

EXPLANATORY MEMORANDUM TO
THE LEGAL AID (ASYLUM AND IMMIGRATION APPEALS) (NORTHERN
IRELAND) REGULATIONS 2007

2007 No. xxxx

1. This explanatory memorandum has been prepared by the Northern Ireland Court Service and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 The Regulations, which are subject to affirmative resolution, come into operation on 30 April 2007.
 - 2.2 This instrument prescribes the procedures to be followed, in relation to cases arising in Northern Ireland, by the Asylum and Immigration Tribunal and the High Court when retrospectively awarding legal aid for challenges to decisions of the Tribunal. The power for the Tribunal and the High Court to grant legal aid is contained in section 103D of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”), as inserted by section 26(6) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (“the 2004 Act”).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 These Regulations make equivalent provision for Northern Ireland to that contained in the Community Legal Service (Asylum and Immigration Appeals) Regulations 2005 (as amended). Those regulations came into operation in England and Wales on 4 April 2005, and are being amended with effect from 30 April 2007.

Regulation 1

- 3.2 This regulation commences these Regulations on 30 April 2007. Section 26(6) of the 2004 Act inserted section 103D into the 2002 Act. That insertion was commenced in England and Wales on 4 April 2005. The insertion of section 103D into the 2002 Act is being commenced in Northern Ireland on 30 April 2007, by way of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (Commencement Order No. 1) (Northern Ireland) Order 2007.

Regulation 3

- 3.3 This regulation places general restrictions on the powers of the High Court and the Tribunal to make orders under section 103D(1) and (3) of the 2002 Act.
- 3.4 In particular, regulation 3(1) restricts the exercise of the powers to proceedings where an appellant is represented by a solicitor acting within the legal aid scheme.

Regulation 4

- 3.5 This regulation sets out criteria to be applied by the appropriate court in exercising the power in section 103D(1) of the 2002 Act.
- 3.6 The term “appropriate court” is defined in regulation 4(5).

Regulation 5

- 3.7 This regulation sets out criteria to be applied by the Tribunal in exercising the power in section 103D(3) of the 2002 Act.

Regulation 6

- 3.8 This regulation makes provision for reviews by the Tribunal of decisions not to make an order under section 103D(3) of the 2002 Act.
- 3.9 Paragraph (3) of this regulation provides for reviews to be carried out by a senior immigration judge. This title is to be conferred by the Lord Chancellor on certain legally qualified members of the Tribunal, pursuant to the Asylum and Immigration (Judicial Titles) Order 2005.

Regulation 7

- 3.10 This regulation makes provision about the terms and effect of orders under section 103D of the 2002 Act. It also provides that the amount to be paid under an order, and the person or persons to whom payment is to be made, shall be determined by the Northern Ireland Legal Services Commission in accordance with the provisions of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 as if the section 103D Order was a civil aid certificate granted under the Legal Aid (General) Regulations (Northern Ireland) 1965.

4. Legislative Background

- 4.1 Section 26 of the 2004 Act establishes a single tier Tribunal called the Asylum and Immigration Tribunal (AIT). It also introduces a new system of higher court oversight for decisions of the AIT and new retrospective legal aid arrangements. Section 26(6) inserts new sections 103A to 103E into the 2002 Act.
- 4.2 Section 103A enables a party to an appeal to the Tribunal to apply to the appropriate court for an order requiring the Tribunal to reconsider its decision on appeal on the grounds that the Tribunal may have made an error of law.
- 4.3 Section 103D provides for legal aid for applications and reconsiderations under section 103A to be awarded retrospectively by the AIT and the High

Court. Section 103D does not apply if the application is made by a party to the appeal other than the appellant or for cases funded under fast track processes.

- 4.4 These Regulations are made by the Secretary of State for Constitutional Affairs under section 103D of the 2002 Act, as inserted by section 26(6) of the 2004 Act.

5. **Extent**

- 5.1 This instrument extends only to Northern Ireland.

6. **European Convention on Human Rights**

- 6.1 The Parliamentary Under-Secretary of State has made the following statement regarding human rights:

“In my view, the provisions of the Legal Aid (Asylum and Immigration Appeals) (Northern Ireland) Regulations 2007 are compatible with the Convention rights.”

7. **Policy Background**

- 7.1 The 2004 Act contains measures to support the Government’s proposals on asylum reform. This includes unifying the immigration and asylum appeals system into a single tier of appeal with limited onward review or appeal. To reduce exploitation of the system, the Act also introduces retrospective legal aid arrangements for the onward review stage of the process.
- 7.2 Under the new arrangements legal aid will be awarded retrospectively at the end of the process, usually by the Tribunal judge following reconsideration and, in a limited number of cases, following the determination of the review application.
- 7.3 This mirrors the policy that has been applicable in England and Wales since 4 April 2005, and which is now being refined by virtue of the Community Legal Service (Asylum and Immigration Appeals) (Amendment) Regulations 2007 (coming into operation on 30 April 2007, which coincides with these ‘NI’ Regulations).

8. **Impact**

- 8.1 A Regulatory Impact Assessment was conducted for the 2004 Act. The view of the Small Business Service was that the changes proposed are largely social. Whilst it recognises that there is some impact on specific business sectors, this income only exists as a function of the current immigration appeals system and should not necessarily have been viewed by those businesses as sustainable income from the public purse. The Department’s view is that this position has not changed because the regulations support the original aims of the 2004 Act.

9. **Contact**

- 9.1 Any enquiries about the content of this memorandum should be addressed to Jonathan McNaught at the Northern Ireland Court Service (telephone: 028 9041 2236) or e-mail: jonathanmnaught@courtsni.gsi.gov.uk