

## SCHEDULE

### PROCEDURE IN ADJUDICATION PROCEEDINGS

#### PART II

#### PROCEDURE RELATING TO APPEALS

##### **Initiating an appeal**

2.—(1) An appeal shall be made by delivering a notice of appeal to the proper officer.

(2) A notice of appeal—

- (a) must state the name and address of the appellant;
- (b) may specify some other address as being the address at which the appellant wishes documents to be sent to him in connection with the appeal;
- (c) must state the date and any reference number of the decision and the name of the charging authority; and
- (d) may include any representation which the appellant desires to make in addition to the original representations.

(3) If the notice of appeal is delivered to the proper officer later than the time limit specified in regulation 11 or 16 (as the case may be), the appellant must include in the notice a statement of the reasons on which he relies for justifying the delay, and the adjudicator shall treat any such statement of reasons for delay as a request for extending that time limit.

(4) The appellant or his authorised representative shall sign the notice of appeal.

##### **Action upon receipt of notice of appeal and copy of such notice**

3.—(1) Upon receiving a notice of appeal the proper officer shall—

- (a) send an acknowledgement of its receipt to the appellant;
- (b) enter particulars of it in the register; and
- (c) send to the charging authority a copy of the notice of appeal and any directions extending the time limit for appealing.

(2) Upon receipt of a copy of the notice of appeal sent under this paragraph, the charging authority shall within 7 days deliver to the proper officer a copy of—

- (a) the original representations;
- (b) the relevant penalty charge notice (if any); and
- (c) the notice served under regulation 10 or 13 as the case may be.

##### **Further representations**

4.—(1) Any party may deliver representations to the proper officer at any time before the appeal is determined.

(2) The adjudicator may invite a party to deliver to the proper officer at any time representations dealing with any matter relating to an appeal within such time and in such manner as may be specified.

(3) Where a party fails to respond to an invitation under sub-paragraph (2), the adjudicator may (without prejudice to any other power he may have) draw such inferences as appear to him proper.

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(4) Any representations delivered under this paragraph shall be signed by, or by the authorised representative of, the party in question.

(5) Where the appellant delivers representations to the proper officer under this paragraph, the proper officer shall send a copy of the representations to the charging authority.

(6) Where the charging authority deliver representations to the proper officer under this paragraph, they shall at the same time send a copy of the representations to the appellant.

(7) This paragraph is without prejudice to the powers of an adjudicator under paragraph 8.

### **Right to make representations**

5.—(1) The adjudicator may require the attendance of any person (including a party to the proceedings) as a witness, at a time and place specified by him, at the hearing of an appeal and require him to answer any questions or produce any documents in his custody or control which relate to any matter in the proceedings.

(2) A person in respect of whom a requirement has been made under sub-paragraph (1) may apply to the adjudicator to vary or set aside the requirement.

(3) A person shall not be bound to comply with a requirement under sub-paragraph (1) unless he has been given at least 7 days' notice of the hearing or, if less than 7 days, he has informed the adjudicator that he accepts such notice as he has been given.

(4) A person shall not be bound to comply with a requirement under sub-paragraph (1) unless the necessary expenses of his attendance are paid or tendered to him.

(5) No person shall be required to give any evidence or produce any documents under sub-paragraph (1) which he could not be required to give or produce in the trial of an action in a court of law.

### **Disposal of an appeal without a hearing**

6.—(1) Subject to the provisions of this paragraph, the adjudicator may dispose of an appeal without a hearing.

(2) The adjudicator shall not dispose of an appeal without a hearing if either party has requested a hearing unless—

- (a) the party who made the request withdraws the request before notice of a hearing has been sent to the other party under paragraph 7;
- (b) both parties have subsequently consented to the appeal being disposed of without a hearing; or
- (c) the party requesting the hearing having been sent a notice of the hearing of an appeal in accordance with paragraph 7, fails to attend or be represented at the hearing.

(3) The adjudicator shall not dispose of an appeal without a hearing until after the expiration of 4 weeks beginning with the day on which an acknowledgement is sent in accordance with paragraph 3 unless both parties consent to the disposal taking place on an earlier date.

### **Notice of time and place of hearing**

7.—(1) This paragraph shall have effect where a hearing is to be held for the purpose of disposing of an appeal.

(2) The proper officer shall fix the time and place of the hearing and, not less than 21 days before the date so fixed (or such shorter time as the parties agree), notify each party in writing or in such other manner as he thinks fit.

(3) The adjudicator may alter the time and place of any hearing and the proper officer shall, not less than 7 days before the date on which the hearing is then to be held (or such shorter time as the parties agree), notify each party of the altered time and place in writing or in such other manner as he thinks fit.

(4) This paragraph applies to an adjourned hearing but, if the time and place of the adjourned hearing are announced before the adjournment, no further notice shall be required.

