

SCHEDULE 1

Regulation 7(2) and (3)

Appeals to the Special Immigration Appeals Commission

PART 1

Certification of appealable decisions on national security etc. grounds

Certification that decision was taken on national security etc. grounds

1.—(1) The Secretary of State may certify an appealable decision under this paragraph if it was taken—

- (a) by the Secretary of State wholly or partly on a ground listed in sub-paragraph (2), or
- (b) in accordance with a direction of the Secretary of State which identifies the person to whom the decision relates and which is given wholly or partly on a ground listed in sub-paragraph (2).

(2) The grounds are that the person's exclusion or removal from the United Kingdom is—

- (a) in the interests of national security, or
- (b) in the interests of a relationship between the United Kingdom and another country.

(3) In this paragraph any reference to the Secretary of State is to the Secretary of State acting in person.

Certification that decision was taken on information which cannot be disclosed for reasons of national security etc.

2.—(1) The Secretary of State may certify an appealable decision under this paragraph if it was taken wholly or partly in reliance on information which the Secretary of State considers must not be made public—

- (a) in the interests of national security,
- (b) in the interests of a relationship between the United Kingdom and another country, or
- (c) otherwise in the public interest.

(2) In this paragraph any reference to the Secretary of State is to the Secretary of State acting in person.

Effect of certification: appeal pending before the Tribunal

3. Where a certificate is given under paragraph 1 or 2 in relation to a decision in respect of which an appeal is pending to the Tribunal, the appeal lapses.

PART 2

Application of the 1997 Act to appeals to the Special Immigration Appeals Commission

Application of the 1997 Act to appeals under these Regulations

4.—(1) The 1997 Act applies to an appeal to the Special Immigration Appeals Commission (“the Commission”) under these Regulations as it applies to an appeal under section 2 of that Act (subject to the modifications specified in sub-paragraphs (2) and (3)).

(2) Any reference in the 1997 Act to an appeal under section 2 of that Act, however expressed, has effect as a reference to an appeal to the Commission under these Regulations.

(3) Section 2(1) has effect as if—

(a) for subsection (2), there were substituted—

“(2) The following provisions of the Nationality, Immigration and Asylum Act 2002 apply in connection with an appeal to the Commission under the 2020 Regulations as they apply in connection with an appeal under section 82(1) of that Act, but subject to the modifications specified in subsection (2A)—

- (a) section 72;
- (b) sections 78 to 79(2);
- (c) section 105 and any regulations made under that section;
- (d) sections 112 and 113;
- (e) section 120(3).

In this section, “the 2020 Regulations” means the Immigration (Citizens’ Rights Appeals) (EU Exit) Regulations 2020.

(2A) The modifications mentioned in subsection (2) are—

(a) section 72 has effect as if—

(i) in subsection (9), for paragraph (a), there were substituted—

“(a) a person appeals to the Commission under the 2020 Regulations against a decision and makes a section 120 statement (within the meaning of regulation 9 of those Regulations) which relies wholly or partly on the ground of appeal mentioned in section 84(1)(a) or (3)(a) of this Act (breach of the United Kingdom’s obligations under the Refugee Convention), and”;

(ii) in subsection (10), “Tribunal or” were omitted;

(b) section 78 has effect as if—

(i) in subsection (1), for “section 82(1)” there were substituted “to the Commission under the 2020 Regulations”;

(ii) after subsection (1), there were inserted—

(1) Section 2 was substituted by the Nationality, Immigration and Asylum Act 2002, Schedule 7, paragraph 20. It has been amended by the Immigration, Asylum and Nationality Act 2006 (c. 13), Schedule 1, paragraph 14, and Schedule 7, paragraph 20, the Immigration Act 2014 (c. 22) (“the 2014 Act”), Schedule 9, paragraph 2, and the Immigration Act 2016 (c. 19), section 64.

(2) Section 78A was inserted by the 2014 Act, section 2. Section 79 was amended by the UK Borders Act 2007 (c. 30), section 35(2), and the 2014 Act, Schedule 9, paragraph 32.

