



COURTS AND
TRIBUNALS JUDICIARY

**Special Immigration Appeals Commission Practice Note on late and improperly
instituted appeals**

Introduction

1. The Special Immigration Appeals Commission ('the Commission') has been receiving increasing numbers of late appeals and improperly instituted appeals.
2. Late appeals are appeals which have not been lodged within the time limits provided for by rule 8 of the Special Immigration Appeals Commission (Procedure) Rules 2003 ('the Rules'). The approach of Appellant's representatives to late appeals is variable, and, in some cases, unacceptable. In some cases, it causes unnecessary extra work for the Commission and for the Government Legal Department ('GLD').
3. An improperly instituted appeal is an appeal which is lodged without the Appellant's authority, or which does not give reasons in support of the grounds of appeal (see further, paragraphs 25-27, below).
4. This Practice Note explains what the Commission expects from Appellant's representatives in both types of case.
5. In this Practice Note, the word 'appellant' is used to mean a person who seeks to institute a statutory appeal and a person who seeks to institute an application for a statutory review. 'Appeal' has a similar meaning.
6. This Practice Note was circulated to the Commission's Users' Group in draft. The Commission is very grateful to the busy practitioners who took the time to respond with their comments on it. Some are not reflected, or are not fully reflected, in this final version, but the Commission has taken them all into account.
7. This Practice Note will come into force on the date when it is published on the Commission's website.

A. Late appeals

Starting an appeal

8. An appeal is made by 'giving' a notice of appeal in accordance with the Rules (rule 7(1) and (1A)). The general rule is that a notice of appeal must be filed with the Commission (rule 7(2)). Rule 7(3) is a special rule for appellants who are detained under the Immigration Acts. Such an appellant may appeal by serving a notice of appeal on the person who has custody of him. Rule 7(5) makes further provision for such cases. An appellant to whom rule 7(2) applies must, at the same time as filing his notice of appeal with the Commission, serve it and any accompanying documents on the Secretary of State (rule 7(4)).

The time limits

9. The time limits provided for in rule 8(1) of the Rules depend on where the appellant is when notice of the decision is served on him.
 - a. If the appellant is in detention when notice of the decision is served on him, he must appeal no later than 5 days after he is served with that notice.
 - b. If the appellant is not in detention and is in the United Kingdom when notice of the decision is served on him, he must appeal no later than 10 days after service of the decision.
 - c. If the appellant is not in detention and is outside the United Kingdom when notice of the decision is served on him, he must appeal no later than 28 days after service of the decision.

Service of documents

10. Rule 49(1) of the Rules provides that filing and service of documents required or permitted by the Rules can be effected by post, fax, email or the Document Exchange. Rule 49(2) provides that service can also be effected personally. Service on a person whom a party has nominated as a legal representative is effective service (rule 49(3)) unless the Commission directs that a document is to be served both on a party and on his legal representative (rule 49(4)).

Deemed date of service

11. Rule 49(5) is a deeming provision. Its effect is that if a document has been served on a person in accordance with rule 49, then, unless the contrary is proved by evidence, it is to be treated as having been served,

- a. in the case of a document sent by post or by the Document Exchange within the United Kingdom, on the second day after it was sent,
 - b. in the case of a document sent by post from or to a place outside the United Kingdom, on the twenty-eighth 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.
12. Because rule 49(5) is a deeming provision, its effect can be displaced. The Commission will not treat its effect as displaced unless evidence, such as a witness statement, is provided, which shows that the document was received on a different date from the relevant date as calculated in accordance with rule 49.
13. Rule 49(6) provides that any documents, including a notice of appeal, which is filed with the Commission is treated as having been filed on the day on which it is received by the Commission. The Commission's staff will endorse a notice of appeal to show when it was received by the Commission.

Calculation of time

14. Rule 51 deals with the calculation of time.
- a. Any period in the Rules is to be calculated
 - i. excluding the day when the period begins and
 - ii. where the period is 10 days or less, excluding any day which is not a business day.
 - b. Where a period ends on a day which is not a business day, an act is done in time if it is done on the next business day.
 - c. 'Business day' means any day other than Saturday, Sunday, a Bank Holiday, Christmas Day, 27-31 December, or Good Friday.

Extension of time

15. Appellants are reminded that they are not entitled to an extension of time if they lodge an appeal late. The Commission can only extend time for lodging an appeal if the Commission is satisfied, by reason of special circumstances, it would be unjust not to extend time (rule 8(5)).

