

SCHEDULE 2

Article 5(2)

Consequential provisions – secondary legislation

Detention Centre Rules 2001

1. In rule 27(6) of the Detention Centre Rules 2001⁽¹⁾ (correspondence) for “or the Asylum and Immigration Tribunal” substitute “, the First-tier Tribunal or the Upper Tribunal”.

Asylum and Immigration Tribunal (Procedure) Rules 2005

2. The Asylum and Immigration Tribunal (Procedure) Rules 2005⁽²⁾ are amended as follows.

3. In rule 2 (interpretation)—

(a) after the definition of “the 2004 Act” insert—

““appeal to the Upper Tribunal” means the exercise of a right of appeal on a point of law under section 11 of the Tribunals, Courts and Enforcement Act 2007;”;

(b) omit the definitions of—

(i) “appropriate appellate court”;

(ii) “appropriate court”;

(iii) “order for reconsideration”;

(iv) “President”;

(v) “section 103A”; and

(vi) “section 103A application”; and

(c) in the definition of “Tribunal” for “Asylum and Immigration Tribunal” substitute “First-tier Tribunal”.

4. For rule 3 (scope of these Rules) substitute—

“Scope of these Rules

3. These Rules apply to proceedings before the Tribunal which have been allocated to the Immigration and Asylum Chamber by the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008⁽³⁾.”.

5. In rule 8(1) (form and contents of notice of appeal) for “President” substitute “Senior President”.

6. For rule 23(5)(a)(i) (special procedures and time limits in asylum appeals) substitute—

“(i) if the respondent makes an application for permission to appeal against a decision of the Tribunal, by sending, delivering or personally serving the determination not later than the date on which the respondent makes that application;”.

⁽¹⁾ [S.I. 2001/238](#). Rule 27(6) was amended by rule 3 of the Detention Centre (Amendment) Rules 2005 ([S.I. 2005/673](#)).

⁽²⁾ [S.I. 2005/230](#). Rule 3 was amended by rule 4 of the Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2005 ([S.I. 2005/569](#)). Rules 28A and 33(4A) were inserted by rule 4 of the Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2005 ([S.I. 2005/569](#)). Rules 8, 27, 28A 33, 34, 38 and 60 were amended by rules 3, 9 to 13 and 15 of the Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2006 ([S.I. 2006/2778](#)). Rule 62 was amended by the Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2007 ([S.I. 2007/835](#)). Rule 27 was amended by rule 2 of the Asylum and Immigration Tribunal (Procedure) (Amendment No 2) Rules 2007 ([S.I. 2007/3170](#)). Rules 30, 31, 33, 36 were amended by rules 5 to 8 of the Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2008 ([S.I. 2008/1088](#)).

⁽³⁾ [S.I. 2008/2684](#). Amended by the First-tier Tribunal and Upper Tribunal (Chambers) (Amendment) Order 2009 ([S.I. 2009/196](#)), the First-tier Tribunal and Upper Tribunal (Chambers) (Amendment No. 2) Order 2009 ([S.I. 2009/1021](#)), and the First-tier Tribunal and Upper Tribunal (Chambers) (Amendment No. 3) Order 2009 ([S.I. 2009/1590](#)).

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7. After rule 23 insert—

“No power to award costs

23A. The Tribunal may not make any order in respect of costs (or, in Scotland, expenses) pursuant to section 29 of the Tribunals, Courts and Enforcement Act 2007 (power to award costs).”.

8. For Part 3 substitute —

“PART 3

Appeals to the Upper Tribunal

Application for permission to appeal to the Upper Tribunal

24.—(1) A party seeking permission to appeal to the Upper Tribunal must make a written application to the Tribunal for permission to appeal.

(2) Subject to paragraph (3), an application under paragraph (1) must be sent or delivered to the Tribunal so that it is received no later than 5 days after the date on which the party making the application is deemed to have been served with the later of the following—

- (a) written reasons for the decision; or
- (b) notification of the outcome of a review under rule 60(1A).

(3) Where an appellant is outside the UK, the time limit for sending or delivering an application under paragraph (1) is 28 days.

