STATUTORY INSTRUMENTS

1972 No. 1684

IMMIGRATION

The Immigration Appeals (Procedure) Rules 1972

Made - - - 3*rd November* 1972
Laid before Parliament 17*th November* 1972
Coming into Operation 1*st January* 1973

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In exercise of the powers conferred upon me by section 22 of the Immigration Act 1971(a) and paragraph 25 of Schedule 2 thereto, after consultation with the Council on Tribunals, I hereby make the following Rules:—

PART I

INTRODUCTION

Citation and commencement

1. These Rules may be cited as the Immigration Appeals (Procedure) Rules 1972 and shall come into operation on 1st January 1973.

Interpretation

2.—(1) In these Rules, unless the context otherwise requires—

"the Act" means the Immigration Act 1971;

"appeal" means, subject to Rules 3 and 13, any appeal under Part II of the Act;

"appellate authority" means an adjudicator or the Tribunal;

"chairman" means any member of the Tribunal qualified as mentioned in paragraph 7 of Schedule 5 to the Act;

"entry clearance officer" means a person having authority to grant an entry clearance on behalf of the Government of the United Kingdom;

"officer" means an immigration officer or an entry clearance officer;

"the president" means the president of the Tribunal;

"the Tribunal" means the Immigration Appeal Tribunal for the purposes of the Act.

(2) Without prejudice to section 31 of the Interpretation Act 1889(b), the following expressions have the same meanings as in the Act:—

"adjudicator";

"aircraft";

"certificate of patriality";

"entry clearance";

"immigration officer";

"limited leave".

(3) Any reference in these Rules to a Rule is a reference to a Rule contained therein.

(4) Any reference in these Rules to a form is a reference to a form set out in the Schedule thereto.

(5) The Interpretation Act 1889 shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

PART II

APPEAL TO ADJUDICATOR OR TRIBUNAL AT FIRST INSTANCE

Application of Part II

3. This Part applies to appeals at first instance to an adjudicator or to the Tribunal, and references in this Part to—

(*a*) an appeal, an appellant, the appropriate appellate authority or proceedings shall be construed accordingly;

(a) 1971 c. 77. (b) 1889 c. 63.

(*b*) the respondent, shall be construed as references to the person, other than the appellant, who is a party to the appeal by virtue of Rule 7(1).

Time limit for appealing

4.—(1) Notice of appeal under section 13(1) of the Act by a person refused leave to enter the United Kingdom may be given—

(*a*) where, by virtue of section 13(3) of the Act, he is not entitled to appeal so long as he is in the United Kingdom, after the departure of the ship or aircraft in which he leaves the United Kingdom but not later than 28 days thereafter;

(*b*) in any other case, before or after the departure of the ship or aircraft in which he is to be removed from, or leaves, the United Kingdom but not later than 28 days thereafter.

(2) Notice of appeal under section 13(2) of the Act by a person refused a certificate of patriality, on an application duly made to an entry clearance officer, may be given not later than 3 months after the refusal.

(3) Notice of appeal under section 13(2) of the Act by a person refused a certificate of patriality, on an application duly made to the Secretary of State, may be given not later than 14 days after the refusal.

(4) Notice of appeal under section 13(2) by a person refused an entry clearance may be given not later than 3 months after the refusal.

(5) Notice of appeal under section 14(1) of the Act by a person who has a limited leave to enter or remain in the United Kingdom, against any variation of the leave or any refusal to vary it, may be given not later than 14 days after the variation or refusal to vary.

(6) Notice of appeal under section 14(2) of the Act by a person given a limited leave to remain in the United Kingdom in the circumstances there mentioned, against any provision limiting the duration of the leave or attaching any condition to it, may be given not later than 14 days after the giving of the limited leave.

(7) Notice of appeal under section 15(1)(*a*) of the Act by a person against whom the Secretary of State has decided to make a deportation order by virtue of section 3(5), against that decision, may be given not later than 14 days after the decision.

(8) Notice of appeal under section 15(1)(*b*) of the Act by a person against whom a deportation order is in force, against a refusal by the Secretary of State to revoke the order, may be given not later than 28 days after the refusal.

(9) Notice of appeal under section 16(1) of the Act by a person for whose removal from the United Kingdom such directions as are there mentioned have been given, against those directions, may be given—

(*a*) where, by virtue of section 16(2) of the Act, he is not entitled to appeal so long as he is in the United Kingdom, after the departure of the ship or aircraft in which he leaves the United Kingdom but not later than 28 days thereafter;

(*b*) in any other case, before or after the departure of the ship or aircraft in which he is to be removed from, or leaves, the United Kingdom but not later than 28 days thereafter.

(10) Notice of appeal under section 17(1) of the Act by a person for whose removal from the United Kingdom directions have been given, on the ground

that he ought to be removed (if at all) to a different country or territory specified by him, may be given—

(*a*) where the directions have been given on his being refused leave to enter the United Kingdom, at any time before the departure of the ship or aircraft in which he is to be removed from the United Kingdom;

(*b*) in any other case, before such departure but not later than 14 days after the giving of the directions.

(11) Where notice in writing of an action or decision is required by the Immigration Appeals (Notices) Regulations 1972**(a)** to be given then, for the purposes of this Rule, that action or decision shall be deemed to have been taken—

(*a*) where the notice is sent by post, on the day on which it was sent;

(*b*) in any other case, on the day on which the notice was served.

Further opportunity to appeal

5.—(1) Where a person may not appeal by reason that the period permitted by Rule 4 for the giving of notice of appeal has expired, subject to paragraph (4) below, he may serve on the appropriate officer specified in Rule 6(2) a written petition for a further opportunity to appeal and, subject to paragraph (2) below, that officer shall, as soon as is practicable, take such steps as are necessary to ensure that the petition is referred to the appropriate appellate authority together with such particulars relating thereto as have been given by the petitioner or appear to the officer to be relevant.

(2) Where the appropriate officer is an entry clearance officer he shall enjoy the like powers as are conferred on the appropriate appellate authority by paragraph (3) below; and, if he exercises those powers in favour of the petitioner the petition shall not be referred to the appropriate appellate authority.

