

## SCHEDULE

### PROCEDURE IN ADJUDICATION PROCEEDINGS

#### PART 2

#### 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 be in writing signed by the appellant or someone authorised by him to sign on his behalf;
- (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 to him 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 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.

##### **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, and;
- (b) enter particulars of the appeal in the register.

(2) If he is satisfied that the notice is in accordance with paragraph 2, the proper officer shall send to the enforcement authority a copy of the notice of appeal and any directions extending the time limit for appealing.

(3) Upon receipt of a copy of the notice of appeal sent to it under subparagraph (2), the enforcement authority shall 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.

(4) If a notice of appeal is received by the proper officer and he considers that it may not be in accordance with paragraph 2, he shall refer the issue of its validity to an adjudicator.

(5) If the adjudicator determines that a notice of appeal referred to him under subparagraph (4) is in accordance with paragraph 2, the proper officer shall deal with it in accordance with subparagraph (2)

(6) If—

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- (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 shall 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 shall 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 shall be so delivered within the time and in the manner specified.

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

(4) Any representations delivered under this paragraph shall be signed by the party in question , or by someone authorised by him to sign on his behalf.

(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 enforcement authority.

(6) Where the enforcement authority delivers representations to the proper officer under this paragraph, it 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 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 his custody or under his control, relating to any matter in the proceedings,

and any such notice shall contain a statement of the effect of subparagraphs (2) to (6) below.

(2) A person in respect of whom a requirement has been made under subparagraph (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 subparagraph (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) No person, other than the appellant, shall be bound to comply with a requirement under subparagraph (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 subparagraph (1) which he could 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 subparagraph (1) is guilty of an offence and shall be 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 shall not dispose of an appeal without a hearing if, in his opinion, the appeal raises issues of public importance such as to require that a hearing be held.

(3) 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.

(4) Where the adjudicator is minded to dispose of an appeal without a hearing, he shall not do so unless and until either—

- (a) there has elapsed a period of 28 days beginning with the date on which an acknowledgement 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 shall have effect where a hearing is to be held for the purpose of disposing of an appeal.

(2) The proper officer shall—

- (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 he thinks fit.

(3) The adjudicator may alter the time and place of any hearing, and the proper officer shall, not less than seven days before the date on which the hearing is then to be held, or such shorter time as the parties agree—

- (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 he 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 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 it is just and reasonable for him 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) The following persons shall be entitled to attend the hearing of an appeal which is held in private—
  - (a) any other adjudicator; and
  - (b) (for the purpose of discharging his functions as a member of that Council) a member of the Council on Tribunals.
- (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 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 appellant and the enforcement authority shall be 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 his case himself (with assistance from any person if he 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, he 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 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;
  - (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(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 his absence.

### **Decisions on appeals**

- 11.—(1) The adjudicator must give the reasons for his decision on appeal.
- (2) Where an appeal is disposed of at a hearing, the adjudicator may give his decision and the reasons orally at the end of the hearing, or may reserve his decision and give it and his reasons subsequently in writing.
- (3) Upon the decision being given (whether at a hearing or otherwise), the proper officer shall—

- (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 his failure 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 subparagraph (1) must—

- (a) be delivered to the proper officer within the period of 14 days beginning with the date on which the copy of the register entry is served on the parties; and
- (b) state the grounds in full.

(3) The parties shall have the opportunity to be heard on any application for review under subparagraph (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, he shall substitute a new decision or order a re-determination by himself, the original adjudicator or a different adjudicator.

(6) Paragraph 11 shall apply 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 shall not normally 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 his appeal or an enforcement authority which has 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 an enforcement authority where he considers that the disputed decision was wholly unreasonable.

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(2) An order shall not be made under subparagraph (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 subparagraph (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 both or 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 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 his 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 his own motion or on the application of a party.

### **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.