

2008 No. 1088 (L. 7)

IMMIGRATION

**The Asylum and Immigration Tribunal (Procedure)
(Amendment) Rules 2008**

<i>Made</i> - - - -	<i>11th April 2008</i>
<i>Laid before Parliament</i>	<i>21st April 2008</i>
<i>Coming into force</i> - -	<i>12th May 2008</i>

The Lord Chancellor makes these Rules in exercise of the powers conferred by sections 106(1) to (3) and 112(3) of the Nationality, Immigration and Asylum Act 2002(a) and section 40A(3) of the British Nationality Act 1981(b).

He has consulted the Administrative Justice and Tribunals Council in accordance with section 8 of the Tribunals and Inquiries Act 1992(c).

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2008 and come into force on 12th May 2008.

(2) In these Rules a reference to a rule by number alone is to the rule so numbered in the Asylum and Immigration Tribunal (Procedure) Rules 2005(d).

Amendments to the Asylum and Immigration Tribunal (Procedure) Rules 2005

2. For rule 8(2) substitute—

“(2) The notice of appeal must be accompanied by—

- (a) the notice of decision against which the appellant is appealing; or
- (b) if it is not practicable to include the notice of decision, the reasons why it is not practicable.”.

3. In rule 9—

- (a) for the title substitute “Where the Tribunal may not accept a notice of appeal”; and
- (b) for paragraph (1) substitute—

(a) 2002 c.41. Section 106 was amended by paragraph 21 of Schedule 2 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19), by paragraph 9 of Schedule 1 to the Immigration, Asylum and Nationality Act 2006 (c.13) and by section 19 of the UK Borders Act 2007 (c.30) from a date to be appointed.

(b) 1981 c.61. Section 40A was substituted by section 4(1) of the Nationality, Immigration and Asylum Act 2002 (c.41), and amended by paragraph 4 of Schedule 2 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19) and by paragraph 9 of Schedule 1 to the Immigration, Asylum and Nationality Act 2006 (c.13).

(c) 1992 c.53. The Administrative Justice and Tribunals Council has replaced the Council on Tribunals under section 44 of, and paragraph 30 of Schedule 8 to, the Tribunals, Courts and Enforcement Act 2007 (c.15).

(d) S.I. 2005/230. Relevant amending instruments are S.I. 2005/569 and S.I. 2006/2788.

“(1) Where a person has given a notice of appeal to the Tribunal and the circumstances in paragraph (1A) apply, the Tribunal may not accept the notice of appeal.

(1A) The circumstances referred to in paragraph (1) are that—

- (a) there is no relevant decision; or
- (b) the notice of appeal concerns the refusal of an application for entry clearance which was not made for a purpose falling within section 88A(1)(a) or (b) of the 2002 Act, and the notice of appeal does not rely on either of the grounds specified in section 88A(3)(a) of the 2002 Act.”.

4. In rule 15(2)—

(a) after sub-paragraph (b) insert—

“(ba) the appellant is outside the United Kingdom and his representative’s address for service is outside the United Kingdom;” and

(b) in sub-paragraph (c) after “a direction of the Tribunal” insert “, or to provide a satisfactory explanation under rule 8(2)(b)”.

5. For rule 30(1) substitute—

“(1) When the other party to the appeal is served with an order for reconsideration, he must file with the Tribunal and serve on the applicant a reply setting out his case if he contends that—

- (a) there was no error of law in the decision on the appeal; or
- (b) there was an error of law in the decision on the appeal, but it was not a material error of law.”.

6. In rule 31—

(a) in paragraph (4)—

- (i) in sub-paragraph (a) delete “and”;
- (ii) in sub-paragraph (b) for “reconsideration.” substitute “reconsideration; and”; and
- (iii) after sub-paragraph (b) insert—

“(c) when making a decision under paragraph (2)(a)—

- (i) must take into account the section 103A application and any reply; and
- (ii) may take into account any other matter which it considers relevant.”; and

(b) in paragraph (5) after “In” insert “ rule 30 and”.

7. In rule 33—

(a) in paragraph (2) for “make a separate determination (“the funding determination”)” substitute “make a determination (“the funding determination”) either at the same time as its determination of the reconsidered appeal (“the principal determination”) or in a separate determination.”; and

(b) in paragraph (4) for “the determination of the reconsidered appeal (“the principal determination”)” substitute “the principal determination”.

8. For rule 36(2) and (3) substitute—

“(2) The Tribunal may—

- (a) grant permission to appeal;
- (b) refuse permission to appeal; or
- (c) subject to paragraph (3), set aside the Tribunal’s determination and direct that the proceedings be reheard by the Tribunal.

(3) The power in paragraph (2)(c) may be exercised only—

- (a) by the President or a Deputy President;

(b) with the agreement of the parties; and

(c) where there has been no previous exercise of the power in the proceedings.”.

9. In rule 45(4)(c), after “party” add “ (including, where the Tribunal considers that there are exceptional reasons for doing so, extending a time limit which has expired)”.

10. After rule 56(2) add—

“(3) If the respondent knows that the appellant has changed the address referred to in paragraph (1), he must notify the Tribunal in writing of that fact and, if he is aware of it, the new address.”.

Signed by authority of the Lord Chancellor

11th April 2008

Bridget Prentice
Parliamentary Under Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Asylum and Immigration Tribunal (Procedure) Rules 2005 (S.I. 2005/230), which prescribe the procedures to followed for appeals and applications to the Asylum and Immigration Tribunal.

Rules 2 and 4(b) require the appellant to give reasons for a failure to include with the notice of appeal the notice of decision to which the appeal relates, and permit the Tribunal to determine the appeal without a hearing where the appellant fails to give reasons or where the reasons given are unsatisfactory.

Rule 3 requires the Tribunal not to accept a notice of appeal in cases where a person may not appeal pursuant to s.88A of the 2002 Act.

Rule 4(a) permits the Tribunal to hear an appeal without a hearing where the appellant is outside the United Kingdom and has a representative outside the United Kingdom.

Rules 5 and 6 clarify the nature of a reply, and provide that it must be considered (and what else must or may be considered) when the Tribunal is deciding whether the original Tribunal made a material error of law.

Rule 7 provides that a determination relating to public funding in reconsideration cases need not be made separately from the substantive determination.

Rule 8 empowers the Tribunal, in certain circumstances, to set aside a determination and direct that proceedings be reheard.

Rule 9 empowers the Tribunal to extend time limits retrospectively in exceptional circumstances.

Rule 10 requires the respondent to notify the Tribunal if the respondent knows of the appellant's change of address.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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