(3) The appellate authority to which a petition is referred under this Rule may, subject to paragraph (4) below, grant the petitioner a further opportunity to appeal if it is of the opinion that, by reason of special circumstances, it is just and right so to do; and, in such case, a notice of appeal given before a date specified by the authority shall be treated for all purposes as if it had been given in accordance with Rule 4.

(4) No steps shall be taken under this Rule by, or in the case of, a person in respect of whom a deportation order is for the time being in force.

(5) Rule 6(7) shall apply for the purposes of this Rule as it applies for the purposes of Rule 6 but as if any reference therein to a notice of appeal were a reference to a petition and the reference therein to paragraph (5) of Rule 6 were a reference to paragraph (1) of this Rule.

Notice of appeal

6.—(1) Notice of appeal shall be given by completing Form 1 and serving it on the appropriate officer specified in paragraph (2) below:

Provided that notice of appeal under section 13(1) of the Act by a person refused leave to enter, against the refusal (unless, by virtue of section 13(3) of the Act, he is not entitled to appeal so long as he is in the United Kingdom) or against the decision that he requires leave, may, if the appellant is in the United Kingdom, be given orally to any immigration officer (whether or not responsible

(a) S.I. 1972/1683 (1972 III, p.4916).

for the decision or action in question) by him or by a person duly authorised by him in that behalf or, in the case of an appellant who is a minor or who is for any reason incapable of acting, by any person acting on his behalf.

(2) For the purposes of paragraph (1) above the appropriate officer is—

(*a*) in the case of an appeal under section 13(1), 16(1) or 17(1) of the Act, against an action or a decision for which an immigration officer is responsible, that officer;

(*b*) in the case of an appeal under section 13(2) of the Act by a person refused an entry clearance or a certificate of patriality on an application duly made to an entry clearance officer, that officer;

(*c*) in the case of any other appeal, the Secretary of State,

except that, in the case of such an appeal as is mentioned in sub-paragraph (*a*) or (*b*) above, where the Secretary of State is satisfied that, by reason of special circumstances, it is impracticable or impossible for notice of appeal to be served on the immigration or entry clearance officer concerned, the appropriate officer shall be the Secretary of State or such immigration or entry clearance officer as he may designate to accept service of the notice.

(3) The grounds of an appeal set out in Form 1 may be varied or amplified at any time during the course of the appeal.

(4) Form 1 shall be signed by the appellant or by a person duly authorised by him in that behalf or, in the case of an appellant who is a minor or who is for any reason incapable of acting, by any person acting on his behalf.

(5)(*a*) Subject to paragraph (6) below, an officer to whom notice of appeal has been given in accordance with these Rules shall, unless the appellant subsequently gives that officer written notice of the withdrawal of his appeal, take such steps as are necessary to ensure that the notice of appeal is referred to the appropriate appellate authority together with such particulars relating to the nature and grounds of the appeal as have been given by the appellant.

(*b*) The steps required by sub-paragraph (*a*) above shall be taken, in the case of an immigration officer, as soon as practicable after the giving of the notice of appeal or, in any other case, as soon as practicable after the written statement of facts required by Rule 8 has been prepared.

(6) Where notice of appeal has been given to an officer in accordance with these Rules but the decision or action to which it relates has subsequently been reversed, withdrawn or varied, the officer shall ascertain whether the appellant wishes to pursue the appeal and—

(*a*) unless he does, no action shall be taken on the notice;

(*b*) if he does, he shall be afforded an opportunity to amend the notice or to substitute a fresh notice therefor.

(7) Where a written notice of appeal directed to an immigration officer or an entry clearance officer has in accordance with Rule 44 been sent to, or delivered at, the address mentioned in Rule 44(1)(*d*) then, if that officer is for any reason unable to receive the notice, it shall, on being received at that address, be deemed to have been served on him; and in any such case the Secretary of State shall cause the steps required by paragraph (5) above to be taken by another officer in accordance with that paragraph.

Parties

7.—(1) The parties to an appeal shall be the appellant and—

(*a*) in the case of an appeal under section 13(1), 16(1) or 17(1) of the Act against an action or a decision for which an immigration officer is responsible, that officer;

(*b*) in the case of an appeal under section 13(2) of the Act by a person refused an entry clearance or a certificate of patriality on an application duly made to an entry clearance officer, that officer;

(*c*) in the case of any other appeal, the Secretary of State,

except that, in the case of such an appeal as is mentioned in sub-paragraph (*a*) or (*b*) above, where the Secretary of State is satisfied that, by reason of special circumstances, it is impracticable or impossible for the immigration or entry clearance officer concerned to take part in the proceedings, the Secretary of State may direct that he, or such immigration or entry clearance officer as he may designate for the purpose, shall be treated as a party to the appeal in place of the officer concerned; and thereupon any notice or other document sent or given by or to the officer concerned for the purposes of the appeal shall be deemed to have been sent or given by or to the Secretary of State or the designated officer.

(2) The Secretary of State shall be treated as a party to any appeal, where he would not otherwise be a party to it by virtue of this Rule, upon giving written notice to the appellate authority at any time during the course of the appeal stating that he desires to be so treated.

(3) If any party to an appeal is or claims to be a refugee within the competence of the United Nations High Commissioner for Refugees, the United Kingdom Representative of the High Commissioner shall be treated as a party to the appeal upon giving written notice to the appellate authority at any time during the course of the appeal stating that he desires to be so treated.

Explanatory statement by respondent

8.—(1) Subject to the provisions of paragraphs (2) and (3) below, the respondent in an appeal shall, as soon as practicable after notice of the appeal is given, prepare a written statement of the facts relating to the decision or action in question and the reasons therefor and take such steps as are necessary to ensure that the statement is referred to an adjudicator or the Tribunal, as appropriate, and that a copy thereof is given to the appellant.

(2) It shall not be necessary for an immigration officer who is the respondent in an appeal to comply with the requirements of paragraph (1) above if he is of the opinion that it is not practicable to do so, having regard to the time available before the hearing of the appeal; but he shall then, as soon as practicable after notice of the appeal is given, give written notice to the appellate authority and the appellant that he is of that opinion and that a statement of the facts relating to the decision or action in question and the reasons therefor will be given orally at the hearing of the appeal.

