

**EXPLANATORY MEMORANDUM TO
THE ASYLUM AND IMMIGRATION TRIBUNAL (PROCEDURE)
(AMENDMENT) RULES 2006**

2006 No.2788 (L.10)

**THE ASYLUM AND IMMIGRATION TRIBUNAL (FAST TRACK
PROCEDURE) (AMENDMENT) RULES 2006**

2006 No.2789 (L.11)

1. This explanatory memorandum has been prepared by the Tribunals Service 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, 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 Rules. The amendments are, for the most part, minor and technical, and arise from provisions in the Immigration, Asylum and Nationality Act 2006 (“the IAN Act 2006”) and practical concerns raised by the AIT’s stakeholders.

- 2.2 The Rules are subject to negative resolution, and are, with two minor exceptions, to come into force on 13th November 2006.

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

- 3.1 None.

4. **Legislative Background**

- 4.1 The Procedure Rules for the AIT are made by the Lord Chancellor under sections 106(1) to 106(3), 112(2) and 112(3) of the Nationality, Immigration and Asylum Act 2002 (“the NIA Act 2002”).

- 4.2 The Fast Track Rules are made under sections 106 and 112(3) of the Nationality, Immigration and Asylum Act 2002 (“the NIA Act 2002”). 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.

- 4.3 Section 9 of the IAN Act 2006 amends section 104(4) of the Nationality, Immigration and Asylum Act 2002 (“the NIA Act 2002”) so that appeals will not be automatically abandoned if appellants are granted leave to enter or remain. Under new section 104(4B) appeals on race discrimination grounds will not be treated as abandoned following grants of leave to enter or remain providing appellants give notice confirming they wish to continue with the appeal. Under new section 104(4C), appeals on Refugee Convention grounds shall not be abandoned if leave to enter or remain is granted for more than 12 months and appellants give notice confirming they want to continue with the appeal. We understand that section 9 is due to come into force in November 2006 and the rules reflecting it will need to coincide with this.
- 4.4 Section 8 of the IAN Act 2006 amends section 103D of the NIA Act 2002, to state that the AIT may order that an appellant’s costs in respect of preparation for reconsideration be paid out of the Community Legal Service Fund. This addresses the rare situation where reconsideration of a decision is order by the AIT, but does not proceed because, for example the appeal is treated as abandoned. This provision is not to commence until early 2007, and the relevant Rules (Rules 10 and 11) consequently have a later commencement date than the remainder of the Rules.

5. Extent

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

6. European Convention of 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)14/06, outlining the proposed amendments to the Principal Rules, was published on 24th July 2006. The consultation ended on 4th September. The level of public interest in the policy was low, and responses were received from the following organisations (including those received after the consultation period):
- (a) the Immigration and Nationality Directorate of the Home Office (“IND”);
 - (b) the AIT senior judiciary;
 - (c) the AIT operational management;
 - (d) UKvisas;
 - (e) the Immigration Law Practitioners Association;
 - (f) the Law Reform Committee of the Bar Council; and
 - (g) the Law Centre (Northern Ireland).

7.2 The IAN Act 2006 contains measures to improve the asylum and immigration process. As set out in section 4, above, this instrument reflects the changes introduced by sections 8 and 9 of the Act.

- (a) Rule 7 of the principal instrument provides, in accordance with section 9 of the IAN Act 2006, a procedure for appellants to notify the AIT that they wish their appeal to continue in circumstances in which it would otherwise be abandoned. All the respondents were in favour of the proposed amendment.
- (b) Rules 10 and 11 provide, in accordance with section 8 of the IAN Act 2006, that the AIT may order payment of the appellant's costs in respect of preparation for reconsideration out of the Community Legal Service Fund. The five respondents who commented on this proposal were in favour of it.

7.3 The following amendments arise from practical concerns raised by the AIT's stakeholders, rather than the IAN Act 2006.

