STATUTORY INSTRUMENTS

# 2005 No. 230

# The Asylum and Immigration Tribunal (Procedure) Rules 2005

## PART 1

*Introduction*

**Citation and commencement**

**1.** These Rules may be cited as the Asylum and Immigration Tribunal (Procedure) Rules 2005 and shall come into force on 4th April 2005.

**Interpretation**

**2.** In these Rules—

"the 2002 Act" means the Nationality, Immigration and Asylum Act 2002;

"the 2004 Act" means the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004(**1**);

"appellant" means a person who has given a notice of appeal to the Tribunal against a relevant decision in accordance with these Rules;

"appropriate appellate court" has the meaning given in sections 103B(5) and 103E(5) of the 2002 Act;

"apropriate court" has the meaning given in section 103A(9) of the 2002 Act;

"appropriate prescribed form" means the appropriate form in the Schedule to these Rules, or that form with any variations that the circumstances may require;

"asylum claim" has the meaning given in section 113(1) of the 2002 Act;

"business day" means any day other than a Saturday or Sunday, a bank holiday, 25th to 31st December or Good Friday;

"determination", in relation to an appeal, means a decision by the Tribunal in writing to allow or dismiss the appeal, and does not include a procedural, ancillary or preliminary decision;

"the Immigration Acts" means the Acts referred to in section 44(1) of the 2004 Act;

"immigration decision" means a decision of a kind listed in section 82(2) of the 2002 Act;

"immigration rules" means the rules referred to in section 1(4) of the Immigration Act 1971(**2**);

"order for reconsideration" means an order under section 103A(1) or any other statutory provision requiring the Tribunal to reconsider its decision on an appeal;

"President" means the President of the Tribunal;

"relevant decision" means a decision against which there is an exercisable right of appeal to the Tribunal;

(**1**) 2004 c. 19.
(**2**) 1971 c. 77.

"respondent" means the decision maker specified in the notice of decision against which a notice of appeal has been given;

"section 103A" means section 103A of the 2002 Act (Review of Tribunal's decision) and "section 103A application" means an application under section 103A;

"Tribunal" means the Asylum and Immigration Tribunal;

"United Kingdom Representative" means the United Kingdom Representative of the United Nations High Commissioner for Refugees.

**Scope of these Rules**

**3.**—(1) These Rules apply to the following proceedings—

(a) appeals to the Tribunal;

(b) section 103A applications which are considered by a member of the Tribunal in accordance with paragraph 30 of Schedule 2 to the 2004 Act;

(c) reconsideration of appeals by the Tribunal;

(d) applications to the Tribunal for permission to appeal to the Court of Appeal, the Court of Session, or the Court of Appeal in Northern Ireland; and

(e) applications to the Tribunal for bail.

(2) These Rules apply subject to any other Rules made under section 106 of the 2002 Act which apply to specific classes of proceedings.

**Overriding objective**

**4.** The overriding objective of these Rules is to secure that proceedings before the Tribunal are handled as fairly, quickly and efficiently as possible; and, where appropriate, that members of the Tribunal have responsibility for ensuring this, in the interests of the parties to the proceedings and in the wider public interest.

# PART 2

## *Appeals to the Tribunal*

**Scope of this Part**

**5.** This Part applies to appeals to the Tribunal.

**Giving notice of appeal**

**6.**—(1) An appeal to the Tribunal may only be instituted by giving notice of appeal against a relevant decision in accordance with these Rules.

(2) Subject to paragraphs (3) and (4), notice of appeal must be given by filing it with the Tribunal in accordance with rule 55(1).

(3) A person who is in detention under the Immigration Acts may give notice of appeal either—

(a) in accordance with paragraph (2); or

(b) by serving it on the person having custody of him.

(4) A person who is outside the United Kingdom and wishes to appeal against a decision of an entry clearance officer may give notice of appeal either—

(a) in accordance with paragraph (2); or

(b) by serving it on the entry clearance officer.

(5) Where a notice of appeal is served on a custodian under paragraph (3)(b), that person must—

(a) endorse on the notice the date that it is served on him; and

(b) forward it to the Tribunal within 2 days.

(6) Where a notice of appeal is served on an entry clearance officer under paragraph (4)(b), the officer must—

(a) endorse on the notice the date that it is served on him;

(b) forward it to the Tribunal as soon as reasonably practicable, and in any event within 10 days; and

(c) if it is practicable to do so within the time limit in sub-paragraph (b), send to the Tribunal with the notice of appeal a copy of the documents listed in rule 13(1).

**Time limit for appeal**

**7.**—(1) A notice of appeal by a person who is in the United Kingdom must be given—

(a) if the person is in detention under the Immigration Acts when he is served with notice of the decision against which he is appealing, not later than 5 days after he is served with that notice; and

(b) in any other case, not later than 10 days after he is served with notice of the decision.