(4) If a person makes an application under paragraph (1) later than the time required by paragraph (2)—

- (a) the Tribunal may extend the time for appealing if satisfied that by reason of special circumstances it would be unjust not to do so; and
- (b) unless the Tribunal extends time under sub-paragraph (a), the Tribunal must not admit the application.

(5) An application under paragraph (1) must—

- (a) identify the decision of the Tribunal to which it relates;
- (b) identify the alleged error or errors of law in the decision; and
- (c) state the result the party making the application is seeking.

Tribunal’s consideration of an application for permission to appeal to the Upper Tribunal

25.—(1) On receiving an application for permission to appeal the Tribunal must first consider whether to review the decision in accordance with rule 26.

(2) If the Tribunal decides not to review the decision, or reviews the decision and decides to take no action in relation to the decision, or part of it, the Tribunal must consider whether to give permission to appeal in relation to the decision or that part of it.

(3) The Tribunal must make a decision under paragraph (1) and, where relevant, paragraph (2), no later than 10 days after receiving the application.

(4) Subject to rule 27, if the Tribunal refuses permission to appeal it must send to the parties—

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- (a) a statement of its reasons for such refusal; and
 - (b) notification of the right to make an application to the Upper Tribunal for permission to appeal and the time within which, and the method by which, such application must be made.
- (5) The Tribunal may give permission to appeal on limited grounds, but must comply with paragraph (4) in relation to any grounds on which it has refused permission.

Review of a decision

26.—(1) The Tribunal may only undertake a review of a decision pursuant to rule 25(2) if it is satisfied that there was an error of law in the decision.

(2) Subject to rule 27, the Tribunal must notify the parties in writing of the outcome of any review, and of any right of appeal in relation to the outcome.

(3) If the Tribunal takes any action in relation to a decision following a review without first giving every party an opportunity to make representations, the notice under paragraph (2) must state that any party that did not have an opportunity to make representations may apply for such action to be set aside and for the decision to be reviewed again.

Special procedure for providing notice of a decision relating to an asylum case

27.—(1) This Rule applies to an application to the Tribunal for permission to appeal to the Upper Tribunal where—

- (a) the appellant is in the United Kingdom at the time the application is made; and
- (b) the appeal relates, in whole or in part, to an asylum claim.

(2) In cases to which this paragraph applies—

- (a) the Tribunal must send the documents mentioned in rule 25(4), or, where appropriate, rule 26(2), to the Secretary of State for the Home Department;
- (b) the Secretary of State for the Home Department must serve those documents on the appellant not later than 28 days after receiving them from the Tribunal;
- (c) the Secretary of State for the Home Department must, as soon as practicable after serving the documents mentioned in sub-paragraph (b), notify the Tribunal on what date and by what means they were served; and
- (d) if the Secretary of State for the Home Department does not give the Tribunal notification under sub-paragraph (c) within 29 days after the Tribunal sends the documents mentioned in rule 25(4), or, where appropriate, rule 26(2) on it, the Tribunal must serve those documents on the appellant as soon as reasonably practicable thereafter.”.

9. In rule 38(1) (applications for bail) for “President” substitute “Senior President”.

10. Omit rule 44 (constitution of the Tribunal).

11. In rule 45(6) (directions) for “President” substitute “Tribunal”.

12. In rule 60 (correction of orders and determinations)—

- (a) in paragraph (1A)—
 - (i) for “President” substitute “Tribunal”; and
 - (ii) for “his” substitute “its”;
- (b) omit paragraph (1D); and

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(c) in paragraph (2)(b) for “, rule 23(5) and (6) or rule 27(5)(b)-(d)” substitute “or rule 23(5) and (6)”.

13. Omit Part 6 (revocation and transitional provisions).

Asylum and Immigration Tribunal (Procedure) (Fast-track) Rules 2005

14. The Asylum and Immigration Tribunal (Procedure) (Fast-track) Rules 2005(4) are amended as follows.

15. For rule 3(2) (scope of these Rules) substitute—

“(2) Part 3 applies to applications to appeal to the Upper Tribunal in the circumstances specified in rule 15.”.

