

**EXPLANATORY MEMORANDUM TO
THE ASYLUM AND IMMIGRATION TRIBUNAL (PROCEDURE) (AMENDMENT)
RULES 2008**

2008 No.1088 (L.7)

**THE ASYLUM AND IMMIGRATION TRIBUNAL (FAST TRACK PROCEDURE)
(AMENDMENT) RULES 2008**

2008 No.1089 (L.8)

1. This explanatory memorandum has been prepared by the Tribunals Service of the Ministry of Justice 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 These instruments amend the Asylum and Immigration Tribunal (Procedure) Rules 2005 (“the Principal Rules”), which prescribe the procedure to be followed for appeals and applications to the Asylum and Immigration Tribunal (“the AIT”) and the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 (“the Fast Track Rules”), which prescribe the procedure to be followed for appeals and applications to the AIT where the appellant is in detention under the Immigration Acts at locations specified in the Fast Track Rules. The amendments are, for the most part, minor and technical, and arise from practical concerns raised by the AIT’s stakeholders.
- 2.2 The Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2008 (“the 2008 Amendment Rules”) and the Asylum and Immigration Tribunal (Fast Track Procedure) (Amendment) Rules 2008 (“the 2008 Fast Track Amendment Rules”) are subject to negative resolution, and are to come into force on 12 May 2008.

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

- 3.1 None.

4. **Legislative Background**

- 4.1 The Principal Rules were made by the Lord Chancellor under sections 106(1) to 106(3) and 112(3) of the Nationality, Immigration and Asylum Act 2002 (“the NIA Act 2002”) and section 40A(3) of the British Nationality Act 1981 (“the BN Act 1981”).
- 4.2 The Fast Track Rules were made under sections 106 and 112(3) of the NIA Act 2002 and section 40A(3) of the BN Act 1981. 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 section 106 of the NIA Act may make provision which applies only in specified circumstances, or make different provision for different circumstances.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Consultation paper CP(L) 29/07 (“the consultation”), outlining the proposed amendments, was published on 5 November 2007. The consultation ended on 16 December 2007. The level of public interest was low, and responses were received from the following organisations.

- (a) the UK Borders Agency of the Home Office (“the UKBA”);
- (b) the AIT senior judiciary;
- (c) the AIT operational management;
- (d) the Immigration Law Practitioners Association;
- (e) the Law Reform Committee of the Bar Council;
- (f) the Public and Commercial Services Union; and
- (g) the Association of Members of the Asylum and Immigration Tribunal.

Part One – the Principal Rules: Appeals to the AIT

7.2 Rule 1 of the 2008 Amendment Rules amends rule 8 of the Principal Rules to require appellants to provide reasons if the notice of decision being appealed against is not included with the appeal form submitted to the AIT. Rule 8 as drafted in the Principal Rules only imposes a requirement on the appellant to enclose the notice of decision with the notice of appeal “if reasonably practicable” and therefore does not require the appellant to provide reasons for not including the notice of appeal. The majority of respondents to the consultation supported this amendment. One respondent expressed concerns about the strength of the sanction, as applied by rule 15 (detailed below), for non-compliance with the provisions of this rule as amended. However, the Ministry considers that the counterbalancing effect afforded to the appellant to supply any reasons for non-inclusion of the notice of decision, in addition to the necessity for this document when the appeal is lodged to aid effective appeal processing, offsets and justifies the application of a sanction. Further, the application of the sanction in rule 15 is within the discretion of the AIT.

7.3 The intention of rule 3 of the 2008 Amendment Rules is to amend rule 15 of the Principal Rules to enable the AIT to deal with appeals on paper, without a hearing, where the appellant’s representative is overseas; and to allow the AIT to consider appeals on paper where no notice of decision has been provided and no reasons given, or where those reasons given are not considered satisfactory by the AIT. The majority of respondents supported this proposal. One respondent made helpful suggestions for improving the draft, which have been considered fully and incorporated where appropriate.