(3) Where the respondent to an appeal alleges that—

(*a*) the appellant is not entitled to appeal—

(i) by virtue of a provision of the Act specified by the respondent, or

(ii) by reason that a passport or other travel document, certificate of patriality, entry clearance or work permit (or any part thereof or entry therein) on which the appellant relies is a forgery, or

(*b*) the notice of appeal was not given within the period permitted by Rule 4,

the written statement referred to in paragraph (1) above shall include that allegation but it shall not be necessary for the respondent to include in the statement facts which are not relevant to the allegation.

(4) At the commencement of any hearing before an appellate authority, the authority shall give to the respondent an opportunity to amplify orally the written statement given in accordance with paragraph (1) above or, if no such written statement has been given, shall obtain from the respondent an oral statement of the facts relating to the decision or action in question and the reasons therefor.

Appeal against removal on objection to destination

9.—(1) This Rule shall apply where an appellant objects to removal to a particular country or territory and claims that he ought to be removed (if at all) to a different country or territory—

(*a*) on appeal under section 17(1) of the Act;

(*b*) by virtue of section 17(2) of the Act, on appeal under section 13(1) thereof, or

(*c*) by virtue of section 17(3) of the Act, on appeal under section 15 thereof.

(2) The appellant shall submit with his notice of appeal a statement in writing of the matters put forward in support of his objection and claim.

Supply of documents

10. Subject to the provisions of Rule 30(2) (cases involving forgery of documents) the appellate authority shall cause copies of all notices and other documents required for an appeal to be supplied to every party to the appeal.

Determination of preliminary issues

11.—(1) Where the respondent to an appeal makes such an allegation as is mentioned in Rule 8(3), the appellate authority may, and at the request of the respondent shall, determine the validity of the allegation as a preliminary issue.

(2) Unless in consequence of the determination of such a preliminary issue the appellate authority dismisses the appeal, the respondent shall, by such time as the appellate authority directs, submit to that authority a written statement of the facts relating to the decision or action in question to the extent that by virtue of the provisions of Rule 8(3) those facts have not already been furnished, and a copy of such a statement shall be given to the appellant.

(3) Unless the appellate authority dismisses the appeal as aforesaid, in any hearing before the authority, at the commencement of the proceedings subsequent to the determination of the preliminary issue, the appellate authority shall give to the respondent an opportunity to amplify orally the written statements given in accordance with Rule 8(1) or paragraph (2) above.

(4) Where the respondent to an appeal makes such an allegation as is mentioned in Rule 8(3)(*b*) and the appellate authority determines, as a preliminary issue, that the notice of appeal was not given within the period permitted by Rule 4, then, except where a deportation order is for the time being in force in respect of the appellant, the appellate authority shall not be required to dismiss the appeal but may allow it to proceed if the authority is of the opinion that, by reason of special circumstances, it is just and right so to do; and, in such case, the notice of appeal shall be treated for all purposes as if it had been given in accordance with Rule 4.

Determination of appeal without hearing

12. An appellate authority may determine an appeal without a hearing if—

(*a*) no party to the appeal has requested a hearing; or

(*b*) the appellate authority has decided, after giving every other party to the appeal an opportunity of replying to any representations submitted in writing by or on behalf of the appellant, to allow the appeal; or

(*c*) the appellate authority is satisfied that the apellant is outside the United Kingdom or that it is impracticable to give him notice of a hearing and, in either case, that no person is authorised to represent him at a hearing; or

(*d*) the appellate authority is satisfied that no matter arises on the appeal other than an objection by the appellant to removal to a particular country or territory or a claim by him that he ought to be removed (if at all) to a different country or territory and is of opinion that matters put forward in support of the appeal in pursuance of Rule 9 do not warrant a hearing; or

(*e*) such a preliminary issue as is referred to in Rule 11 arises and the appellate authority has afforded the appellant a reasonable opportunity to submit a statement in writing of matters put forward in rebuttal of the respondent's allegation, and—

(i) the appellant has not submitted such a statement, or

(ii) the appellate authority is of the opinion that matters put forward by the appellant in such a statement do not warrant a hearing.

PART III

APPEAL TO TRIBUNAL FROM ADJUDICATOR

Application of Part III

13. This Part applies to appeals to the Tribunal from the determination of an adjudicator under section 20 of the Act, and, except where the context otherwise requires, references in this Part to an appeal, an appellant or proceedings shall be construed accordingly.

Leave to appeal

14.—(1) An appeal shall lie only with the leave of the adjudicator or of the Tribunal where it is from a determination by an adjudicator—

(*a*) on an appeal under any provision of the Act other than section 14 (appeals against conditions);

(*b*) on an appeal under section 14 which was dismissed on the determination of such a preliminary issue as is referred to in Rule 11, or

(*c*) on an appeal under section 14(1), by a person who has a limited leave under the Act to enter or remain in the United Kingdom, against a refusal to vary that leave.

(2) In addition to the circumstances in which leave to appeal must be granted by virtue of section 22(5) of the Act (existence of certificate of patriality or entry clearance), an appellate authority to whom application for leave to appeal as aforesaid is duly made shall grant it—

(*a*) if the authority is satisfied that the determination of the appeal turns upon an arguable point of law; or

(*b*) where an adjudicator has dismissed an appeal by a person who is in the United Kingdom, if the authority is satisfied that the country or territory to which he is to be removed is one to which he is unwilling to go owing to the fear of being persecuted there for reasons of race, religion, nationality, membership of a particular social group or political opinion.

Time limit for appealing

15.—(1) Application to an adjudicator for leave to appeal shall be made forthwith after the determination in question.

(2) Application to the Tribunal for leave to appeal or notice of appeal may be made or given not later than 14 days after the determination in question.

(3) Where the applicant or the appellant, as the case may be, is the person against whom the decision or action in question was taken and he is not in the United Kingdom, the Isle of Man, the Channel Islands or the Republic of Ireland, paragraph (2) above shall have effect as if for the words "14 days" there were substituted the words "42 days".

