

SCHEDULE

PROCEDURE IN ADJUDICATION PROCEEDINGS

PART 2

PROCEDURE RELATING TO APPEALS

Initiating an appeal

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

(2) A notice of appeal—

- (a) must be in writing and signed by the appellant or someone authorised by the appellant to sign the notice of appeal;
- (b) must state the name and address of the appellant;
- (c) may specify some other address as being the address at which the appellant wishes documents to be sent in connection with the appeal;
- (d) must state the date and any reference number of the disputed decision and the name of the enforcement authority; and
- (e) may include any representations 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 7(1)(a) or 10(1)(a) (as the case may be), the appellant must include in the notice a statement of the reasons which are relied upon for justifying the delay, and the adjudicator must treat any such statement of reasons for delay as a request for extending that time limit.

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

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

- (a) send an acknowledgement of its receipt to the appellant; and
- (b) enter particulars of the appeal in the register.

(2) Subject to sub-paragraph (3), if satisfied that the notice is in accordance with paragraph 2, the proper officer must send to the enforcement authority a copy of the notice of appeal and any directions extending the time limit for appealing.

(3) The requirement under sub-paragraph (2) does not apply where the adjudicator has declined a request under paragraph 2(3) to extend the appeal period.

(4) Upon receipt of a copy of the notice of appeal sent to it under sub-paragraph (2), the enforcement authority must within 7 days deliver to the proper officer copies of—

- (a) the original representations;
- (b) the relevant penalty charge notice (if any); and
- (c) the relevant notice of rejection.

(5) If the proper officer receives a notice of appeal and considers that it may not be in accordance with paragraph 2, the proper officer must refer the issue of its validity to an adjudicator.

(6) If the adjudicator determines that a notice of appeal referred under sub-paragraph (5) is in accordance with paragraph 2, the proper officer must deal with it in accordance with sub-paragraph (2).

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(7) If—

- (a) a notice of appeal is delivered outside the appeal period with a request to extend the appeal period and the adjudicator declines to direct that the period be extended; or
- (b) the adjudicator determines that a notice of appeal is not in accordance with paragraph 2, the proper officer must inform the appellant that the adjudicator has declined the request for an extension or, as the case may be, of the reasons why the adjudicator considers that the notice does not accord with paragraph 2 and must record the action taken in the register.

Further representations

4.—(1) Any party may deliver representations in relation to the matters referred to in regulation 4(2)(b) or 8(4), as appropriate in the circumstances, 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 representations dealing with such matters relating to the appeal as may be specified and any such representations must be so delivered within the time and in the manner specified.

(3) Where a party fails to respond to an invitation under sub-paragraph (2), the adjudicator may draw such inferences as appear proper to the adjudicator.

(4) Any representations delivered under this paragraph must be signed by the party in question or by someone authorised by that party to sign those representations.

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

(6) Where the enforcement authority delivers representations to the proper officer under this paragraph, it must 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 10.

Adjudicator’s power to require attendance of witnesses and production of documents

5.—(1) The adjudicator may, by notice in writing sent to any person (including a party to the proceedings), require that person—

- (a) to attend, at a time and place specified by the adjudicator, to give evidence at the hearing of an appeal; and
- (b) to produce any documents in that person’s custody or under that person’s control, relating to any matter in the proceedings,

and any such notice must contain a statement of the effect of sub-paragraphs (2) to (6) below.

(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 is bound to comply with a requirement under sub-paragraph (1) if that person has been given at least 7 days’ notice of the hearing or, if less than 7 days, that the person has informed the adjudicator that the shorter notice period is accepted.

(4) No person, other than the appellant, is bound to comply with a requirement under sub-paragraph (1) unless the necessary expenses of that person’s attendance are paid or tendered to that person.

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

(6) Any person who fails to comply with a requirement made under sub-paragraph (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Disposal of an appeal without a hearing

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

(2) The adjudicator must not dispose of an appeal without a hearing if, in the opinion of the adjudicator, the appeal raises issues of public importance such as to require that a hearing be held.

(3) The adjudicator must 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.

(4) Where the adjudicator is minded to dispose of an appeal without a hearing, the appeal must not be disposed of unless and until either—

- (a) there has elapsed a period of 28 days beginning with the date on which an acknowledgment is sent in accordance with paragraph 3(1) during which neither party has requested a hearing; or
- (b) both parties have consented to its disposal without a hearing.

Notice of time and place of hearing

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

(2) The proper officer must—

- (a) fix the time and place of the hearing; and
- (b) not less than 21 days before the time so fixed, or such shorter time as the parties agree—
 - (i) send to each party a notice that the hearing is to be at that time and place; or
 - (ii) inform them of those matters in such other manner as the proper officer thinks fit.

(3) The adjudicator may alter the time and place of any hearing, and, 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, the proper officer must —

- (a) send to each party notice of the new time and place of the hearing; or
- (b) inform them of those matters in such other manner as the proper officer thinks fit.

