



Statutory Document No. 184/08

NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

IMMIGRATION APPEALS (PROCEDURE) RULES 2008

Arrangement of rules

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Statutory Document No. 184/08

NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

IMMIGRATION APPEALS (PROCEDURE) RULES 2008

Laid before Tynwald

15th April 2008

Coming into operation

1st May 2008

In exercise of the powers conferred on the Deemsters by sections 106(1) to (3) and 112(3) of the Nationality, Immigration and Asylum Act 2002 (an Act of Parliament)¹, and by paragraph 25 of Schedule 2 to the Immigration Act 1971 (an Act of Parliament)², as those Acts have effect in the Isle of Man³, and of all other enabling powers, the following Rules are hereby made:—

PART 1

INTRODUCTION

1. Citation and commencement

These Rules may be cited as the Immigration Appeals (Procedure) Rules 2008 and shall come into operation on the 1st May 2008.

2. Interpretation

(1) In these Rules —

"the 1971 Act" means the Immigration Act 1971 (an Act of Parliament);

"the 2002 Act" means the Nationality, Immigration and Asylum Act 2002 (an Act of Parliament);

"the 2004 Act" means the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (an Act of Parliament)⁴;

"adjudicator" means an adjudicator for the purposes of Part 5 of the 2002 Act;

"appellant" means a person who has given a notice of appeal to an adjudicator against a relevant decision in accordance with these Rules;

"business day" means any day other than a Saturday or Sunday, a day which has been declared a bank holiday under section 1 of the Bank Holidays Act 1989 (an Act of Tynwald)⁵, Christmas Day or Good Friday;

¹ 2002 c.41

² 1971 c.77

³ SI 2008/680

⁴ 2004 c.19

⁵ 1989 c.5

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"determination", in relation to an appeal, means a decision by an adjudicator in writing to allow or dismiss the appeal, and does not include a procedural, ancillary or preliminary decision;

"immigration decision" means a decision of a kind listed in section 82(2) of the 2002 Act;

"immigration rules" means the rules for the time being laid down as mentioned in section 3(2) of the 1971 Act;

"relevant decision" means a decision against which there is an exercisable right of appeal to an adjudicator;

"respondent" means the decision maker specified in the notice of decision against which a notice of appeal has been given;

"United Kingdom Representative" means the United Kingdom Representative of the United Nations High Commissioner for Refugees.

- (2) Any reference in these Rules to —
- (a) an enactment which extends to the Isle of Man, or
 - (b) a provision of any such enactment,

shall be construed as a reference to that enactment or provision as it has effect in the Isle of Man

3. Revocation

Subject to rule 4(2), the Immigration Appeals (Procedure) Rules 1997⁶ are revoked.

4. Application of Rules

(1) Subject to paragraph (2), these Rules apply to the following proceedings —

- (a) appeals to an adjudicator;
- (b) reconsideration of appeals by an adjudicator;
- (c) applications to an adjudicator for permission to appeal to the High Court; and
- (d) applications to an adjudicator for bail.

(2) These Rules do not apply, and the Immigration Appeals (Procedure) Rules 1997 continue to apply, to —

- (a) an appeal or application under the old appeals provisions which is pending on the 1st April 2008, and
- (b) an appeal instituted or application made after that date under the old appeals provisions by virtue of paragraph 5(1) of Schedule 2 to the Immigration (Isle of Man) Order 2008⁷.

⁶ SD 26/97

⁷ SI 2008/680

(3) In paragraph (2) "the old appeals provisions" has the meaning given by paragraph 5(5) of the said Schedule 2.

5. Overriding objective

The overriding objective of these Rules is to secure that proceedings before an adjudicator are handled as fairly, quickly and efficiently as possible; and, where appropriate, that the adjudicator has responsibility for ensuring this, in the interests of the parties to the proceedings and in the wider public interest.

PART 2

APPEALS TO ADJUDICATOR

6. Scope of this Part

This Part applies to appeals to an adjudicator.

7. Giving notice of appeal

(1) An appeal to an adjudicator may only be instituted by giving notice of appeal against a relevant decision in accordance with these Rules.

(2) Subject to paragraphs (3) and (4), notice of appeal must be given by serving it on an immigration officer in accordance with rule 48(1).

(3) A person who is in detention under the Immigration Acts may give notice of appeal either —

- (a) in accordance with paragraph (2); or
- (b) by serving it on the person having custody of him.

(4) A person who is outside the Isle of Man and the United Kingdom and wishes to appeal against a decision of an entry clearance officer may give notice of appeal either —

- (a) in accordance with paragraph (2); or
- (b) by serving it on the entry clearance officer.

(5) Where a notice of appeal is served on an immigration officer under paragraph (2), the officer must —

- (a) endorse on the notice the date that it is served on him;
- (b) forward it to an adjudicator as soon as reasonably practicable, and in any event within 15 days; and
- (c) if it is practicable to do so within the time limit in sub-paragraph (b), send to the adjudicator with the notice of appeal a copy of the documents listed in rule 13(1).

