nationality or citizenship; or
- (c) he or any person whose dependant he is seeks entry for a period exceeding that permitted by the immigration rules;

and a person shall not be entitled to appeal against a refusal of leave to enter if the refusal is on any of those grounds.

(3C) For the purposes of subsection (3B)(a) above, the following are “relevant documents”—

- (a) entry clearances;
- (b) passports or other identity documents; and
- (c) work permits.”

(2) In section 14 of the 1971 Act (appeals against refusals to vary leave to enter or remain), after subsection (2) there shall be inserted—

“(2A) A person shall not be entitled to appeal under subsection (1) above against any refusal to vary his leave if the refusal is on the ground that—

- (a) a relevant document which is required by the immigration rules has not been issued; or
- (b) the person or a person whose dependant he is does not satisfy a requirement of the immigration rules as to age or nationality or citizenship; or
- (c) the variation would result in the duration of the person’s leave exceeding what is permitted by the immigration rules; or
- (d) any fee required by or under any enactment has not been paid.

(2B) For the purposes of subsection (2A)(a) above, the following are relevant documents—

- (a) entry clearances;
- (b) passports or other identity documents; and
- (c) work permits.”

Visas for transit passengers

Carriers’ liability for transit passengers.
1987 c. 24.

12.—(1) The Immigration (Carriers’ Liability) Act 1987 shall be amended as follows.

(2) In subsection (1)(b) of section 1 (liability of carrier of person who requires a visa for entry but fails to produce one) for the words “, a visa valid for that purpose,” there shall be substituted the words “or by virtue of section 1A below requires a visa for passing through the United Kingdom, a visa valid for the purpose of entering or (as the case may be) passing through the United Kingdom.”

(3) After that section there shall be inserted—

“Visas for transit passengers.

1A.—(1) The Secretary of State may by order require persons of any description specified in the order who on arrival in the United Kingdom pass through to another country or territory without entering the United Kingdom to hold a visa for that purpose.

(2) An order under this section—

- (a) may specify a description of persons by reference to nationality, citizenship, origin or other connection with any particular country or territory, but not by reference to race, colour or religion;
- (b) shall not provide for the requirement imposed by the order to apply to any person who under the Immigration Act 1971 has the right of abode in the United Kingdom and may provide for any category of persons of a description specified in the order to be exempted from the requirement imposed by the order; and
- (c) may make provision about the method of application for visas required by the order.

1971 c. 77.

(3) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

Supplementary

13.—(1) There shall be paid out of money provided by Parliament—

Financial provision.

- (a) any expenditure incurred by the Secretary of State under this Act; and
- (b) any increase attributable to this Act in the sums payable out of such money under any other enactment.

(2) Any sums received by the Secretary of State by virtue of this Act shall be paid into the Consolidated Fund.

14.—(1) Sections 4 to 11 above (and section 1 above so far as it relates to those sections) shall not come into force until such day as the Secretary of State may by order appoint, and different days may be appointed for different provisions or for different purposes.

Commencement.

(2) An order under subsection (1) above—

- (a) shall be made by statutory instrument; and
- (b) may contain such transitional and supplemental provisions as the Secretary of State thinks necessary or expedient.

(3) Without prejudice to the generality of subsections (1) and (2) above, with respect to any provision of section 4 above an order under subsection (1) above may appoint different days in relation to different descriptions of asylum-seekers and dependants of asylum-seekers; and any such descriptions may be framed by reference to nationality, citizenship, origin or other connection with any particular country or territory, but not by reference to race, colour or religion.

Extent.

15.—(1) Her Majesty may by Order in Council direct that any of the provisions of this Act shall extend, with such modifications as appear to Her Majesty to be appropriate, to any of the Channel Islands or the Isle of Man.

(2) This Act extends to Northern Ireland.

Short title.

16. This Act may be cited as the Asylum and Immigration Appeals Act 1993.

SCHEDULES

SCHEDULE 1

Section 4(5).

HOUSING OF ASYLUM-SEEKERS AND THEIR DEPENDANTS: SUPPLEMENTARY

Qualifying persons

1. In this Schedule the expression “qualifying person” means an asylum-seeker or a dependant of an asylum-seeker.

Inquiries about applicants

2. If a housing authority to whom an application is made have reason to believe that the applicant is a qualifying person, they shall include in the inquiries that they are required to make under section 62 of the Housing Act 1985, section 28 of the Housing (Scotland) Act 1987 or, as the case may be, Article 7 of the Housing (Northern Ireland) Order 1988 such inquiries as are necessary to satisfy them as to whether—

1985 c. 68.
1987 c. 26.
S.I. 1988/1990
(N.I.23).

- (a) he is a qualifying person; and
- (b) if so, whether any duty is owed to him to secure that accommodation is made available for his occupation.