(2) A notice of appeal by a person who is outside the United Kingdom must be given—

(a) if the person—

(i) was in the United Kingdom when the decision against which he is appealing was made; and

(ii) may not appeal while he is the United Kingdom by reason of a provision of the 2002 Act,

not later than 28 days after his departure from the United Kingdom; or

(b) in any other case, not later than 28 days after he is served with notice of the decision.

(3) Where a person—

(a) is served with notice of a decision to reject an asylum claim; and

(b) on the date of being served with that notice does not satisfy the condition in section 83(1)(b) of the 2002 Act, but later satisfies that condition,

paragraphs (1) and (2)(b) apply with the modification that the time for giving notice of appeal under section 83(2) runs from the date on which the person is served with notice of the decision to grant him leave to enter or remain in the United Kingdom by which he satisfies the condition in section 83(1)(b).

**Form and contents of notice of appeal**

**8.**—(1) The notice of appeal must be in the appropriate prescribed form and must—

(a) state the name and address of the appellant; and

(b) state whether the appellant has authorised a representative to act for him in the appeal and, if so, give the representative's name and address;

(c) set out the grounds for the appeal;

(d) give reasons in support of those grounds; and

(e) so far as reasonably practicable, list any documents which the appellant intends to rely upon as evidence in support of the appeal.

(2) The notice of appeal must if reasonably practicable be accompanied by the notice of decision against which the appellant is appealing, or a copy of it.

(3) The notice of appeal must be signed by the appellant or his representative, and dated.

(4) If a notice of appeal is signed by the appellant's representative, the representative must certify in the notice of appeal that he has completed it in accordance with the appellant's instructions.

**Rejection of invalid notice of appeal**

**9.**—(1) Where—

(a) a person has given a notice of appeal to the Tribunal; and

(b) there is no relevant decision,

the Tribunal shall not accept the notice of appeal.

(2) Where the Tribunal does not accept a notice of appeal, it must—

(a) notify the person giving the notice of appeal and the respondent; and

(b) take no further action.

**Late notice of appeal**

**10.**—(1) If a notice of appeal is given outside the applicable time limit, it must include an application for an extension of time for appealing, which must—

(a) include a statement of the reasons for failing to give the notice within that period; and

(b) be accompanied by any written evidence relied upon in support of those reasons.

(2) If a notice of appeal appears to the Tribunal to have been given outside the applicable time limit but does not include an application for an extension of time, unless the Tribunal extends the time for appealing of its own initiative, it must notify the person giving notice of appeal in writing that it proposes to treat the notice of appeal as being out of time.

(3) Where the Tribunal gives notification under paragraph (2), if the person giving notice of appeal contends that—

(a) the notice of appeal was given in time, or

(b) there were special circumstances for failing to give the notice of appeal in time which could not reasonably have been stated in the notice of appeal,

he may file with the Tribunal written evidence in support of that contention.

(4) Written evidence under paragraph (3) must be filed—

(a) if the person giving notice of appeal is in the United Kingdom, not later than 3 days; or

(b) if the person giving notice of appeal is outside the United Kingdom, not later than 10 days,

after notification is given under paragraph (2).

(5) Where the notice of appeal was given out of time, the Tribunal may extend the time for appealing if satisfied that by reason of special circumstances it would be unjust not to do so.

(6) The Tribunal must decide any issue as to whether a notice of appeal was given in time, or whether to extend the time for appealing, as a preliminary decision without a hearing, and in doing so may only take account of—

(a) the matters stated in the notice of appeal;

(b) any evidence filed by the person giving notice of appeal in accordance with paragraph (1) or (3); and

(c) any other relevant matters of fact within the knowledge of the Tribunal.

(7) Subject to paragraphs (8) and (9), the Tribunal must serve written notice of any decision under this rule on the parties.

(8) Where—

(a) a notice of appeal under section 82 of the 2002 Act which relates in whole or in part to an asylum claim was given out of time;

(b) the person giving notice of appeal is in the United Kingdom; and

(c) the Tribunal refuses to extend the time for appealing,

the Tribunal must serve written notice of its decision on the respondent, which must—

(i) serve the notice of decision on the person giving notice of appeal not later than 28 days after receiving it from the Tribunal; and

(ii) as soon as practicable after serving the notice of decision, notify the Tribunal on what date and by what means it was served.

(9) Where paragraph (8) applies, if the respondent does not give the Tribunal notification under sub-paragraph (ii) within 29 days after the Tribunal serves the notice of decision on it, the Tribunal must serve the notice of decision on the person giving notice of appeal as soon as reasonably practicable thereafter.

**Special provisions for imminent removal cases**

**11.**—(1) This rule applies in any case in which the respondent notifies the Tribunal that removal directions have been issued against a person who has given notice of appeal, pursuant to which it is proposed to remove him from the United Kingdom within 5 calendar days of the date on which the notice of appeal was given.

