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STATUTORY INSTRUMENTS

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**1996 No. 2070**

**The Asylum Appeals (Procedure) Rules 1996**

**PART V**

**GENERAL PROCEDURE**

**Application of Part V**

- 22.**—(1) This Part applies to —
- (a) proceedings to which Part II applies (appeals to special adjudicator);
  - (b) proceedings to which Part III applies (appeals to the Tribunal from special adjudicator);
  - (c) proceedings to which Part IV applies (applications for leave to appeal from the Tribunal);  
and
  - (d) applications for bail.

**Conduct of appeals**

**23.**—(1) The appellate authority may, subject to the provisions of these Rules, regulate the procedure to be followed at hearings.

(2) The overriding objective shall be to secure the just, timely and effective disposal of appeals and, in order to further that objective, the authority may give directions which control the preparation for, and conduct of, any hearing.

(3) The authority may, after receiving a notice of appeal, give directions under this rule orally or in writing and notice of any written directions so given shall be served on all parties to the appeal.

- (4) Directions given under this rule may —
- (a) relate to any matter concerning the preparation for a hearing and, in particular, may specify the length of time allowed for anything to be done;
  - (b) specify the place at which the appeal shall be heard;
  - (c) in particular, provide for —
    - (i) a particular matter to be dealt with as a preliminary issue;
    - (ii) a pre-hearing review to be held;
    - (iii) the furnishing of any particulars which appear to be requisite for the determination of the appeal;
  - (d) require any party to the appeal to file —
    - (i) statements of the evidence which will be called at the hearing specifying in what respect the services of an interpreter will be required;
    - (ii) a paginated and indexed bundle of all the documents which will be relied on at the hearing;

- (iii) a skeleton argument which summarises succinctly the submissions which will be made at the hearing and cites all the authorities which will be relied on identifying any particular passages to be relied on;
- (iv) an estimate of the time which will be needed for the hearing of the appeal;
- (v) a list of the witnesses who will be called to give evidence;
- (vi) a chronology of events;
- (e) limit
  - (i) the number or length of documents produced by, for example, requiring the appellant to specify to the respondent the passage or part of any document on which he will rely, especially if the document has to be translated into English for the hearing;
  - (ii) the length of oral submissions;
  - (iii) the time allowed for the examination and cross examination of witnesses by, for example, allowing a witness statement to stand as evidence in chief;
  - (iv) the issues which will be addressed at the hearing;
- (f) facilitate the holding of combined hearings under rule 34.

(5) The appellant and the respondent shall provide to every other party to the appeal a copy of any document which he is directed to file under paragraph (4).

(6) Directions shall be given under this rule in an appeal in which the appellant is unrepresented only where the appellate authority is satisfied that the appellant will be able to comply with the directions.

#### **Failure to comply with directions**

**24.**—(1) Subject to paragraph (2), where a party fails to comply with a direction given under rule 23 the appellate authority may —

- (a) treat that party as having abandoned the appeal or, as the case may be, treat the decision appealed against as having been withdrawn, or
- (b) proceed with the appeal; or
- (c) determine the appeal without a hearing under rule 35.

(2) Where the appellate authority is satisfied that the party in default was prevented by circumstances beyond his control from complying with the direction given under rule 23, additional directions may be given under that rule.

#### **Bail**

**25.**—(1) An application by an appellant to be released on bail if made to —

- (a) an immigration officer or police officer, shall be made orally; or
- (b) the appellate authority, may be made either orally or in writing.

(2) Where an application is made in writing pursuant to paragraph (1)(b), it shall contain the following particulars —

- (a) the full name of the appellant;
- (b) the address of the place where, and the purpose for which, the appellant is detained at the time when the application is made;
- (c) whether an appeal is pending at the time when the application is made;
- (d) the address where the appellant would reside if his application for bail were to be granted;

- (e) the amount of the recognizance in which he would agree to be bound;
- (f) the full names, addresses and occupations of two persons who might act as sureties for the appellant if his application for bail were to be granted, and the amounts of the recognizance in which those persons might agree to be bound; and
- (g) the grounds on which the application is made and, where a previous application has been refused, full particulars of the change in circumstances which has occurred since that refusal.