16. In rule 4(2) (application of the Principal Rules) omit “, 20, 24”.

17. In rule 6 (application of Part 2 of the Principal Rules) after sub-paragraph (g) insert—

“(h) rule 23A.”.

18. For Part 3 (reconsideration of appeals etc.) substitute—

“PART 3

Appeals to the Upper Tribunal

Scope of this Part

15.—(1) This Part applies to applications for permission to appeal to the Upper Tribunal made pursuant to rule 25 of the Principal Rules, where—

- (a) Part 2 of these Rules applied at all times to the appeal to the Tribunal; and
- (b) the appellant has been continuously in detention under the Immigration Acts at a place or places specified in Schedule 2 to these Rules since being served with notice of the immigration decision that is the subject of the appeal.

(2) This Part shall cease to apply if the Tribunal makes an order under rule 30(1).

Application of the Principal Rules to this Part

16. The following provisions of the Principal Rules apply to proceedings to which this Part applies—

- (a) rule 24 except for paragraph (2); and
- (b) rule 25 except for paragraph (1).

Time limits for making an application for permission to appeal

17. An application under rule 25(1) of the Principal Rules must be sent or delivered to the Tribunal so that it is received no later than 2 days after the later of the dates on which the party is served with—

- (a) written reasons for the decision; or

(4) [S.I. 2005/560](#). Rule 6(g) was inserted by rule 2 of the Asylum and Immigration Tribunal (Procedure) (Fast-track) (Amendment) Rules 2008 ([S.I. 2008/1089](#)). Rule 29A was inserted by rule 5 of the Asylum and Immigration Tribunal (Fast Track Procedure) (Amendment) Rules 2006 ([S.I. 2006/2789](#)).

- (b) notification that an application for the decision to be set aside has been unsuccessful.

Service of permission application decision

18. The Tribunal must send to the parties written reasons for its decision in relation to an application for permission to appeal not later than 1 business day after the application was received by the Tribunal.”.

19. In rule 29A (correction of administrative errors) for “President, Deputy President or senior immigration judge” substitute “Tribunal”.

20. Omit Part 6 (revocation and transitional provisions).

Immigration (European Economic Area) Regulations 2006

21. The Immigration (European Economic Area) Regulations 2006⁽⁵⁾ are amended as follows.

22. In regulation 25(1) (interpretation of Part 6) omit the definition of “Asylum and Immigration Tribunal”.

23. In regulation 26(6) and (7) (appeal rights) for “Asylum and Immigration Tribunal” substitute “First-tier Tribunal”.

24. In regulation 28(6) (appeals to the Commission) for “Asylum and Immigration Tribunal” substitute “First-tier Tribunal or Upper Tribunal”.

25. In regulation 29(1) and the heading (effect of appeals to the Asylum and Immigration Tribunal) for “Asylum and Immigration Tribunal” substitute “First-tier Tribunal or Upper Tribunal”.

26. In Schedule 1 (appeals to the Asylum and Immigration Tribunal)—

- (a) Schedule 1 shall stand as paragraph 1 of Schedule 1;
- (b) in each place (including the heading) for “Asylum and Immigration Tribunal” substitute “First-tier Tribunal”;
- (c) omit “sections 103A to 103E”; and
- (d) after paragraph 1 insert—

“2. Tribunal Procedure Rules have effect in relation to appeals under these Regulations.”.

27. In paragraph 4(3) of Schedule 2 (appeals under the 2002 Act and previous immigration Acts) for “Asylum and Immigration Tribunal” substitute “First-tier Tribunal”.

Administrative Justice and Tribunals Council (Listed Tribunals) Order 2007

28. In article 2 of the Administrative Justice and Tribunals Council (Listed Tribunals) Order 2007⁽⁶⁾ (list of tribunals) omit the entry relating to the Asylum and Immigration Tribunal.

Contracting Out (Administrative Work of Tribunals) Order 2009

29. In article 2 of the Contracting Out (Administrative Work of Tribunals) Order 2009⁽⁷⁾ omit paragraph (e) (together with the “and” immediately before it).

(5) [S.I. 2006/1003](#).

(6) [S.I. 2007/2951](#).

(7) [S.I. 2009/121](#).

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