### **Admission to a hearing**

8.—(1) Subject to the provisions of this paragraph, a hearing shall be held in public.

(2) The adjudicator may direct that the whole or any part of a hearing be held in private if he is satisfied that by reason of—

- (a) the likelihood of disclosure of intimate personal or financial circumstances;
- (b) the likelihood of disclosure of commercially sensitive information or information obtained in confidence; or
- (c) exceptional circumstances not falling within paragraphs (a) or (b);

it is just and reasonable for him so to do.

(3) Where the hearing is in private the adjudicator may admit such persons as he considers appropriate.

(4) Notwithstanding the foregoing provisions of this paragraph, a representative of the Council on Tribunals may be present in his capacity as such notwithstanding that the hearing, or part of a hearing is not in public and such a person shall not be excluded under sub-paragraph (5).

(5) Without prejudice to any other powers he may have, an adjudicator may exclude from the hearing of an appeal, or part of it, any person whose conduct has disrupted or is likely, in the opinion of the adjudicator, to disrupt the hearing.

### **Appearances at a hearing**

9.—(1) The following persons shall be entitled to appear at a hearing relating to an application—

- (a) the registered keeper;
- (b) a person who has duly made representations in respect of the appeal; and
- (c) the charging authority.

(2) Any other person may appear at a hearing at the discretion of the adjudicator.

(3) Any person entitled or permitted to appear at a hearing may do so on his own behalf or be represented by counsel, a solicitor or, at the discretion of the adjudicator, by any other person.

### **Procedure at a hearing**

10.—(1) At the beginning of the hearing of an appeal the adjudicator shall explain the order of proceedings which he proposes to adopt.

(2) Subject to the provisions of this paragraph, the adjudicator shall conduct the hearing of an appeal in such manner as he considers most suitable to the clarification of the issues before him and generally to the just handling of the proceedings; he shall so far as appears to him appropriate seek to avoid formality in the proceedings.

(3) At the hearing of an appeal—

- (a) the parties shall be entitled to give evidence, to call witnesses and to address the adjudicator both on the evidence and generally on the subject matter of the appeal;

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(b) the adjudicator may receive evidence of any fact which appears to him to be relevant notwithstanding that such evidence would be inadmissible in proceedings before a court of law.

(4) Without prejudice to paragraph 6(2)(c), where a party who has been sent a notice of the hearing of an appeal or has otherwise been notified of the hearing in accordance with paragraph 7 fails to attend the hearing, the adjudicator may dispose of the appeal in his absence.

### **Decisions on appeals**

**11.**—(1) Where an appeal is disposed of at a hearing, the decision of the adjudicator may be given orally at the end of the hearing or reserved.

(2) Where an appeal has been disposed of whether at a hearing or otherwise, the decision shall be recorded forthwith in the register with (save in the case of a decision by consent) a statement of the reasons for the decision and the proper officer shall send a copy of the entry to each party.

### **Review of adjudicator's decision**

**12.**—(1) An adjudicator shall have power on the application of a party, to review and revoke or vary any decision to dismiss or allow an appeal or any decision as to costs on the grounds (in any such case) that—

- (a) the decision was wrongly made as a result of an error on the part of his administrative staff;
- (b) a party who had failed to appear or to be represented at a hearing had good and sufficient reason for his failure to appear;
- (c) where the decision has been made after a hearing, new evidence has become available since the conclusion of the hearing the existence of which could not reasonably have been known or foreseen; or
- (d) such a review is required in the interests of justice.

(2) An adjudicator shall have power, on the application of a party, to review and revoke or vary any interlocutory decision.

(3) An application under this paragraph shall be made to the proper officer within 14 days after the date on which the decision was sent to the parties, and must state the grounds in full.

(4) The parties shall have the opportunity to be heard on any application for review under this paragraph; and if, having reviewed the decision, the adjudicator directs the decision to be set aside, he shall substitute such decision as he thinks fit or order a re-determination by either the same or a different adjudicator.

(5) Paragraph 11 applies to a decision under sub-paragraph (1) as it applies to a decision made on the disposal of an appeal.

### **Costs**

**13.**—(1) An adjudicator shall not normally make an order awarding costs and expenses, but may, subject to paragraph (2) make such an order—

- (a) against a party (including an appellant who has withdrawn his appeal or a charging authority who have consented to an appeal being allowed) if he is of the opinion that that party has acted frivolously or vexatiously or that his conduct in making, pursuing or resisting an appeal was wholly unreasonable; or
- (b) against a charging authority where he considers that the disputed decision was wholly unreasonable.

(2) An order shall not be made under sub-paragraph (1) against a party unless that party has been given an opportunity of making representations against the making of the order.

(3) An order under sub-paragraph (1) shall require the party against whom it is made to pay to the other party a specified sum in respect of the costs and expenses incurred by that other party in connection with the proceedings.

