

**2005 No. 352 (L. 3)**

**SUPREME COURT OF ENGLAND AND WALES**  
**COUNTY COURTS, ENGLAND AND WALES**

**The Civil Procedure (Amendment) Rules 2005**

<i>Made</i> - - - -	<i>21st February 2005</i>
<i>Laid before Parliament</i>	<i>28th February 2005</i>
<i>Coming into force</i> - -	<i>4th April 2005</i>

The Civil Procedure Rule Committee, having power under section 2 of the Civil Procedure Act 1997(a) to make rules under section 1 of that Act, section 103A(4)(a) of the Nationality, Immigration and Asylum Act 2002(b) and paragraph 30(6) of Schedule 2 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004(c), after consulting in accordance with section 2(6)(a) of the Civil Procedure Act 1997, make the following Rules—

**Citation, commencement and interpretation**

1.—(1) These Rules may be cited as the Civil Procedure (Amendment) Rules 2005 and shall come into force on 4th April 2005.

2. In these Rules—

- (a) a reference to a Part or rule by number alone means the Part or rule so numbered in the Civil Procedure Rules 1998(d);
- (b) a reference to an Order by number and prefixed by “CCR” means the CCR Order so numbered in Schedule 2 to the those Rules;
- (c) “the 2002 Act” means the Nationality, Immigration and Asylum Act 2002;
- (d) “the 2004 Act” means the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004; and
- (e) “adjudicator” means an adjudicator appointed, or treated as if appointed, under section 81 of the 2002 Act.

**Amendments to the Civil Procedure Rules 1998**

3. In Part 54, at the end of the table of contents, insert the text set out in Part I of the Schedule to these Rules.

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(a) 1997 c. 12.  
(b) 2002 c. 41. Section 103A is inserted by section 26(6) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19).  
(c) 2004 c. 19.  
(d) S.I. 1998/3132. There are relevant amendments in S.I. 2000/2092, S.I. 2002/2058, S.I. 2003/364, S.I. 2003/1329 and S.I. 2003/3361.

4. In rule 54.24(1), for “Tribunal” substitute “Asylum and Immigration Tribunal”.
5. In rule 54.25, for paragraphs (3) to (7) substitute—
- “(3) The court may—
- (a) affirm the Tribunal’s decision to refuse permission to appeal;
- (b) reverse the Tribunal’s decision to grant permission to appeal; or
- (c) order the Asylum and Immigration Tribunal to reconsider the adjudicator’s decision on the appeal.
- (4) Where the Tribunal refused permission to appeal, the court will order the Asylum and Immigration Tribunal to reconsider the adjudicator’s decision on the appeal only if it is satisfied that—
- (a) the Tribunal may have made an error of law; and
- (b) there is a real possibility that the Asylum and Immigration Tribunal would make a different decision from the adjudicator on reconsidering the appeal (which may include making a different direction under section 87 of the 2002 Act).
- (5) Where the Tribunal granted permission to appeal, the court will reverse the Tribunal’s decision only if it is satisfied that there is no real possibility that the Asylum and Immigration Tribunal, on reconsidering the adjudicator’s decision on the appeal, would make a different decision from the adjudicator.
- (6) The court’s decision shall be final and there shall be no appeal from that decision or renewal of the application.”.
6. In rule 54.26(1)(c), and in rule 54.27, for “Tribunal” substitute “Asylum and Immigration Tribunal”.
7. At the end of Part 54, insert Section III as set out in Part II of the Schedule to these Rules.
8. In CCR Order 49, in rule 12(3)(b), after “the court may order that any other person”, omit “, not being the patient,”.

### **Transitional provision**

- 9.—(1) This rule applies where, by virtue of transitional provisions contained in an order made under section 48(3)(a) of the 2004 Act—
- (a) an application to the Immigration Appeal Tribunal for permission to appeal against an adjudicator’s decision on an appeal, which was pending immediately before 4th April 2005, continues on and after 4th April 2005 as an application under section 103A of the 2002 Act; or
- (b) an application is made under section 103A of the 2002 Act on or after 4th April 2005 for an order requiring the Asylum and Immigration Tribunal to reconsider an adjudicator’s decision on an appeal.
- (2) III of Part 54 shall apply to the application, subject to the modifications set out in paragraphs (3) and (4).
- (3) In rules 54.28(2)(c), 54.29(2) to (4) and 54.33(3) and (5)(a), references to the Tribunal shall be construed as references to the adjudicator who decided the appeal.
- (4) In rules 54.28(2)(g) and 54.33(4)(b) and (5), the references to the Tribunal’s decision on the appeal shall be construed as references to the adjudicator’s decision.

