

## **APPEALS NOT LODGED BY THE 'APPEAL BY' DEADLINE**

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## Introduction

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This section sets out guidance for Case Owners and team support on the processes and procedures to be followed where a claim for asylum has been refused and there is a right of appeal under sec 82 or 83 of the Nationality, Immigration and Asylum Act 2002, but no appeal has been lodged by the 'appeal by' deadline date.

### Application of this instruction in respect of children and those with children

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction 'Arrangements to Safeguard and Promote Children's Welfare in the United Kingdom Border Agency' sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

For guidance on appeals that have been submitted **within** the deadline see Asylum Instruction on Asylum Appeal Hearings - Overview

For further information and guidance on Immigration Appeals see Immigration Directorates' Instructions Chapter 12

## Deadline for Lodging an Appeal

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Where a person has been refused asylum, and the consequent immigration decision attracts a suspensive (in-country) right of appeal under section 82 or 83 of the Nationality, Immigration and Asylum Act 2002, any appeal must be lodged within 10 working days of the service of decision. If the immigration decision attracts a non suspensive (out of country) right of appeal under section 82 of the Nationality, Immigration and Asylum Act 2002, any appeal must be lodged within 28 working days of the service of decision.

However, where the appellant is in detention under Immigration Acts at the time the immigration decision was served, any appeal must be lodged within 5 working days of the service of decision

The deadline for submitting the appeal is clearly recorded on the appeal documents and will have been brought to the attention of the claimant if the asylum decision was served in person by the Case Owner.

Any appeal must be lodged directly to the Asylum and Immigration Tribunal (AIT).

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## Checking Whether an Appeal has been submitted by the 'Appeal by' Deadline

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Case Owners should ask the appellant at reporting events whether or not they intend to appeal. The workflow team within each asylum team receives a daily report listing all appeals lodged in respect of cases allocated to the Regional Asylum Teams. The Case Owner will therefore be notified within a day of an appeal being lodged at AIT. Case Owners must check the status of the case with their workflow managers if they have not been notified of an appeal being lodged.

APC are responsible for updating CID when an appeal is lodged and Case Owners can confirm, by checking on CID, that an appeal has been lodged.

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## **Where no Appeal Has Been Lodged by the 'Appeal by' Deadline**

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Where the 'appeal by' date has passed, and no appeal has been lodged, the file should be held in the hold until 24 days after the RFRL is served to await a possible late appeal. This is to enable us to capture any late appeals. Where no appeal has been lodged after that date, the applicant's right to appeal would have been exhausted. The Case Owner should pursue enforcement action and review any asylum support. For further guidance on Enforcement see Asylum Instruction "Removal"

See Asylum Instruction Status Cessation Guidance for further information on discontinuing asylum support.

However, should a late appeal be lodged, any enforcement action must be suspended pending a decision on whether the late appeal has been accepted by AIT.

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## Considering Whether a Late Appeal should be accepted

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Where an appeal is submitted after the deadline, [Rule 10 of the Asylum and Immigration Tribunal \(Procedure\) Rules 2005](#) specifies that the appeal form must include an explanation for its late submission, together with any written evidence. The application will be considered as a 'Preliminary Issue' by the AIT and the case will be referred to an Immigration Judge within two working days of the appeal being lodged.

The Immigration Judge will consider 'on the papers' whether the special circumstances of the case would make it unjust not to hear the appeal. Case Owners should ensure that CID has been updated with the appropriate appeal details.

Where a Case Owner has been informed by the appellant or by the representative that a late appeal has been lodged, but it is not recorded in CID, they should contact AIT (Tel: 0845 6000 877) to confirm that a late appeal has in fact been lodged and contact APC, who will update CID accordingly.

If an appellant fails to provide an explanation for submitting a late appeal, the AIT may decide to extend time of its own motion, but will otherwise notify the appellant that it treat the notice as being out of time. Where such a notice is given, the appellant may file a written explanation to demonstrate that either the notice was submitted on time or provide an explanation of why it was late.

Any evidence must be submitted:

- Within 3 days, if the appellant is in the UK.
- Within 10 days, if the appellant is outside the UK.

