

2000 No. 541

IMMIGRATION

The Asylum Support Appeals (Procedure) Rules 2000

<i>Made</i>	- - -	<i>2nd March 2000</i>
<i>Laid before Parliament</i>		<i>10th March 2000</i>
<i>Coming into force</i>		<i>3rd April 2000</i>

The Secretary of State, in exercise of the powers conferred on him by sections 104 and 166(3) of the Immigration and Asylum Act 1999^(a), after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992^(b), and having regard to the desirability of securing, so far as is reasonably practicable, that appeals are brought and disposed of with the minimum of delay, hereby makes the following Rules:

General

Title and commencement

1. These Rules may be cited as the Asylum Support Appeals (Procedure) Rules 2000 and shall come into force on 3rd April 2000.

Interpretation

2.—(1) In these Rules—

“the Act” means the Immigration and Asylum Act 1999;

“adjudication” means a decision of an adjudicator made in accordance with section 103(3) of the Act;

“appeal bundle” means a bundle prepared by the Secretary of State containing copies of the following documents:

- (a) the form on which the appellant made a claim for support under section 95 of the Act, if the appeal is made under section 103(1) of the Act;
- (b) any supporting documentation attached to that form;
- (c) the decision letter; and
- (d) other material relied on by the Secretary of State in reaching his decision;

“appellant” means a person who appeals under section 103 of the Act against a decision of the Secretary of State;

“bank holiday” means a day that is specified in, or appointed under, the Banking and Financial Dealings Act 1971^(c);

“consideration day” has the meaning given to it by rule 4(4);

“decision letter” means a letter from the Secretary of State giving notice of a decision that gives rise to a right to appeal under section 103;

“excluded day” means a Saturday, a Sunday, a bank holiday, Christmas Day or Good Friday;

“member of the adjudicators’ staff” means a person appointed by the Secretary of State under paragraph 5(1) of Schedule 10 to the Act;

(a) 1999 c. 33.

(b) 1992 c. 53.

(c) 1971 c. 80.

“notice of appeal” has the meaning given to it by rule 3(1); and
“party” includes the appellant and the Secretary of State.

(2) Any reference in these Rules:

- (a) to an adjudicator, in relation to the sending, giving or receiving of notices or other documents, whether by an adjudicator or a party to the appeal, includes a reference to a member of the adjudicators’ staff;
- (b) to an adjudicator, in relation to the receiving of a notice of appeal by him, includes a reference to the offices occupied by the adjudicators;
- (c) to the appellant, in relation to the sending or giving of notices or other documents by the adjudicator or the Secretary of State, is also a reference to his representative, if he has one; and
- (d) to a representative is to be construed in accordance with rule 15.

(3) For the purposes of these Rules, an appeal is determined when an adjudicator gives his adjudication.

Procedure before determination of appeal

Notice of appeal

3.—(1) A person who wishes to appeal under section 103 of the Act must give notice to an adjudicator by completing in full, and in English, the form for the time being issued by the Secretary of State for the purpose (“notice of appeal”); and any form so issued is to be in the form shown in the Schedule to these Rules or a form to like effect.

(2) The notice of appeal must be signed by the appellant or his representative.

(3) Subject to paragraph (4), the notice of appeal must be received by the adjudicator not later than 2 days after the day on which the appellant received the decision letter.

(4) The adjudicator may extend the time limit for receiving the notice of appeal (either before or after its expiry) if:

- (a) he considers that it is in the interests of justice to do so; and
- (b) he is satisfied that:
 - (i) the appellant; or
 - (ii) his representative (if he has one);

was prevented from complying with the time limit by circumstances beyond his control.

Procedure after receiving notice of appeal

4.—(1) On the day that the adjudicator receives notice of appeal or, if not reasonably practicable, as soon as possible on the following day, he must send a copy of the notice of appeal, and any supporting documents, to the Secretary of State by fax.

(2) On the day after the day on which the adjudicator receives notice of appeal, the Secretary of State must send the appeal bundle to the adjudicator by fax or by hand and to the appellant by first class post or by fax.

(3) On consideration day, the adjudicator must:

- (a) decide in accordance with rule 5 whether there should be an oral hearing;
- (b) set the date for determining the appeal in accordance with rule 6;
- (c) if there is to be an oral hearing, give notice to the Secretary of State and the appellant, in accordance with rule 7, of the date on which it is to be held.

