

SCHEDULE 4

Article 5(4)

Transitional and saving provisions

Appeals and applications for bail

1. An appeal under section 40A of the British Nationality Act 1981⁽¹⁾, section 82, 83 or 83A of the 2002 Act or regulation 26 of the Immigration (European Economic Area) Regulations 2006⁽²⁾, or an application for bail under Schedule 2 to the Immigration Act 1971⁽³⁾, made to the Asylum and Immigration Tribunal before 15 February 2010 but not determined before that date shall continue as an appeal or application before the First-tier Tribunal.

Section 103A applications

2. An application for review made to the Asylum and Immigration Tribunal under section 103A of the 2002 Act and Schedule 2 to the 2004 Act before 15 February 2010 but not determined before that date shall continue as an application to the First-tier Tribunal for permission to appeal to the Upper Tribunal under section 11 of the 2007 Act.

3. Where the Asylum and Immigration Tribunal or the appropriate court has made an order for reconsideration under section 103A of the 2002 Act before 15 February 2010, but reconsideration has not taken place before that date, the order for reconsideration shall be treated as an order granting permission to appeal to the Upper Tribunal under section 11 of the 2007 Act and sections 12 and 13 of the 2007 Act shall apply.

4. Where the reconsideration of an appeal by the Asylum and Immigration Tribunal under section 103A of the 2002 Act has commenced before 15 February 2010 but has not been determined, the reconsideration shall continue as an appeal to the Upper Tribunal under section 12 of the 2007 Act and section 13 of the 2007 Act shall apply.

5. An application for review made to the appropriate court under section 103A of the 2002 Act before 15 February 2010 but not determined before that date shall continue as an application for review under section 103A of the 2002 Act.

6. An order for reconsideration made by the appropriate court on or after 15 February 2010 which, if it had been made before that date would have been for reconsideration by the Asylum and Immigration Tribunal, shall be treated as an order granting permission to appeal to the Upper Tribunal under section 11 of the 2007 Act and sections 12 and 13 of the 2007 Act shall apply.

Section 103C references

7. A reference made by the appropriate court to the appropriate appellate court under section 103C of the 2002 Act before 15 February 2010 shall continue to be considered as a reference under section 103C of the 2002 Act.

8. A case remitted or restored by the appropriate appellate court on or after 15 February 2010 which, if it had been remitted or restored before that date would have been remitted to the Asylum and Immigration Tribunal or restored to the appropriate court, shall be remitted to the Upper Tribunal and sections 12 and 13 of the 2007 Act shall apply.

(1) 1981 c.61.
(2) S.I. 2006/1003.
(3) 1971 c.77.

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Section 103B and 103E applications

9. An application for permission to appeal to the appropriate appellate court made to the Asylum and Immigration Tribunal under section 103B or 103E of the 2002 Act before 15 February 2010 but not determined before that date shall continue as an application to the Upper Tribunal for permission to appeal to the relevant appellate court under section 13 of the 2007 Act.

10. An application for permission to appeal to the appropriate appellate court made to that court under section 103B or 103E of the 2002 Act before 15 February 2010 but not determined before that date shall continue as an application for permission to appeal to the appropriate appellate court under section 103B or 103E of the 2002 Act.

11. An appeal which is proceeding before the appropriate appellate court under section 103B or 103E of the 2002 Act before 15 February 2010 but which is not determined before that date shall continue as an appeal to the appropriate appellate court under section 103B or 103E of the 2002 Act.

12. A case remitted by the appropriate appellate court on or after 15 February 2010 which, if it had been remitted before that date would have been remitted to the Asylum and Immigration Tribunal, shall be remitted to the Upper Tribunal and sections 12 and 13 of the 2007 Act shall apply.

Time limits

13.—(1) Where the time period for making an appeal or application has begun but not expired before 15 February 2010, in the case of—

- (a) an appeal to the Asylum and Immigration Tribunal under section 40A of the British Nationality Act 1981, section 82, 83 or 83A of the 2002 Act or regulation 26 of the Immigration (European Economic Area) Regulations 2006, an appeal may be made within that period to the First-tier Tribunal;
- (b) an application to the Asylum and Immigration Tribunal for review under section 103A of the 2002 Act and Schedule 2 to the 2004 Act, an application for permission to appeal to the Upper Tribunal under section 11 of the 2007 Act may be made within that period to the First-tier Tribunal;
- (c) an application to the appropriate court for review under section 103A of the 2002 Act, an application may be made within that period under section 103A of the 2002 Act to the appropriate court;
- (d) an application to the Asylum and Immigration Tribunal for permission to appeal to the appropriate appellate court under section 103B or 103E of the 2002 Act, an application for permission to appeal to the relevant appellate court under section 13 of the 2007 Act may be made within that period to the Upper Tribunal; and
- (e) an application to the appropriate appellate court for permission to appeal to that court under section 103B or 103E of the 2002 Act, an application for permission to appeal to the relevant appellate court under section 13 of the 2007 Act may be made within that period to that court.

(2) Where an appeal or application mentioned in sub-paragraphs (1)(a) to (e) is made after the time period in question has expired, it must be made and decided in accordance with the relevant procedural rules or other enactments, as they apply on and after the transfer date.

(3) Where an appeal or application has been determined by the Asylum and Immigration Tribunal before the transfer date but the determination has not been served on the parties before that date, the determination shall be treated as if it were a determination of the First-tier Tribunal or (if it follows reconsideration) a determination of the Upper Tribunal, as the case may be, and the determination may be served accordingly.