### AIT notify Home Office of their decision

When AIT have made a decision on whether to hear a late appeal, written notification of the decision will be provided in accordance with [Rule 10\(7\) of the Asylum and Immigration Tribunal \(Procedure\) Rules 2005](#).

The AIT/06 which indicates that the out of time application can progress is sent direct to ADMU who update CID and forward the determination to the Case Owner, who would arrange service.

The AIT/07 which indicates that an out of time application has been refused is sent to ADMU, who would forward to the Case Owner, the Case Owner on receipt should consider enforcement action. Both these determinations are served by the AIT on the appellant and fax a copy to the representative.

Where the appellant is in detention, AIT notifies appellant via the detention centre as well as any representative and ADMU.

Case Owner should regularly check CID to see whether the application has been decided.

## Where AIT Agree to Hear the Appeal

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Where the decision is to proceed with the appeal, the Case Owner should, wherever possible, serve the determination on the appellant in person. Where the appellant is in detention, the AIT will arrange for the determination to be served via the detention centre and on any representatives as well as ADMU.

Removal Actions must be suspended if the Removal Directions have not been set within the next 5 calendar days and it may not be possible to continue detention. The Case Owner must work closely with UKIS, if the appellant is to be released from detention, contact management arrangements will need to be decided. The Case Owner should be aware that the appellant could apply for bail, see AI on Bail Applications.

The Case Owner should:

- Update the Case Management Plan,
- Review contact management arrangements
- Consideration should also be given to whether the appeal process will give rise to any change in eligibility for NASS support.
- Cancel enforcement proceedings if necessary
- Remove Appeal Rights Exhausted from CID

A CMR and substantive appeal hearing will be arranged by AIT in accordance with the usual appeal process. The Case Owner should refer to the Asylum Instruction: Asylum Appeal Hearings - Overview

### Where Removal Directions Have Been Set Within 5 Calendar Days

Rule 11 of The Asylum and Immigration Tribunal (Procedure) Rules 2005 sets out special provisions for cases where late notice of appeal has been given and removal is imminent.

Where Removal Directions have already been set for a date within five calendar days of the date AIT was notified of a late appeal, Operational Support and Certification Unit (OSCU) after receiving notification via the CID data report of a submitted late appeal would consider whether to apply for the case to be heard as urgent tribunal business.

OSCU will then inform AIT that Removal Directions have been set for implementation within 5 calendar days. The urgent tribunal business section in AIT takes responsibility for such cases and will arrange for the papers to be put before a Senior Immigration Judge within 24 hours. The Senior Immigration Judge considers 'on the papers' whether the special circumstances of the case would make it unjust not to hear the appeal.

Case Owners should liaise with OSCU (Duty officer) to ensure that relevant information is put before the Judge.

### Where Removal Directions have been set for more than 5 Calendar Days

In cases where Removal Directions have already been set for a date more than 5 calendar days after the late appeal is lodged, the Case Owners should:

- Contact OSCU for advice on whether a request can be made to the AIT to consider the matter as 'Urgent Tribunal Business'.

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## Where AIT Refuse to Accept the Late Appeal

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Where the Senior Immigration Judge decides that an appeal that has been lodged after the deadline should **not** be allowed to proceed, AIT will notify OSCU who will update CID and inform the Enforcement Unit dealing with the case or the Case Owner. Case Owners should maintain contact with Immigration Service officers and continue the enforcement process referring to the guidance contained in Asylum Instruction "Removal".

The applicant is regarded as 'Appeal Rights Exhausted' (ARE). The Case Owner should update CID with the ARE date.

The Case Owner should arrange for the service of the AIT decision and proceed with removal arrangements. If the applicant is detained pending removal IS would serve the determination. OSCU should be consulted to ensure that all remaining barriers to Removal have been concluded. For guidance on Removal see Asylum Instruction "Removal".

Consideration must also be given to whether any asylum support should be terminated.

See Asylum Instruction "Status Cessation Guidance" for further information on discontinuing asylum support.

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## Document Control

### Change Record

Version	Authors	Date	Change Reference
1.0	MO	29/01/07	Re-formatted to new web friendly format
2.0	JW	07/01/08	Change to "Where no Appeal Has Been Lodged by the 'Appeal by' Deadline"
3.0	RA	29/10/09	Included reference to S55 BCIA 2009 (children's duty)

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