(6) Where a notice of appeal is served on a custodian under paragraph (3)(b), that person must —

- (a) endorse on the notice the date that it is served on him; and
- (b) forward it to an adjudicator within 2 days.

(7) Where a notice of appeal is served on an entry clearance officer under paragraph (4)(b), the officer must —

- (a) endorse on the notice the date that it is served on him;
- (b) forward it to an adjudicator as soon as reasonably practicable, and in any event within 15 days; and
- (c) if it is practicable to do so within the time limit in sub-paragraph (b), send to the adjudicator with the notice of appeal a copy of the documents listed in rule 13(1).

8. Time limit for appeal

(1) A notice of appeal by a person who is in the Isle of Man must be given —

- (a) if the person is in detention under the Immigration Acts when he is served with notice of the decision against which he is appealing, not later than 5 days after he is served with that notice; and
- (b) in any other case, not later than 10 days after he is served with notice of the decision.

(2) A notice of appeal by a person who is outside the Isle of Man must be given —

- (a) if the person —
 - (i) was in the Isle of Man when the decision against which he is appealing was made; and
 - (ii) may not appeal while he is the Isle of Man by reason of a provision of the 2002 Act,not later than 28 days after his departure from the Isle of Man; or
- (b) in any other case, not later than 28 days after he is served with notice of the decision.

9. Form and contents of notice of appeal

(1) The notice of appeal must be made on a form approved for the purpose by the First Deemster and must —

- (a) state the name and address of the appellant;
- (b) state whether the appellant has authorised a representative to act for him in the appeal and, if so, give the representative's name and address;
- (c) set out the grounds for the appeal;
- (d) give reasons in support of those grounds; and
- (e) so far as reasonably practicable, list any documents which the appellant intends to rely upon as evidence in support of the appeal.

(2) The notice of appeal must if reasonably practicable be accompanied by the notice of decision against which the appellant is appealing, or a copy of it.

(3) The notice of appeal must be signed by the appellant or his representative, and dated.

(4) If a notice of appeal is signed by the appellant's representative, the representative must certify in the notice of appeal that he has completed it in accordance with the appellant's instructions.

10. Notice of appeal where there is no relevant decision

(1) Where —

- (a) a person has given a notice of appeal to an adjudicator; and
- (b) there is no relevant decision,

the adjudicator may not accept the notice of appeal.

(2) Where the adjudicator does not accept a notice of appeal, he must —

- (a) notify the person giving the notice of appeal and the respondent; and
- (b) take no further action.

11. Late notice of appeal

(1) If a notice of appeal is given outside the applicable time limit, it must include an application for an extension of time for appealing, which must —

- (a) include a statement of the reasons for failing to give the notice within that period; and
- (b) be accompanied by any written evidence relied upon in support of those reasons. .

(2) If a notice of appeal appears to the adjudicator to have been given outside the applicable time limit but does not include an application for an extension of time, unless the adjudicator extends the time for appealing of his own initiative, he must notify the person giving notice of appeal in writing that he proposes to treat the notice of appeal as being out of time.

(3) Where the adjudicator gives notification under paragraph (2), if the person giving notice of appeal contends that —

- (a) the notice of appeal was given in time, or
- (b) there were special circumstances for failing to give the notice of appeal in time which could not reasonably have been stated in the notice of appeal,

he may file with the adjudicator written evidence in support of that contention.

(4) Written evidence under paragraph (3) must be filed —

- (a) if the person giving notice of appeal is in the Isle of Man, not later than 3 days; or
- (b) if the person giving notice of appeal is outside the Isle of Man, not later than 10 days,

after notification is given under paragraph (2).

(5) Where the notice of appeal was given out of time, the adjudicator may extend the time for appealing if satisfied that by reason of special circumstances it would be unjust not to do so.

(6) The adjudicator must decide any issue as to whether a notice of appeal was given in time, or whether to extend the time for appealing, as a preliminary decision without a hearing, and in doing so may only take account of —

- (a) the matters stated in the notice of appeal;
- (b) any evidence filed by the person giving notice of appeal in accordance with paragraph (1) or (3); and
- (c) any other relevant matters of fact within the knowledge of the adjudicator.

(7) Where the adjudicator makes a decision under this Rule, he must give written notice of his decision, including his reasons which may be in summary form.

(8) The adjudicator must serve the written notice given under paragraph (7) on the parties.

12. Special provisions for imminent removal cases

(1) This rule applies in any case in which the respondent notifies the adjudicator that removal directions have been issued against a person who has given notice of appeal, pursuant to which it is proposed to remove him from the Isle of Man within 5 calendar days of the date on which the notice of appeal was given.

