
STATUTORY INSTRUMENTS

2005 No. 230

The Asylum and Immigration Tribunal (Procedure) Rules 2005

PART 5

General Provisions

Conduct of appeals and applications

43.—(1) The Tribunal may, subject to these Rules, decide the procedure to be followed in relation to any appeal or application.

(2) Anything of a formal or administrative nature which is required or permitted to be done by the Tribunal under these Rules may be done by a member of the Tribunal's staff.

Constitution of the Tribunal

44.—(1) The Tribunal shall be under no duty to consider any representations by a party about the number or class of members of the Tribunal which should exercise the jurisdiction of the Tribunal.

(2) Where the President directs that the Tribunal's jurisdiction shall be exercised by more than one member, unless the President's direction specifies otherwise a single immigration judge may—

- (a) conduct a case management review hearing;
- (b) give directions to the parties; and
- (c) deal with any other matter preliminary or incidental to the hearing of an appeal or application.

Directions

45.—(1) The Tribunal may give directions to the parties relating to the conduct of any appeal or application.

(2) The power to give directions is to be exercised subject to any specific provision of these Rules.

(3) Directions must be given orally or in writing to every party.

(4) Directions of the Tribunal may, in particular—

- (a) relate to any matter concerning the preparation for a hearing;
- (b) specify the length of time allowed for anything to be done;
- (c) vary any time limit in these Rules or in directions previously given by the Tribunal for anything to be done by a party;
- (d) provide for—
 - (i) a particular matter to be dealt with as a preliminary issue;
 - (ii) a case management review hearing to be held;
 - (iii) a party to provide further details of his case, or any other information which appears to be necessary for the determination of the appeal;

- (iv) the witnesses, if any, to be heard;
 - (v) the manner in which any evidence is to be given (for example, by directing that witness statements are to stand as evidence in chief);
 - (e) require any party to file and serve—
 - (i) statements of the evidence which will be called at the hearing;
 - (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) a time estimate for the hearing;
 - (v) a list of witnesses whom any party wishes to call to give evidence;
 - (vi) a chronology of events; and
 - (vii) details of whether an interpreter will be required at the hearing, and in respect of what language and dialect;
 - (f) limit—
 - (i) the number or length of documents upon which a party may rely at a hearing;
 - (ii) the length of oral submissions;
 - (iii) the time allowed for the examination and cross-examination of witnesses; and
 - (iv) the issues which are to be addressed at a hearing; and
 - (g) require the parties to take any steps to enable two or more appeals to be heard together under rule 20.
 - (h) provide for a hearing to be conducted or evidence given or representations made by video link or by other electronic means; and
 - (i) make provision to secure the anonymity of a party or a witness.
- (5) The Tribunal must not direct an unrepresented party to do something unless it is satisfied that he is able to comply with the direction.
- (6) The President may direct that, in individual cases or in such classes of case as he shall specify, any time period in these Rules for the Tribunal to do anything shall be extended by such period as he shall specify.

Notification of hearings

46.—(1) When the Tribunal fixes a hearing it must serve notice of the date, time and place of the hearing on every party.

(2) The Tribunal may vary the date of a hearing, but must serve notice of the new date, time and place of the hearing on every party.

Adjournment

47. Subject to any provision of these Rules, the Tribunal may adjourn any hearing.

Representation

48.—(1) An appellant or applicant for bail may act in person or be represented by any person not prohibited from representing him by section 84 of the Immigration and Asylum Act 1999(1).

(2) A respondent to an appeal, the Secretary of State or the United Kingdom Representative may be represented by any person authorised to act on his behalf.

(3) If a party to whom paragraph (1) applies is represented by a person not permitted by that paragraph to represent him, any determination given or other step taken by the Tribunal in the proceedings shall nevertheless be valid.

(4) Where a representative begins to act for a party, he must immediately notify the Tribunal and the other party of that fact.

(5) Where a representative is acting for a party, he may on behalf of that party do anything that these Rules require or permit that party to do.

(6) Where a representative is acting for an appellant, the appellant is under a duty—

- (a) to maintain contact with his representative until the appeal is finally determined; and
- (b) to notify the representative of any change of address.

