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**2000 No. 2739**

**IMMIGRATION AND ASYLUM**

**The Immigration Services Tribunal Rules 2000**

*Made - - - - - 4th October 2000*

*Laid before Parliament 9th October 2000*

*Coming into force - - 30th October 2000*

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The Lord Chancellor, in exercise of the powers conferred upon him by paragraphs 7 and 8(3) of Schedule 7 to the Immigration and Asylum Act 1999(a) and after consulting the Scottish Ministers and the Council on Tribunals, makes the following Rules:

### **Citation and commencement**

1. These Rules may be cited as the Immigration Services Tribunal Rules 2000 and shall come into force on 30th October 2000.

### **Interpretation**

2. In these Rules:—

“appeal” means an appeal under section 87(2) against a decision of the Commissioner, and “appellant” shall be construed accordingly;

“charge” means a disciplinary charge laid by the Commissioner under paragraph 9(1)(e) of Schedule 5 and “person charged” shall be construed accordingly;

“procedural direction” means a direction relating to any of the following matters:—

- (a) the suspension of the effect of the decision appealed against pending determination of the appeal (rule 10);
- (b) the cancellation or variation of a direction suspending the effect of a decision (rule 11);
- (c) restrictions on or prohibition of the provision of immigration advice or immigration services pending determination of a charge (rule 15);
- (d) the consolidation of the proceedings with any other proceedings before the Tribunal, whether involving the same or different parties (rule 16(2)(a));
- (e) the hearing of any two or more sets of proceedings together (rule 16(2)(b));
- (f) the extension of the time limited by these Rules for any step in the proceedings (rule 16(2)(c));
- (g) what witnesses are to be heard at the full hearing of an appeal or charge (rule 17);
- (h) the provision of information, or disclosure of documents, by any party to the proceedings to any other party or to the Tribunal (rule 18);
- (i) the date for the full hearing of an appeal or charge (rule 19);
- (j) who may represent any party to an appeal or charge (rule 21(d));
- (k) the setting aside of a decision made in the absence of a party and the re-listing of the proceedings for hearing (rule 25);
- (l) any other arrangement which, in the opinion of the Tribunal, may facilitate the determination of the appeal or charge (rule 16(2)(d));

a section or Schedule cited by number alone means the section or Schedule so numbered in the Immigration and Asylum Act 1999;

all words and expressions defined in section 82 shall have the same meaning in these Rules.

### **Composition of the Tribunal**

3.—(1) At the hearing of an appeal or charge, the Tribunal shall consist of a legally qualified member and two other members.

(2) The Tribunal shall consist of a legally qualified member alone when considering or deciding, at a hearing or otherwise, whether—

- (a) to give a person permission to appeal out of time;
- (b) to make, cancel or vary a direction under paragraph 8 of Schedule 7 (suspending the effect of a relevant decision);
- (c) to make a direction under paragraph 9(3) of Schedule 5 (restricting or prohibiting the provision of immigration advice or immigration services while the Tribunal deals with a charge);
- (d) to make any other procedural direction; or
- (e) to give effect to a draft order settling proceedings by consent.

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(a) 1999 c. 33.

(3) At a preliminary hearing, the Tribunal shall consist of a legally qualified member sitting alone if the hearing relates solely to procedural directions, and of a legally qualified member and two other members otherwise.

(4) Subject to the preceding paragraphs of this rule and to rule 4, every function of the Tribunal may be exercised by such member of the Tribunal or of its staff as the President shall direct, either generally or in relation to a specified case or description of cases.

#### **The Register**

- 4.—(1) There shall be a Register of proceedings pending or concluded before the Tribunal.
- (2) That Register shall record:—
- (a) every appeal commenced and every charge laid before the Tribunal, together with the number allotted to it;
  - (b) a brief statement of the way in which each appeal or charge was determined.
- (3) That Register shall be open to inspection by the public during normal office hours.

#### **Notice of appeal**

5.—(1) An appeal shall be commenced by sending to the Tribunal written notice of appeal, together with a copy of the decision against which the appeal is brought.

(2) Every notice of appeal shall be signed and dated, and contain the following information:—

- (a) the name and address of the appellant;
- (b) the name and address of any person representing the appellant;
- (c) the nature and date of the decision against which the appeal is brought;
- (d) the grounds of the appeal; and
- (e) where the appeal is out of time, the reason for the delay.

#### **Acknowledgment of appeal**

6. As soon as practicable after receiving the notice of appeal, the Tribunal shall—
- (a) allot a number to the appeal and enter it in the Register mentioned in rule 4; and
  - (b) send an acknowledgment to the appellant and a copy of the notice of appeal to the Commissioner.