(2) The Tribunal must, if reasonably practicable, make any preliminary decision under rule 10 before the date and time proposed for his removal.

(3) Rule 10 shall apply subject to the modifications that the Tribunal may—

(a) give notification under rule 10(2) orally, which may include giving it by telephone;

(b) shorten the time for giving evidence under rule 10(3); and

(c) direct that any evidence under rule 10(3) is to be given orally, which may include requiring the evidence to be given by telephone, and hold a hearing or telephone hearing for the purpose of receiving such evidence.

**Service of notice of appeal on respondent**

**12.**—(1) Subject to paragraph (2), when the Tribunal receives a notice of appeal it shall serve a copy upon the respondent as soon as reasonably practicable.

(2) Paragraph (1) does not apply where the notice of appeal was served on an entry clearance officer under rule 6(4)(b).

**Filing of documents by respondent**

**13.**—(1) When the respondent is served with a copy of a notice of appeal, it must (unless it has already done so) file with the Tribunal a copy of—

(a) the notice of the decision to which the notice of appeal relates, and any other document served on the appellant giving reasons for that decision;

(b) any—

(i) statement of evidence form completed by the appellant; and

(ii) record of an interview with the appellant,

in relation to the decision being appealed;

(c) any other unpublished document which is referred to in a document mentioned in sub-paragraph (a) or relied upon by the respondent; and

(d) the notice of any other immigration decision made in relation to the appellant in respect of which he has a right of appeal under section 82 of the 2002 Act.

(2) Subject to paragraph (3), the respondent must file the documents listed in paragraph (1)—

(a) in accordance with any directions given by the Tribunal; and

(b) if no such directions are given, as soon as reasonably practicable and in any event not later than 2.00 p.m. on the business day before the earliest date appointed for any hearing of or in relation to the appeal.

(3) If the Tribunal considers the timeliness of a notice of appeal as a preliminary issue under rule 10, the respondent must file the documents listed in paragraph (1) as soon as reasonably practicable after being served with a decision of the Tribunal allowing the appeal to proceed, and in any event not later than 2.00 p.m. on the business day before the earliest date appointed for any hearing of or in relation to the appeal following that decision.

(4) The respondent must, at the same time as filing them, serve on the appellant a copy of all the documents listed in paragraph (1), except for documents which the respondent has already sent to the appellant.

**Variation of grounds of appeal**

**14.** Subject to section 85(2) of the 2002 Act, the appellant may vary his grounds of appeal only with the permission of the Tribunal.

**Method of determining appeal**

**15.**—(1) Every appeal must be considered by the Tribunal at a hearing, except where—

(a) the appeal—

(i) lapses pursuant to section 99 of the 2002 Act;

(ii) is treated as abandoned pursuant to section 104(4) of the 2002 Act;

(iii) is treated as finally determined pursuant to section 104(5) of the 2002 Act; or

(iv) is withdrawn by the appellant or treated as withdrawn in accordance with rule 17;

(b) paragraph (2) of this rule applies; or

(c) any other provision of these Rules or of any other enactment permits or requires the Tribunal to dispose of an appeal without a hearing.

(2) The Tribunal may determine an appeal without a hearing if—

(a) all the parties to the appeal consent;

(b) the appellant is outside the United Kingdom or it is impracticable to give him notice of a hearing and, in either case, he is unrepresented;

(c) a party has failed to comply with a provision of these Rules or a direction of the Tribunal, and the Tribunal is satisfied that in all the circumstances, including the extent of the failure and any reasons for it, it is appropriate to determine the appeal without a hearing; or

(d) subject to paragraph (3), the Tribunal is satisfied, having regard to the material before it and the nature of the issues raised, that the appeal can be justly determined without a hearing.

(3) Where paragraph (2)(d) applies, the Tribunal must not determine the appeal without a hearing without first giving the parties notice of its intention to do so, and an opportunity to make written representations as to whether there should be a hearing.

### Certification of pending appeal

**16.**—(1) If the Secretary of State or an immigration officer issues a certificate under section 97 or 98 of the 2002 Act which relates to a pending appeal, he must file notice of the certification with the Tribunal.

(2) Where a notice of certification is filed under paragraph (1), the Tribunal must—

(a) notify the parties; and

(b) take no further action in relation to the appeal.

### Withdrawal of appeal

**17.**—(1) An appellant may withdraw an appeal—

(a) orally, at a hearing; or

(b) at any time, by filing written notice with the Tribunal.

(2) An appeal shall be treated as withdrawn if the respondent notifies the Tribunal that the decision (or, where the appeal relates to more than one decision, all of the decisions) to which the appeal relates has been withdrawn.