- (a) Rule 5 imposes a duty on the Tribunal to provide reasons for extending, or refusing to extend, the time limit to appeal. Of the five respondents who commented on this proposal, four were in favour of it. One consultee expressed concern that it would result in a lack of flexibility, but the Department considers that given the view of the remainder of the respondents, and the growing trend in case law to provide reasons for decisions, the amendment should be maintained.
- (b) Rule 8 extends the time limits within which the AIT must hear asylum appeals, from 28 days to 35 days, in order to provide additional flexibility during holiday periods. This amendment arose from the AIT Review, published in April 2006, on which there was wide and lengthy stakeholder consultation, and which was agreed by the Lord Chancellor. Three respondents welcomed this proposal. Other respondents expressed concerns that it may result in delays in hearing non-asylum appeals. However, the administrative default position will still be that asylum cases are listed 28 days after being lodged; the additional week will only be used during exceptionally busy bank holiday periods.
- (c) Rule 15 inserts a provision which allows the President of the AIT to set aside decisions wrongly made as a result of administrative errors by the Tribunal or its staff. This amendment also arose from the AIT Review. The intention of this proposal was widely supported by all consultation respondents. Respondents gave some useful suggestions for improving the rule which have been fully considered and incorporated where appropriate.

7.4 Other minor and technical amendments contained in rules 4, 9 and 14 were accepted by the consultation respondents.

7.5 A small number of proposals did not receive wide support from the respondents and we have decided not to pursue these amendments at this time. The three retracted amendments were as follows:

- (a) *Removing the discretion for oral hearings for appeals with no representatives or sponsors*: we believe we can more effectively achieve our aim of reducing unnecessary oral hearings through internal administrative procedures and amendments to the appeal forms and notices.
- (b) *Making provision for the Tribunal on a reconsideration hearing to consider issues from the original notice of appeal not necessarily identified as errors of law in the order for reconsideration*: Our intention in this amendment was to clarify the scope of the Tribunal's reconsideration process, but consultation respondents were not of the view that the drafted amendment would attain the required flexibility. We are of the view it would be premature to amend the Rules at this stage; however, we will keep this under review.
- (c) *Reducing the time limit (28 days) for deemed service where documents are sent between the UK and other countries*: Many consultation respondents were concerned that a reduction would not allow sufficient postage time. We will however keep this under review.

7.6 Following the consultation we identified the need for two other amendments. Given the minor and technical nature of these, we do not believe they require further consultation. The AIT's President is in favour of the amendments:

- (a) Rules 2, 3, 12, 13 and 16 de-prescribe the appeal forms. This is in line with the Council on Tribunals' *Guidance For Drafting Procedure Rules*, which states that prescribing forms inhibits the amendment of forms as circumstances require. It is intended that the appeal forms will be amended by direction from the President, and stakeholders will retain the right to comment on any proposed amendments.
- (b) Rule 6 provides that where an appellant dies, the appeal should be withdrawn, but allows the Tribunal to order that the appeal should continue if it considers it necessary. For example, an appeal could continue if there is a strong legal reason for determining the appeal or there are exceptional matters that could not be resolved without determination of the appeal.

7.7 Four of the amendments to the Principal Rules require consequential amendments to the Fast Track Rules. These are as follows:

- (a) a duty for the Tribunal to provide reasons for extending, or refusing to extend, the time limit to appeal;
- (b) a minor amendment to provide drafting consistency with section 9 of the IAN Act on abandonment, as outlined in 4.3 above;

- (c) a provision for the President of the AIT to set aside decisions wrongly made as a result of administrative errors by the Tribunal or its staff; and
- (d) de-prescription of the appeal forms, which is in line with Council on Tribunals guidelines on Procedure Rules.

7.8 Consultation respondents did not make specific reference to the Fast Track Rules, but responded on provisions in the Principal Rules that are reflected in the Fast Track Rules.

7.9 A report responding to the consultation will be published by the time the Procedure Rules are laid.

8. Impact

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

9. Contact

9.1 Jason Latham at the Tribunals Service can be contacted with queries regarding the instrument, on 0161 234 2077 or Jason.Latham@tribunals.gsi.gov.uk.