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**CHAPTER 12 SECTION 2  
NOTICES OF APPEALABLE DECISIONS**

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**CHAPTER 12  
SECTION 2****NOTICES OF APPEALABLE DECISIONS****1. APPEALABLE DECISIONS**

The Immigration (Notices) Regulations 2003 require us to serve a notice of decision in all cases where an appealable decision is made. This covers:

- immigration decisions (within the meaning of section 82 - see paragraph 2 of section 1 above);
- EEA decisions;
- decisions to grant leave which result in a right of appeal on asylum grounds under section 83;
- decisions to withdraw recognition as a refugee but grant alternative leave which results in a right of appeal on asylum grounds under section 83A.

The Regulations also apply to decisions to make a deportation order in Overstayers Regularisation Scheme cases, which still attract a right of appeal under the 1971 Act.

**2. CONTENTS OF THE NOTICE****2.1. The notice of decision**

Where the decision carries a right of appeal, the notice should contain:

- a statement of reasons, which can be a summary paragraph included in the text of the notice or an attached reasons for refusal letter. If the appeal is under section 83, a statement of reasons for the refusal of the asylum claim must be included, even if that claim was refused separately earlier and the reasons for refusal were issued at the time.
- if the decision is a removal decision (including a refusal of leave to enter), the name of the country or territory to which it is intended the person is to be removed. In cases where the claimant can lawfully be removed to more than one country, all such countries may be specified. For guidance on when it is appropriate to specify more than one country please see APU notice 02/2006.
- the statutory provision on which the appeal is based. This is incorporated into the heading of the pro-formas we use.
- a note of whether or not the appeal may be brought in the UK
- the grounds on which the appeal may be brought

**2.2. Assistance with the appeal**

The notice must state the facilities available for advice and assistance. The Legal Services Commission have produced a note, which should be provided with the refusal notice and which fulfils this requirement.

**2.3. The appeal form**

The appeal forms are statutory documents, and are contained in the Asylum and Immigration Tribunal (Procedure) Rules 2005. The notice must be accompanied by a blank appeal form, which must state:

- the time limit for appealing
- addresses for delivery by post and by hand
- a fax number where delivery will be accepted

Caseworkers are provided with a table of dates for working out the date by which the appeal notice must be returned. Deadlines for addresses in England and Wales may not be the same as those for addresses in Scotland and Northern Ireland, where public holidays are slightly different. The table will cover these variations.

## 2.4 Appealable decisions which can only be challenged on ‘residual grounds’

As a general proposition a right of appeal under section 82(2) of the 2002 Act can be brought on any one or more of the grounds of appeal listed in section 84(1) of the same Act. There are, however, certain circumstances in which the right of appeal can only be brought on a limited number of grounds. For decisions taken in the UK, the residual grounds are asylum, human rights or race discrimination, while in entry clearance cases an appeal may not be brought on asylum grounds. These limitations are described and listed at section 1 point 5 of this chapter.

Where a decision can only be challenged on these residual grounds, it is not necessary to notify the applicant of the following matters:

- The details of his right of appeal;
- The facilities available for advice and assistance in connection with such an appeal;
- An appeal notice;

The notice of decision in such cases need only give a statement of reasons and (in removal cases) the country (or countries) to which removal is proposed.

If, after receiving the notice of decision, the applicant states that the decision is -

- unlawful by virtue of section 19B of the 1976 Race Relations Act (discrimination by public authorities)
- unlawful under section 6 of the Human Rights Act 1998, or
- removal as a consequence would breach our obligations under the Refugee Convention or would be unlawful under section 6 of the Human Rights Act

then full notice of decision must be served which meets the requirements of paragraphs 2.1 - 2.3 above. The new grounds must be considered but, unless the existing decision is to be overturned, or a formal human rights or asylum claim is made in terms of section 113 it is not appropriate to make a new decision.

Where a person receiving the notice of decision raises asylum or human rights objections to the decision this should be treated as giving rise to an asylum or human rights claim. Once a full notice of decision is re-served notifying the applicant of their appeal rights, any subsequent appeal will be in the United Kingdom unless the claim is certified under section 94. Thus, it is important that a decision is made on whether to certify *before* the full notice of decision is re-served. See the **API entitled Certification under section 94 of the NIA Act 2002.**

## 3. SERVICE

### 3.1. On whom should the notice of decision be served?

The notice should usually be served on the person who will have a right of appeal against the decision. Service on that person's representative instead is acceptable. It is not a requirement of the Regulations to serve the notice on both, but it is courteous and good administrative practice to do so and as such is **strongly**

recommended. A person's "representative" for these purposes is someone who seems to the decision-taker to be representing that person and who is not prevented (by section 84 of the 1999 Act) from so acting. This means that service on a representative will be ineffective if we know that the rep is neither approved nor exempted by the Office of the Immigration Services Commissioner.

In the case of applicants who are under 18 and have no legal representative, notice may be given to a parent, guardian or other adult who is taking responsibility for the child.

### 3.2 Means of service and service on file

The notice can be given by hand, by fax or by (first class) recorded delivery post to an address provided by the applicant or representative. Where no address for correspondence has been given, the notice can be served at the last-known usual place of abode (or place of business, in the case of a representative). It is the applicant's or representative's responsibility to tell us of any change.

These options will cover the vast majority of cases, but if (and only if) none are available, the notice can be served on file. If the decision is appealable, the usual requirements (set out in paragraph 2 above) must be met. The circumstances and reasons why normal service is not possible should be clearly noted, in case of legal action later. It may be necessary to provide the note in evidence as well as the original notice of decision, which should be signed and dated in the normal way and placed in a pouch at the bottom of the file. It should be docketed to the file, or its presence and location on the file clearly minuted. Serving a notice on file will terminate the application and start the period for appealing. If the application was made in time, service will also trigger the winding-up provisions of section 3C of the 1971 Act (ie 3C leave will end at the end of the period for appealing if no appeal is lodged and from that point on the person will be an overstayer).

Service on file is only possible where:

- we know of no fixed place where notice could be served on the applicant; **and**
- no address for correspondence has been provided and there is no "last-known" address **OR** the address which was provided is defective, false or known to be no longer in use; **and**
- no representatives appear to be acting for the applicant.

When notice has been served on file and the person concerned is located, they must be given a copy of the notice as soon as possible, together with the additional papers related to the right of appeal. The option of an out of time appeal remains open, the AIT would need to be persuaded that it would be particularly unjust to prevent the appeal from proceeding (see paragraph 1.4 of section 4 below on late appeals).

### 3.3. Date of service

A notice sent by recorded delivery post to a place within the UK is deemed to have been served two business days after it is posted, unless the contrary is proved. Saturdays, Sundays, bank holidays, Good Friday and Christmas day do not count as business days.

A notice sent to a place outside the UK is deemed to have been served 28 days (not business days) after it was posted, unless the contrary is proved.