What the Commission expects

16. It is the responsibility of appellants' representatives to fill in the notice of appeal accurately and completely. This includes accurately recording the date of service of the notice of the decision which is challenged (by reference, where appropriate, to any applicable rules about service), and calculating when the time for lodging the appeal expired. Those exercises must be done in accordance with the Rules (see 9, 11, 10 and 13, above). It is not acceptable for appellants' representatives to leave this work to the Commission or to GLD.
17. There is no excuse for leaving those boxes blank. The purpose of this part of notice of appeal is draw the attention of the Commission, and of GLD, to an appeal which has been, or might have been, lodged late.
18. If it is contended that the deeming provision about service applies but is displaced, evidence to that effect must be provided with the notice of appeal, or in a case in which the appeal is late, with the witness statement referred to in the next paragraph.
19. If appellants' representatives fill in the notice of appeal properly, and having done so, they realise that the appeal is late (or is likely to be late) they must apply expressly for an extension of time in the notice of appeal. That application must be supported, as soon as possible, by evidence (that is, a signed and dated witness statement) which explains what has happened during the period of any delay (see further, paragraph 21, below).
20. The Commission recognises that the provision of such a witness statement should not further delay the lodging of the notice of appeal, so will accept a notice of appeal which contains short grounds outlining the reasons for the delay. The Commission will normally expect that a witness statement will be provided within 14 days after the notice of appeal is lodged.
21. Appellants' representatives are encouraged to ensure that any witness statement in support of an application for an extension of time is as full and frank as possible. Events must be set out in chronological order, with supporting documents where these are relevant. Any supporting documents must be provided in a paginated and indexed exhibit. It is not acceptable for events to be recounted in a random order, because this makes it difficult for the Commission to understand, without unnecessary extra work,

what has happened and whether there are special circumstances. Appellants' representatives must bear in mind that unexplained gaps in the sequence of events may cause the Commission to doubt the frankness of any explanation and/or, whether there are special circumstances which would justify an extension of time.

22. Once an appellant has submitted any witness statement, the Commission considers that GLD should be given 14 days in which to make written submissions, if it is GLD's contention that time should not be extended. GLD must indicate as soon as possible if they do not oppose an extension of time, so that the Commission can make a decision quickly.
23. The appellant's representatives should then indicate, as soon as possible, whether or not they wish to make submissions in reply. If they do so, and do provide submissions in reply, the Commission will take them into account before making a decision.
24. The Commission considers that an oral hearing in such cases will not always be necessary. It will depend on what the issues are. A hearing may be necessary, for example, if it is capable of resolving a relevant issue of fact (*LI v Secretary of State for the Home Department* [2013] EWCA (Civ) 906 may be relevant to that question). Any party contending that a hearing is necessary must explain why.

B. Improperly instituted appeals

Reasons in support of the grounds of appeal

25. Rule 9(1) and (1A)(b) require a notice of appeal to contain grounds of appeal/review, and 'reasons in support of those grounds'. The Commission recognises that the scope of the reasons which can be given in support of grounds of appeal may be restricted by the limited nature of the OPEN reasons for a decision. Nevertheless, to the extent that it is possible to do so, appellants must provide reasons in support of their grounds of appeal, which indicate, in outline at least, the legal or factual arguments which the appellant relies on to challenge the decision.

Authority for bringing an appeal

26. Rule 9(3) requires a notice of appeal to be signed by the appellant or his representative. Rule 9(4) applies where a notice of appeal is signed by the appellant's representative. In such a case, the representative must certify that he has completed the notice of appeal in accordance with the appellant's instructions. There is an increasing

trend for appeals to be lodged in circumstances where there is at least a doubt whether the appeal has been lodged in accordance with an appellant's instructions, for example where an appellant is detained abroad, and there is limited, or no evidence, that he knows about the decision in question and/or has given any instructions to challenge it.

27. The Commission has concerns about this trend. It has considered how best to deal with it, without imposing undue obligations on solicitors, or compromising legal privilege. The certificate is prima facie evidence that the solicitor concerned has such instructions. The Commission may, nevertheless, in cases in which it doubts whether the appellant has given his authority, require further evidence of that authority to be provided. It will consider any representations GLD wishes to make. The Commission reminds solicitors doing this work that they must not sign such a certificate unless they have express instructions from the appellant, or from a person who, to their knowledge, has the appellant's authority to give such instructions.

CLOSED material

28. Where any party contends that CLOSED material may be relevant to any of these issues, the Commission will, if asked to, make appropriate modifications to the procedures described in this Practice Note.

Mrs Justice Elisabeth Laing

Chairman, Special Immigration Appeals Commission

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