
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about the exercise of powers in section 103D(1) and (3) of the Nationality, Immigration and Asylum Act 2002 (c.41) for the High Court or the Asylum and Immigration Tribunal to order payment of an appellant's costs out of the Community Legal Service Fund. Section 103D and these Regulations give effect to a special legal aid scheme for—

- (a) applications under section 103A of the 2002 Act by an appellant for a review of the Tribunal's decision on an asylum or immigration appeal, and
- (b) proceedings for the reconsideration by the Tribunal of its decision following an order made on such an application,

under which the High Court or the Tribunal decides when it determines an application or reconsiders an appeal whether to order the payment out of the Fund of costs incurred by the appellant's legal representative.

These Regulations have effect only in relation to an appeal decided in England and Wales.

Regulation 4 places general restrictions on the exercise by the High Court or the Tribunal of the powers to make orders under section 103D(1) or (3). Under regulation 4(1), an order may only be made in proceedings in which the appellant's legal representative is a supplier providing services under a contract with the Legal Services Commission. By virtue of regulation 4(2), the scheme does not apply in fast track proceedings where the time limit for making an application under section 103A of the 2002 Act is a period of less than 5 days.

Regulation 5 specifies criteria to be applied in exercising the power under section 103D(1) to make a costs order on an application under section 103A of the 2002 Act for a review of the Tribunal's decision on an appeal. Regulation 6 specifies criteria to be applied in exercising the power under section 103D(3) for the Tribunal to make a costs order when it has reconsidered its decision on an appeal.

Regulation 7 makes provision for the review of a decision by the Tribunal not to make a costs order under section 103D(3) when it has reconsidered an appeal.

Regulation 8 makes provision about the terms and effect of a costs order under section 103D, and provides that the Legal Services Commission is to determine the amount to be paid pursuant to an order, in accordance with the terms of its contract with the supplier.

Regulation 9(1) modifies the Legal Services Commission's Funding Code under section 9 of the Access to Justice Act 1999, by disapplying the Commission's usual criteria for granting of legal aid for representation in immigration proceedings (other than criteria relating to financial eligibility) in respect of proceedings within the scope of this scheme. Regulation 9(2) specifies the effect of a grant of Legal Representation by the Commission in proceedings within the scope of this scheme, and in particular provides that advice on the merits of an application under section 103A of the 2002 Act, and disbursements incurred by a supplier, will be funded whether or not the court or Tribunal makes a costs order. Regulation 9(3) clarifies that an appellant represented under this scheme shall not be required to make any payment towards the costs of services except where regulations provide otherwise.