

2003 No. 801 (L. 21)

IMMIGRATION

**The Immigration and Asylum Appeals (Fast Track
Procedure) Rules 2003**

Made - - - - - *20th March 2003*

Laid before Parliament *20th March 2003*

Coming into force - - *10th April 2003*

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SCHEDULE

The Lord Chancellor, in exercise of the powers conferred by sections 106(1)-(3) and 112(3) of the Nationality, Immigration and Asylum Act 2002^(a), after consulting with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992^(b), makes the following Rules:

PART 1
INTRODUCTION

Citation and commencement

1. These Rules may be cited as the Immigration and Asylum Appeals (Fast Track Procedure) Rules 2003 and shall come into force on 10th April 2003.

Interpretation

- 2.—(1) In these Rules—
 - “the Principal Rules” means the Immigration and Asylum Appeals (Procedure) Rules 2003^(c);
 - “appellant”, in relation to an appeal to an adjudicator has the same meaning as it is given in rule 5(2)(a) of the Principal Rules, and in relation to an appeal to the Tribunal has the same meaning as it is given in rule 14(2)(a) of the Principal Rules;
 - “respondent”, in relation to an appeal to an adjudicator has the same meaning as it is given in rule 5(2)(b) of the Principal Rules, and in relation to an appeal to the Tribunal has the same meaning as it is given in rule 14(2)(b) of the Principal Rules.
- (2) Other words and expressions used in these Rules which are defined in rule 2 of the Principal Rules have the same meaning in these Rules as in the Principal Rules.
- (3) Where a provision of the Principal Rules applies by virtue of these Rules—
 - (a) any reference in that provision to the Principal Rules is to be interpreted as including a reference to these Rules; and
 - (b) any reference in that provision to a specific Part or rule in the Principal Rules is to be interpreted as including a reference to any equivalent Part or rule in these Rules.

(a) 2002 c. 41.
(b) 1992 c. 53.
(c) S.I. 2003/652.

(4) For the purposes of rules 4, 9 and 15 of these Rules, a party does not cease to satisfy a condition that he must have continuously been in detention under the Immigration Acts at a place or places specified in the Schedule to these Rules by reason only of—

- (a) being transported from one place of detention specified in the Schedule to another place which is so specified; or
- (b) leaving and returning to such a place of detention for any purpose between the hours of 7 a.m. and 7 p.m.

Scope of these Rules

3.—(1) The following Parts of these Rules apply to appeals and applications to an adjudicator or the Tribunal to the following extent—

- (a) Parts 2 and 5 apply to appeals to an adjudicator, in the circumstances specified in rule 4;
- (b) Parts 3 and 5 apply to appeals (including applications for permission to appeal) to the Tribunal against an adjudicator's determination, in the circumstances specified in rule 9;
- (c) Parts 4 and 5 apply to applications to the Tribunal for permission to appeal to the Court of Appeal or the Court of Session, in the circumstances specified in rule 15; and
- (d) Part 6 applies to pending appeals and applications to which any of Parts 2, 3, 4 and 5 apply or have applied.

(2) In appeals and applications to which these Rules apply, the Principal Rules also apply, but only to the extent specified in rules 5, 10, 16 and 20 of these Rules.

PART 2

APPEALS TO AN ADJUDICATOR

Scope of this Part

4. This Part applies to an appeal to an adjudicator against an immigration decision which was made on or after 10th April 2003, where—

- (a) the appellant was in detention under the Immigration Acts at a place specified in the Schedule to these Rules when notice of that immigration decision was served on him; and
- (b) the appellant has continuously been in detention under the Immigration Acts at a place or places specified in the Schedule since that notice was served on him.

Application of Part 2 of the Principal Rules

5. The following rules in Part 2 of the Principal Rules apply to an appeal to an adjudicator to which this Part applies—

- (a) rule 5;
- (b) rule 6;
- (c) rule 8;
- (d) rule 10(1);
- (e) rule 11; and
- (f) rule 12, except for sub-paragraph (b).

Time limits

6.—(1) A notice of appeal to an adjudicator must be given in accordance with rules 6 and 8 of the Principal Rules not later than 2 days after the day on which the appellant is served with notice of the decision against which he wishes to appeal.