(3) If an appeal is withdrawn or treated as withdrawn, the Tribunal must serve on the parties a notice that the appeal has been recorded as having been withdrawn.

### Abandonment of appeal

**18.**—(1) Any party to a pending appeal must notify the Tribunal if they are aware that an event specified in—

(a) section 104(4) or (5) of the 2002 Act; or

(b) regulation 33(1A) of the Immigration (European Economic Area) Regulations 2000(**3**) ("the 2000 Regulations"),

has taken place.

(2) Where an appeal is treated as abandoned pursuant to section 104(4) of the 2002 Act or regulation 33(1A) of the 2000 Regulations, or finally determined pursuant to section 104(5) of the 2002 Act, the Tribunal must—

(a) serve on the parties a notice informing them that the appeal is being treated as abandoned or finally determined; and

(b) take no further action in relation to the appeal.

### Hearing appeal in absence of a party

**19.**—(1) The Tribunal must hear an appeal in the absence of a party or his representative, if satisfied that the party or his representative—

(a) has been given notice of the date, time and place of the hearing, and

(**3**) S.I. 2000/2326. There are relevant amendments in S.I. 2003/3188 and S.I. 2004/1236.

(b) has given no satisfactory explanation for his absence.

(2) Where paragraph (1) does not apply, the Tribunal may hear an appeal in the absence of a party if satisfied that—

(a) a representative of the party is present at the hearing;

(b) the party is outside the United Kingdom;

(c) the party is suffering from a communicable disease or there is a risk of him behaving in a violent or disorderly manner;

(d) the party is unable to attend the hearing because of illness, accident or some other good reason;

(e) the party is unrepresented and it is impracticable to give him notice of the hearing; or

(f) the party has notified the Tribunal that he does not wish to attend the hearing.

**Hearing two or more appeals together**

**20.** Where two or more appeals are pending at the same time, the Tribunal may direct them to be heard together if it appears that—

(a) some common question of law or fact arises in each of them;

(b) they relate to decisions or action taken in respect of persons who are members of the same family; or

(c) for some other reason it is desirable for the appeals to be heard together.

**Adjournment of appeals**

**21.**—(1) Where a party applies for an adjournment of a hearing of an appeal, he must—

(a) if practicable, notify all other parties of the application;

(b) show good reason why an adjournment is necessary; and

(c) produce evidence of any fact or matter relied upon in support of the application.

(2) The Tribunal must not adjourn a hearing of an appeal on the application of a party, unless satisfied that the appeal cannot otherwise be justly determined.

(3) The Tribunal must not, in particular, adjourn a hearing on the application of a party in order to allow the party more time to produce evidence, unless satisfied that—

(a) the evidence relates to a matter in dispute in the appeal;

(b) it would be unjust to determine the appeal without permitting the party a further opportunity to produce the evidence; and

(c) where the party has failed to comply with directions for the production of the evidence, he has provided a satisfactory explanation for that failure.

(4) Where the hearing of an appeal is adjourned, the Tribunal will fix a new hearing date which—

(a) shall be not more than 28 days after the original hearing date, unless the Tribunal is satisfied that because of exceptional circumstances the appeal cannot justly be heard within that time; and

(b) shall in any event be not later than is strictly required by the circumstances necessitating the adjournment.

**Giving of determination**

**22.**—(1) Except in cases to which rule 23 applies, where the Tribunal determines an appeal it must serve on every party a written determination containing its decision and the reasons for it.

(2) The Tribunal must send its determination—

(a) if the appeal is considered at a hearing, not later than 10 days after the hearing finishes; or

(b) if the appeal is determined without a hearing, not later than 10 days after it is determined.

**Special procedures and time limits in asylum appeals**

**23.**—(1) This rule applies to appeals under section 82 of the 2002 Act where—

(a) the appellant is in the United Kingdom; and

(b) the appeal relates, in whole or in part, to an asylum claim.

(2) Subject to paragraph (3)—

(a) where an appeal is to be considered by the Tribunal at a hearing, the hearing must be fixed for a date not more than 28 days after the later of—

(i) the date on which the Tribunal receives the notice of appeal; or

(ii) if the Tribunal makes a preliminary decision under rule 10 (late notice of appeal), the date on which notice of that decision is served on the appellant; and

(b) where an appeal is to be determined without a hearing, the Tribunal must determine it not more than 28 days after the later of those dates.

(3) If the respondent does not file the documents specified in rule 13(1) within the time specified in rule 13 or directions given under that rule—

(a) paragraph (2) does not apply; and

(b) the Tribunal may vary any hearing date that it has already fixed in accordance with paragraph (2)(a), if it is satisfied that it would be unfair to the appellant to proceed with the hearing on the date fixed.