(3) An application made in writing pursuant to paragraph (1)(b) shall be signed by the appellant or by a person duly authorised by him in that behalf or, in the case of an appellant who is a minor or who is for any reason incapable of acting, by any person acting on his behalf.

(4) The recognizance of an appellant shall be in Form A4 and that of a surety in Form A5.

(5) Where the appellate authority directs the release of an appellant on bail and the taking of the recognizance is postponed under paragraph 22(3) or 29(6) of Schedule 2 to the 1971 Act, it shall certify in writing that bail has been granted in respect of the appellant, and shall include in the certificate particulars of the conditions to be endorsed on the recognizance with a view to the recognizance being taken subsequently, the amounts in which the appellant and any sureties are to be bound and the date of issue of the certificate.

(6) The person having custody of an appellant shall —

- (a) on receipt of a certificate signed by or on behalf of the appellate authority stating that the recognizance of any sureties required have been taken, or on being otherwise satisfied that all such recognizances have been taken; and
- (b) on being satisfied that the appellant has entered into his recognizance,

release the appellant.

(7) Paragraphs (4) and (5) above shall not apply to Scotland, and in its application to Scotland, this rule shall have effect as if

- (a) for paragraph (2)(e) and (f), there were substituted —
  - “(e) the amount, if any, to be deposited if bail is granted;
  - (f) the full names, addresses and occupations of such persons, if any, who offer to act as cautioners if the appellant’s application for bail were to be granted;”
- (b) for paragraph (6), there were substituted —
  - “(6) The person having custody of an appellant shall on receipt of a certified copy of the decision to grant bail and on being satisfied that the amount, if any, to be deposited has been so deposited release the appellant..”

## **Representation**

**26.—**(1) In any proceedings on an appeal, a party to the appeal may act in person or be represented or may appear —

- (a) in the case of the appellant, by counsel or a solicitor, a person appointed in that behalf by any voluntary organisation for the time being in receipt of a grant under section 23 of the 1971 Act or, with the leave of the appellate authority, by any other person appearing to the authority to be acting on behalf of the appellant;
- (b) in the case of the Secretary of State or any officer of his, by counsel or a solicitor or any officer of the Secretary of State;
- (c) in the case of the United Kingdom Representative of the United Nations High Commissioner for Refugees, by a person appointed by him in that behalf.

(2) A person representing a party to an appeal in accordance with paragraph (1) may take all such steps and do all such things relating to the proceedings as the person whom he represents is by these Rules required or authorised to take or do.

### **Evidence**

**27.**—(1) In any proceedings on an appeal the Tribunal may receive as evidence the summary made in accordance with rule 43 of any evidence received —

- (a) by the special adjudicator in the course of the proceedings to which the appeal relates, or
- (b) by a special adjudicator to whom the appeal has been remitted in pursuance of paragraph (3)(c)(i) below.

(2) If any party to the appeal wishes to adduce evidence before the Tribunal further to that to be received in accordance with paragraph (1) above, he shall give notice in writing to that effect to the Tribunal indicating the nature of the evidence; and any such notice shall be given —

- (a) in the case of the appellant, with the notice of appeal or as soon as practicable after notice of appeal is given or is deemed to have been given;
- (b) in the case of any other party, as soon as practicable after he has been notified of the appeal.

(3) In any proceedings on an appeal —

- (a) the Tribunal may, in its discretion, receive or decline to receive further evidence of which notice has been given in accordance with paragraph (2);
- (b) if, to enable it to arrive at a proper determination of the appeal, the Tribunal requests the furnishing of further evidence relating to specified matters, it shall receive such further evidence;
- (c) where such further evidence as is mentioned in sub-paragraph (a) or (b) falls to be received it shall be given, as the Tribunal may direct, either —
  - (i) orally, in which case the Tribunal may take the further evidence itself or remit the appeal to the same or another adjudicator for the taking of that evidence, or
  - (ii) in writing, in which case it shall be given in such manner and at such time as the Tribunal may require.