*Phillips of Worth Matravers, M.R.*  
*John Dyson, L.J.*  
*Rupert Jackson, J.*  
*Terence Etherton, J.*  
*Stephen Oliver-Jones*

*Steven Whitaker  
Carlos Dabezies  
David di Mambro  
Andrew Parker  
Tina Jones  
Nicholas Burkill  
Philip Rainey  
Juliet Herzog  
Richard Walford*

I allow these Rules

21st February 2005

*Falconer of Thoroton, C.*

# SCHEDULE

Rules 3 and 7

## PART I

### “III – APPLICATIONS FOR STATUTORY REVIEW UNDER SECTION 103A OF THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

Scope and interpretation	Rule 54.28
Application for review	Rule 54.29
Application to extend time limit	Rule 54.30
Procedure while filter provision has effect	Rule 54.31
Procedure in fast track cases while filter provision does not have effect	Rule 54.32
Determination of the application by the Administrative Court	Rule 54.33
Service of order	Rule 54.34
Costs	Rule 54.35”

## PART II

### “III – APPLICATIONS FOR STATUTORY REVIEW UNDER SECTION 103A OF THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

#### **Scope and interpretation**

**54.28**—(1) This Section of this Part contains rules about applications to the High Court under section 103A of the Nationality, Immigration and Asylum Act 2002<sup>(a)</sup> for an order requiring the Asylum and Immigration Tribunal to reconsider its decision on an appeal.

(2) In this Section—

- (a) “the 2002 Act” means the Nationality, Immigration and Asylum Act 2002;
- (b) “the 2004 Act” means the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004<sup>(b)</sup>;
- (c) “appellant” means the appellant in the proceedings before the Tribunal;
- (d) “applicant” means a person applying to the High Court under section 103A;
- (e) “asylum claim” has the meaning given in section 113(1) of the 2002 Act;
- (f) “filter provision” means paragraph 30 of Schedule 2 to the 2004 Act;
- (g) “order for reconsideration” means an order under section 103A(1) requiring the Tribunal to reconsider its decision on an appeal;
- (h) “section 103A” means section 103A of the 2002 Act;
- (i) “Tribunal” means the Asylum and Immigration Tribunal.

(3) Any reference in this Section to a period of time specified in—

- (a) section 103A(3) for making an application for an order under section 103A(1); or
- (b) paragraph 30(5)(b) of Schedule 2 to the 2004 Act for giving notice under that paragraph,

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(a) 2002 c. 41.  
(b) 2004 c. 19.

includes a reference to that period as varied by any order under section 26(8) of the 2004 Act.

(4) Rule 2.8 applies to the calculation of the periods of time specified in—

- (a) section 103A(3); and
- (b) paragraph 30(5)(b) of Schedule 2 to the 2004 Act.

(5) Save as provided otherwise, the provisions of this Section apply to an application under section 103A regardless of whether the filter provision has effect in relation to that application.

### **Application for review**

**54.29**—(1) Subject to paragraph (4), an application for an order for reconsideration must be made by filing an application notice—

- (a) during a period in which the filter provision has effect, with the Tribunal at the address specified in the relevant practice direction; and
- (b) at any other time, at the Administrative Court Office.

(2) The applicant must file with the application notice—

- (a) the notice of the immigration, asylum or nationality decision to which the appeal related;
- (b) any other document which was served on the appellant giving reasons for that decision;
- (c) the grounds of appeal to the Tribunal;
- (d) the Tribunal's determination on the appeal; and
- (e) any other documents material to the application which were before the Tribunal.