Part Two – the Principal Rules: Reconsideration of appeals

- 7.4 The intention of rules 4 and 5 of the 2008 Amendment Rules is to clarify the purpose of a reply as part of the process whereby a party seeks review of an appeal decision by the AIT on the ground that that decision contained a material error of law. The amendments to rule 30 and rule 31 make it clear that a reply should be submitted by the other party to the appeal if that party contends that there was no material error of law in that decision, or that there was an error of law in that decision but that it was not material. The amendments to these rules also clarify that the content of the reply and other matters the AIT deems relevant will be considered when determining whether an error of law is material in the reconsideration process. Respondents gave some helpful suggestions for improving these amendments which have been fully considered and incorporated where appropriate.
- 7.5 Rule 6 of the 2008 Amendment Rules amends rule 33 of the Principal Rules by providing for the option to amalgamate the decision on funding from the Community Legal Service Fund with the outcome of the appeal. All the respondents who commented on this proposal were in favour of this amendment. Some of the respondents suggested improvements to the draft which have been incorporated accordingly.
- 7.6 The intention of rule 7 of the 2008 Amendment Rules is to introduce a power within rule 36 of the Principal Rules to enable the President and Deputy Presidents to order that an appeal be remitted back to the AIT in place of granting permission to appeal to the Court of Appeal, with the consent of the parties and where the President/Deputy President deems this appropriate. The majority of respondents were in favour of this proposal.

Part Three – the Principal Rules: General Provisions

- 7.7 Rule 8 of the 2008 Amendment Rules clarifies rule 45(4)(c) of the Principal Rules by stating that time limits cannot be extended retrospectively, except in circumstances where the Tribunal considers that there are exceptional reasons for doing so. All the respondents who commented on this proposal were in favour of it.
- 7.8 Rule 9 of the 2008 Amendment Rules requires the respondent to the appeal, under rule 56 of the Principal Rules, to notify the Tribunal in writing if they are aware that the appellant has changed their postal address. The respondents, with one exception, supported this proposal. The Ministry considers, however, that the reduction of the possibility of hearings going ahead in a party's absence or the need for adjournments is constructive in establishing effective appeal processing and therefore the amendment should be maintained.

Part Four – the Fast Track Rules

- 7.9 One consequential amendment is required to the Fast Track Rules to ensure consistency with the Principal Rules (replication of the amendment to rule 15 of the Principal Rules allowing the AIT to consider appeals on paper where no notice of decision has been provided and no reasons given, or where those reasons given are not considered satisfactory by the AIT). To achieve this an amendment is made to rule 13 of the Fast Track Rules by rule 3 of the Fast Track Amendment Rules.
- 7.10 Rule 2 of the 2008 Fast Track Amendment Rules amends rule 6 of the Fast Track Rules to allow two or more Fast Track appeals to be heard together where appropriate, bringing

the Fast Track Rules in line with the Principal Rules. All the respondents who commented on this proposal supported its effect, with one respondent giving helpful suggestions for improving the draft which have been fully considered and incorporated where appropriate.

- 7.11 The intention of rule 4 of the 2008 Fast Track Amendment Rules is to add Oakington Reception Centre to the list of specified sites in schedule 2 of the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005. The majority of respondents supported this proposal.
- 7.12 Following the consultation we identified the need for one other amendment. Given the minor and technical nature of this, we do not believe that it requires further consultation. The AIT's President is in favour of this amendment:
- (a) Rule 2 of the 2008 Amendment Rules requires the Tribunal not to accept a notice of appeal in cases where a person may not appeal pursuant to section 88A of the 2002 Act. This amendment will ensure that the Tribunal is able to give effect to section 88A of the 2002 Act, which may not be the case on one interpretation of the current rule 9 of the Principal Rules.
- 7.13 A report responding to the consultation will be published by the time the 2008 Amendment Rules are laid.

8. Impact

- 8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on businesses, charities or voluntary bodies.

9. Contact

Joanne Noble at the Tribunals Service can be contacted with queries regarding the instrument via 020 7566 1334 or e-mail: joanne.noble@tribunals.gsi.gov.uk