(2) The adjudicator must, if reasonably practicable, make any preliminary decision under rule 11 before the date and time proposed for his removal.

(3) Rule 11 shall apply subject to the modifications that the adjudicator may —

- (a) give notification under rule 11(2) orally, which may include giving it by telephone;
- (b) shorten the time for giving evidence under rule 11(3); and
- (c) direct that any evidence under rule 11(3) is to be given orally, which may include requiring the evidence to be given by telephone, and hold a hearing or telephone hearing for the purpose of receiving such evidence.

13. Filing of documents by respondent

(1) When the respondent is served with a notice of appeal, he must (unless he has already done so) file with the adjudicator a copy of —

- (a) the notice of the decision to which the notice of appeal relates, and
- (b) any other document served on the appellant giving reasons for that decision;
- (c) any statement of evidence form completed by the appellant;
- (d) any record of an interview with the appellant, in relation to the decision being appealed;

- (e) any other unpublished document which is referred to in a document mentioned in sub-paragraph (a) or relied upon by the respondent; and
- (f) the notice of any other immigration decision made in relation to the appellant in respect of which he has a right of appeal under section 82 of the 2002 Act.

(2) Subject to paragraph (3), the respondent must file the documents listed in paragraph (1) not later than 7 days before the earliest date appointed for any hearing of or in relation to the appeal.

(3) The respondent must, at the same time as filing them, serve on the appellant a copy of all the documents listed in paragraph (1), except for documents which the respondent has already sent to the appellant.

14. Variation of grounds of appeal

Subject to section 85(2) of the 2002 Act, the appellant may vary his grounds of appeal only with the permission of the adjudicator.

15. Method of determining appeal

(1) Every appeal must be considered by the adjudicator at a hearing, except where —

- (a) the appeal —
 - (i) lapses pursuant to section 99 of the 2002 Act;
 - (ii) is treated as abandoned pursuant to section 104(4) of the 2002 Act;
 - (iii) is treated as finally determined pursuant to section 104(5) of the 2002 Act; or
 - (iv) is withdrawn by the appellant or treated as withdrawn in accordance with rule 17;
 - (b) paragraph (2) of this rule applies; or
 - (c) any other provision of these Rules or of any other enactment permits or requires the adjudicator to dispose of an appeal without a hearing.
- (2) The adjudicator may determine an appeal without a hearing if —
- (a) all the parties to the appeal consent;
 - (b) the appellant is outside the Isle of Man or it is impracticable to give him notice of a hearing and, in either case, he is unrepresented;
 - (c) a party has failed to comply with a provision of these Rules or a direction of the adjudicator; and the adjudicator is satisfied that in all the circumstances, including the extent of the failure and any reasons for it, it is appropriate to determine the appeal without a hearing; or
 - (d) subject to paragraph (3), the adjudicator is satisfied, having regard to the material before him and the nature of the issues raised, that the appeal can be justly determined without a hearing.

(3) Where paragraph (2)(d) applies, the adjudicator must not determine the appeal without a hearing without first giving the parties notice of his intention to do

so; and an opportunity to make written representations as to whether there should be a hearing.

16. Certification of pending appeal

(1) If the Governor or an immigration officer issues a certificate under section 97, 97A or 98 of the 2002 Act which relates to a pending appeal, he must file notice of the certification with the adjudicator.

(2) Where a notice of certification is filed under paragraph (1), the adjudicator must —

- (a) notify the parties; and
- (b) take no further action in relation to the appeal.

17. Withdrawal of appeal

(1) An appellant may withdraw an appeal —

- (a) orally, at a hearing; or
- (b) at any time, by filing written notice with the adjudicator.

(2) An appeal shall be treated as withdrawn if the respondent notifies the adjudicator that the decision (or, where the appeal relates to more than one decision, all of the decisions) to which the appeal relates has been withdrawn.

(3) Where an appellant dies before the appeal has been determined by the adjudicator, the adjudicator may direct that —

- (a) the appeal shall be treated as withdrawn; or
- (b) where the adjudicator considers it necessary, the personal representative of the appellant may continue the proceedings in place of the applicant.

(4) If an appeal is withdrawn or treated as withdrawn, the adjudicator must serve on the parties a notice that the appeal has been recorded as having been withdrawn.

18. Abandonment of appeal

(1) Any party to a pending appeal must notify the adjudicator if they are aware that an event specified in section 104(4), (4A) or (5) of the 2002 Act has taken place.

(2) Where section 104(4A) of the 2002 Act applies and the appellant wishes to pursue his appeal, the appellant must file a notice with the adjudicator —

- (a) where section 104(4B) of the 2002 Act applies, within 28 days of the date on which the appellant received notice of the grant of leave to enter or remain in the Isle of Man for a period exceeding 12 months; or
- (b) where section 104(4C) of the 2002 Act applies, within 28 days of the date on which the appellant received notice of the grant of leave to enter or remain in the Isle of Man.

