

SCHEDULE

Rules 3 and 7

PART I

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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⁽¹⁾ 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⁽²⁾;
- (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.

(1) 2002 c. 41.

(2) 2004 c. 19.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (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,

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.

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- (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.

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(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.”