Notification of decision and reasons

3.—(1) Subject to sub-paragraph (2) below, if a housing authority who are dealing with an applicant’s case are satisfied that he is a qualifying person they shall notify him—

- (a) that they are so satisfied;
- (b) that they are or, as the case may be, are not satisfied that a duty is owed to him to secure that accommodation is made available for his occupation;
- (c) if they are the authority to whom the application is made, whether they have notified or propose to notify another housing authority under section 67 of the Act of 1985 or, as the case may be, section 33 of the Act of 1987 (referral of application on grounds of local connection) as modified by paragraph 4 below;

and they shall at the same time notify him of their reasons.

(2) In its application to Northern Ireland, sub-paragraph (1) above shall have effect as if paragraph (c) were omitted.

(3) The notice required to be given to the applicant under sub-paragraph (1) above shall be given in writing and shall, if not received by him, be treated as having been given to him only if it is made available at the authority’s office for a reasonable period for collection by him or on his behalf.

(4) Where notice is given under sub-paragraph (1) above, no notice need be given under section 64 of the Act of 1985, section 30 of the Act of 1987 or, as the case may be, Article 9 of the Order of 1988 (notification of decision and reasons).

Referral of application to another housing authority

4.—(1) If a housing authority to whom an application is made are satisfied that the applicant is a qualifying person and that a duty to secure that accommodation is made available for his occupation is owed to him, the homelessness legislation shall have effect as if in section 67 of the Act of 1985 or, as the case may be, section 33 of the Act of 1987 for paragraph (a) of subsection (1) there were substituted—

SCH. 1

“(a) are satisfied that an applicant is a qualifying person and that a duty to secure that accommodation is made available for his occupation is owed to him.”

(2) Sub-paragraph (1) above does not apply in relation to Northern Ireland.

Offences

5. Section 74 of the Act of 1985, section 40 of the Act of 1987 or, as the case may be, Article 17 of the Order of 1988 applies to statements made or information withheld with intent to induce an authority to believe that a person is or is not an asylum-seeker or a dependant of an asylum-seeker as it applies to statements made or information withheld with the intent mentioned in subsection (1) of section 74, section 40 or, as the case may be, Article 17.

Security of tenure

6.—(1) A tenancy granted in pursuance of any duty under Part III of the Act of 1985 to a person who is a qualifying person cannot be—

- (a) a tenancy which is a secure tenancy for the purposes of that Act, or
- (b) a tenancy which is an assured tenancy for the purposes of the Housing Act 1988,

1988 c. 50.

before the expiry of the period of twelve months beginning with the date on which the landlord is supplied with written information given by the Secretary of State under paragraph 7 below that the person has ceased to be a qualifying person, unless before the expiry of that period the landlord notifies that person that the tenancy is to be regarded as a secure tenancy or, as the case may be, an assured tenancy.

S.I. 1983/1118
(N.I.15).

(2) A tenancy granted in pursuance of any duty under Part II of the Order of 1988 to a person who is a qualifying person cannot be a tenancy which is a secure tenancy for the purposes of Part II of the Housing (Northern Ireland) Order 1983 before the expiry of the period of twelve months beginning with the date on which the landlord is supplied with written information given by the Secretary of State under paragraph 7 below that the person has ceased to be a qualifying person, unless before the expiry of that period the landlord notifies that person that the tenancy is to be regarded as a secure tenancy.

Information

7.—(1) The Secretary of State shall, if requested to do so by a housing authority who are dealing with an applicant's case, inform the authority whether the applicant has become a qualifying person.

(2) Where information which the Secretary of State is required to give to a housing authority under sub-paragraph (1) above is given otherwise than in writing, he shall confirm it in writing if a written request is made to him by the authority.

(3) If the Secretary of State informs an authority that an applicant has become a qualifying person, he shall, when the applicant ceases to be a qualifying person, inform the authority and the applicant in writing of that event and of the date on which it occurred.

Existing applicants

8.—(1) Nothing in section 4 or section 5 of this Act or this Schedule shall affect—

- (a) the right of any person to occupy (or to have made available for his occupation) accommodation which, immediately before the day on which section 4 comes into force, is required to be made available for his occupation in pursuance of the homelessness legislation; or

(b) any application made to a housing authority which immediately before that day is a pending application. SCH. 1

(2) For the purposes of sub-paragraph (1) above an application shall be regarded as pending if it is an application in respect of which the authority have not completed the inquiries that they are required to make under section 62 of the Housing Act 1985, section 28 of the Housing (Scotland) Act 1987 or, as the case may be, Article 7 of the Housing (Northern Ireland) Order 1988. 1985 c. 68. 1987 c. 26. S.I. 1988/1990 (N.I.23).

Isles of Scilly

9.—(1) The provisions of sections 4 and 5 of this Act and this Schedule shall apply to the Isles of Scilly subject to such exceptions, adaptations and modifications as the Secretary of State may by order direct.

(2) An order under sub-paragraph (1) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

SCHEDULE 2

Section 8(6).

APPEALS TO SPECIAL ADJUDICATOR: SUPPLEMENTARY

New appeal rights to replace rights under the 1971 Act

1. No appeal may be brought under Part II of the 1971 Act on any of the grounds mentioned in subsections (1) to (4) of section 8 of this Act.