(4) The Tribunal must serve its determination on the respondent—

(a) if the appeal is considered at a hearing, by sending it not later than 10 days after the hearing finishes; or

(b) if the appeal is determined without a hearing, by sending it not later than 10 days after it is determined.

(5) The respondent must—

(a) serve the determination on the appellant—

(i) if the respondent makes a section 103A application or applies for permission to appeal under section 103B or 103E of the 2002 Act, by sending, delivering or personally serving the determination not later than the date on which it makes that application; and

(ii) otherwise, not later than 28 days after receiving the determination from the Tribunal; and

(b) as soon as practicable after serving the determination, notify the Tribunal on what date and by what means it was served.

(6) If the respondent does not give the Tribunal notification under paragraph (5)(b) within 29 days after the Tribunal serves the determination on it, the Tribunal must serve the determination on the appellant as soon as reasonably practicable thereafter.

(7) In paragraph (2) of this rule, references to a hearing do not include a case management review hearing or other preliminary hearing.

# PART 3

## *Reconsideration of Appeals etc.*

### Scope of this Part

**24.**—(1) Section 1 of this Part applies to section 103A applications made during any period in which paragraph 30 of Schedule 2 to the 2004 Act has effect, which are considered by an immigration judge in accordance with that paragraph.

(2) Section 2 of this Part applies to reconsideration of appeals by the Tribunal pursuant to—

(a) an order under section 103A(1) made by—

(i) the appropriate court; or

(ii) an immigration judge in accordance with paragraph 30 of Schedule 2 to the 2004 Act; and

(b) remittal by the appropriate appellate court under section 103B(4)(c), 103C(2)(c) or 103E(4)(c) of the 2002 Act.

(3) Section 3 of this Part applies to applications for permission to appeal to the appropriate appellate court.

### *SECTION 1*

### *Section 103A applications considered by members of the Tribunal*

### Procedure for applying for review

**25.** Where paragraph 30 of Schedule 2 to the 2004 Act has effect in relation to a section 103A application, the application must be made in accordance with relevant rules of court (including any practice directions supplementing those rules).

### Deciding applications for review

**26.**—(1) A section 103A application shall be decided by an immigration judge authorised by the President to deal with such applications.

(2) The immigration judge shall decide the application without a hearing, and by reference only to the applicant's written submissions and the documents filed with the application notice.

(3) The immigration judge is not required to consider any grounds for ordering the Tribunal to reconsider its decision other than those set out in the application notice.

(4) The application must be decided not later than 10 days after the Tribunal receives the application notice.

(5) In deciding a section 103A application, the immigration judge may—

(a) in relation to an application for permission under section 103A(4)(b), either—

(i) permit the application to be made outside the period specified in section 103A(3); or

(ii) record that he does not propose to grant permission; and

(b) in relation to an application for an order under section 103A(1), either—

(i) make an order for reconsideration; or

(ii) record that he does not propose to make such an order.

(6) The immigration judge may make an order for reconsideration only if he thinks that—

(a) the Tribunal may have made an error of law; and

(b) there is a real possibility that the Tribunal would decide the appeal differently on reconsideration.

**Form and service of decision**

**27.**—(1) Where an immigration judge decides a section 103A application, he must give written notice of his decision, including his reasons which may be in summary form.

(2) Where an immigration judge makes an order for reconsideration—

(a) his notice of decision must state the grounds on which the Tribunal is ordered to reconsider its decision on the appeal; and

(b) he may give directions for the reconsideration of the decision on the appeal which may—

(i) provide for any of the matters set out in rule 45(4) which he considers appropriate to such reconsideration; and

(ii) specify the number or class of members of the Tribunal to whom the reconsideration shall be allocated.

(3) The Tribunal must, except in cases to which paragraph (5) applies—

(a) serve a copy of the notice of decision and any directions on every party to the appeal to the Tribunal; and

(b) where the immigration judge makes an order for reconsideration, serve on the party to the appeal other than the party who made the section 103A application a copy of the application notice and any documents which were attached to it.

(4) Paragraph (5) applies to reviews of appeals under section 82 of the 2002 Act where—

(a) the appellant is in the United Kingdom; and

(b) the appeal relates, in whole or in part, to an asylum claim.

(5) In cases to which this paragraph applies—

(a) the Tribunal must send to the respondent to the appeal—

(i) the notice of decision,

(ii) any directions, and

(iii) the application notice and any documents which were attached to it (unless the respondent to the appeal made the application for reconsideration);

(b) the respondent must serve on the appellant—

(i) the notice of decision and any directions; and

(ii) the application notice and any documents which were attached to it (unless the appellant made the application for reconsideration),

not later than 28 days after receiving them from the Tribunal;

(c) the respondent must, as soon as practicable after serving the documents mentioned in sub-paragraph (b), notify the Tribunal on what date and by what means they were served; and

(d) if the respondent does not give the Tribunal notification under sub-paragraph (c) within 29 days after the Tribunal serves the notice of decision on it, the Tribunal must serve

the documents mentioned in sub-paragraph (b) on the appellant as soon as reasonably practicable thereafter.