(2) An adjudicator may not extend the time limit in paragraph (1) unless he is satisfied that, because of circumstances outside the control of the appellant or his representative, it was not practicable for notice of appeal to be given within that time limit.

(3) The respondent must (whether or not the notice of appeal is given within the time specified in paragraph (1))—

(a) file with the appellate authority the documents specified in rule 9(1) of the Principal Rules; and

(b) serve on the appellant the documents specified in rule 9(2) of the Principal Rules, not later than 2 days after the day on which notice of appeal is given.

Listing

7.—(1) The appellate authority must fix a hearing date as soon as practicable after the respondent files the documents under rule 6(3)(a).

(2) The hearing date must be not later than 2 days after the day on which the respondent files those documents, or as soon as practicable thereafter if the appellate authority is unable to arrange a hearing within that time.

(3) The appellate authority must serve notice of the date, time and place of the hearing on—

(a) every party; and

(b) subject to rule 21, any representative acting for a party,

not later than noon on the day before the hearing.

Determining the appeal

8.—(1) An adjudicator must consider the appeal at the hearing fixed under rule 7(1), and give a written determination following that hearing, except where—

(a) the notice of appeal was given out of time, and the adjudicator does not grant an extension of time;

(b) rule 12(a) of the Principal Rules applies; or

(c) the adjudicator adjourns the hearing on a ground specified in paragraph (2).

(2) An adjudicator may only adjourn the hearing of an appeal where—

(a) it is necessary to do so because there is insufficient time to hear the appeal;

(b) a party has not been served with notice of the hearing in accordance with these Rules;

(c) the adjudicator is satisfied by evidence filed or given by or on behalf of a party that—

(i) the appeal cannot be justly determined on the date on which it is listed for hearing; and

(ii) there is an identifiable future date, not more than 10 days after the date on which the appeal is listed for hearing, by which the appeal can be justly determined; or

(d) the adjudicator makes an order under rule 23.

(3) The appellate authority must serve the adjudicator's written determination of the appeal on—

(a) every party; and

(b) subject to rule 21, any representative acting for a party,

not later than one day after the day on which the hearing of the appeal finishes.

PART 3

APPEALS TO THE TRIBUNAL

Scope of this Part

9. This Part applies to an appeal (including an application for permission to appeal) to the Tribunal where—

(a) the appeal is against the determination of an adjudicator upon an appeal to which Part 2 of these Rules applied; and

(b) the party appealing against an immigration decision has, since being served with notice of that immigration decision, continuously been in detention under the Immigration Acts at a place or places specified in the Schedule to these Rules.

Application of Part 3 of the Principal Rules

10. The following rules in Part 3 of the Principal Rules apply to an appeal to the Tribunal to which this Part applies—

- (a) rule 14;
- (b) rule 15, except for paragraph (5);
- (c) rule 17;
- (d) rule 18, except for paragraph (7)(b);
- (e) rule 19(1) and (3);
- (f) rule 20;
- (g) rule 21(1), (2) and (4);
- (h) rule 22;
- (i) rule 23;
- (j) rule 24; and
- (k) rule 25.

Applying for permission to appeal

11.—(1) An application for permission to appeal to the Tribunal against an adjudicator's determination must be made, in accordance with rules 15(1)-(4) and 17 of the Principal Rules, not later than 2 days after the day on which the appellant is served with the adjudicator's determination.

(2) The appellant must—

- (a) state in his application notice whether he seeks an oral hearing of the appeal if permission to appeal is granted, giving reasons if he does so; and
- (b) file with the application notice (whether or not he seeks an oral hearing)—
 - (i) any written submissions upon which he wishes to rely if the Tribunal grants permission to appeal and decides to determine the appeal without a hearing; and
 - (ii) any notice under rule 21(2) of the Principal Rules asking the Tribunal to consider additional evidence.

(3) When the appellate authority receives the application notice, it must serve a copy of the notice and any accompanying documents on the respondent as soon as practicable.

(4) The Tribunal may extend the time limit in paragraph (1) if it is satisfied that, by reason of special circumstances, it would be unjust not to do so.