#### **Reply to notice of appeal**

7.—(1) Within the period specified in paragraph (2) below, the Commissioner may send to the appellant and the Tribunal a notice in reply, containing the Commissioner's reasons for opposing the appeal.

- (2) The notice in reply may be sent at any time within 28 days from—
- (a) where the appeal is out of time, the Tribunal's decision to permit the appellant to appeal out of time;
  - (b) otherwise, the sending to the Commissioner of the copy of the notice of appeal.

#### **Time for appealing**

8. The period within which an appeal against any relevant decision of the Commissioner as defined in section 87(3) can be brought is 28 days after the decision is notified to the person aggrieved; and where the decision is notified in writing, the decision shall be deemed to be notified as soon as written notice of it is sent.

#### **Permission to appeal out of time**

9.—(1) A person aggrieved by a decision of the Commissioner may appeal against it after the expiry of the period limited by rule 8 with the permission of the Tribunal.

(2) An application for permission under this rule shall be made in the notice of appeal, and this notice shall be acknowledged, and a copy sent to the Commissioner, in accordance with rule 6; but no further steps in the appeal shall be taken until the application for permission has been granted.

(3) The Commissioner may, within 14 days after the sending to him of a copy of a notice of appeal containing an application for permission under paragraph (2) above, send the Tribunal a written statement consenting or objecting to the grant of permission; and whether or not he sends such a statement the Tribunal shall decide on the application as soon as practicable after the expiry of those 14 days.

(4) Where the Tribunal gives permission to appeal out of time, it may concurrently make an interim direction suspending the effect of the decision appealed against.

(5) The Tribunal may decide on an application under this rule either—

- (a) without a hearing, by consideration of the written application for permission, together with the notice from the Commissioner under paragraph (3) if any, or
- (b) at a hearing at which the applicant and the Commissioner are given the opportunity to be heard.

#### **Applications for suspension of effect of decision**

**10.**—(1) An application for a direction under paragraph 8 of Schedule 7 (suspending the effect of a relevant decision) shall be made by sending to the Tribunal written notice of the application; and this written notice may—

- (a) be combined with the written notice of appeal against the decision to which the direction sought relates, or
- (b) be sent after the notice of appeal and refer to that notice

and in either case shall state the grounds of the application.

(2) As soon as practicable after receiving a notice of application under paragraph (1), the Tribunal shall send an acknowledgement to the applicant and a copy of the notice of application to the Commissioner.

(3) Before deciding any application under this rule, the Tribunal may if it sees fit invite representations in writing from the Commissioner or hold a hearing.

(4) Where a direction is made other than at a hearing at which both parties were present or represented, the Tribunal shall as soon as practicable notify both parties in writing of the terms of the direction.

#### **Cancellation or variation of direction for suspension**

**11.**—(1) An application by the Commissioner for the cancellation or variation of a direction given under paragraph 8(2) of Schedule 7 shall be made by sending to the Tribunal written notice of the application, which shall state the grounds of the application.

(2) As soon as practicable after receiving a notice of application under paragraph (1), the Tribunal shall send an acknowledgement to the Commissioner and a copy of the notice of application to the appellant.

(3) Before deciding any application under this rule, the Tribunal shall either invite representations in writing from the appellant or hold a hearing at which both parties may be heard.

(4) Where a decision on an application under this rule is made other than at a hearing at which both parties were present or represented, the Tribunal shall as soon as practicable notify both parties in writing of the decision.

#### **Notice of charge**

**12.**—(1) A charge shall be laid by sending a written notice of charge to the Tribunal.

(2) Every notice of charge shall contain the following information:—

- (a) the name and address for service of the person charged;
- (b) the nature of the complaint giving rise to the charge;
- (c) the directions under section 89 which, in the Commissioner's opinion, the Tribunal ought to make in relation to the person charged

and shall be accompanied by a copy of the written statement of the Commissioner's decision on the complaint given under paragraph 8 of Schedule 5.

**Acknowledgement of notice of charge**

13. As soon as practicable after receiving the notice of charge, the Tribunal shall—
- (a) allot a number to the charge and enter it in the Register mentioned in rule 4; and
  - (b) send an acknowledgment to the Commissioner and a copy of the notice to the person charged.

**Reply to notice of charge**

14. Within 28 days after the sending to him of his copy of the notice of charge, the person charged may send to the Tribunal and the Commissioner a notice in reply, containing his answer to the complaint giving rise to the charge and any representations about the directions sought by the Commissioner.