(4) In this Rule any reference to a determination is a reference—

(*a*) where it is pronounced at a hearing in the presence of the appellant or his representative, to its pronouncement;

(*b*) in any other case, to the sending to the appellant in accordance with Rule 44, or to the delivery to the appellant, of a copy of the document, referred to in Rule 39(2), recording the determination.

Notice of appeal and application for leave to appeal

16.—(1) Subject to the following provisions of this Rule, notice of appeal or an application for leave to appeal shall be given or made by completing so much of Form 2 as relates to the notice and serving it on an adjudicator or the Tribunal, as appropriate.

(2) Form 2 shall be signed by the appellant or applicant, as the case may be, or by a person duly authorised by him in that behalf or, in the case of an appellant or applicant who is a minor or who is for any reason incapable of acting, by any person acting on his behalf.

(3) The grounds of an appeal or application set out in Form 2 may be varied or amplified during the course of the appeal or application.

(4) Notwithstanding the provisions of paragraph (1) above, an application to an adjudicator for leave to appeal may be made orally by the applicant or by a person duly authorised by him in that behalf or, in the case of an applicant who is a minor or who is for any reason incapable of acting, by any person acting on his behalf; but, if leave is granted, the requirements of paragraph (1) above relating to the giving of notice of appeal shall be complied with as soon as practicable thereafter except that the Form 2 shall be served on the adjudicator instead of on the Tribunal.

(5) An application for leave to appeal shall be disposed of without a hearing unless the adjudicator or, as the case may be, the Tribunal to whom the application is made considers that special circumstances render a hearing desirable.

(6) Where an adjudicator grants leave to appeal he shall endorse his decision on the appropriate Form 2, that is to say—

(*a*) on the Form 2 relating to the application, where it was made in accordance with paragraph (1) above, or

(*b*) on the Form 2 served on him in pursuance of paragraph (4) above, where the application was made orally in accordance with that paragraph,

and he shall transmit that Form to the Tribunal; and in such case notice of appeal shall be deemed to have been duly given to the Tribunal.

(7) Where the Tribunal grants leave to appeal on an application made in accordance with paragraph (1), notice of appeal shall be deemed to have been duly given to the Tribunal.

(8) Where an application for leave to appeal is made in accordance with paragraph (1) above in a case in which such leave is not required, the Form 2, if not served on the Tribunal, shall be transmitted by the adjudicator to the Tribunal; and in such case, or where the application was made to the Tribunal, notice of appeal shall be deemed to have been duly given to the Tribunal.

Parties

17.—(1) On any appeal against the determination of an adjudicator, the persons who were the parties to the appeal before the adjudicator shall be the parties to the appeal before the Tribunal.

(2) The Secretary of State shall be treated as a party to any appeal, where he would not otherwise be a party to it by virtue of paragraph (1) above, upon giving written notice to the Tribunal at any time during the course of the appeal stating that he desires to be so treated.

(3) If any party to an appeal is or claims to be a refugee within the competence of the United Nations High Commissioner for Refugees, the United Kingdom Representative of the High Commissioner shall be treated as a party to the appeal, where he would not otherwise be a party to it by virtue of paragraph (1) above, upon giving written notice to the Tribunal at any time during the course of the appeal stating that he desires to be so treated.

(4) If the Secretary of State is satisfied that an officer is for any reason unable to take part in the proceedings of any appeal to which he would otherwise be a party by virtue of paragraph (1) above, the Secretary of State may direct that he, or such immigration or entry clearance officer as he may designate for the purpose, shall be treated as a party to the appeal in place of the officer; and thereupon any notice or other document sent or given by or to the officer for the purpose of the appeal shall be deemed to have been sent or given by or to the Secretary of State or the designated officer.

Evidence

18.—(1) In any proceedings on an appeal the Tribunal shall receive as evidence the summary or record taken or kept in accordance with Rule 40 of any evidence received—

(*a*) by the adjudicator in the course of the proceedings to which the appeal relates, or

(*b*) by an adjudicator to whom the appeal has been remitted in pursuance of paragraph (3)(*c*)(i) below.

(2) If any party to the appeal wishes to adduce evidence before the Tribunal further to that to be received in accordance with paragraph (1) above, he shall give notice in writing to that effect to the Tribunal indicating the nature of the evidence; any such notice shall—

(*a*) in the case of the appellant, be given with the notice of appeal or as

soon as practicable after notice of appeal is given or is deemed to have been given;

(*b*) in the case of any other party, as soon as practicable after he has been notified of the appeal.

(3) In any proceedings on an appeal—

(*a*) the Tribunal may, in its discretion, receive or decline to receive further evidence of which notice has been given in accordance with paragraph (2) above;

(*b*) if, to enable it to arrive at a proper determination of the appeal, the Tribunal requests the furnishing of further evidence relating to specified matters, it shall receive such further evidence;

(*c*) where such further evidence as is mentioned in sub-paragraph (*a*) or (*b*) above falls to be received it shall be given, as the Tribunal may direct, either—

(i) orally, in which case the Tribunal may take the further evidence itself or remit the appeal to the same or another adjudicator for the taking of that evidence, or

(ii) in writing, in which case it shall be given in such manner and at such time as the Tribunal may require.

Supply of documents

19. Subject to the provisions of Rule 30(2) (cases involving forgery of documents), the Tribunal shall cause copies of all notices and other documents required for an appeal, other than those already supplied in accordance with Rule 10, to be supplied to every party to the appeal.

Determination of appeal without hearing

20. The Tribunal may dispose of an appeal without a hearing if—

(*a*) no party to the appeal has requested a hearing; or

(*b*) where the appellant is the person against whom the decision or action in question was taken, the Tribunal is satisfied that he is outside the United Kingdom or that it is impracticable to give him notice of a hearing and, in either case, that no other person is authorised to represent him at a hearing.

Remittal of appeal for determination by adjudicator

21.—(1) The Tribunal may, if in the circumstances of a particular appeal it thinks it appropriate so to do, remit that appeal to an adjudicator for determination by him in accordance with any directions given to him by the Tribunal.

(2) The adjudicator to whom an appeal is remitted under this Rule may be either the adjudicator whose determination is the subject matter of the appeal or some other adjudicator.

