

**EXPLANATORY MEMORANDUM TO THE
ASYLUM AND IMMIGRATION TRIBUNAL (PROCEDURE) RULES 2005**

2005 No. 230 (L.1)

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). The Tribunal is created under section 81 of and Schedule 4 to the Nationality, Immigration and Asylum Act 2002, as substituted by section 26(1) of and Schedule 1 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (“the AITC Act”). The Rules come into force on 4th April 2005. The Rules are subject to negative resolution.

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

- 3.1 None.

4. **Legislative Background**

- 4.1 Section 26 of the AITC Act establishes a single tier Tribunal called the Asylum and Immigration Tribunal (AIT). 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 Nationality, Immigration and Asylum Act 2002 (“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. Part 2 of Schedule 2 of the AITC Act allows for applications made to the appropriate court to be considered by the Tribunal from commencement of Section 26 until such date as may be appointed by Order of the Lord Chancellor.
- 4.3 Sections 103B and 103A provide for parties to an appeal to bring a further appeal on a point of law to the appropriate appellate court, where an appeal has been reconsidered by the Tribunal, or where at the initial appeal hearing

the Tribunals jurisdiction was exercised by three or more legally qualified members.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Lord Chancellor has made the following statement regarding Human Rights:

In my view the provisions of the Asylum and Immigration Tribunal (Procedure) Rules 2005 are compatible with the Convention rights.

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 Consultation Paper Asylum and Immigration Tribunal – Procedure Rules and Judicial Titles Order (CP(L)27/04) outlining the proposals for the Rules was published on 25 October 2004. The consultation ended on 6 December. 30 responses were received, including those received after the end of the consultation period.

7.3 With the creation of the AIT the Rules are required to provide the framework under which the new Tribunal will operate and to revoke the Immigration and Asylum Appeals (Procedure) Rules 2003, which applied to the previous IAA.

7.4 The Rules also introduce other amendments to the way in which immigration and asylum appeals are handled. The provisions for giving notice of appeal have been changed so that, other than in some exceptional, circumstances, appellants will be required to give notice directly to the AIT. Under previous rules notice of appeal was given to the respondent to the appeal. The change in these rules was welcomed by respondents to the consultation paper.

7.5 Where appeals relate in whole or in part to an asylum claims, the Rules provide for service of all determinations, and decisions on review applications under Section 103A of the AITC Act, by the respondent to the appeal rather than by the Tribunal.

7.6 These provisions build on provisions first introduced in the Immigration and Asylum Appeals (Procedure) (Amendment) Rules 2001. These rules introduced respondent service of decisions relating in whole or in part to a claim for asylum where the asylum seeker was unsuccessful and their appeal rights were exhausted. From April 2003, on commencement of the Nationality, Immigration and Asylum Act 2002, service by the respondent has

applied to adverse Statutory Review decisions on applications, which relate in whole or in part to asylum.

7.7 The extension of the provisions in these Rules will support the Government's intention of improved contact management in support of broader policy objectives.

7.8 Responses to the consultation were, for the most part, not in favour of these provisions as a whole. Specific concerns were raised that there were no safeguards to ensure that service takes place within time periods specified in the Rules, and that where the respondent sought to challenge an appeal outcome, there was no requirement for the appellant to have been served with the appeal determination before a challenge was lodged.

7.9 These concerns have been addressed following consultation to provide that;

where the respondent has not notified the Tribunal of service of a decision at the end of the 28 day period specified in the Rules the responsibility for service should revert to the Tribunal, and

In cases where the respondent is seeking to challenge a Tribunal determination they must send or personally serve the determination on the appellant at the same time, or before, they lodge their application.

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 can answer any queries regarding the instrument.