### **Summoning of witnesses**

**28.**—(1) Subject to paragraph (2), the appellate authority may, for the purposes of any appeal, by summons in Form A6 require any person in the United Kingdom to attend as a witness at a hearing of the appeal at such time and place as may be specified in the form and, subject to the provisions of rule 29(2), at the hearing to answer any questions or produce any documents in his custody or under his control which relate to any matter in question in the appeal.

(2) No person shall be required, in obedience to such a summons, to travel more than 16 kilometres from his place of residence unless the necessary expenses of his attendance are paid or tendered to him, and when the summons is issued at the request of a party to the appeal, those expenses are so paid or tendered by that party.

### **Mode of giving evidence**

**29.**—(1) The appellate authority may receive oral, documentary or other evidence of any fact which appears to the authority to be relevant to the appeal notwithstanding that such evidence would be inadmissible in a court of law.

(2) In any proceedings before the appellate authority, no person shall be compelled to give any evidence or produce any document which he could not be compelled to give or produce on the trial of an action in that part of the United Kingdom in which the proceedings are conducted.

(3) The appellate authority may require any witness to give evidence on oath or affirmation, and for that purpose an oath or affirmation in due form may be administered.

### **Inspection of documentary evidence**

**30.**—(1) Subject to paragraph (2) below, when the appellate authority takes into consideration documentary evidence, every party to the appeal shall be given an opportunity of inspecting that evidence and taking copies if copies have not been provided pursuant to rule 23.

(2) Where on an appeal it is alleged that —

- (a) a passport or other travel document, certificate of entitlement, entry clearance or work permit (or any part thereof or entry therein) on which a party relies is a forgery, and
- (b) the disclosure to that party of any matters relating to the method of detection would be contrary to the public interest,

then, if supply of a document to that party would involve such disclosure, that document shall not be supplied to, or made available for inspection by, that party.

### **Burden of proof**

**31.**—(1) If in any proceedings before the appellate authority a party asserts that a decision or action taken against him under any statutory provision ought not to have been taken on the grounds that he is not a person to whom the provision applies, it shall lie on him to prove that he is not such a person.

(2) If in any proceedings before the appellate authority a party asserts any fact of such a kind that, if the assertion were made to the Secretary of State or any officer for the purposes of any statutory provisions or any immigration rules, it would by virtue of those provisions or rules be for him to satisfy the Secretary of State or officer of the truth thereof, it shall lie on that party to prove that the assertion is true.

(3) In this rule “statutory provision” means any provision contained in

- (a) the 1971 Act, the 1993 Act or the 1996 Act, or
- (b) any instrument made under those Acts,

and, in paragraph (2), “immigration rules” means the rules for the time being laid down as mentioned in section 3(2) of the 1971 Act.

### **Exclusion of public**

**32.**—(1) Subject to the provisions of this rule, any hearing by the appellate authority shall take place in public.

(2) Subject to the provisions of paragraph (4), where in accordance with section 22(4) of the 1971 Act (cases involving forgery of documents) the appellate authority is required to arrange for the proceedings to take place in the absence of a party and his representatives, all members of the public shall be excluded from those proceedings.

(3) Subject to the provisions of paragraph (4), the appellate authority may exclude any member of the public or members of the public generally from any hearing or from any part of such a hearing —

- (a) at the request of a party;

- (b) where, in the opinion of the authority, a member of the public is behaving in a manner likely to interfere with the proper conduct of the proceedings and, to prevent such interference, that member or members of the public generally should be excluded; or
  - (c) where, in the opinion of the authority, such evidence relating to a person other than a party is likely to be given as, subject to the interests of the parties, should not be given in public and no party requests that it be given in public.
- (4) Nothing in this rule shall prevent a member of the Council on Tribunals or of its Scottish Committee from attending a hearing in his capacity as such.