(4) “Consideration day” means the day after the day on which the Secretary of State sends the appeal bundle to the adjudicator in accordance with paragraph (2).

Whether there should be an oral hearing

5.—(1) The adjudicator must decide to hold an oral hearing:

- (a) where the appellant has requested an oral hearing in his notice of appeal; or
- (b) if the adjudicator considers that it is necessary for the appeal to be disposed of justly.

(2) In all other cases, the appeal may be determined without an oral hearing.

Date for determination of appeal

6.—(1) If there is to be an oral hearing, the hearing must be held and the appeal determined 4 days after consideration day.

(2) In all other cases, the appeal must be determined on consideration day, or as soon as possible thereafter, but in any event not later than 4 days after consideration day.

Notification of date of oral hearing

7. If there is to be an oral hearing, the adjudicator must send a notice to the appellant and to the Secretary of State informing them of the date, time and place of the hearing.

Further evidence provided before the determination of the appeal

8.—(1) Where the appellant sends to the adjudicator evidence to which this paragraph applies, the appellant must at the same time send a copy of such evidence to the Secretary of State.

(2) Paragraph (1) applies to evidence which is sent after the appellant has sent notice of appeal to the adjudicator but before the appeal has been determined.

(3) Where the Secretary of State sends to the adjudicator evidence to which this paragraph applies, the Secretary of State must at the same time send a copy of such evidence to the appellant.

(4) Paragraph (3) applies to evidence which is sent after the Secretary of State has sent the appeal bundle to the adjudicator but before the appeal has been determined.

Determination of appeal

Hearing of appeal in absence of either party

9.—(1) If an appellant has indicated in his notice of appeal that he does not want to attend, or be represented at, an oral hearing, the hearing may proceed in his absence.

(2) Where:

(a) an appellant has indicated in his notice of appeal that he wants to attend, or be represented at, an oral hearing;

(b) he has been notified of the date, time and place of the hearing in accordance with rule 7; and

(c) neither he nor his representative (if he has one) attends the hearing;

the hearing may proceed in his absence.

(3) Where neither the Secretary of State nor his representative (if he has one) attends the hearing, it may proceed in his absence.

Evidence

10.—(1) Paragraph (2) applies to all appeals.

(2) The adjudicator may take into account any matters which he considers to be relevant to the appeal (including matters arising after the date on which the decision appealed against was taken).

(3) Paragraphs (4) to (6) apply to oral hearings only.

(4) No person may be compelled to give any evidence or produce any document which he could not be compelled to give or produce on the trial of an action.

(5) The adjudicator may require any witness to give evidence on oath or affirmation, and for that purpose an oath or affirmation in due form may be administered.

(6) When the adjudicator takes into consideration documentary evidence at an oral hearing, a party present at the hearing is to be given an opportunity of inspecting and considering that evidence and taking copies if copies have not been provided previously to that party in accordance with these Rules.

Record of proceedings

11. A record of the proceedings at an oral hearing before the adjudicator is to be made.

Exclusion of public

12.—(1) Subject to the provisions of this rule, oral hearings are to take place in public.

(2) Subject to the provisions of paragraph (3), the adjudicator may exclude a member of the

public or members of the public generally from a hearing or from part of a hearing if, and to the extent that, he considers it necessary to do so in the public interest.

(3) But nothing in this rule is to prevent a member of the Council on Tribunals, a member of the Scottish Committee of that Council, the Chief Asylum Support Adjudicator or the Deputy Chief Asylum Support Adjudicator, in their capacity as such, from attending an oral hearing.

Adjudication

13.—(1) Where an oral hearing is held:

- (a) the adjudicator must inform all persons present of his adjudication at the conclusion of the hearing;
- (b) if neither the appellant nor his representative (if he has one) is present at the conclusion of the hearing, the adjudicator must send notice of his adjudication on the same day to the appellant;
- (c) if the Secretary of State is not present at the conclusion of the hearing, the adjudicator must send notice of his adjudication on the same day to the Secretary of State; and
- (d) not later than 2 days after the day on which the appeal is determined, the adjudicator must send a reasons statement to the appellant and the Secretary of State.

(2) Where there is no oral hearing, the adjudicator must on the day that the appeal is determined:

- (a) send notice of his adjudication to the appellant and the Secretary of State; and
- (b) send a reasons statement to them.