**Sending notice of decision to the appropriate court**

**28.** The Tribunal must send to the appropriate court copies of—

(a) the notice of decision; and

(b) the application notice and any documents which were attached to it,

upon being requested to do so by the appropriate court.

*SECTION 2*

*Reconsideration of appeals*

**Rules applicable on reconsideration of appeal**

**29.** Rules 15 to 23, except for rule 23(2) and (3), and Part 5 of these Rules apply to the reconsideration of an appeal as they do to the initial determination of an appeal, and references in those rules to an appeal shall be interpreted as including proceedings for the reconsideration of an appeal.

**Reply**

**30.**—(1) When the other party to the appeal is served with an order for reconsideration, he must, if he contends that the Tribunal should uphold the initial determination for reasons different from or additional to those given in the determination, file with the Tribunal and serve on the applicant a reply setting out his case.

(2) The other party to the appeal must file and serve any reply not later than 5 days before the earliest date appointed for any hearing of or in relation to the reconsideration of the appeal.

(3) In this rule, "other party to the appeal" means the party other than the party on whose application the order for reconsideration was made.

**Procedure for reconsideration of appeal**

**31.**—(1) Where an order for reconsideration has been made, the Tribunal must reconsider an appeal as soon as reasonably practicable after that order has been served on both parties to the appeal.

(2) Where the reconsideration is pursuant to an order under section 103A—

(a) the Tribunal carrying out the reconsideration must first decide whether the original Tribunal made a material error of law; and

(b) if it decides that the original Tribunal did not make a material error of law, the Tribunal must order that the original determination of the appeal shall stand.

(3) Subject to paragraph (2), the Tribunal must substitute a fresh decision to allow or dismiss the appeal.

(4) In carrying out the reconsideration, the Tribunal—

(a) may limit submissions or evidence to one or more specified issues; and

(b) must have regard to any directions given by the immigration judge or court which ordered the reconsideration.

(5) In this rule, a "material error of law" means an error of law which affected the Tribunal's decision upon the appeal.

### Evidence on reconsideration of appeal

**32.**—(1) The Tribunal may consider as evidence any note or record made by the Tribunal of any previous hearing at which the appeal was considered.

(2) If a party wishes to ask the Tribunal to consider evidence which was not submitted on any previous occasion when the appeal was considered, he must file with the Tribunal and serve on the other party written notice to that effect, which must—

(a) indicate the nature of the evidence; and

(b) explain why it was not submitted on any previous occasion.

(3) A notice under paragraph (2) must be filed and served as soon as practicable after the parties have been served with the order for reconsideration.

(4) If the Tribunal decides to admit additional evidence, it may give directions as to—

(a) the manner in which; and

(b) the time by which,

the evidence is to be given or filed.

### Orders for funding on reconsideration

**33.**—(1) This rule applies where—

(a) the Tribunal has reconsidered an appeal following a section 103A application made by the appellant in relation to an appeal decided in England, Wales or Northern Ireland; and

(b) the appellant's representative has specified that he seeks an order under section 103D of the 2002 Act for his costs to be paid out of the relevant fund.

(2) The Tribunal must make a separate determination ("the funding determination") stating whether it orders that the appellant's costs—

(a) in respect of the application for reconsideration; and

(b) in respect of the reconsideration,

are to be paid out of the relevant fund.

(3) The Tribunal must send the funding determination to—

(a) the appellant's representative; and

(b) if the Tribunal has made an order under section 103D, the relevant funding body.

(4) Where the determination of the reconsidered appeal ("the principal determination") is served in accordance with rule 23, the Tribunal must not send the funding determination to the appellant's representative until—

(a) the respondent has notified the Tribunal under rule 23(5)(b) that it has served the principal determination on the appellant; or

(b) the Tribunal has served the principal determination on the appellant under rule 23(6).

(5) In this Rule—

(a) "relevant fund" means—

(i) in relation to an appeal decided in England or Wales, the Community Legal Service Fund established under section 5 of the Access to Justice Act 1999(**4**);

(**4**) 1999 c. 22.

(ii) in relation to an appeal decided in Northern Ireland, the fund established under paragraph 4(2)(a) of Schedule 3 to the Access to Justice (Northern Ireland) Order 2003(**5**); and

(b) "relevant funding body" means—

(i) in relation to an appeal decided in England or Wales, the Legal Services Commission;

(ii) in relation to an appeal decided in Northern Ireland, the Northern Ireland Legal Services Commission.

*SECTION 3*

*Applications for permission to appeal to the appropriate appellate court*

**Applying for permission to appeal**

**34.**—(1) An application to the Tribunal under this Section must be made by filing with the Tribunal an application notice for permission to appeal.