(3) Subject to any necessary adaptations, Rules 17, 18 and 19 shall apply in relation to any proceedings on an appeal remitted to an adjudicator under this Rule as they apply in relation to proceedings before the Tribunal.

PART IV

GENERAL PROCEDURE

Application of Part IV

22.—(1) This Part shall apply in relation to—

(*a*) proceedings to which Part II applies (appeal at first instance to an

adjudicator or the Tribunal);

(*b*) proceedings to which Part III applies (appeal to the Tribunal from an adjudicator), and

(*c*) an application for bail.

(2) References in this Part to the appellant shall be construed—

(*a*) in relation to proceedings to which Part II applies, in accordance with Rule 3;

(*b*) in relation to proceedings to which Part III applies, as references to the person who was the appellant before the adjudicator, notwithstanding that he may not be the appellant before the Tribunal, and

(*c*) in relation to an application for bail, as references to the person to whom the application relates, notwithstanding that he may not have an appeal pending.

Bail

23.—(1) An application by an appellant to be released on bail under paragraph 22 or 29 of Schedule 2 to the Act—

(*a*) if made to an immigration officer or police officer, shall be made orally; or

(*b*) if made to an appellate authority, shall be made either orally or in Form 3.

(2) The recognizance of an appellant shall be in Form 4 and that of a surety in Form 5.

(3) Where an appellate authority directs the release of an appellant on bail and the taking of the recognizance is postponed under paragraph 22(3) or 29(6) of Schedule 2 to the Act, the authority shall issue a certificate in Form 6 showing the conditions to be endorsed on the recognizance with a view to the recognizance being taken subsequently and the amounts in which the appellant and any sureties are to be bound.

(4) The person having custody of an appellant shall—

(*a*) on receipt of a certificate in Form 7 signed by the secretary of the Tribunal or by the adjudicator stating that the recognizances of any sureties required have been taken, or on being otherwise satsified that all such recognizances have been taken; and

(*b*) on being satisfied that the appellant has entered into his recognizance, release the appellant.

(5) Paragraphs (2) and (3) above shall not apply to Scotland, and in their application to Scotland paragraph (4) above and Form 7 shall have effect as if for the references to recognizance of sureties having been taken there were substituted references to bail having been taken and for the references to a recognizance there were substituted references to a bail bond.

Notice of time and place of hearing

24.—(1) Subject to the provisions of paragraph (2) below, as soon as practicable after notice of appeal has been given, or is deemed to have been given, or an appeal has been remitted to an adjudicator in accordance with Rule 18(3)(*c*)(i) or 21 the appellate authority shall, if there is to be a hearing, give notice in writing to every party to the appeal stating the time and place of the hearing.

(2) Where an appellant is detained under paragraph 16 of Schedule 2 to the Act (detention pending examination or removal), the appellate authority may,

instead of giving notice in writing as aforesaid, cause any immigration officer to be notified orally of the time and place of the hearing; and thereupon that officer shall take such steps as are necessary to ensure that every party to the appeal is notified accordingly and that the appellant is produced at the hearing.

(3) Where a hearing is adjourned, the appellate authority shall give notice, either orally or in writing, to every party to the appeal of the time and place of the adjourned hearing except in the case of a party who has been absent throughout the preceding proceedings on the appeal or where the authority is satisfied that it is impracticable to give such notice.

Power to require particulars

25. An appellate authority may at any time request any party to the appeal to furnish any particulars which appear to be requisite for the determination of the appeal and thereupon that party shall send the particulars to the appellate authority.

Representation

26.—(1) In any proceedings on an appeal, a party to the appeal may act in person or be represented or may appear—

(*a*) in the case of the appellant, by counsel or a solicitor, a consular officer or a person performing functions corresponding to those of a consular officer, a person appointed in that behalf by any voluntary organisation for the time being in receipt of a grant under section 23 of the Act or, with the leave of the appellate authority, by any other person appearing to the authority to be acting on behalf of the appellant;

(*b*) in the case of the Secretary of State or any officer, by counsel or a solicitor or any officer of the Home Department;

(*c*) in the case of the United Kingdom Representative of the United Nations High Commissioner for Refugees, by a person appointed by him in that behalf.

(2) A person representing a party to an appeal in accordance with paragraph (1) above may take all such steps and do all such things relating to the proceedings as the person whom he represents is by these Rules required or authorised to take or do.

Summoning of witnesses

27.—(1) An appellate authority may, for the purposes of any appeal, by summons require any person in the United Kingdom to attend as a witness at a hearing of the appeal at such time and place as may be specified in the summons and, subject to the provisions of Rule 29(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 question in the appeal:

Provided that no person shall be required, in obedience to such a summons, to go more than 10 miles from his place of residence unless the necessary expenses of his attendance are paid or tendered to him, and, when the summons is issued at the request of a party to the appeal, those expenses are so paid or tendered by that party.

(2) Any such summons shall be in Form 8.

Conduct of proceedings at hearings

28. Subject to the provisions of Rules 18 and 34 at any hearing by an appellate authority—

(*a*) the appellate authority shall give to each party to the appeal an oppor-

tunity to address the authority, to give evidence and to call witnesses, and any party to the appeal may put questions to any person giving evidence before the authority;

(*b*) the appellate authority shall give to each party to the appeal an opportunity of making representations on the evidence (if any) and on the subject matter of the appeal generally but, where evidence is taken, such opportunity shall not be given before the completion of the taking of evidence,

but, save as aforesaid and after complying where appropriate with the provisions of Rule 8(4) or 11(3), the appellate authority shall conduct the proceedings in such manner as it considers appropriate in the circumstances for ascertaining the matters in dispute and determining the appeal.

Evidence

29.—(1) An appellate authority may receive oral, documentary or other evidence of any fact which appears to the authority to be relevant to the appeal, notwithstanding that such evidence would be inadmissible in a court of law.

(2) In any proceedings before an appellate authority, no person shall 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 in that part of the United Kingdom in which the proceedings are conducted.

(3) An appellate authority 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.