### **Hearing of appeal in absence of appellant or other party**

**33.**—(1) The appellate authority may, where in the circumstances of the case it appears proper so to do, hear an appeal in the absence of the appellant if satisfied that —

- (a) he is not in the United Kingdom;
- (b) he is suffering from a communicable disease or from a mental disorder;
- (c) by reason of illness or accident he cannot attend the hearing; or
- (d) it is impracticable to give him notice of the hearing and that no person is authorised to represent him at the hearing.

(2) Without prejudice to paragraph (1) but subject to paragraph (3), the appellate authority may proceed with the hearing of an appeal in the absence of a party (including the appellant) if satisfied that, in the case of that party, such notice of the time and place of the hearing, or of the adjourned hearing, as is required by rules 14(2) and 18(3) or, in the case of a hearing before a special adjudicator, by rule 6 and rule 10(3), has been given.

(3) The appellate authority shall proceed with the hearing in pursuance of paragraph (2) if the absent party has not furnished the authority with a satisfactory explanation of his absence.

(4) Where in pursuance of this rule the appellate authority hears an appeal or proceeds with a hearing in the absence of the appellant or some other party, it may determine the appeal on such evidence as has been received.

(5) For the purposes of this rule a reference to a party (including an appellant) includes a reference to his representative.

### **Combined hearings**

**34.** Where in the case of two or more appeals it appears to the appellate authority that —

- (a) some common question of law or fact arises in both or all of them; or
- (b) they relate to decisions or action taken in respect of persons who are members of the same family; or
- (c) for some other reason it is desirable to proceed with the appeals under this rule,

the authority may, after giving all the parties an opportunity of being heard, decide that the appeals should be heard together.

### **Determination without hearing**

**35.**—(1) An appeal may be determined without a hearing under this rule if —

- (a) the special adjudicator has decided, after giving every other party to the appeal an opportunity of replying to any representations submitted in writing by or on behalf of the appellant, to allow the appeal; or

- (b) the special adjudicator is satisfied that the appellant is outside the United Kingdom or that it is impracticable to give him notice of a hearing and, in either case, that no person is authorised to represent him at a hearing; or
  - (c) a preliminary issue has arisen and, the appellant having been afforded a reasonable opportunity to submit a written statement rebutting the respondent's allegation —
    - (i) the appellant has not submitted such a statement, or
    - (ii) the special adjudicator is of the opinion that matters put forward by the appellant in such a statement do not warrant a hearing; or
  - (d) the parties agree in writing upon the terms of a determination, or
  - (e) the special adjudicator is satisfied, having regard to —
    - (i) the material before him;
    - (ii) the nature of the issues raised; and
    - (iii) the extent to which any directions given under rule 23 have been complied with, that the appeal could be so disposed of justly.
- (2) Paragraph (1) shall apply with the necessary modifications to hearings before the Tribunal.
- (3) Where an appeal is determined under paragraph (1)(e), written notice of the determination shall be made available for public inspection.
- (4) This paragraph applies where —
- (a) the decision appealed against has been withdrawn or reversed by the respondent, and the special adjudicator is satisfied that written notice of the withdrawal or reversal has been given to the appellant by the respondent; or
  - (b) the special adjudicator is satisfied, having regard to the material before him or to the conduct of the appellant or his failure to appear or otherwise to prosecute the appeal, that the appeal has been abandoned; or
  - (c) the special adjudicator is satisfied, having regard to the material before him or to the conduct of any party, that the decision appealed against has been withdrawn.
- (5) Where the appellate authority is satisfied that —
- (a) the appellant was notified of the hearing date, and
  - (b) the provisions of paragraph (4) apply to the appeal,
- it shall send to the parties written notice that paragraph (4) applies (specifying the sub-paragraph which is appropriate) and it shall not be necessary to hold a hearing in order to determine the appeal or to issue a written notice of determination.