(2) The application notice for permission to appeal must—

(a) be in the appropriate prescribed form;

(b) state the grounds of appeal; and

(c) be signed by the applicant or his representative, and dated.

(3) If the application notice is signed by the applicant's representative, the representative must certify in the application notice that he has completed the application notice in accordance with the applicant's instructions.

(4) As soon as practicable after an application notice for permission to appeal is filed, the Tribunal must notify the other party to the appeal to the Tribunal that it has been filed.

**Time limit for application**

**35.**—(1) In application notice for permission to appeal must be filed in accordance with rule 34—

(a) if the applicant is in detention under the Immigration Acts when he is served with the Tribunal's determination, not later than 5 days after he is served with that determination;

(b) in any other case, not later than 10 days after he is served with the Tribunal's determination.

(2) The Tribunal may not extend the time limits in paragraph (1).

**Determining the application**

**36.**—(1) An application for permission to appeal must be determined by a senior immigration judge without a hearing.

(2) The Tribunal may either grant or refuse permission to appeal.

(3) Where the Tribunal intends to grant permission to appeal it may, if it thinks that the Tribunal has made an administrative error in relation to the proceedings, instead set aside the Tribunal's determination and direct that the proceedings be reheard by the Tribunal.

(4) The Tribunal must serve on every party written notice of its decision, including its reasons, which may be in summary form.

(**5**) S.I. 2003/435 (N.I. 10).

# PART 4

## *Bail*

### Scope of this Part and interpretation

**37.**—(1) This Part applies to applications under the Immigration Acts to the Tribunal, by persons detained under those Acts, to be released on bail.

(2) In this Part, "applicant" means a person applying to the Tribunal to be released on bail.

(3) The parties to a bail application are the applicant and the Secretary of State.

### Applications for bail

**38.**—(1) An application to be released on bail must be made by filing with the Tribunal an application notice in the appropriate prescribed form.

(2) The application notice must contain the following details—

(a) the applicant's—

(i) full name;

(ii) date of birth; and

(iii) date of arrival in the United Kingdom;

(b) the address of the place where the applicant is detained;

(c) whether an appeal by the applicant to the Tribunal is pending;

(d) the address where the applicant will reside if his application for bail is granted, or, if he is unable to give such an address, the reason why an address is not given;

(e) where the applicant is aged 18 or over, whether he will, if required, agree as a condition of bail to co-operate with electronic monitoring under section 36 of the 2004 Act;

(f) the amount of the recognizance in which he will agree to be bound;

(g) the full names, addresses, occupations and dates of birth of any persons who have agreed to act as sureties for the applicant if bail is granted, and the amounts of the recognizances in which they will agree to be bound;

(h) the grounds on which the application is made and, where a previous application has been refused, full details of any change in circumstances which has occurred since the refusal; and

(i) whether an interpreter will be required at the hearing, and in respect of what language or dialect.

(3) The application must be signed by the applicant or his representative or, in the case of an applicant who is a child or is for any other reason incapable of acting, by a person acting on his behalf.

### Bail hearing

**39.**—(1) Where an application for bail is filed, the Tribunal must—

(a) as soon as reasonably practicable, serve a copy of the application on the Secretary of State; and

(b) fix a hearing.

(2) If the Secretary of State wishes to contest the application, he must file with the Tribunal and serve on the applicant a written statement of his reasons for doing so—

(a) not later than 2.00 p.m. on the business day before the hearing; or

(b) if he was served with notice of the hearing less than 24 hours before that time, as soon as reasonably practicable.

(3) The Tribunal must serve written notice of its decision on—

(a) the parties; and

(b) the person having custody of the applicant.

(4) Where bail is granted, the notice must include—

(a) the conditions of bail; and

(b) the amount in which the applicant and any sureties are to be bound.

(5) Where bail is refused, the notice must include reasons for the refusal.

**Recognizances**

**40.**—(1) The recognizance of an applicant or a surety must be in writing and must state—

(a) the amount in which he agrees to be bound; and

(b) that he has read and understood the bail decision and that he agrees to pay that amount of money if the applicant fails to comply with the conditions set out in the bail decision.

(2) The recognizance must be—

(a) signed by the applicant or surety; and

(b) filed with the Tribunal.

**Release of applicant**

**41.** The person having custody of the applicant must release him upon—

(a) being served with a copy of the decision to grant bail; and

(b) being satisfied that any recognizances required as a condition of that decision have been entered into.

