

EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEDURE (AMENDMENT) RULES 2005

2005 No. 352 (L.3)

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 The instrument amends the Civil Procedure Rules 1998 (“the CPR”) 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;
 - (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 (“the 2002 Act”); and
 - (c) making consequential amendments to Section II of Part 54 and transitional provisions relating to Section III of Part 54.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 Rule 9 of the instrument refers to transitional provisions to be contained in a commencement order under section 48(3)(a) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (“the 2004 Act”). This Order is to be made shortly and will bring section 26 and Schedules 1 and 2 to that Act into force on 4 April 2005. The Department will provide copies to the Committee upon it being made.

- 3.2 New CPR 54.32 (in Part II of the Schedule to the instrument) refers to an order under section 26(8) of the 2004 Act, replacing a period of time specified in section 103A(3) of the 2002 Act with a period shorter than 5 days. The Lord Chancellor proposes to make such an order shortly, and is consulting the Lord Chief Justice as required by section 26(10) of the 2004 Act. The Department will provide copies to the Committee upon making any such order. (However, Rule 54.32 will not have any effect until the Lord Chancellor makes a further order under paragraph 30(1)(a) of Schedule 2 to the 2004 Act. No date for making such an order has been set.)

4. **Legislative Background**

- 4.1 The instrument is made principally in exercise of the powers conferred on the Civil Procedure Rule Committee (“the CPRC”) by section 2 of the Civil Procedure Act 1997 (but see paragraph 4.7 below). It amends the CPR.
- 4.2 Certain provisions of the County Court Rules (“CCR”) are preserved in Schedule 2 to the CPR. The amendment to CCR Order 49, rule 12 (in rule 8 of the instrument) concerns proceedings under section 29 Mental Health Act 1983 for an order that the functions of the nearest relative should be exercisable by some other person. Rule 12(3) concerns who may be joined as a respondent to an application under that section, and rule 12(3)(b) states that *“the court may order that any other person, not being the patient, shall be made a respondent”*.
- 4.3 The remaining amendments are required to give effect to provisions in section 26 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (the 2004 Act), which commences on 4 April 2005.
- 4.4 Section 103A of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act) as inserted by section 26 of the 2004 Act provides that a party to an appeal to the new Asylum and Immigration Tribunal (“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. New Section 103C of the 2002 Act allows the High Court to refer applications under section 103A to the Court of Appeal where it thinks the appeal raises a question of law of such importance that it should be decided by that Court.
- 4.5 Rules 3 and 7 of the instrument introduce a new Section III of CPR Part 54, which sets out the procedures for applying for an order for reconsideration, applying for an extension of the time limit for making the application, provisions about the determination of applications by the court, and referral of applications to the Court of Appeal. The time limit for making an application, and the grounds for extending time, are set out in section 103A of the 2002 Act.
- 4.6 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. However, 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 CPR 54.31 deals with the procedure for notifying the High Court in these instances.
- 4.7 Section 103A(4)(a) of the 2002 Act, and paragraph 30(6) of Schedule 2 to the 2004 Act, provide that rules of court may specify days to be disregarded in calculating the time limits for an applicant to make an

application for reconsideration and to notify the High Court that he wishes it to consider the application. New Rule 54.28(4) does this by applying the general rule on calculation of time in CPR 2.8 to these applications.

- 4.8 CPR 54.34 contains provisions about the service of the court's order on the parties. This includes orders made pursuant to section 103D of the 2002 Act, which allows for the Court to order that appellants' costs of applications under Section 103A are paid out of the Community Legal Service Fund.
- 4.9 Section 26 of the 2004 Act comes into force on 4th April 2005, and on commencement the Immigration Appeal Tribunal (IAT) ceases to exist. While most pending applications will transfer to the appropriate point in the new appeals process, an exception to this are applications to the High Court under section 101(2) of the 2002 Act for the review of decisions made by the IAT on applications for permission to appeal to the IAT. These applications are covered under Section II of Part 54 of the CPR, which will continue to apply to pending applications. Rules 4-6 of the instrument 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.
- 4.10 The amendments do not implement EU legislation.

5. Extent

- 5.1 The instrument applies to England and Wales.

6. European Convention on Human Rights

Not applicable

7. Policy background

- 7.1 The CPR make provision for the practice and procedure in county courts, the High Court and the Civil Division of the Court of Appeal.
- 7.2 CCR Order 49, rule 12(3)(b) is amended to allow a patient to be joined as a respondent to proceedings under section 29 of the Mental Health Act 1983. The current rule, which replicates an old provision, precludes the patient from being joined in proceedings under that section. It is considered that this restriction is no longer appropriate to safeguard the patient's interests. The CPRC has decided that it would be appropriate to amend the rule to permit the court to make an order allowing the patient to be joined as respondent in proceedings under that section.

- 7.3 In relation to asylum and immigration, the 2004 Act contains measures to support the Government's proposals for reform of the appeals system. These include the replacement of the Immigration Appellate Authority (IAA) with the single tier AIT, and provisions for onward review of decisions of the new Tribunal by the appropriate court (High Court or Court of Session).
- 7.4 The CPR amendments form part of the package of secondary legislation supporting the new appeal structure. New rules for appeals are set out in the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230), which replace the Immigration and Asylum Appeals (Procedure) Rules 2003. The amendments to CPR Part 54 are required to provide the framework under which the onward review procedures will operate.
- 7.5 Section III of CPR Part 54 builds on existing provisions in Section II of CPR Part 54, which concerns High Court review of decisions of the IAT on applications for permission to appeal from an adjudicator to the IAT (see paragraph 4.9 above).
- 7.6 In particular, Rule 54.34 builds on the existing Rule 54.26, under which adverse decisions of the High Court on applications for statutory review under section 101(2) are served on the appellant by the respondent to the appeal (e.g. the Home Office) rather than by the High Court. The new Rules allows for service by the respondent of all review decisions under section 103A irrespective of outcome, in cases where the application relates in whole or in part to an asylum claim.
- 7.7 The extension of the provisions in these Rules will support the Government's intention of improved contact management in support of broader asylum policy objectives, and mirror similar provisions in the Asylum and Immigration Tribunal (Procedure) Rules 2005. To ensure that these rules do not operate unfairly to appellants, the respondent is required to notify the Court of service within a 28 day period and the Court will serve the order on the appellant if notice is not given at the end of this period.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for the instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

- 9.1 Andrew Moseley at the Department for Constitutional Affairs Tel: 020 7210 8546 or e-mail Andrew.Moseley@dca.gsi.gov.uk can answer any queries regarding the instrument.