### **Summary determination of appeals**

**36.**—(1) Subject to paragraph (2), where it appears to the appellate authority that the issues raised on an appeal have been determined —

- (a) in the case of an appeal before a special adjudicator, by the same or another adjudicator or by the Tribunal, or
- (b) in the case of an appeal before the Tribunal, by the Tribunal,

under Part II of the 1971 Act, under the 1993 Act or under the 1996 Act in previous proceedings to which the appellant was a party, on the basis of facts which did not materially differ from those to which the appeal relates, the authority may determine the appeal summarily without a hearing.

(2) Before the appellate authority determines an appeal summarily in accordance with paragraph (1), it shall give the parties an opportunity of making representations to the effect that the appeal ought not to be so determined.

(3) Where an appeal is determined summarily in accordance with paragraph (1), the appellate authority shall send to the parties written notice that the appeal has been so determined, and any such notice shall

- (a) contain a statement of the issues raised on the appeal and
- (b) specify the previous proceedings in which those issues were determined

and the provisions of rule 2(3)(b) shall not apply to such a notice.

### **Performance of functions of Tribunal**

**37.** The following functions may be performed by the President of the Tribunal or a chairman acting alone:

- (a) any function conferred on the Tribunal by Part II of Schedule 2 to the 1971 Act;
- (b) any function conferred on the Tribunal relating to applications for leave to appeal; or
- (c) any function conferred on the Tribunal of —
  - (i) extending time limits under rule 41;
  - (ii) remitting an appeal to an adjudicator pursuant to rule 17(2); or
  - (iii) requiring the attendance of witnesses at the hearing of an appeal.

### **Notices etc**

**38.—**(1) Any notice or other document required or authorised by these Rules to be sent or given to any person or authority may be sent by post or FAX or delivered, in the case of a document directed to —

- (a) the Tribunal, to the secretary of the Tribunal;
- (b) a special adjudicator, to any person employed as his clerk;
- (c) the Secretary of State, to the Appeals Support Section of the Asylum Division in the Home Office;

and, if sent or given to a person representing a party to an appeal in accordance with rule 26(1), shall be deemed to have been sent or given to that party.

(2) A party to an appeal shall inform the appellate authority of the address at which documents may be served on him (“his address for service”) and, until he gives notice to the authority that his address for service has changed, any document served at that address shall be deemed to have been served on him.

### **Mixed appeals**

**39.—**(1) This rule applies in any case where a person (“the appellant”) is appealing to the appellate authority in relation to any of the grounds mentioned in subsections (1) to (4) of section 8 of the 1993 Act (“section 8 appeal”) and is also appealing to the authority in relation to other grounds under Part II of the 1971 Act (“1971 Act appeal”).

(2) Where the appellant lodges his 1971 Act appeal before his section 8 appeal has been determined by the authority, the authority shall deal with both appeals in the same proceedings.

(3) Where the appellant lodges his section 8 appeal before his 1971 Act appeal has been determined by the authority, the authority dealing with his section 8 appeal shall deal with both appeals in the same proceedings.



(4) These Rules (so far as they relate to appeals to the authority) shall apply to the 1971 Act appeal as if that appeal had been a section 8 appeal and shall continue so to apply even if the section 8 appeal is determined before the 1971 Act appeal.

(5) Nothing in paragraph (4) shall —

- (a) prejudice any steps taken under the 1984 Rules before the appellant lodged the section 8 appeal; or
- (b) require any step to be taken under these Rules which is analogous to a step already taken under the 1984 Rules.

(6) The authority may adjourn a section 8 appeal or a 1971 Act appeal so far as is necessary or expedient for complying with a requirement in this rule to deal with both appeals in the same proceedings.