Inspection of documentary evidence

30.—(1) Subject to paragraph (2) below, when an appellate authority takes into consideration documentary evidence the authority shall give every party to the appeal an opportunity of inspecting that evidence and taking copies thereof.

(2) Where on an appeal it is alleged—

(*a*) that a passport or other travel document, certificate of patriality, entry clearance or work permit (or any part thereof or entry therein) on which a party relies is a forgery, and

(*b*) that the disclosure to that party of any matters relating to the method of detection would be contrary to the public interest,

then, if supply of a document to that party would involve such disclosure, that document shall not be supplied to, or made available for inspection by, that party.

Burden of proof

31.—(1) If in any proceedings before an appellate authority a party thereto asserts that a decision or action taken against him under any provisions of the Act ought not to have been taken on the grounds that he is not a person to whom those provisions apply, it shall lie on him to prove that he is not such a person.

(2) If in any proceedings before an appellate authority a party thereto asserts any fact of such a kind that, if the assertion were made to the Secretary of State or any officer for the purposes of any of the provisions of the Act or any immigration rules, it would by virtue of those provisions or rules be for him to satisfy the Secretary of State or officer of the truth thereof, it shall lie on that party to prove that the assertion is true.

(3) In paragraph (2) above, "immigration rules" means the rules for the time being laid down as mentioned in section 3(2) of the Act.

Exclusion of public

32.—(1) Subject to the provisions of this Rule, any hearing by an appellate authority shall take place in public.

(2) Subject to the provisions of paragraph (4) below, where in accordance with section 22(4) of the Act (cases involving forgery of documents) an appellate authority is required to arrange for the proceedings to take place in the absence of a party and his representatives, the authority shall exclude all members of the public from those proceedings.

(3) Subject to the provisions of paragraph (4) below, an appellate authority may exclude any member of the public or members of the public generally from any hearing by the authority or from any part of such a hearing—

(*a*) at the request of a party; or

(*b*) where, in the opinion of the authority, a member of the public is behaving in a manner likely to interfere with the proper conduct of the proceedings and, to prevent such interference, that member or members of the public generally should be excluded; or

(*c*) where, in the opinion of the authority, such evidence relating to a person other than a party is likely to be given as, subject to the interests of the parties, should not be given in public and no party requests that it be given in public.

(4) Nothing in this Rule shall prevent a member of the Council on Tribunals or of its Scottish Committee from attending a hearing in his capacity as such.

Transfer of proceedings

33.—(1) Where any proceedings before an adjudicator have not been disposed of by the adjudicator and the chief adjudicator, or any person for the time being carrying out the functions of the chief adjudicator, is of the opinion that it is not practicable without undue delay for the proceedings to be completed by that adjudicator, he shall make arrangements for them to be dealt with by another adjudicator; and any adjudicator to whom any proceedings are transferred as aforesaid shall have power to deal with them as if they had been commenced before him.

(2) Where an adjudicator dealing with an appeal considers that it is expedient that it should be dealt with by another adjudicator—

(*a*) at a place elsewhere by reason of the existence there of facilities for the medical examination or further medical examination of the appellant; or

(*b*) by reason of the first-mentioned adjudicator's personal connection with, or interest in, the circumstances of the appeal,

the first-mentioned adjudicator may make arrangements for it to be dealt with by that other adjudicator; and any other adjudicator to whom an appeal is transferred as aforesaid shall have power to deal with it as if it had been commenced before him.

(3) Where any proceedings are transferred to an adjudicator in accordance with paragraph (1) or (2) above, any notice or other document sent or given by or to the adjudicator from whom the proceedings were transferred shall be deemed to have been sent or given by or to the first-mentioned adjudicator.

Hearing of appeal in absence of appellant or other party

34.—(1) An appellate authority may, where in the circumstances of the case it appears to the authority proper so to do, hear an appeal in the absence of the appellant—

(*a*) if satisfied that he is not in the United Kingdom; or

(*b*) if satisfied that he is suffering from a communicable disease or from a mental disorder; or

(*c*) if satisfied that by reason of illness or accident he cannot attend the hearing.

(2) Without prejudice to paragraph (1) above but subject to paragraph (3) below, an appellate authority may proceed with the hearing of an appeal in the absence of a party (including the appellant) if satisfied that, in the case of that party, such notice of the time and place of the hearing, or of the adjourned hearing, as is required by Rule 24, has been given.

(3) The appellate authority shall not, unless in the circumstances of the case it appears to the authority proper so to do, proceed with the hearing in pursuance of paragraph (2) above if the absent party has furnished the authority with an explanation of his absence.

(4) Where in pursuance of this Rule an appellate authority hears an appeal or proceeds with a hearing in the absence of the appellant or some other party, the authority may determine the appeal upon such evidence as has been received.

(5) For the purposes of this Rule—

(*a*) notice of the time and place of a hearing, or an adjourned hearing, shall be presumed to have been given, unless the contrary be shown, if notice was sent by post in accordance with Rule 44 not later than 7 days before the date thereof;

(*b*) a reference to a party (including an appellant) includes a reference to his representative.

Summary determination of appeals

35.—(1) Subject to the provisions of paragraph (2) below, where it appears to an appellate authority that the issues raised on an appeal have been determined—

(*a*) in the case of an appeal before an adjudicator, by the same or another adjudicator or by the Tribunal, or

(*b*) in the case of an appeal before the Tribunal, by the Tribunal,

under Part II of the Act or the former appeal provisions, in previous proceedings to which the appellant was a party, on the basis of facts which did not materially differ from those to which the appeal relates, the authority may forthwith determine the appeal without a hearing.

(2) Before an appellate authority determines an appeal without a hearing in accordance with paragraph (1) above, the authority shall give the parties an opportunity of making representations to the effect that the appeal ought not to be so determined.

(3) Where an appeal is determined without a hearing in accordance with paragraph (1) above, the appellate authority shall give written notice to the parties that the appeal has been so determined, and any such notice shall contain a statement of the issues raised on the appeal and specify the previous proceedings in which those issues were determined.

(4) In paragraph (1) above the reference to the former appeal provisions is a reference to Part I of the Immigration Appeals Act 1969**(a)** or Part II of the Aliens (Appeals) Order 1970**(b)**.