**Application of this Part to Scotland**

**42.** This Part applies to Scotland with the following modifications—

(a) in rule 38, for paragraph (2)(f) and (g) substitute—

"(f) the amount, if any, to be deposited if bail is granted;

(g) the full names, addresses and occupations of any persons offering to act as cautioners if the application for bail is granted;";

(b) in rule 39, for paragraph (4)(b) substitute—

"(b) the amount (if any) to be deposited by the applicant and any cautioners.";

(c) rule 40 does not apply; and

(d) in rule 41, for sub-paragraph (b) substitute—

"(b) being satisfied that the amount to be deposited, if any, has been deposited.".

# 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(**6**).

(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.

(**6**) 1999 c. 33.

(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.

# PART 6

*Revocation and Transitional Provisions*

## Revocation

**61.** The Immigration and Asylum Appeals (Procedure) Rules 2003(**7**) are revoked.

## Transitional provisions

**62.**—(1) Subject to the following paragraphs of this rule, these Rules apply to any appeal or application to an adjudicator or the Immigration Appeal Tribunal which was pending immediately before 4th April 2005, and which continues on or after that date as if it had been made to the Tribunal by virtue of a transitional provisions order.

(2) Where a notice of a relevant decision has been served before 4th April 2005 and the recipient gives notice of appeal against the decision on or after 4th April 2005—

(a) rules 6-8, 12 and 13 of these Rules shall not apply; and

(b) rules 6-9 of the 2003 Rules shall continue to apply as if those Rules had not been revoked, but subject to the modifications in paragraph (4).

(3) Where a notice of appeal to an adjudicator has been given before 4th April 2005, but the respondent has not filed the notice of appeal with the appellate authority in accordance with rule 9 of the 2003 Rules—

(a) rules 12 and 13 of these Rules shall not apply; and

(b) rule 9 of the 2003 Rules shall continue to apply as if it had not been revoked, but subject to the modifications in paragraph (4).

(4) The modifications referred to in paragraphs (2)(b) and (3)(b) are that—

(a) references to an adjudicator or the appellate authority shall be treated as referring to the Tribunal;

(b) in rule 9(1) of the 2003 Rules—

(i) the words "Subject to rule 10" shall be omitted; and

(ii) for "together with" there shall be substituted "and must also when directed by the Asylum and Immigration Tribunal file"; and

(c) for rule 9(2) of the 2003 Rules there shall be substituted—

"(2) The respondent must, as soon as practicable after filing the notice of appeal, serve on the appellant—

(a) a copy of all the documents listed in paragraph (1), except for documents which the respondent has already sent to the appellant; and

(b) notice of the date on which the notice of appeal was filed.".

(5) Where, pursuant to a transitional provisions order, the Tribunal considers a section 103A application for a review of an adjudicator's determination of an appeal, Section 1 of Part 3 of these Rules shall apply subject to the modifications that—

(a) in rules 26(3) and 27(2), the references to "its decision" shall be interpreted as referring to the adjudicator's decision; and

(b) in rules 26(6)(a) and 27(3)(a), the references to "the Tribunal" shall be interpreted as referring to the adjudicator.

(**7**) S.I. 2003/652.

(6) Where, pursuant to a transitional provisions order, the Tribunal reconsiders an appeal which was originally determined by an adjudicator, Section 2 of Part 3 shall apply to the reconsideration, subject to paragraph (7).

(7) Where—

(a) a party has been granted permission to appeal to the Immigration Appeal Tribunal against an adjudicator's determination before 4th April 2005, but the appeal has not been determined by that date; and

(b) by virtue of a transitional provisions order the grant of permission to appeal is treated as an order for the Tribunal to reconsider the adjudicator's determination,

the reconsideration shall be limited to the grounds upon which the Immigration Appeal Tribunal granted permission to appeal.

(8) Any time limit in these Rules for the Tribunal to do anything shall not apply in relation to proceedings to which these Rules apply by virtue of paragraph (1) of this rule.

(9) In relation to proceedings which were pending immediately before 4th April 2005—

(a) unless the Tribunal directs otherwise—

(i) anything done or any directions given before 4th April 2005 under the 2003 Rules (including anything which, pursuant to rule 61(3) of those Rules, was treated as if done or given under those Rules) shall continue to have effect on and after that date;

(ii) anything done or any directions given by the appellate authority shall be treated as if done or given by the Tribunal; and

(iii) any document served on the appellate authority shall be treated as if served on the Tribunal;

(b) unless the context requires otherwise, any reference in a document to an adjudicator, the Immigration Appeal Tribunal or the appellate authority shall, insofar as it relates to an event on or after 4th April 2005, be treated as a reference to the Tribunal.

(10) In this rule—

(a) "the 2003 Rules" means the Immigration and Asylum Appeals (Procedure) Rules 2003;

(b) "adjudicator" and "appellate authority" have the same meaning as in the 2003 Rules; and

(c) "a transitional provisions order" means an order under section 48(3)(a) of the 2004 Act containing transitional provisions.

Dated 6th February 2005 *Falconer of Thoroton*