Scope of new rights of appeal

2. A person may not bring an appeal on any of the grounds mentioned in subsections (1) to (4) of section 8 of this Act unless, before the time of the refusal, variation, decision or directions (as the case may be), he has made a claim for asylum.

Other grounds of appeal

3. Where an appeal is brought by a person on any of the grounds mentioned in subsections (1) to (4) of section 8 of this Act, the special adjudicator shall in the same proceedings deal with—

- (a) any appeal against the refusal, variation, decision or directions (as the case may be) which the person is entitled to bring under Part II of the 1971 Act on any other ground on which he seeks to rely; and
- (b) any appeal brought by the person under that Part of that Act against any other decision or action.

Application of procedures in the 1971 Act

4.—(1) Subject to sub-paragraphs (3) and (4) of this paragraph and to paragraph 5 below, the provisions of the 1971 Act specified in sub-paragraph (2) below shall have effect as if section 8 of this Act were contained in Part II of that Act.

- (2) The provisions referred to in sub-paragraph (1) above are—
 - (a) section 18 (notice of decisions appealable under that Part and statement of appeal rights etc.);
 - (b) section 19 (determination of appeals under that Part by adjudicators);
 - (c) section 20 (appeal from adjudicator to Immigration Appeal Tribunal);

- SCH. 2
- (d) section 21 (references of cases by Secretary of State for further consideration);
 - (e) section 22(1) to (4), (6) and (7) (rules of procedure for appeals);
 - (f) section 23 (grants to voluntary organisations helping persons with rights of appeal); and
 - (g) Schedule 5 (provisions about adjudicators and Immigration Appeal Tribunal).
- (3) Rules of procedure under section 22 may make special provision in relation to—
- (a) proceedings on appeals on any of the grounds mentioned in subsections (1) to (4) of section 8 of this Act; and
 - (b) proceedings in which, by virtue of paragraph 3 above, a special adjudicator is required to deal both with an appeal on any of those grounds and another appeal.
- (4) So much of paragraph 5 of Schedule 5 as relates to the allocation of duties among the adjudicators shall have effect subject to subsection (5) of section 8 of this Act.

Special appeal procedures for claims without foundation

5.—(1) Subject to sub-paragraph (2) below, this paragraph applies to an appeal by a person under subsection (1), (3)(b) or (4) of section 8 of this Act if the Secretary of State has certified that, in his opinion, the person's claim on the ground that it would be contrary to the United Kingdom's obligations under the Convention for him to be removed from the United Kingdom is without foundation.

(2) This paragraph does not apply to an appeal on the ground mentioned in subsection (1) of section 8 of this Act if, by virtue of section 13(3) of the 1971 Act (right of appeal for person with current entry clearance or work permit), the appellant seeks to rely on another ground.

(3) For the purposes of this paragraph a claim is without foundation if (and only if)—

- (a) it does not raise any issue as to the United Kingdom's obligations under the Convention; or
- (b) it is otherwise frivolous or vexatious.

(4) Rules of procedure under section 22 of the 1971 Act may make special provision in relation to appeals to which this paragraph applies.

(5) If on an appeal to which this paragraph applies the special adjudicator agrees that the claim is without foundation, section 20(1) of that Act shall not confer on the appellant any right to appeal to the Immigration Appeal Tribunal.

(6) If the special adjudicator does not agree that the claim is without foundation, he may (as an alternative to allowing or dismissing the appeal) refer the case to the Secretary of State for reconsideration; and the making of such a reference shall, accordingly, be regarded as disposing of the appeal.

Exception for national security

6. Subsection (5) of section 13, subsection (3) of section 14 and subsections (3) and (4) of section 15 of the 1971 Act shall have effect in relation to the rights of appeal conferred by section 8(1), (2) and (3)(a) and (b) of this Act respectively as they have effect in relation to the rights of appeal conferred by subsection (1) of those sections of that Act but as if references to a person's exclusion, departure or deportation being conducive to the public good were references to its being in the interests of national security.

Suspension of variation of limited leave pending appeal

SCH. 2

7. The limitation on the taking effect of a variation and on a requirement to leave the United Kingdom contained in subsection (1) of section 14 of the 1971 Act shall have effect as if appeals under section 8(2) of this Act were appeals under that subsection.

Deportation order not to be made while appeal pending

8. In section 15(2) of the 1971 Act references to an appeal against a decision to make a deportation order shall include references to an appeal against such a decision under section 8(3)(a) of this Act.

Stay of removal directions pending appeal and bail

9. Part II of Schedule 2, and paragraph 3 of Schedule 3, to the 1971 Act shall have effect as if the references to appeals under section 13(1), 15(1)(a) and 16 of that Act included (respectively) appeals under section 8(1), (3) and (4) of this Act and as if sub-paragraph (5) of paragraph 28 of Schedule 2 were omitted.

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