Combined hearings

36. Where in the case of two or more appeals it appears to the appellate authority—

(*a*) that some common question of law or fact arises in both or all of them; or

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

(*c*) that for some other reason it is desirable to proceed with the appeals under this Rule,

the appellate authority may, with the agreement of all the parties to those appeals, decide that the appeals should be heard together.

Miscellaneous powers

37. An appellate authority may—

(*a*) postpone the time fixed for the hearing of an appeal;

(*b*) give directions on any matter arising in connection with an appeal to any party who requests them;

(*c*) if the parties to an appeal agree in writing upon the terms of a determination to be made by the appellate authority, determine the appeal accordingly;

(*d*) adjourn the hearing of any evidence or representations or the consideration of an appeal to such date as the authority may determine; and

(*e*) subject to the provisions of the Act and of these Rules, regulate its own procedure.

Irregularities

38. Any irregularity resulting from failure to comply with these Rules before an appellate authority has reached its decision shall not by itself render the proceedings void, but the appellate authority may, and shall if it considers that any person may have been prejudiced, take such steps as it thinks fit before reaching its decision to cure the irregularity, whether by amendment of any document, the giving of any notice or otherwise.

Promulgation of determination and reasons therefor

39.—(1) Where there is a hearing of an appeal and the appellate authority does not reserve the determination on the appeal, the authority shall pronounce the determination and the reasons therefor at the conclusion of the hearing.

(2) Whether or not paragraph (1) above applies, the determination on any appeal shall be recorded by the appellate authority in a document signed by the adjudicator or, as the case may be, the president or presiding chairman of the Tribunal; and the reasons for the determination shall be set out therein.

(3) The appellate authority shall, as soon as practicable, cause a copy of the document referred to in paragraph (2) above to be sent to every party to the appeal.

(a) 1969 c. 21. **(b)** S.I. 1970/151 (1970 I, p. 663).

Record of proceedings

40. The appellate authority shall cause a summary of the proceedings before it to be taken, except insofar as a record of them is kept by means of shorthand notes or by mechanical means.

PART V

MISCELLANEOUS

References by the Secretary of State

41. An appellate authority shall consider any matter referred to it by the Secretary of State for consideration under section 21 of the Act in whatever manner it thinks appropriate.

Performance of functions of Tribunal

42. Any function conferred on the Tribunal by Part II of Schedule 2 to the Act or Rule 5 or 27 and any function of the Tribunal in relation to applications for leave to appeal may be performed by the president or a chairman acting alone.

Time

43.—(1) Where the time provided by these Rules for doing any act expires on a Sunday or a public holiday and by reason thereof the act cannot be done on that day, the act shall be in time if done on the next working day.

(2) Where, under these Rules, an act is to be done not later than a specified period after any event, the period shall be calculated from the expiry of the day on which the event occurred.

Notices etc.

44.—(1) Any notice or other document required or authorised by these Rules to be sent or given to any person or authority may be sent by post in a registered letter or by the recorded delivery service or delivered—

(*a*) in the case of a document directed to the Tribunal, to the secretary of the Tribunal;

(*b*) in the case of a document directed to an adjudicator, to any person employed as his clerk;

(*c*) in the case of a document directed to the Secretary of State, to the Immigration and Nationality Department (Appeals Section), the Home Office;

(*d*) in the case of a document directed to an immigration officer or entry clearance officer, to the address specified in the statement issued in relation to the decision or action in question under Regulation 4 of the Immigration Appeals (Notices) Regulations 1972 or, if no such statement has been issued, to the address specified in sub-paragraph (*c*) above;

(*e*) in the case of a document directed to any other person, to his address for service specified in any notice given under these Rules, or to his last known or usual place of abode,

and, if sent or given to a person representing a party to an appeal in accordance with Rule 26(1), shall be deemed to have been sent or given to that party.

(2) A party to an appeal may at any time by notice to the appellate authority change his address for service under these Rules.

Variation of forms

45. The forms set out in the Schedule to these Rules or forms substantially to the like effect may be used with such variations as the circumstances may require.

Robert Carr,
One of Her Majesty's Principal Secretaries of State.

Home Office,
Whitehall.
3rd November 1972.

SCHEDULE

FORMS Rule 45

FORM 1 Rule 6

IMMIGRATION ACT 1971

Notice of appeal to adjudicator or Tribunal at first instance

To the *Adjudicator/*Tribunal

The appellant is—

*giving notice of appeal

*applying for bail (*see Note (a) below*)

Particulars of Appellant

Date of birth:

Full name: (*forenames*) (*surname*)
(Block letters)

Nationality:

Address:
(*If detained give address where detained*)

Particulars of decision or action appealed against:—

A copy of the notice of the decision or action appealed against is annexed hereto.

The grounds of appeal are as follows:—

---

*The appellant objects to removal to the country/territory to which he is to be removed, namely.....on the grounds set out in the attached statement (*see Note (b) below*).

A hearing of the appeal *is/*is not requested.

Signed .....
(Appellant or authorised representative)

Date .....

---

*Delete words which are inapplicable.

Notes:

(*a*) An application for bail should normally be supported by the appropriate form, but may be made orally. Such an application may be made subsequently.

(*b*) An objection to removal to a particular country or territory must be accompanied by a written statement specifying the grounds for the objection and the country or territory to which the appellant claims that he ought to be removed.

Rule 16

FORM 2

IMMIGRATION ACT 1971

Notice of appeal or application for leave to appeal from adjudicator

To the *Adjudicator/*Tribunal

The appellant is—

*applying for leave to appeal to the Tribunal
*giving notice of appeal to the Tribunal
*applying for bail (*see Note (a) below*)

Particulars of Appellant

Date of birth:

Full name: (*forenames*) (*surname*)
(Block letters)

Nationality:

Address:
(*If detained give address where detained*)

Particulars of determination of the adjudicator appealed against:—

A copy of the notice of the determination of the adjudicator appealed against is annexed hereto.

The grounds of appeal are as follows:—

---

*The appellant wishes to adduce further evidence before the Tribunal as follows:—

---

*The appellant objects to removal to the country/territory to which he is to be removed, namely.....on the grounds set out in the attached statement (*see Note (b) below*).