(3) Where the appellant does not comply with the time limits specified in paragraph (2) the appeal shall be treated as abandoned in accordance with section 104(4) of the 2002 Act.

(4) At the same time as filing the notice under paragraph (2), the appellant must serve a copy of the notice on the respondent

(5) Where section 104(4B) of the 2002 Act applies, the notice filed under paragraph (2) must state —

- (a) the appellant's full name and date of birth;
- (b) the date on which the appellant was granted leave to enter or remain in the Isle of Man for a period exceeding 12 months; and
- (c) that the appellant wishes to pursue the appeal in so far as it is brought on the ground specified in section 84(1)(g) of the 2002 Act which relates to the Refugee Convention.

(6) Where section 104(4C) of the 2002 Act applies, the notice filed under paragraph (2) must state —

- (a) the appellant's full name and date of birth;
- (b) the date on which the appellant was granted leave to enter or remain in the Isle of Man; and
- (c) that the appellant wishes to pursue the appeal in so far as it is brought on the ground specified in section 84(1)(b) of the 2002 Act which relates to sections 1 and 2 of the Race Relations Act 2004 (an Act of Tynwald)⁸.

(7) Where an appellant has filed a notice under paragraph (2) the adjudicator must notify the appellant of the date on which he received the notice.

(8) The adjudicator must send a copy of the notice issued under paragraph (7) to the respondent.

(9) Where an appeal is treated as abandoned pursuant to section 104(4) of the 2002 Act, or finally determined pursuant to section 104(5) of the 2002 Act, the adjudicator must —

- (a) serve on the parties a notice informing them that the appeal is being treated as abandoned or finally determined; and
- (b) take no further action in relation to the appeal.

⁸ 2004 c.6

19. Hearing appeal in absence of a party

(1) The adjudicator may hear an appeal in the absence of a party or his representative, if satisfied that —

- (a) the party or his representative has been given notice of the date, time and place of the hearing, and
- (b) there is no good reason for such absence.

(2) Where paragraph (1) does not apply, the adjudicator may hear an appeal in the absence of a party if satisfied that —

- (a) a representative of the party is present at the hearing;
- (b) the party is outside the Isle of Man;
- (c) the party is suffering from a communicable disease or there is a risk of him behaving in a violent or disorderly manner;
- (d) the party is unable to attend the hearing because of illness, accident or some other good reason;
- (e) party is unrepresented and it is impracticable to give him notice of the hearing; or
- (f) the party has notified the adjudicator that he does not wish to attend the hearing.

20. Hearing two or more appeals together

Where 2 or more appeals are pending at the same time, the adjudicator may direct them to be heard together if it appears that —

- (a) some common question of law or fact arises in each of them;
- (b) they relate to decisions or action taken in respect of persons who are members of the same family; or
- (c) for some other reason it is desirable for the appeals to be heard together.

21. Adjournment of appeals

(1) Where a party applies for an adjournment of a hearing of an appeal, that party must —

- (a) if practicable, notify all other parties of the application;
- (b) show good reason why an adjournment is necessary; and
- (c) produce evidence of any fact or matter relied upon in support of the application.

(2) The adjudicator must not adjourn a hearing of an appeal on the application of a party, unless satisfied that the appeal cannot otherwise be justly determined.

- (3) The adjudicator must not, in particular, adjourn a hearing on the application of a party in order to allow the party more time to produce evidence, unless satisfied that —
- (a) the evidence relates to a matter in dispute in the appeal;
 - (b) it would be unjust to determine the appeal without permitting the party a further opportunity to produce the evidence; and
 - (c) where the party has failed to comply with directions for the production of the evidence, he has provided a satisfactory explanation for that failure.
- (4) Where the hearing of an appeal is adjourned, the adjudicator must fix a new hearing date which —
- (a) must be not more than 28 days after the original hearing date, unless the adjudicator is satisfied that because of exceptional circumstances the appeal cannot justly be heard within that time; and
 - (b) must in any event be not later than is strictly required by the circumstances necessitating the adjournment.

22. Giving of determination

- (1) Where the adjudicator determines an appeal he must serve on every party a written determination containing his decision and the reasons for it.
- (2) The adjudicator must send his determination —
- (a) if the appeal is considered at a hearing, not later than [28 days] after the hearing finishes; or
 - (b) if the appeal is determined without a hearing, not later than [28 days] after it is determined.

PART 3

RECONSIDERATION OF APPEALS ETC.

23. Scope of this Part

- (1) Section 1 of this Part applies to applications for permission to appeal to the High Court.
- (2) Section 2 of this Part applies to reconsideration of appeals by an adjudicator pursuant to remittal by the High Court under section 103E(4)(c) of the 2002 Act.

SECTION 1

Applications for permission to appeal to the High Court

24. Applying for permission to appeal

- (1) An application to an adjudicator under this Section must be made by filing with the adjudicator an application notice for permission to appeal.