**Interim directions restricting or prohibiting provision of immigration advice or immigration services**

15.—(1) The Commissioner may apply for a direction under paragraph 9(3) of Schedule 5 (restricting or prohibiting the provision of immigration advice or immigration services while the Tribunal deals with a charge) by sending to the Tribunal written notice of the application; and this written notice may—

- (a) be combined with the written notice of charge to which the direction sought relates, or
- (b) be sent after the notice of charge and refer to that notice

and in either case shall state the grounds of the application.

(2) As soon as practicable after receiving a notice of application under paragraph (1), the Tribunal shall send an acknowledgement to the Commissioner and a copy of the notice of application to the person charged.

(3) Before deciding any application under this rule, the Tribunal shall either invite representations in writing from the person charged or hold a hearing at which all parties may be heard.

**Procedural directions in general**

16.—(1) Any procedural direction provided for by these Rules may be made by the Tribunal either of its own motion or on the application of either party to the proceedings.

(2) In addition to every other power to make directions conferred by these Rules, the Tribunal may at any time make directions providing for—

- (a) the consolidation of the proceedings with any other proceedings before the Tribunal, whether involving the same or different parties;
- (b) two or more sets of proceedings to be heard together;
- (c) the extension of the time limited by these Rules for any step in the proceedings; or
- (d) any other arrangement which, in the opinion of the Tribunal, may facilitate the determination of the appeal or charge.

(3) Before making any procedural directions, the Tribunal may invite representations in writing or hold a hearing.

**Witnesses**

17.—(1) Within 42 days after the Tribunal has sent an acknowledgement under rule 6(b) or 13(b), each party shall notify the Tribunal in writing of the names of all witnesses whom he proposes to call in the proceedings.

(2) The Tribunal may invite any person to appear as a witness at the hearing of an appeal or charge.

(3) At or before the time when it makes arrangements for the hearing, the Tribunal shall notify all parties to the proceedings of the names of all witnesses who are due to appear at the hearing.

**Documents**

**18.**—(1) Within 42 days after the Tribunal has sent an acknowledgement under rule 6(b) or 13(b), each party shall—

- (a) send to the Tribunal copies of all documents on which he proposes to rely in the proceedings; and
- (b) send to the Tribunal a list of all other documents in his possession or control which may be relevant to issues in the proceedings, stating which he is willing to produce and which he objects to producing, with the ground of any objection.

(2) The Tribunal, upon receiving the information and documents referred to in paragraph (1) above from any party to the proceedings, shall send copies to all other parties.

(3) The Tribunal may at any time direct a party to the proceedings to disclose a specified document or documents of a specified description to the other party or parties and to the Tribunal.

(4) At or before the time when he makes arrangements for the hearing, the Tribunal shall send to each party to the proceedings copies of such of the following documents as are not already in that party's possession:—

- (a) all documents furnished to the Tribunal by any party in response to procedural directions;
- (b) in the case of an appeal, the decision appealed against;
- (c) in the case of a charge, the Commissioner's statement of his decision on the complaint underlying the charge; and
- (d) any other documents in the Tribunal's possession which it considers relevant.

**Arrangements for the hearing**

**19.**—(1) The Tribunal shall make arrangements for the hearing of an appeal or charge as soon as it is satisfied that—

- (a) all outstanding procedural directions have been complied with and there is sufficient information to allow a fair determination of the issues; or
- (b) a party has failed to comply with any reasonable directions as to the conduct of the proceedings and it is expedient for the proceedings to be determined.

(2) In selecting a date for the hearing, the Tribunal shall consult each party to the proceedings, except that if the circumstance set out in paragraph (1)(b) obtains, the hearing may be arranged so as to take place in the absence of the party in default.

(3) The President may direct that there shall be one or more preliminary hearings, either on a question of law or for any other purpose.

**The hearing**

**20.**—(1) Every hearing of an appeal or charge shall be open to the public unless the Tribunal directs otherwise.

(2) A hearing may be held in the absence of a party either—

- (a) in the circumstance set out in rule 19(1)(b), or
- (b) if the party has been notified of the date of the hearing but has failed, without reasonable excuse, to appear before the Tribunal.

(3) At any time in the course of the hearing the Tribunal may make procedural directions, including a direction that the hearing be adjourned.

(4) At the conclusion of a hearing, the members of the Tribunal shall retire to consider their determination.

(5) Any member or representative of the Council on Tribunals shall be allowed to be present at the hearing, including any part of the hearing from which the public is excluded.

(6) If the members considering an appeal or charge disagree, they shall decide by a majority.