(4) This paragraph applies to an adjourned hearing but, if before the adjournment, the time and place of the adjourned hearing are notified to all persons expected to attend, no further notice is required.

Admission to a hearing

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

(2) The adjudicator may direct that the whole or any part of a hearing be held in private if satisfied that it is just and reasonable to do so 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

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- (c) exceptional circumstances not falling within paragraph (a) or (b).
- (3) Any other adjudicator is entitled to attend the hearing of an appeal which is held in private.
- (4) The adjudicator, with the consent of the parties, may permit any other person to attend the hearing of an appeal, which is held in private or, where part of it is so held, that part.
- (5) Without prejudice to any other powers an adjudicator may have, the 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 appellant and the enforcement authority are entitled to appear at the hearing of an appeal.
- (2) Any other person may appear at a hearing at the discretion of the adjudicator.
- (3) At the hearing of an appeal, the appellant may conduct their case in person (with assistance from any person if the appellant wishes) or may be represented by a solicitor, counsel or any other person.
- (4) If in any particular case the adjudicator is satisfied that there are sufficient reasons for doing so, the adjudicator may prohibit a particular person from assisting or representing either party at the hearing.

Procedure at a hearing

- 10.—(1) At the beginning of the hearing of an appeal the adjudicator must explain the order of proceedings.
- (2) Subject to the provisions of this paragraph, the adjudicator must conduct the hearing of an appeal in the manner most suitable to the clarification of the issues and generally to the just handling of the proceedings, and the adjudicator must seek to avoid formality in the proceedings so far as appears to the adjudicator to be appropriate.
- (3) At the hearing of an appeal—
 - (a) the parties are 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;
 - (b) the adjudicator may receive evidence of any fact which appears to the adjudicator to be relevant notwithstanding that such evidence would be inadmissible in proceedings before a court of law.
- (4) Without prejudice to paragraph 6(3)(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 that party's absence.

Decisions on appeals

- 11.—(1) The adjudicator must give the reasons for a decision on an appeal.
- (2) Where an appeal is disposed of at a hearing, the adjudicator may give the decision and the reasons orally at the end of the hearing, or may reserve the decision and give it and the reasons subsequently in writing.
- (3) Upon the decision being given (whether at a hearing or otherwise), the proper officer must—
 - (a) as soon as practicable record the decision in the register, together with the adjudicator's reasons and any directions given; and
 - (b) send a copy of the register entry to each party.

Review of adjudicator's decision

- 12.**—(1) The adjudicator may, on the application of a party, review—
- (a) any interlocutory decision; or
 - (b) any decision to determine that a notice of appeal does not accord with paragraph 2 or to dismiss or allow an appeal, or any decision as to costs, on one or more of the following grounds—
 - (i) the decision was wrongly made as the result of an administrative error;
 - (ii) the adjudicator was wrong to reject the notice of appeal;
 - (iii) a party who failed to appear or be represented at a hearing had good and sufficient reason for failing to appear;
 - (iv) where the decision was 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;
 - (v) where the decision was made without a hearing, new evidence has become available since the decision was made, the existence of which could not reasonably have been known or foreseen; or
 - (vi) the interests of justice require such a review.
- (2) An application under sub-paragraph (1) must—
- (a) be delivered to the proper officer within the period of 14 days beginning with the date on which the decision is given to the parties; and
 - (b) state the grounds in full.
- (3) The parties must have the opportunity to be heard on any application for review under sub-paragraph (1).
- (4) Having reviewed the decision, the adjudicator may direct that it be confirmed, that it be revoked or that it be varied.
- (5) If, having reviewed a decision, the adjudicator directs that it be revoked, the adjudicator must substitute a new decision or order a re-determination by that adjudicator, the original adjudicator or a different adjudicator.
- (6) Paragraph 11 applies to the confirmation, revocation or variation of a decision under this paragraph as it applies to a decision made on the disposal of an appeal.

Costs

- 13.**—(1) The adjudicator is not normally to make an order awarding costs and expenses, but may, subject to sub-paragraph (2) make such an order—
- (a) against a party (including an appellant who has withdrawn an appeal or an enforcement authority which has consented to an appeal being allowed) if the adjudicator considers that that party has acted frivolously or vexatiously or that the party's conduct in making, pursuing or resisting an appeal was wholly unreasonable; or
 - (b) against an enforcement authority where the adjudicator considers that the disputed decision was wholly unreasonable.
- (2) An order must 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) must 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.

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

(2) An order must 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—

- (a) extend the time appointed by or under this Schedule for the doing of any act notwithstanding that the time appointed has expired;
- (b) if an appellant at any time gives notice of the withdrawal of an appeal, dismiss the proceedings;
- (c) if an enforcement authority consents to an appeal being allowed, allow the appeal;
- (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) on the application of a party or on the adjudicator's own motion.

Clerical errors

16. Clerical mistakes in any document recording a direction or decision of the adjudicator, or errors in such a document arising from an accidental slip or omission, may be corrected by the proper officer on the direction of the adjudicator.