- (2) The application notice for permission to appeal must —
 - (a) be made on a form approved for the purpose by the First Deemster;
 - (b) state the grounds of appeal; and
 - (c) be signed by the applicant or his representative, and dated.

(3) If the application notice is signed by the applicant's representative, the representative must certify in the application notice that he has completed the application notice in accordance with the applicant's instructions.

(4) As soon as practicable after an application notice for permission to appeal is filed, the adjudicator must notify the other party to the appeal to the adjudicator that it has been filed.

25. Time limit for application

- (1) An application notice for permission to appeal must be filed in accordance with rule 24 —
 - (a) if the applicant is in detention under the Immigration Acts when he is served with the adjudicator's determination, not later than 5 days after he is served with that determination;
 - (b) in any other case, not later than 10 days after he is served with the adjudicator's determination.
- (2) The adjudicator may not extend the time limits in paragraph (1).

26. Determining the application

- (1) An application for permission to appeal must be determined by the adjudicator without a hearing.
- (2) The adjudicator may either grant or refuse permission to appeal.
- (3) Where the adjudicator intends to grant permission to appeal he may, if he thinks that an administrative error in relation to the proceedings has been made, instead set aside his original determination and rehear the proceedings.
- (4) The adjudicator must serve on every party written notice of his decision, including its reasons, which may be in summary form.

27. Sending notice of decision to the High Court

The adjudicator must send to the Chief Registrar copies of —

- (a) the notice of decision; and
- (b) the application notice and any documents which were attached to it;

upon being requested to do so by the High Court

SECTION 2

Reconsideration of appeals

28. Rules applicable on reconsideration of appeal

Rules 15 to 22 and Part 5 of these Rules apply to the reconsideration of an appeal as they do to the initial determination of an appeal, and references in those rules to an appeal shall be interpreted as including proceedings for the reconsideration of an appeal.

29. Reply

(1) When the other party to the appeal is served with an order for reconsideration, he must, if he contends that the adjudicator should uphold the initial determination for reasons different from or additional to those given in the determination, file with the adjudicator and serve on the applicant a reply setting out his case.

(2) The other party to the appeal must file and serve any reply not later than 5 days before the earliest date appointed for any hearing of or in relation to the reconsideration of the appeal.

(3) In this rule, "the other party to the appeal" means the party other than the party on whose application the order for reconsideration was made.

30. Procedure for reconsideration of appeal

(1) Where an order for reconsideration has been made, the adjudicator must reconsider the appeal as soon as reasonably practicable after that order has been served on both parties to the appeal.

(2) The adjudicator must substitute a fresh decision to allow or dismiss the appeal.

(3) In carrying out the reconsideration, the adjudicator —

- (a) may limit submissions or evidence to one or more specified issues; and
- (b) must have regard to any directions given by the High Court on ordering the reconsideration.

31. Evidence on reconsideration of appeal

(1) The adjudicator may consider as evidence any note or record made by the adjudicator of any previous hearing at which the appeal was considered.

(2) If a party wishes to ask the adjudicator to consider evidence which was not submitted on any previous occasion when the appeal was considered, he must file with the adjudicator and serve on the other party written notice to that effect, which must —

- (a) indicate the nature of the evidence; and
- (b) explain why it was not submitted on any previous occasion.

(3) A notice under paragraph (2) must be filed and served as soon as practicable after the parties have been served with the order for reconsideration.

(4) If the adjudicator decides to admit additional evidence, he may give directions as to —

- (a) the manner in which; and
- (b) the time by which,

the evidence is to be given or filed.

PART 4

BAIL

32. Scope of this Part and interpretation

(1) This Part applies to applications under paragraph 22 or 29 of Schedule 2 to the 1971 Act to the adjudicator, by persons detained under that Act, to be released on bail.

(2) In this Part, "applicant" means a person applying to the adjudicator to be released on bail.

33. Applications for bail

(1) An application by a person to be released on bail —

- (a) if made to an immigration officer or police officer, must be made orally; or
- (b) if made to the adjudicator, may be made either orally or in writing.

(2) Where an application is made in writing pursuant to paragraph (1)(b), it must contain the following particulars —

- (a) the full name of the applicant;
- (b) the address of the place where the applicant is detained at the time when the application is made;
- (c) the address where the applicant would reside if his application for bail were to be granted, or if he is unable to give such an address, the reason why an address is not given;
- (d) where the applicant is aged 18 or over, whether he will, if required, agree as a condition of bail to co-operate with electronic monitoring under section 36 of the 2004 Act;
- (e) the amount of the recognizance in which he will agree to be bound;
- (f) the full names, addresses and occupations of 2 persons who have agreed to act as sureties for the applicant if bail is granted, and the amounts of the recognizances in which they will agree to be bound; and
- (g) the grounds on which the application is made and, where a previous application has been refused, full details of any change in circumstances which has occurred since the refusal.