Documents to be filed by respondent

12.—(1) The respondent must, not later than one day after the day on which he is served with a copy of the application notice—

- (a) file with the appellate authority a statement of whether he seeks an oral hearing of the appeal if permission is granted, giving reasons if he does so; and
- (b) file with that statement (whether or not he seeks an oral hearing)—
 - (i) any written submissions upon which he wishes to rely if the Tribunal grants permission to appeal and decides to determine the appeal without a hearing;
 - (ii) any respondent's notice under rule 19 of the Principal Rules; and
 - (iii) any notice under rule 21(2) of the Principal Rules asking the Tribunal to consider additional evidence.

(2) The Tribunal may extend the time limit in paragraph (1) if it is satisfied that, by reason of special circumstances, it would be unjust not to do so.

Determining the permission application

13. The Tribunal must determine the application for permission to appeal, and the Tribunal's written determination must be served on—

- (a) every party; and
- (b) subject to rule 21, any representative of a party,

not later than one day after the expiry of the time for the respondent to file documents under rule 12.

Determining the appeal

14.—(1) This rule applies where the Tribunal grants permission to appeal under rule 18 of the Principal Rules.

(2) The Tribunal must, having regard to any written representations made by the parties, decide whether to—

- (a) determine the appeal without a hearing in accordance with rule 45(1) of the Principal Rules; or
- (b) fix a hearing.

(3) If the Tribunal decides to determine an appeal without a hearing, it must determine it—

- (a) at the same time as granting permission to appeal; or
- (b) as soon as practicable afterwards.

(4) If the Tribunal fixes a hearing—

- (a) the hearing date must be not later than 2 days after the grant of permission to appeal, or as soon as practicable thereafter if the appellate authority is unable to arrange the hearing within that time; and

(b) the appellate authority must serve notice of the date, time and place of the hearing on—

- (i) every party; and
- (ii) subject to rule 21, any representative acting for a party,

not later than noon on the day before the hearing.

(5) The Tribunal may only adjourn the hearing of an appeal only where—

- (a) it is necessary to do so because there is insufficient time to hear the appeal;
- (b) a party has not been served with notice of the hearing in accordance with these Rules;
- (c) the Tribunal is satisfied by evidence filed or given by or on behalf of a party that—
 - (i) the appeal cannot be justly determined on the date on which it is listed for hearing; and
 - (ii) there is an identifiable future date, not more than 10 days after the date on which the appeal is listed for hearing, by which the appeal can be justly determined;
- (d) the Tribunal makes an order under rule 23.

(6) The appellate authority must serve the Tribunal's written determination of the appeal upon—

- (a) every party; and
- (b) subject to rule 21, any representative acting for a party,

not later than one day after the day on which the hearing of the appeal finishes, or the Tribunal determines the appeal without a hearing.

PART 4

APPLICATIONS FOR PERMISSION TO APPEAL FROM TRIBUNAL

Scope of this Part

15. This Part applies to an application to the Tribunal for permission to appeal to the Court of Appeal or the Court of Session where—

- (a) the application is for permission to appeal against the determination of the Tribunal upon an appeal to which Part 3 of these Rules applied; and
- (b) the party appealing against an immigration decision has, since being served with notice of that immigration decision, continuously been in detention under the Immigration Acts at a place or places specified in the Schedule to these Rules.

Application of Part 4 of the Principal Rules

16. The following rules in Part 4 of the Principal Rules apply to an application to which this Part applies—

- (a) rule 26;
- (b) rule 27;

- (c) rule 29; and
- (d) rule 30.

Time limit for application

17.—(1) An application notice to the Tribunal for permission to appeal to the Court of Appeal or the Court of Session must be given, in accordance with rules 27 and 29 of the Principal Rules, not later than 2 days after the day on which the appellant is served with the Tribunal's determination.

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

Determining the application

18. The Tribunal must determine the application, and its determination must be served on—

- (a) every party; and
- (b) subject to rule 21, any representative acting for a party,

not later than one day after the day on which the appellate authority receives the application notice.