(3) An adjudication takes effect from the day on which it is made.

(4) A “reasons statement” is a written statement giving reasons for the adjudication.

Miscellaneous

Directions

14. The adjudicator may give directions on any matter arising in connection with an appeal if he considers it necessary or desirable to do so in the interests of justice.

Representation

15. A party to the appeal may be represented by any other person.

Withdrawal of decision

16.—(1) Where the Secretary of State withdraws the decision which is appealed against, he must give notice to the adjudicator and the appellant forthwith.

(2) Where the appellant withdraws his appeal, he must give notice to the adjudicator and the Secretary of State forthwith.

(3) Where paragraph (1) or (2) applies, the appeal is to be treated for all purposes as at an end.

Notices

17. In the absence of express provision, any notice or other document required or authorised by these Rules to be sent or given by any party may be sent by first class post, by fax or by hand.

Time

18.—(1) Subject to paragraph (2), for the purposes of these Rules, a notice or other document is to be taken to have been received on the day on which it was in fact received.

(2) Where a notice or other document is sent by first class post by the Secretary of State or by the adjudicator, it is to be taken to have been received 2 days after the day on which it was sent, unless the contrary is proven.

(3) Where reference is made in these Rules to a specified number of days after an event, the number of days is to be calculated from the expiry of the day on which the event occurred.

(4) Where these Rules provide that an act is to be done or to be taken to have been done:

- (a) not later than a specified number of days after an event; or
- (b) a specified number of days after an event;

and that number of days:

- (c) expires on an excluded day, the act is to be taken to have been done as required if done on the next working day;
 - (d) includes an excluded day, that day is to be discounted.
- (5) Where these Rules provide that an act is to be done or to be taken to have been done on a certain day and that day is an excluded day, the act is to be taken to have been done as required if done on the next working day.

Irregularities

19.—(1) Any irregularity resulting from failure to comply with these Rules before the adjudicator has determined the appeal is not by itself to render the proceedings void.

(2) But the adjudicator must, if he considers that either party may have been prejudiced, take such steps as he thinks fit to remove or reduce the prejudice.

Home Office
2nd March 2000

Barbara Roche
Minister of State

NOTICE OF APPEAL

Asylum Support Adjudicators

NOTICE OF APPEAL

Section one

Give your personal details

Full Name:

Date of Birth: Nationality:

Your NASS reference number:.....

Section two

Give an address in the United Kingdom

where we can contact you:
.....
.....
.....

Give a daytime fax or telephone number in the UK

where we can contact you (if you have one):

Section three

Give the date of the decision letter against which

you are appealing:

Section four

Do you want an oral hearing of your appeal? Yes/No

Do you want to attend any oral hearing of your appeal? Yes/No

If you want to attend the hearing, will you need an interpreter? Yes/No

If so, in what language?.....

Are you to be represented in this appeal? Yes/No

If so you must give full details of your representative: name and address, and telephone and fax numbers if available, together with any reference number the representative has given your case.

.....
.....
.....
.....

Will your representative attend any oral hearing of your appeal? Yes/No

Section five

What are the grounds of your appeal?

What matters in the decision letter do you dispute?

Signed: Date:
[Appellant/Representative]

If you have further information which you would like the Adjudicator to take into account when making a decision about your appeal, you should send copies of any documents with this form.

Return this form to:
Asylum Support Adjudicator
Christopher Wren House
113 High Street
Croydon CR0 1GQ

EXPLANATORY NOTE

(This note is not part of the Rules)

Section 103 of the Immigration and Asylum Act 1999 (the Act) provides for an appeal right if the Secretary of State decides that a person does not qualify, or no longer qualifies, for asylum support under section 95 of the Act. These Rules provide for the procedure to be followed in deciding such appeals.

Section 104(3) provides that, in making these Rules, regard must be had to the desirability of securing, so far as is reasonably practicable, that appeals are brought and disposed of with the minimum of delay.

The Rules therefore provide for a short time-scale. The adjudicator must receive notice of appeal 2 working days after the appellant receives notice of the Secretary of State's decision. Where there is to be an oral hearing, it must take place 6 working days after the adjudicator receives notice of appeal and the adjudicator must give his decision on the same day. Where there is no oral hearing, the appeal must be determined as soon as possible and not later than 6 working days after receipt of the notice of appeal, and the adjudicator must give notice of his decision on the day that he determines it.

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