(3) An application made in writing pursuant to paragraph (1)(b) must be signed by the applicant or his representative or, in the case of an applicant who is a child or is for any other reason incapable of acting, by any person acting on his behalf.

34. Recognizances

(1) The recognizance of an applicant and that of a surety must be in a form approved for the purpose by the First Deemster.

(2) The recognizance must state —

- (a) the amount in which an applicant or a surety agrees to be bound; and
- (b) that the applicant or the surety has read and understood the bail decision and agrees to pay that amount of money if the applicant fails to comply with the conditions set out in the bail decision.

(3) The recognizance must be —

- (a) signed by the applicant or surety; and
- (b) filed with the adjudicator.

35. Release of applicant

The person having custody of the applicant must —

- (a) on receipt of a certificate signed by the adjudicator stating that the recognizances of any sureties required have been taken, or on being otherwise served satisfied that all such recognizances have been taken; and

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

PART 5

GENERAL PROVISIONS

36. Conduct of appeals and applications

(1) The adjudicator may, subject to these Rules, decide the procedure to be followed in relation to any appeal or application.

(2) Anything of a formal or administrative nature which is required or permitted to be done by the adjudicator under these Rules may be done by the adjudicator's clerk.

37. Directions

(1) The adjudicator may give directions, to the parties relating to the conduct of any appeal or application.

(2) The power to give directions is to be exercised subject to any specific provision of these Rules.

(3) Directions must be given orally or in writing to every party.

(4) Directions of the adjudicator may in particular —

- (a) relate to any matter concerning the preparation for a hearing;
- (b) specify the length of time allowed for anything to be done;
- (c) vary any time limit in these Rules or in directions previously given by the adjudicator for anything to be done by a party;
- (d) provide for —
 - (i) a particular matter to be dealt with as a preliminary issue;
 - (ii) a party to provide further details of his case, or any other information which appears to be necessary for the determination of the appeal;
 - (iii) the witnesses, if any, to be heard;
 - (iv) the manner in which any evidence is to be given (for example, by directing that witness statements are to stand as evidence in chief);
- (e) require any party to file and serve —
 - (i) statements of the evidence which will be called at the hearing;
 - (ii) a paginated and indexed bundle of all the documents which will be relied on at the hearing;
 - (iii) a skeleton argument which summarises succinctly the submissions which will be made at the hearing and cites all the authorities which will be relied on, identifying any particular passages to be relied on;
 - (iv) a time estimate for the hearing;
 - (v) a list of witnesses whom any party wishes to call to give evidence;
 - (vi) a chronology of events; and
 - (vii) details of whether an interpreter will be required at the hearing, and in respect of what language and dialect;
- (f) limit —
 - (i) the number or length of documents upon which a party may rely at a hearing;
 - (ii) the length of oral submissions;
 - (iii) the time allowed for the examination and cross-examination of witnesses; and
 - (iv) the issues which are to be addressed at a hearing;
- (g) require the parties to take any steps to enable 2 or more appeals to be heard together under rule 20;
- (h) provide for a hearing to be conducted or evidence given or representations made by video link or by other electronic means; and
- (i) make provision to secure the anonymity of a party or a witness.

(5) The adjudicator must not direct an unrepresented party to do something unless he is satisfied that the party is able to comply with the direction.

38. Notification of hearings

(1) When the adjudicator fixes a hearing he must serve notice of the date: time and place of the hearing on every party,

(2) The adjudicator may vary the date of a hearing, but must serve notice of the new date, time and place of the hearing on every party.

39. Adjournment

Subject to any provision of these Rules, the adjudicator may adjourn any hearing.

40. Representation

(1) In any proceedings on an appeal or for bail, an appellant may act in person or be represented by an advocate or, with the leave of the adjudicator, by any other person appearing to act on behalf of the appellant

(2) A respondent to an appeal, the Governor or the United Kingdom Representative may be represented by any person authorised by him to act in that behalf.

(3) A person representing a party to an appeal in accordance with paragraph (1) may take all 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.

(4) Where a representative begins to act for a party, he must immediately notify the adjudicator and the other party of that fact.

(5) Where a notice of appeal, or an application for bail under rule 33, is signed by a representative, the representative shall be deemed to have notified the adjudicator and the other party that he is acting for a party in accordance with paragraph (4).

(6) Where a notice of appeal, or an application for bail under rule 33, is not signed by a representative, the representative must file a separate notice with the adjudicator and serve it on the other party to comply with his obligations under paragraph (4).

(7) Where a representative is acting for an appellant, the appellant is under a duty —

(a) to maintain contact with his representative until the appeal is finally determined; and

(b) to notify the representative of any change of address.

(8) Where a representative ceases to act for a party; the representative and the party must immediately notify the adjudicator and the other party in writing of that fact, and of the name and address of any new representative(if known).