(4) Sub-paragraph (3) applies, subject to any necessary modifications, to any other decision of the Asylum and Immigration Tribunal that has been made but not served before the transfer date.

General

14.—(1) This paragraph applies where proceedings are commenced or continued in the First-tier Tribunal or the Upper Tribunal by virtue of the provisions of this Schedule.

(2) The First-tier Tribunal or Upper Tribunal, as the case may be, may give any direction to ensure that the proceedings are dealt with fairly and, in particular, may apply any provision in procedural rules which applied to the proceedings before 15 February 2010.

(3) In sub-paragraph (2) “procedural rules” includes any provision (whether called rules or not) regulating practice or procedure before the Asylum and Immigration Tribunal.

(4) Any direction or order given or made in the proceedings which is in force immediately before 15 February 2010 remains in force on and after that date as if it were a direction or order of the First-tier Tribunal or Upper Tribunal, as the case may be, and may be varied accordingly.

(5) A time period which has started to run before 15 February 2010 and which has not expired shall continue to apply.

15. Any procedural, ancillary or preliminary matter before the Asylum and Immigration Tribunal before 15 February 2010 may, on or after that date, be considered by the First-tier Tribunal or the Upper Tribunal, as the case may be, as appropriate.

16.—(1) This paragraph applies when—

- (a) the Asylum and Immigration Tribunal has started to reconsider or has reconsidered an appeal before 15 February 2010, but has not produced a determination before that date; and
- (b) the reconsideration of the appeal continues as an appeal to the Upper Tribunal by virtue of paragraph 4.

(2) A member of the Asylum and Immigration Tribunal who was hearing or otherwise considering the appeal may take all such steps as the member considers necessary to determine the appeal and produce a determination on or after 15 February 2010.

17. In any judicial review proceedings before the High Court, the Court of Session or the High Court of Northern Ireland before 15 February 2010 where a matter could be remitted to the Asylum and Immigration Tribunal, on or after that date the matter may be remitted to the First-tier Tribunal or the Upper Tribunal as the court considers appropriate.

18. Staff appointed to the Asylum and Immigration Tribunal before 15 February 2010 are to be treated on and after that date, for the purpose of any enactment, as if they had been appointed by the Lord Chancellor under section 40(1) of the Tribunals, Courts and Enforcement Act 2007 (tribunal staff and services).

Saving provisions

19. In accordance with the provisions of this Schedule, sections 87(3) and (4), 103A, 103B, 103C and 103E of the 2002 Act, shall continue to apply to proceedings to which paragraphs 5, 7, 10 to 12 and 13(1)(c) and (2) (in relation to sub-paragraph (1)(c)) apply as if the repeals in Schedule 1 in respect of those sections of the 2002 Act had not been made.

20. Section 103D of the 2002 Act and the Community Legal Service (Asylum and Immigration Appeals) Regulations 2005(4) (“the 2005 Regulations”) (legal aid funding arrangements) shall

(4) *S.I. 2005/966* was amended by the Community Legal Service (Asylum and Immigration Appeals) (Amendment) Regulations 2007 (*S.I. 2007/1317*).

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continue to apply to proceedings to which paragraphs 2 to 8 and 13(1)(b), (c) and (2) (in relation to sub-paragraphs (1)(b) to (e)) apply until the proceedings are finally determined —

- (a) as if the repeals in Schedule 1 in respect of sections 103A and 103D of the 2002 Act and rule 33 of the Asylum and Immigration Tribunal (Procedure) Rules 2005⁽⁵⁾ (“the 2005 Rules”), and the repeals and revocations in Schedule 3 in respect of paragraph 30 of Schedule 2 to the 2004 Act and the 2005 Regulations had not been made;
- (b) as if the references to the Tribunal in section 103D of the 2002 Act, paragraph 30 of Schedule 2 to the 2004 Act, the 2005 Regulations and rule 33 of the 2005 Rules were references to the First-tier Tribunal or the Upper Tribunal as appropriate, and the references to the appropriate court and the High Court were references to the Upper Tribunal where appropriate; and
- (c) subject to any necessary modifications to the 2005 Regulations and the 2005 Rules.

Interpretation

21. In this Schedule—

“appropriate court” means—

- (i) in relation to an appeal decided in England or Wales, the High Court;
- (ii) in relation to an appeal decided in Scotland, the Outer House of the Court of Session; and
- (iii) in relation to an appeal decided in Northern Ireland, the High Court of Northern Ireland;

“appropriate appellate court” means—

- (iv) in relation to an appeal decided in England or Wales, the Court of Appeal;
- (v) in relation to an appeal decided in Scotland, the Inner House of the Court of Session; and
- (vi) in relation to an appeal decided in Northern Ireland, the Court of Appeal of Northern Ireland;

“the 2002 Act” means the Nationality, Immigration and Asylum Act 2002⁽⁶⁾;

“the 2004 Act” means the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004⁽⁷⁾;
and

“the 2007 Act” means the Tribunals, Courts and Enforcement Act 2007⁽⁸⁾.

⁽⁵⁾ S.I. 2005/230.

⁽⁶⁾ 2002 c.41.

⁽⁷⁾ 2004 c.19.

⁽⁸⁾ 2007 c.15.