(3) Section 120 was substituted by the 2014 Act, Schedule 9, paragraph 55, and amended by the Immigration Act 2016, section 64.

“(1A) But subsection (1) does not apply in relation to a relevant appellant.

(1B) A person is a “relevant appellant” for the purposes of this section if—

- (a) the person’s removal is certified under regulation 16(3) of the 2020 Regulations, and
- (b) the relevant appealable decision in respect of which the person’s removal is certified in accordance with that provision is the decision in relation to which the appeal to the Commission under the 2020 Regulations is pending.

(1C) A relevant appellant may not be removed from, or required to leave, the United Kingdom in accordance with a provision of the Immigration Acts⁽⁴⁾ before the end of the relevant period except—

- (a) in a duly substantiated case of urgency,
- (b) where they are detained pursuant to the sentence or order of any court, or
- (c) where they have entered the United Kingdom and are removable as an illegal entrant under Schedule 2 to the Immigration Act 1971.

But those exceptions do not apply at any time when the removal of the appellant is prohibited under subsection (1F).

(1D) For the purposes of subsection (1C), “the relevant period” is the period of one month beginning with the day on which the relevant appellant is notified of the decision to remove them.

(1E) Subsection (1F) applies to a relevant appellant who applies to the appropriate court or tribunal (whether by means of judicial review or otherwise) for an interim order to suspend enforcement of the decision to remove them from the United Kingdom.

(1F) A relevant appellant to whom this subsection applies may not be removed from, or required to leave, the United Kingdom in accordance with a provision of the Immigration Acts until such time as the decision on the interim order has been taken unless—

- (a) the decision to remove them is based on a previous judicial decision,
- (b) they have had previous access to judicial review, or
- (c) the decision to remove them is based on imperative grounds of public security.”;

(iii) in subsection (2), for “section 104” there were substituted “regulation 13 of the 2020 Regulations”;

(iv) in subsection (4), for “section 92” there were substituted “the 2020 Regulations”;

(c) section 78A(3) has effect as if—

- (i) in paragraph (a), for “section 82” there were substituted “the 2020 Regulations”;

(4) See the definition of “the Immigration Acts” in Schedule 1 to the Interpretation Act 1978 (c. 30).

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

- (ii) in paragraph (b), for “section 104” there were substituted “regulation 13 of the 2020 Regulations”;
 - (d) section 79 has effect as if —
 - (i) in subsection (1), for the words from “section 82(1)” to “relating to” there were substituted “the 2020 Regulations to the Commission against”;
 - (ii) after subsection (1), there were inserted—
 - “(1A) But subsection (1) does not prevent the Secretary of State making a deportation order in respect of a person (“P”) if—
 - (a) the decision to make the deportation order in respect of P is certified under paragraph 1 or 2 of Schedule 1 to the 2020 Regulations as taken in the interests of national security, or
 - (b) P’s removal is certified under paragraph (3) of regulation 16 of the 2020 Regulations, where the decision to make the deportation order in respect of P is the relevant appealable decision referred to in paragraph (1)(a) of that regulation in respect of which P’s removal was certified.”;
 - (iii) in subsection (2), for “section 104” there were substituted “regulation 13 of the 2020 Regulations”;
 - (e) section 105 has effect as if, in subsection (4), for the words from “means” to the end, there were substituted “has the meaning given in regulation 2 of the 2020 Regulations”;
 - (f) section 113 has effect as if, before the definition of “asylum claim”, there were inserted—
 - ““the 2020 Regulations” means the Immigration (Citizens’ Rights Appeals) (EU Exit) Regulations 2020;”;
 - (g) section 120 has effect as if at the end of the definition of “grounds” in subsection (6) there were inserted “, or on which an appeal to the Commission under the 2020 Regulations may be brought (see regulation 8 of those Regulations)”.
- (b) subsections (3), (5) and (6) were omitted.