(9) Notification under paragraph (4) —

- (a) where a representative is appointed to act for a party on the day of a hearing, may be given orally at that hearing to the adjudicator and to any other party present at that hearing; but
 - (b) must otherwise be given in writing.
- (10) Until the adjudicator is notified that a representative has ceased to act for a party, any document served on that representative shall be deemed to be properly served on the party he was representing.

41. United Kingdom Representative

(1) 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 shall be treated as a party to the appeal upon giving written notice to the adjudicator at any time during the course of the appeal stating that he desires to be so treated.

(2) Where the United Kingdom Representative has given notice under paragraph (1) —

- (a) rules 47(5) and 48(7) shall apply; and
- (b) the adjudicator must permit him to make representations in the proceedings if he wishes to do so, and may give directions for that purpose.

42. Summoning of witnesses

(1) The adjudicator may, by issuing a summons ("a witness summons"), require any person in the Isle of Man —

- (a) to attend as a witness at the hearing of an appeal; and
- (b) subject to rule 43(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 issue in the appeal.

(2) A person is not required to attend a hearing in obedience to a witness summons unless —

- (a) the summons is served on him; and
- (b) the necessary expenses of his attendance are paid or tendered to him.

(3) If a witness summons is issued at the request of a party, that party must pay or tender the expenses referred to in paragraph (2)(b).

(4) Any such summons must be in a form approved for the purpose by the First Deemster.

43. Evidence

(1) The adjudicator may allow oral, documentary or other evidence to be given of any fact which appears to be relevant to an appeal or an application for bail, even if that evidence would be inadmissible in a court of law.

(2) The adjudicator may not compel a party or witness to give any evidence or produce any document which he could not be compelled to give or produce at the trial of a civil claim in the Isle of Man.

(3) 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.

(4) Where the adjudicator has given directions setting time limits for the filing and serving of written evidence, he must not consider any written evidence which is not filed or served in accordance with those directions unless satisfied that there are good reasons to do so.

(5) Where a party seeks to rely upon a copy of a document as evidence, the adjudicator may require the original document to be produced.

(6) In an appeal to which section 85(5) of the 2002 Act applies (appeal against refusal of entry clearance or refusal of a certificate of entitlement), the adjudicator must only consider evidence relating to matters which he is not prevented by that section from considering.

(7) Subject to section 108 of the 2002 Act (proceedings regarding a forged document to be held in private), the adjudicator must not take account of any evidence that has not been made available to all the parties.

44. Language of documents

(1) Any notice of appeal or application notice filed with the adjudicator must be completed in English.

(2) Any other document filed with the adjudicator must be in English, or accompanied by a translation into English signed by the translator to certify that the translation is accurate.

(3) The adjudicator shall be under no duty to consider a document which is not in English or accompanied by a certified translation.

45. Interpreters

An appellant is entitled to the services of an interpreter —

- (a) when giving evidence; and
- (b) in such other circumstances as the adjudicator considers necessary.

46. Burden of proof

(1) If an appellant asserts that a relevant decision ought not to have been taken against him on the ground that the statutory provision under which that decision was taken does not apply to him, it is for that party to prove that the provision does not apply to him.

(2) If —

- (a) an appellant asserts any fact; and
- (b) by virtue of an Act, subordinate legislation or immigration rules, if he had made such an assertion to the Governor, an immigration officer or an entry clearance officer, it would have been for him to satisfy the Governor or officer that the assertion was true,

it is for the appellant to prove that the fact asserted is true.

47. Admission of public to hearings

(1) Subject to the following provisions of this rule, every hearing before the adjudicator must be held in public.

(2) Where the adjudicator is considering an allegation referred to in section 108 of the 2002 Act (proceedings regarding a forged document to be held in private) —

- (a) all members of the public must be excluded from the hearing, and
- (b) any party or representative of a party may be excluded from the hearing.

(3) The adjudicator may exclude any or all members of the public from any hearing or part of a hearing if it is necessary —

- (a) in the interests of public order or national security; or
- (b) to protect the private life of a party or the interests of a minor.

(4) The adjudicator may also, in exceptional circumstances, exclude any or all members of the public from any hearing or part of a hearing to ensure that publicity does not prejudice the interests of justice, but only if and to the extent that it is strictly necessary to do so.

(5) The United Kingdom Representative, where he has given notice to the adjudicator under rule 41, is entitled to attend any hearing except where paragraph (2) applies, and may not be excluded pursuant to paragraph (3) or (4).

48. Filing and service of documents

(1) Any document which is required or permitted by these Rules or by a direction of the adjudicator to be filed with the adjudicator, or served on any person may be —

- (a) delivered, or sent by post, to an address;
- (b) sent by fax to a fax number; or
- (c) sent by e-mail to an e-mail address,

specified for that purpose by the adjudicator or person to whom the document is directed.

