

**EXPLANATORY MEMORANDUM TO THE  
ASYLUM AND IMMIGRATION TRIBUNAL (FAST TRACK PROCEDURE)  
RULES 2005  
2005 No 560 (L. 12)**

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 This instrument prescribes the procedure to be followed for appeals and applications to the Asylum and Immigration Tribunal (“The Tribunal”) where the appellant is in detention under the Immigration Acts at locations specified in the Rules. The Tribunal is created under section 81 of and Schedule 4 to the Nationality, Immigration and Asylum Act 2002 (“the NIA Act”), as substituted by section 26(1) of and Schedule 1 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (“the AITC Act”). These Rules come into force on 4<sup>th</sup> April 2005. The Rules are subject to negative resolution.

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

- 3.1 Rule 33(4) includes references to a transitional provisions Order. This will be contained in a commencement order under section 48(3)(a) of the AITC Act. This Order is to be made at around the same time as these Rules, and will bring section 26 and Schedules 1 and 2 to the AITC Act into force on 4<sup>th</sup> April 2005.

- 3.2 Section 26(8) of the Act allows the Lord Chancellor to make Orders varying periods specified in Section 103A(3) of the Nationality, Immigration and Asylum Act 2002 (“the NIA Act”), and paragraph 30(5)(b) of Schedule 2 of the AITC Act. These sections set out time limits for applying for orders under S103A(1) of the NIA Act and for further application to the Appropriate Court while the transitional arrangements in Schedule 2 of the AITC Act apply. An Order under this section is to be made at around the same time as these Rules, to commence on 4 April. The Order will shorten the time for applications for reconsideration where these Rules apply.

4. **Legislative Background**

- 4.1 Section 26 of the AITC Act establishes a single tier Tribunal called the Asylum and Immigration Tribunal. Section 26(5) of the Act abolishes the Immigration Appeal Tribunal, the second tier of the current Immigration Appellate Authority (“IAA”).

- 4.2 Section 26(6) inserts new sections 103A to 103E into the NIA Act. 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. Paragraph 30 of Schedule 2 of the AITC Act (“the filter provision”) provides for applications made to the appropriate court to be considered initially by a member of the Tribunal for a transitional period from commencement of Section 26 until such date as may be appointed by Order of the Lord Chancellor.
- 3.3 Rules have already been made setting out the general procedures for appeals and applications to the Tribunal, and for the consideration of section 103A applications by the Tribunal under the filter provision. The Asylum and Immigration Tribunal (Procedure) Rules 2005 (S.I. 2005/230) (“the Principal Rules”) were laid before Parliament on 8 February and commence on 4 April 2005.
- 4.3 The Fast Track appeals process was established in April 2003, and the procedure is currently prescribed in the Immigration and Asylum Appeals (Fast Track Procedure) Rules 2003.
- 4.4 These Rules are required to reflect the changes to the appeals process introduced in Section 26 of, and Paragraph 30 of Schedule 2 to, the AITC Act, and in the Principal Rules. Adopting a similar scheme to the previous fast track rules, they apply certain provisions of the Principal Rules to fast track cases and set out separate procedures for other parts of the fast track process.
- 4.5 These Rules are made under sections 106 and 112(3) of the NIA Act. The procedures only apply to a particular category of appeals (where the appellant is in detention at specified locations). Section 112(3) of the NIA Act provides that rules made under various provisions of the NIA Act (including section 106) may make provision which applies only in specified circumstances, or make different provision for different circumstances.

## **5. Extent**

- 5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

- 6.1 Not applicable.

## **7. Policy background**

- 7.1 The AITC 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.

- 7.2 The detained fast track has operated since April 2003 and aims to take applicants from their initial application through to integration or removal in approximately 4 weeks. The fast track is part of the Government's Asylum and Immigration strategy.
- 7.3 Consultation Paper Asylum and Immigration Tribunal – Fast Track Procedure Rules outlining the proposals for the Rules was published on 7 February 2005. The consultation ended on 28 February. 5 responses were received, including those received after the end of the consultation period.
- 7.4 With the creation of the Tribunal, the Rules are required to provide the framework under which the fast track will operate within the new appeals structure, and to revoke the Immigration and Asylum Appeals (Fast Track Procedure) Rules 2003, which applied to the previous IAA.
- 7.5 The Rules also introduce other amendments to the way in which the fast track process operates. The most significant change is to the time limits for promulgation of Tribunal determinations. Under previous fast track Rules, the requirement was for determinations to be sent out on the day after the hearing. The new fast track rules extend this time to two working days bringing it into line with time periods for other stages of the appeals process.
- 7.6 The rules also extend the locations where the Fast Track procedure applies to include Yarl's Wood Immigration Removals Centre. This centre will provide for a fast track process for single females as announced in the strategy paper 'Controlling our Borders: Making migration work for Britain' published in February 2005.
- 7.7 Provisions have been amended to meet concerns expressed in responses to the consultation paper. In particular provisions in Rules 13 and 23 allowing for the Tribunal to determine appeals without a hearing have been revised so that, with the exception of where both parties consent, they do not apply to first appeal hearings, and instead apply to reconsideration hearings only.
- 7.8 The Rules have also been amended to provide that the Tribunal must (rather than may) order that fast track rules shall not apply in specified circumstances (Rule 30). This change has been made following concerns that where the circumstances are met there should not be a discretion and the appeal must be transferred out of the fast track. The Principal Rules will then apply.

## **8. Impact**

- 8.1 A Regulatory Impact Assessment is has not been prepared for this 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](mailto:Andrew.Moseley@dca.gsi.gov.uk) can answer any queries regarding the instrument.