(3) The applicant must also file with the application notice written submissions setting out—

- (a) the grounds upon which it is contended that the Tribunal made an error of law which may have affected its decision; and
- (b) reasons in support of those grounds.

(4) Where the applicant—

- (a) was the respondent to the appeal; and
- (b) was required to serve the Tribunal's determination on the appellant,

the application notice must contain a statement of the date on which, and the means by which, the determination was served.

(5) Where the applicant is in detention under the Immigration Acts, the application may be made either—

- (a) in accordance with paragraphs (1) to (3); or
- (b) by serving the documents specified in paragraphs (1) to (3) on the person having custody of him.

(6) Where an application is made in accordance with paragraph (5)(b), the person on whom the application notice is served must—

- (a) endorse on the notice the date that it is served on him;
- (b) give the applicant an acknowledgment in writing of receipt of the notice; and
- (c) forward the notice and documents within 2 days—
  - (i) during a period in which the filter provision has effect, to the Tribunal; and
  - (ii) at any other time, to the Administrative Court Office.

### **Application to extend time limit**

**54.30** An application to extend the time limit for making an application under section 103A(1) must—

- (a) be made in the application notice;
- (b) set out the grounds on which it is contended that the application notice could not reasonably practicably have been filed within the time limit; and
- (c) be supported by written evidence verified by a statement of truth.

### **Procedure while filter provision has effect**

**54.31**—(1) This rule applies during any period in which the filter provision has effect.

(2) Where the applicant receives notice from the Tribunal that it—

- (a) does not propose to make an order for reconsideration; or
- (b) does not propose to grant permission for the application to be made outside the relevant time limit,

and the applicant wishes the court to consider the application, the applicant must file a notice in writing at the Administrative Court Office in accordance with paragraph 30(5)(b) of Schedule 2 to the 2004 Act.

(3) Where the applicant—

- (a) was the respondent to the appeal; and
- (b) was required to serve the notice from the Tribunal mentioned in paragraph (2) on the appellant,

the notice filed in accordance with paragraph 30(5)(b) of Schedule 2 to the 2004 Act must contain a statement of the date on which, and the means by which, the notice from the Tribunal was served.

(4) A notice which is filed outside the period specified in paragraph 30(5)(b) must—

- (a) set out the grounds on which it is contended that the notice could not reasonably practicably have been filed within that period; and
- (b) be supported by written evidence verified by a statement of truth.

(5) If the applicant wishes to respond to the reasons given by the Tribunal for its decision that it—

- (a) does not propose to make an order for reconsideration; or
- (b) does not propose to grant permission for the application to be made outside the relevant time limit,

the notice filed in accordance with paragraph 30(5)(b) of Schedule 2 to the 2004 Act must be accompanied by written submissions setting out the grounds upon which the applicant disputes any of the reasons given by the Tribunal and giving reasons in support of those grounds.

### **Procedure in fast track cases while filter provision does not have effect**

**54.32**—(1) This rule applies only during a period in which the filter provision does not have effect.

(2) Where a fast track order applies to an application under section 103A—

- (a) the court will serve copies of the application notice and written submissions on the other party to the appeal; and
- (b) the other party to the appeal may file submissions in response to the application not later than 2 days after being served with the application.

(3) In this Rule, a “fast track order” means an order made under section 26(8) of the 2004 Act which replaces a period of time specified in section 103A(3) of the 2002 Act with a period shorter than 5 days.

### **Determination of the application by the Administrative Court**

**54.33**—(1) This rule, and rules 54.34 and 54.35, apply to applications under section 103A which are determined by the Administrative Court.

(2) The application will be considered by a single judge without a hearing.

(3) Unless it orders otherwise, the court will not receive evidence which was not submitted to the Tribunal.

(4) Subject to paragraph (5), where the court determines an application for an order for reconsideration, it may—

- (a) dismiss the application;
- (b) make an order requiring the Tribunal to reconsider its decision on the appeal under section 103A(1) of the 2002 Act; or
- (c) refer the appeal to the Court of Appeal under section 103C of the 2002 Act.

(5) The court will only make an order requiring the Tribunal to reconsider its decision on an appeal if it thinks that—

- (a) the Tribunal may have made an error of law; and
- (b) there is a real possibility that the Tribunal would make a different decision on reconsidering the appeal (which may include making a different direction under section 87 of the 2002 Act).