(7) For the purposes of this rule, a person shall be taken to be appealing if he has given a notice of appeal in accordance with these Rules (in the case of a section 8 appeal) or in accordance with the 1984 Rules (in the case of a 1971 Act appeal) and, in either case, the appeal has not yet been determined.

### **Transfer of proceedings**

**40.**—(1) Where any proceedings before a special adjudicator have not been disposed of by him and the chief adjudicator, or any person for the time being carrying out the functions of the chief adjudicator, is of the opinion that —

- (a) it is not practicable without undue delay for the proceedings to be completed by that adjudicator, or
- (b) for some other good reason the proceedings should not be completed by that adjudicator,

he shall make arrangements for them to be dealt with by another special adjudicator.

(2) Where any proceedings are transferred to another special adjudicator in accordance with paragraph (1) —

- (a) any notice or other document which is sent or given to or by the special adjudicator from whom the proceedings were transferred shall be deemed to have been sent or given to or by the first-mentioned adjudicator; and
- (b) any special adjudicator to whom an appeal is transferred shall have power to deal with it as if it had been commenced before him.

### **Extension of time limit**

**41.**—(1) Where under these Rules the appellate authority is required to decide or determine an appeal or to provide written notice of the determination at or within a time prescribed, the authority may if necessary extend the time so prescribed either to enable it fairly to make the decision or determination or (as the case may be) to provide the notice.

(2) A special adjudicator shall not extend the time limit for giving notice of appeal except where it is in the interests of justice and he is satisfied that the party in default was prevented from complying with the time limit by circumstances beyond his control.

(3) An extension may be made notwithstanding that the time limit in any case has already expired.

### **Time**

**42.**—(1) Subject to paragraph (2), any notice or other document that is sent or served under these Rules shall be deemed to have been received —

- (a) where the notice or other document is sent by post from within the United Kingdom, on the second day after which it was sent regardless of when or whether it was received;
  - (b) where the notice or other document is sent by post from outside the United Kingdom, on the fifteenth day after which it was sent regardless of when or whether it was received; and
  - (c) in any other case, on the day on which the notice or other document was served.
- (2) Where under these Rules a notice or other document is sent by post to the appellate authority, it shall be deemed to have been received on the day on which it was in fact received by the authority.
- (3) For the purposes of these Rules, a notice or other document is received by the authority when it is received by any person employed as a clerk to the authority.
- (4) Where under these Rules, an act is to be done not later than a specified period after any event, the period shall be calculated from the expiry of the day on which the event occurred.
- (5) Where the time provided by these Rules by which any act must be done expires on a Saturday, Sunday or a bank holiday, Christmas Day or Good Friday, the act shall be done in time if done on the next working day.
- (6) Where, apart from this paragraph, the period in question being a period of 10 days or less would include a Saturday, Sunday or bank holiday, Christmas Day or Good Friday, that day shall be excluded.
- (7) In this rule, “bank holiday” means a day that is specified in, or appointed under, the Banking and Financial Dealings Act 1971(1) as a bank holiday.

### **Record of proceedings**

43. A summary of the proceedings before the appellate authority shall be made.

### **Irregularities**

44. Any irregularity resulting from failure to comply with these Rules before the appellate authority has reached a decision shall not by itself render the proceedings void, but the authority shall, if it considers that any person may have been prejudiced, take such steps as it thinks fit before reaching a decision to cure the irregularity, whether by amendment of any document, the giving of any notice or otherwise.

### **Correction of accidental errors**

45.—(1) Clerical mistakes in any determination or notice of determination, or errors arising therein from any accidental slip or omission, may at any time be corrected and any correction made to, or to a record of, a determination shall be deemed to be part of that determination or record and written notice of it shall be given as soon as practicable to every party to the proceedings.

(2) The Tribunal may after consulting the special adjudicator concerned correct errors in a determination given by a special adjudicator and any correction made to, or to a record of, a determination shall be deemed to be part of that determination or record and written notice of it shall be given as soon as practicable to every party to the proceedings and to the special adjudicator.