### **Consolidation of proceedings**

**14.**—(1) Where there are pending two or more appeals and at any time it appears to an adjudicator that—

- (a) some common question of law or fact arises in both or all appeals; or
- (b) for some other reason it is desirable to make an order under this paragraph,

the adjudicator may order that all of the appeals or those specified in the order shall be considered together and may give such consequential directions as may appear to him to be necessary.

(2) An order shall not be made under this paragraph unless all parties concerned have been given an opportunity of making representations against the making of the order.

### **Miscellaneous powers of adjudicators**

**15.**—(1) An adjudicator may, if he thinks fit—

- (a) extend the time appointed by or under this Schedule for doing any act notwithstanding that the time appointed has expired;
- (b) if an appellant at any time gives notice of the withdrawal of his appeal, dismiss the proceedings;
- (c) if a charging authority consent to an appeal being allowed, allow the appeal without a hearing;
- (d) if both or all of the parties agree in writing on the terms of a decision to be made by an adjudicator, decide accordingly; or
- (e) adjourn a hearing.

(2) An adjudicator may exercise the powers conferred by this Schedule (other than paragraph 12) or by regulation 11(1)(b) or 16(1)(b) on his own motion or on the application of a party.

### **Clerical errors**

**16.** Unintentional errors or slips in any document recording a direction or decision of an adjudicator may be corrected by the proper officer on the direction of the adjudicator.

### **Service of documents**

**17.**—(1) This paragraph has effect in relation to any notice or other document required or authorised by this Schedule to be sent to a party to an appeal.

(2) Any such document shall be regarded as having been sent to that party if it is—

- (a) delivered to him;
- (b) left at his proper address;
- (c) sent by post to him at that address; or
- (d) transmitted to him by FAX or other means of electronic data transmission in accordance with sub-paragraphs (3), (4) and (5).

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(3) A document may be transmitted by FAX where the party has indicated in writing to the proper officer that he is willing to regard a document as having been duly sent to him if it is transmitted to a specified FAX number and the document is transmitted to that number.

(4) In the case of a charging authority, an indication under sub-paragraph (3) can be expressed to apply to any appeal to which they are a respondent.

(5) Sub-paragraphs (3) and (4) shall apply with appropriate modification to a transmission of electronic data other than by FAX as it applies to a transmission by FAX.

(6) Where the proper address includes a numbered box number at a document exchange, delivery of a document may be effected by leaving the document addressed to that numbered box at that document exchange or at a document exchange which transmits documents on every business day to that exchange.

(7) Any document which is left at a document exchange in accordance with sub-paragraph (6) shall, unless the contrary is proved, be deemed to have been delivered on the second business day after the day on which it is left.

(8) For the purposes of this Schedule and of section 7 of the Interpretation Act 1978<sup>(1)</sup> in its application to this paragraph—

- (a) the proper address of the appellant is the address specified in his notice of appeal pursuant to paragraph 2(2)(b) or, if no such address is so specified, the address specified pursuant to paragraph 2(2)(a); and
- (b) the proper address of a charging authority in proceedings to which they are the respondent is such address as the charging authority from time to time specify in a notice delivered to the proper officer as their proper address in all such proceedings.

(9) If no address for service has been specified, the proper address for the purposes of this Schedule and of section 7 of the Interpretation Act 1978 shall be—

- (a) in the case of an individual, his usual or last known address;
- (b) in the case of a partnership, the principal or last known place of business of the partnership within the United Kingdom; or
- (c) in the case of an incorporated or unincorporated body, the registered or principal office of the body.

(10) An appellant may at any time by notice to the proper officer change his proper address for service for the purposes of this Schedule and of section 7 of the Interpretation Act 1978.

(11) A party may by notice in writing delivered to the proper officer vary or revoke any indication given by him under sub-paragraph (3).

### **Delivery of documents to proper officer**

**18.—**(1) This paragraph has effect in relation to any notice or other document required or authorised to be delivered to the proper officer and is without prejudice to paragraph 4(3).

(2) Any such document may be transmitted to him by FAX or other means of electronic data transmission.

(3) Where the address of the proper officer includes a box number at a document exchange, the delivery of such a document may be effected by leaving the document addressed to that numbered box at that document exchange or at another document exchange which transmits documents on every business day to that exchange.

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(1) 1978 c. 30.

(4) Any document which is left at a document exchange in accordance with sub-paragraph (3) shall, unless the contrary is proved, be deemed to have been delivered on the second business day after the day on which it is left.

(5) Paragraphs 2(4) and 4(4)—

- (a) shall in the case of a document transmitted by FAX, be satisfied if a copy of the signature of the relevant person appears on the transmitted copy; and
- (b) shall not apply in relation to a document transmitted by other means of electronic data transmission.