(7) Where a representative ceases to act for a party, the representative and the party must immediately notify the Tribunal and the other party of that fact, and of the name and address of any new representative (if known).

(8) Notification under paragraph (4) or (7)—

- (a) may be given orally at a hearing to the Tribunal and to any other party present at that hearing; but
- (b) must otherwise be given in writing.

(9) Until the Tribunal is notified that a representative has ceased to act for a party, any document served on that representative shall be deemed to be properly served on the party he was representing.

United Kingdom Representative

49.—(1) The United Kingdom Representative may give notice to the Tribunal that he wishes to participate in any proceedings where the appellant has made an asylum claim.

(2) Where the United Kingdom Representative has given notice under paragraph (1)—

- (a) rules 54(6) and 55(7) shall apply; and
- (b) the Tribunal must permit him to make representations in the proceedings if he wishes to do so, and may give directions for that purpose.

Summoning of witnesses

50.—(1) The Tribunal may, by issuing a summons (“a witness summons”), require any person in the United Kingdom—

- (a) to attend as a witness at the hearing of an appeal; and
- (b) subject to rule 51(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 issue in the appeal.

(2) A person is not required to attend a hearing in obedience to a witness summons unless—

- (a) the summons is served on him; and
- (b) the necessary expenses of his attendance are paid or tendered to him.

(3) If a witness summons is issued at the request of a party, that party must pay or tender the expenses referred to in paragraph (2)(b).

Evidence

51.—(1) The Tribunal may allow oral, documentary or other evidence to be given of any fact which appears to be relevant to an appeal or an application for bail, even if that evidence would be inadmissible in a court of law.

(2) The Tribunal may not compel a party or witness to give any evidence or produce any document which he could not be compelled to give or produce at the trial of a civil claim in the part of the United Kingdom in which the hearing is taking place.

(3) The Tribunal may require the oral evidence of a witness to be given on oath or affirmation.

(4) Where the Tribunal has given directions setting time limits for the filing and serving of written evidence, it must not consider any written evidence which is not filed or served in accordance with those directions unless satisfied that there are good reasons to do so.

(5) Where a party seeks to rely upon a copy of a document as evidence, the Tribunal may require the original document to be produced.

(6) In an appeal to which section 85(5) of the 2002 Act applies, the Tribunal must only consider evidence relating to matters which it is not prevented by that section from considering.

(7) Subject to section 108 of the 2002 Act, the Tribunal must not take account of any evidence that has not been made available to all the parties.

Language of documents

52.—(1) Subject to paragraph (2)—

(a) any notice of appeal or application notice filed with the Tribunal must be completed in English; and

(b) any other document filed with the Tribunal must be in English, or accompanied by a translation into English signed by the translator to certify that the translation is accurate.

(2) In proceedings in or having a connection with Wales, a document may be filed with the Tribunal in Welsh.

(3) The Tribunal shall be under no duty to consider a document which is not in English (or, where paragraph (2) applies, in Welsh), or accompanied by a certified translation.

Burden of proof

53.—(1) If an appellant asserts that a relevant decision ought not to have been taken against him on the ground that the statutory provision under which that decision was taken does not apply to him, it is for that party to prove that the provision does not apply to him.

(2) If—

(a) an appellant asserts any fact; and

(b) by virtue of an Act, statutory instrument or immigration rules, if he had made such an assertion to the Secretary of State, an immigration officer or an entry clearance officer, it would have been for him to satisfy the Secretary of State or officer that the assertion was true,

it is for the appellant to prove that the fact asserted is true.

Admission of public to hearings

54.—(1) Subject to the following provisions of this rule, every hearing before the Tribunal must be held in public.

(2) Where the Tribunal is considering an allegation referred to in section 108 of the 2002 Act—

- (a) all members of the public must be excluded from the hearing, and
- (b) any party or representative of a party may be excluded from the hearing.

(3) The Tribunal may exclude any or all members of the public from any hearing or part of a hearing if it is necessary—

- (a) in the interests of public order or national security; or
- (b) to protect the private life of a party or the interests of a minor.

(4) The Tribunal may also, in exceptional circumstances, exclude any or all members of the public from any hearing or part of a hearing to ensure that publicity does not prejudice the interests of justice, but only if and to the extent that it is strictly necessary to do so.