PART 5

GENERAL PROVISIONS

Scope of this Part

19. This Part applies to an appeal or application to which any of Parts 2, 3 and 4 of these Rules apply.

Application of Part 6 of the Principal Rules

20. Part 6 of the Principal Rules applies to an appeal or application to which this Part applies, except that—

- (a) rule 39(1) (notification of hearings) applies subject to rules 7(3), 14(4)(b) and 21 of these Rules;
- (b) rule 40 (adjournment of hearings) does not apply;
- (c) rule 45 (determining the appeal without a hearing) does not apply in relation to an appeal to an adjudicator, and paragraph (3) of that rule does not apply in relation to an appeal to the Tribunal; and
- (d) rule 53(3) (giving of determination) applies subject to rule 21 of these Rules.

Service of documents on representatives

21. Any requirement in these Rules, or in the Principal Rules as applied by these Rules, to serve any document on a party's representative in addition to serving it on that party, shall not apply unless the representative provides a fax number for service.

Validity of determinations

22. 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.

PART 6

REMOVAL OF PENDING PROCEEDINGS FROM FAST TRACK

Transfer of appeal out of fast track procedure

23.—(1) Where Part 2 or 3 of these Rules applies to a pending appeal, an adjudicator or the Tribunal may order that that Part shall cease to apply to the appeal—

- (a) if all the parties consent;
- (b) in exceptional circumstances, if the adjudicator or the Tribunal is satisfied by evidence filed or given by or on behalf of a party that the appeal cannot otherwise be justly determined; or
- (c) if—
 - (i) the respondent has failed to comply with a provision of these Rules, or the Principal Rules as applied by these Rules, or a direction of the appellate authority; and
 - (ii) the adjudicator or the Tribunal is satisfied that the appellant would be prejudiced by that failure if the appeal were determined in accordance with these Rules.

(2) An adjudicator or the Tribunal may, when making an order under paragraph (1)—

- (a) adjourn any hearing of the appeal; and
- (b) give directions relating to the further conduct of the appeal.

(3) Where an adjudicator adjourns a hearing in accordance with paragraph (2), rule 13 of the Principal Rules (closure date) shall apply.

Application of the Principal Rules

24.—(1) This rule applies where any of Parts 2 to 4 of these Rules ceases to apply to a pending appeal or application because—

- (a) the conditions in rule 4, 9 or 15 cease to apply; or
- (b) an adjudicator or the Tribunal makes an order under rule 23.

(2) Subject to paragraph (3), the Principal Rules shall apply to the appeal or application from the date on which that Part of these Rules ceases to apply.

(3) Where—

- (a) a time period for something to be done has started to run under a provision of these Rules; and
- (b) that provision ceases to apply,

if the Principal Rules contain a time limit for the same thing to be done, the time period in the Principal Rules shall apply, and shall be treated as running from the date on which the time period under these Rules started to run.

20th March 2003

Irvine of Lairg, C.

SCHEDULE

Immigration Removal Centre, Harmondsworth, Middlesex.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules prescribe a fast track procedure to be followed for appeals to an adjudicator or the Immigration Appeal Tribunal against immigration decisions, where the appellant is in detention under the Immigration Acts at a specified location. The Rules will initially only apply to appellants who are detained at Harmondsworth Immigration Removal Centre, but it is intended that they may subsequently be amended to apply to appellants who are detained at other locations.

These Rules specify the extent to which the Immigration and Asylum Appeals (Procedure) Rules 2003 (S.I. 2003/652) (“the Principal Rules”) are to apply to fast track appeals. They modify certain provisions of the Principal Rules and make different provision for certain matters. In particular these Rules:

- specify shorter time limits for appealing and applying for permission to appeal;
- specify the times within which appeals are to be listed and heard, and determinations are to be served on the parties;
- limit the powers of adjudicators and the Tribunal to extend the time for appealing and to adjourn hearings;
- enable the Tribunal to determine an appeal without an oral hearing at the same time as granting permission to appeal; and
- specify the circumstances in which an adjudicator or the Tribunal may direct that an appeal is to be taken out of the fast track procedure, and how an appeal is to be dealt with when the fast track procedure ceases to apply.

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