(6) Where the Court of Appeal has restored the application to the court under section 103C(2)(g) of the 2002 Act, the court may not refer the appeal to the Court of Appeal.

(7) The court’s decision shall be final and there shall be no appeal from that decision or renewal of the application.

### **Service of order**

**54.34**—(1) The court will send copies of its order to—

- (a) the applicant and the other party to the appeal, except where paragraph (2) applies; and
- (b) the Tribunal.

(2) Where the application relates, in whole or in part, to an asylum claim, the court will send a copy of its order to the Secretary of State.

(3) Where the court sends an order to the Secretary of State under paragraph (2), the Secretary of State must—

- (a) serve the order on the appellant; and
- (b) immediately after serving the order, notify the court on what date and by what method the order was served.

(4) The Secretary of State must provide the notification required by paragraph (3)(b) no later than 28 days after the date on which the court sends him a copy of its order.

(5) If, 28 days after the date on which the court sends a copy of its order to the Secretary of State in accordance with paragraph (2), the Secretary of State has not provided the notification required by paragraph (3)(b), the court may serve the order on the appellant.

(6) If the court makes an order under section 103D(1) of the 2002 Act, it will send copies of that order to—

- (a) the appellant’s legal representative; and
- (b) the Legal Services Commission.

(7) Where paragraph (2) applies, the court will not serve copies of an order under section 103D(1) of the 2002 Act until either—

- (a) the Secretary of State has provided the notification required by paragraph (3)(b); or
- (b) 28 days after the date on which the court sent a copy of its order to the Secretary of State,

whichever is the earlier.

### **Costs**

**54.35** The court shall make no order as to the costs of an application under this Section except, where appropriate, an order under section 103D(1) of the 2002 Act.”



## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules amend the Civil Procedure Rules 1998 by—

- (a) deleting words from CCR Order 49, rule 12(3)(b) to enable a patient to be made a respondent to an application under section 29 of the Mental Health Act 1983 for an order that the functions of his nearest relative shall be exercisable by some other person;
- (b) inserting a new Section III of Part 54 containing rules about applications to the High Court under section 103A of the Nationality, Immigration and Asylum Act 2002; and
- (c) making consequential amendments to Section II of Part 54 and transitional provisions relating to Section III of Part 54.

Section 26 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 introduces a new structure for asylum and immigration appeals, replacing immigration adjudicators and the Immigration Appeal Tribunal (“IAT”) with a new Asylum and Immigration Tribunal (“AIT”). Section 103A of the 2002 Act, as inserted by section 26, provides that a party to an appeal to the AIT may apply to the High Court for an order that the AIT reconsider its decision on the appeal, on the ground that the AIT made an error of law.

The rules in Section III of Part 54 set out the procedures for applying for an order for reconsideration and for an extension of the time limit for making the application. The time limit for making an application, and the grounds for extending time, are set out in section 103A of the 2002 Act. The rules in Section III also contain provisions about the determination of applications by the court, and the service of the court’s order on the parties.

Paragraph 30 of Schedule 2 to the 2004 Act provides that, for a transitional period, all applications under section 103A shall first be considered by a member of the AIT. The consideration of applications by AIT members under this “filter provision” is dealt with in the procedure rules for the AIT. If the AIT member does not make an order for reconsideration or extend the time for making the application, the applicant may notify the High Court that he wishes it to consider the application. New rule 54.31 deals with the procedure for notifying the High Court.

Section 26 of the 2004 Act and Section III of Part 54 come into force on 4th April 2005. The detailed scheme of transitional provisions is to be set out in the order which commences section 26.

Section II of Part 54 will continue to apply on and after 4th April 2005 to any pending or new applications under section 101(2) for the review of decisions made by the IAT before it ceased to exist. These Rules amend Section II of Part 54 to reflect the fact that the IAT will no longer exist, and to replace orders which would have resulted in the grant of permission to appeal to the IAT with orders requiring the AIT to reconsider the adjudicator’s decision on the appeal.





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STATUTORY INSTRUMENTS

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