(5) A member of the Council on Tribunals or of its Scottish Committee acting in that capacity is entitled to attend any hearing and may not be excluded pursuant to paragraph (2), (3) or (4) of this rule.

(6) The United Kingdom Representative, where he has given notice to the Tribunal under rule 49, is entitled to attend any hearing except where paragraph (2) applies, and may not be excluded pursuant to paragraph (3) or (4) of this rule.

Filing and service of documents

55.—(1) Any document which is required or permitted by these Rules or by a direction of the Tribunal to be filed with the Tribunal, or served on any person may be—

- (a) delivered, or sent by post, to an address;
- (b) sent via a document exchange to a document exchange number or address;
- (c) sent by fax to a fax number; or
- (d) sent by e-mail to an e-mail address,

specified for that purpose by the Tribunal or person to whom the document is directed.

(2) A document to be served on an individual may be served personally by leaving it with that individual.

(3) Where a person has notified the Tribunal that he is acting as the representative of an appellant and has given an address for service, if a document is served on the appellant, a copy must also at the same time be sent to the appellant's representative.

(4) If any document is served on a person who has notified the Tribunal that he is acting as the representative of a party, it shall be deemed to have been served on that party.

(5) Subject to paragraph (6), any document that is served on a person in accordance with this rule shall, unless the contrary is proved, be deemed to be served—

- (a) where the document is sent by post or document exchange from and to a place within the United Kingdom, on the second day after it was sent;
- (b) where the document is sent by post or document exchange from or to a place outside the United Kingdom, on the twenty-eighth day after it was sent; and
- (c) in any other case, on the day on which the document was sent or delivered to, or left with, that person.

(6) Any notice of appeal which is served on a person under rule 6(3)(b) or 6(4)(b) shall be treated as being served on the day on which it is received by that person.

(7) Where the United Kingdom Representative has given notice to the Tribunal under rule 49 in relation to any proceedings, any document which is required by these Rules or by a direction of the Tribunal to be served on a party in those proceedings must also be served on the United Kingdom Representative.

Address for service

56.—(1) Every party, and any person representing a party, must notify the Tribunal in writing of a postal address at which documents may be served on him and of any changes to that address.

(2) Until a party or representative notifies the Tribunal of a change of address, any document served on him at the most recent address which he has notified to the Tribunal shall be deemed to have been properly served on him.

Calculation of time

57.—(1) Where a period of time for doing any act is specified by these Rules or by a direction of the Tribunal, that period is to be calculated—

- (a) excluding the day on which the period begins; and
- (b) where the period is 10 days or less, excluding any day which is not a business day (unless the period is expressed as a period of calendar days).

(2) Where the time specified by these Rules or by a direction of the Tribunal for doing any act ends on a day which is not a business day, that act is done in time if it is done on the next business day.

Signature of documents

58. Any requirement in these Rules for a document to be signed by a party or his representative shall be satisfied, in the case of a document which is filed or served electronically in accordance with these rules, by the person who is required to sign the document typing his name or producing it by computer or other mechanical means.

Errors of procedure

59.—(1) Where, before the Tribunal has determined an appeal or application, there has been an error of procedure such as a failure to comply with a rule—

- (a) subject to these Rules, the error does not invalidate any step taken in the proceedings, unless the Tribunal so orders; and
- (b) the Tribunal may make any order, or take any other step, that it considers appropriate to remedy the error.

(2) In particular, any determination made in an appeal or application under these Rules shall be valid notwithstanding that—

- (a) a hearing did not take place; or
- (b) the determination was not made or served,

within a time period specified in these Rules.

Correction of orders and determinations

60.—(1) The Tribunal may at any time amend an order, notice of decision or determination to correct a clerical error or other accidental slip or omission.

- (2) Where an order, notice of decision or determination is amended under this rule—
 - (a) the Tribunal must serve an amended version on the party or parties on whom it served the original; and
 - (b) if rule 10(8) and (9), rule 23(5) and (6) or rule 27(5)(b)-(d) applied in relation to the service of the original, it shall also apply in relation to the service of the amended version.
- (3) The time within which a party may apply for permission to appeal against, or for a review of, an amended determination runs from the date on which the party is served with the amended determination.