(2) A document to be served on an individual may be served personally by leaving it with that individual.

(3) Where a person has notified the adjudicator that he is acting as the representative of an appellant and has given an address for service, if a document is served on the appellant, a copy must also at the same time be sent to the appellant's representative,

(4) If any document is served on a person who has notified the adjudicator that he is acting as the representative of a party, it shall be deemed to have been served on that party.

(5) Subject to paragraph (6), any document that is served on a person in accordance with this rule shall, unless the contrary is proved, be deemed to be served —

- (a) where the document is sent by post from and to a place within the Isle of Man and the United Kingdom, on the second business day after it was sent;
 - (b) where the document is sent by post from or to a place outside the Isle of Man and the United Kingdom, on the 28th day after it was sent; and
 - (c) in any other case, on the day on which the document was sent or delivered to, or left with, that person.
- (6) Any notice of appeal which is served on a person under rule 7(2), (3)(b) or (4)(b) shall be treated as being served on the day on which it is received by that person.
- (7) Where the United Kingdom Representative has given notice to the adjudicator under rule 41 in relation to any proceedings, any document which is required by these Rules or by a direction of the adjudicator to be served on a party in those proceedings must also be served on the United Kingdom Representative.

49. Address for service

- (1) Every party, and any person representing a party, must notify the adjudicator in writing of a postal address at which documents may be served on him and of any changes to that address.
- (2) Until a party or representative notifies the adjudicator of a change of address, any document served on him at the most recent address which he has notified to the adjudicator shall be deemed to have been properly served on him,

50. Calculation of time

- (1) Where a period of time for doing any act is specified by these Rules or by a direction of the adjudicator, that period is to be calculated —
- (a) excluding the day on which the period begins; and
 - (b) excluding any day which is not a business day (unless the period is expressed as a period of calendar days).
- (2) Where the time specified by these Rules or by a direction of the adjudicator for doing any act ends on a day which is not a business day, that act is done in time if it is done on the next business day.

51. Signature of documents

Any requirement in these Rules for a document to be signed by a party or his representative shall be satisfied, in the case of a document which is filed or served electronically in accordance with these rules, by the person who is required to sign the document typing his name or producing it by computer or other mechanical means.

52. Errors of procedure

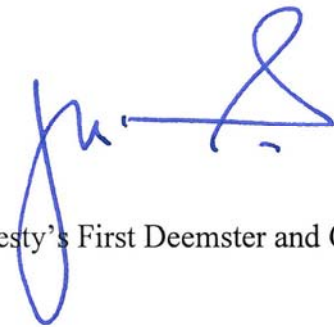
- (1) Where, before the adjudicator has determined an appeal or application, there has been an error of procedure such as a failure to comply with a rule —
- (a) subject to these Rules, the error does not invalidate any step taken in the proceedings, unless the adjudicator so orders; and

- (b) the adjudicator may make any order, or take any other step, that he considers appropriate to remedy the error.
- (2) In particular, any determination made in an appeal or application under these Rules shall be valid even though —
 - (a) a hearing did not take place; or
 - (b) the determination was not made or served,within a time period specified in these Rules.

53. Correction of orders and determinations

- (1) The adjudicator may at any time amend an order, notice of decision or determination to correct a clerical error or other accidental slip or omission.
- (2) Where an order, notice of decision or determination is amended under this rule —
 - (a) the adjudicator must serve an amended version on the party or parties on whom he served the original; and
 - (b) if rule 11(8) and (9) (late notice of appeal) applied in relation to the service of the original, it shall also apply in relation to the service of the amended version.
- (3) The time within which a party may apply for permission to appeal against, or for a review of, an amended determination runs from the date on which the party is served with the amended determination.

MADE 31st MARCH 2008



Her Majesty's First Deemster and Clerk of the Rolls



Second Deemster

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules prescribe the procedure to be followed for appeals and applications to an adjudicator under Part 5 of the Nationality, Immigration and Asylum Act 2002 (an Act of Parliament), as it has effect in the Isle of Man. The Rules come into force on the 1st May 2008.

Part 1 of the Rules contains introductory provisions and revokes, subject to a transitional provision, the Immigration and Asylum Appeals (Procedure) Rules 1997.

Part 2 contains rules about appeals to an adjudicator. Subject to various exceptions and limitations in Part 5 of the 2002 Act, a right of appeal lies to an adjudicator under section 82 of that Act.

Part 3 contains rules about —

- (a) applications to an adjudicator for permission to appeal to the High Court;
- (b) reconsideration by an adjudicator of appeals pursuant to section 103E of the 2002 Act after an appeal to the High Court.

Part 4 contains rules about applications to an adjudicator for bail under Schedule 2 to the Immigration Act 1971 (an Act of Parliament), as it has effect in the Isle of Man.

Part 5 contains general provisions which apply to proceedings under these Rules.