
EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Civil Procedure Rules 1998 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 for an order that the functions of his nearest relative shall be exercisable by some other person;
- (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; and
- (c) making consequential amendments to Section II of Part 54 and transitional provisions relating to Section III of Part 54.

Section 26 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 introduces a new structure for asylum and immigration appeals, replacing immigration adjudicators and the Immigration Appeal Tribunal (“IAT”) with a new Asylum and Immigration Tribunal (“AIT”). Section 103A of the 2002 Act, as inserted by section 26, provides that a party to an appeal to the 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.

The rules in Section III of Part 54 set out the procedures for applying for an order for reconsideration and for an extension of the time limit for making the application. The time limit for making an application, and the grounds for extending time, are set out in section 103A of the 2002 Act. The rules in Section III also contain provisions about the determination of applications by the court, and the service of the court’s order on the parties.

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. 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 rule 54.31 deals with the procedure for notifying the High Court.

Section 26 of the 2004 Act and Section III of Part 54 come into force on 4th April 2005. The detailed scheme of transitional provisions is to be set out in the order which commences section 26.

Section II of Part 54 will continue to apply on and after 4th April 2005 to any pending or new applications under section 101(2) for the review of decisions made by the IAT before it ceased to exist. These Rules 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 on the appeal.