**Representation**

**21.** At the hearing of an appeal or charge, the appellant or person charged may appear in person or be represented by—

- (a) a person with a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990(a);
- (b) an advocate or solicitor in Scotland;
- (c) a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland; or
- (d) with the permission of the Tribunal, any other person.

**Evidence**

**22.—(1)** Oral evidence may be given either on oath or affirmation or unsworn, as the Tribunal may decide.

(2) Subject to paragraph (3) below, the appellant in appeal proceedings, and the Commissioner in charge proceedings, shall have the burden of proving the facts on which he relies; and in either case proof shall be on a balance of probabilities and the strict rules of evidence shall not apply.

(3) The burden of proving that any person has been guilty of criminal or fraudulent conduct shall be on the party so alleging, and proof shall be beyond reasonable doubt; but the fact that a person has been convicted of an offence shall be sufficient evidence that he committed it.

**Withdrawal of proceedings**

**23.—(1)** An appellant may withdraw his appeal, or the Commissioner may withdraw a charge, by sending written notice to that effect to the Tribunal at any time between the sending of the notice of appeal or charge and the date of the main hearing.

(2) The Tribunal shall send a copy of a notice under paragraph (1) to every other party to the proceedings.

(3) The parties to any proceedings may at any time apply to settle them by sending an agreed draft order to the Tribunal.

(4) On receiving an agreed draft order, the Tribunal shall either—

- (a) make an order in the terms of that draft, or
- (b) state its reasons for not making an order in those terms;

and the Tribunal shall send the order, or as the case may be a letter recording its reasons for not making an order, to the parties.

**Determination of the appeal or charge**

**24.—(1)** The Tribunal may either announce its decision on any appeal or charge at the conclusion of the main hearing or reserve its decision.

(2) In either case, as soon as possible after the decision the Tribunal shall draw up a formal order, stating:—

- (a) whether the appeal or charge is upheld or dismissed; and
- (b) any direction made by the Tribunal under section 88 or 89.

(3) The order shall be sent to all parties to the proceedings and shall be accompanied by a statement of the reasons for the Tribunal's decision, and both the order and the statement of reasons shall be signed by the member presiding at the hearing (or if he is unavailable, by another member who was present at the hearing).

**Reopening of determination made in absence of party**

**25.—(1)** Where a decision is made following a hearing in the absence of one of the parties, that party may apply to the Tribunal to set aside its decision and re-list the proceedings for hearing.

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(a) 1990 c.41.

(2) An application under paragraph (1) above shall not be granted unless the applicant satisfies the Tribunal that he had a reasonable excuse for failing to comply with the direction, or to attend the hearing, as the case may be.

### **Irregularities**

**26.**—(1) Any irregularity resulting from failure to comply with any provision of these Rules before the Tribunal has reached its decision shall not of itself render the proceedings void.

(2) In any such case the Tribunal shall, if it considers that any person may have been prejudiced, take such steps as it thinks fit to cure the irregularity before reaching its decision.

(3) Clerical mistakes in any document recording a decision of the Tribunal, or errors arising in such a document from an accidental slip or omission, may be corrected by a legally qualified member.

### **Notices etc.**

**27.**—(1) Any notice or other document required or authorised by these Rules to be sent or given to any person or authority may be delivered or sent by post to an address, or sent by fax to a fax number, specified by the person or authority to whom the notice or document is directed.

(2) If any notice or other document is sent or given to a person appearing to the authority or person sending it to represent that party, it shall be deemed to have been sent or given to that party.

### **Time**

**28.** Where the time limited by these Rules for doing any thing expires on a Saturday, Sunday, Christmas day, Good Friday or bank holiday, the time limit shall be deemed to have been complied with if that thing is done on the next succeeding working day.

Signed by authority of the Lord Chancellor

*Jane Kennedy*  
Parliamentary Secretary  
Lord Chancellor's Department

Dated 4th October 2000

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## **EXPLANATORY NOTE**

*(This note is not part of the Rules)*

These Rules govern the procedure and practice to be followed in the exercise of the functions of the Immigration Services Tribunal constituted with effect from 30th October 2000 by section 87 of the Immigration and Asylum Act 1999. The functions of the Tribunal are:

- (a) to hear appeals against decisions of the Immigration Services Commissioner concerning the registration and exemption of immigration advisers;
- (b) to consider disciplinary charges brought by the Commissioner against immigration advisers.

It may also grant permission to appeal out of time, suspend the effect of a decision pending an appeal, and make directions restricting or prohibiting the provision of services by an immigration adviser pending the hearing of a disciplinary charge.

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