A hearing of the appeal *is/*is not requested.

Signed .....
(Appellant or authorised representative)

Date .....

**Endorsement*

Leave to appeal has been *granted/*refused

Signed .....
(Adjudicator/President/Chairman of the Tribunal)

---

*Delete words which are inapplicable.

Notes:

(*a*) An application for bail should normally be supported by the appropriate form, but may be made orally. Such an application may be made subsequently.

(*b*) An objection to removal to a particular country or territory must be accompanied by a written statement specifying the grounds for the objection and the country or territory to which the appellant claims that he ought to be removed.

FORM 3 Rule 23(1)

IMMIGRATION ACT 1971

Application to appellate authority for bail

To the *Adjudicator/*Tribunal

Particulars of Appellant

(*forenames*) (*surname*)

Full name:
(Block letters)

Address where detained:

Give the appellant's address if bail were granted, and the amount of the recognizance in which he would agree to be bound.
Address if granted bail
Amount of recognizance offered £.....

Give the names, addresses and occupations of two persons who might act as sureties if bail were granted and the amounts of the recognizances in which they might agree to be bound.

1st Surety:
Name, address, occupation
Amount of recognizance offered £.....

2nd Surety:
Name, address, occupation
Amount of recognizance offered £.....

*If bail has been granted by an adjudicator in the course of the appeal state:—
Amount of recognizances:

Appellant	Sureties	
£.....	£.....	£.....

Were the sureties the persons named above?
What, if any, special conditions were imposed?

The appellant applies for bail on the following grounds:—

Signed .....
(Appellant or authorised representative)

Date .....

*Delete words which are inapplicable.

Rule 23(2)

FORM 4

IMMIGRATION ACT 1971

Recognizance of appellant

I, ...(hereinafter called the appellant) acknowledge that I owe to Her Majesty The Queen the sum of £....., payment thereof to be enforced against me by due process of law if I fail to comply with the condition[s] endorsed hereon.

Signed .....

Address at which appellant proposes to reside pending appeal:

.....

.....

.....

Taken before me the.....day of.....19.....

at.....

Signed .....

Office.....

(*Endorsement*)

Condition[s]

The condition[s] of this recognizance is [are] that if the appellant appears before .....(appellate authority) at.....(time and place) unless the appellate authority otherwise orders, then this recognizance shall be void, but otherwise shall remain in full force (*see Note below*).

Note:

Conditions appearing to the appellate authority to be likely to result in the appellant's appearance at the time and place required may be added.

FORM 5 Rule 23(2)

IMMIGRATION ACT 1971

Recognizance of appellant's surety

I, ... acknowledge that I owe to Her Majesty The Queen the sum of £....., payment thereof to be enforced against me by due process of law if..... detained in..... fails to comply with the condition endorsed hereon.

Signed .....

Address.....

.....

.....

Taken before me the ..... day of ..... 19..... at.....

Signed .....

Office.....

(*Endorsement*)

Condition

The condition of the recognizance is that if the said .....

appears before..... (appellate authority) at..... (time and place) unless the appellate authority otherwise orders, then this recognizance shall be void, but otherwise shall remain in full force.

FORM 6 Rule 23(3)

IMMIGRATION ACT 1971

Certificate of conditions of bail

I hereby certify that ..... (appellate authority) has granted bail and has fixed the amount of the recognizance to be entered into by.....

.....

detained in ..... at the sum of £..... and .....surety in..... [each] conditioned for the appearance of the said..... before.....

(appellate authority) at ..... (time and place) unless the appellate authority otherwise orders.*

Signed .....

Date .....

*Add, in the case of the appellant, any other conditions specified by the appellate authority.

Rule 23(4) and (5) FORM 7

IMMIGRATION ACT 1971

Certificate that all recognizances taken

I hereby certify that the recognizances of the sureties of .....

detained in..... have been taken.

Signed .....

(Secretary of the Tribunal/Adjudicator)

Date .....

Rule 27 FORM 8

IMMIGRATION ACT 1971

Summons to witness

To ..... (name)

of .....(address)

An appeal has been lodged by.....

against the * decision / * action / * determination of .....

to the effect that:—

..... State shortly the particulars of the decision, action or determination appealed against

And I, the undersigned, am satisfied that you are likely to be able to [give material evidence] [and] [produce the undermentioned document[s] likely to be material evidence] therein.

You are therefore summoned to attend as a witness at the hearing of the appeal at.....(time and place) and at the hearing to [answer any questions] [and] [produce the following document[s]]:—

Signed .....
(President/Chairman of the Tribunal/ Adjudicator)

Date.....

*Delete words which are inapplicable.

Note:

Failure to comply with this summons without reasonable excuse is an offence carrying a maximum fine of £100 (s. 22(6) Immigration Act 1971).

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules relate to the practice and procedure to be followed on or in connection with appeals under Part II of the Immigration Act 1971 and make provision corresponding to that made by the Immigration Appeals (Procedure) Rules 1970 (S.I. 1970/794) in the case of appeals under the Immigration Appeals Act 1969 or the Aliens (Appeals) Order 1970, which cease to have effect on the coming into operation of Part II of the Act of 1971.

The main changes are described below.

The Rules extend to appeals against the refusal of a certificate of patriality (Rules 4(2) and (3), 6(2) and 7(1)).

Provision is made as respects the determination of preliminary issues (Rules 8(3), 11, 12 and 14(1)).

In the case of a person who is within the common travel area (the United Kingdom, the Isle of Man, the Channel Islands and the Republic of Ireland), the time limit for an appeal from an adjudicator to the Tribunal is extended from 7 to 14 days; in the case of a person who is outside that area, the time limit is extended from 28 to 42 days (Rule 15).

An adjudicator or the Tribunal is empowered to hear an appeal in the absence of the appellant where it appears proper so to do and he is suffering from illness or an accident or in the absence of any party (including the appellant) who has been notified of the hearing (Rule 34).

Provision is made for two or more appeals to be heard together where this appears appropriate and all the parties agree (Rule 36).

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