

**2005 No. 146**

**SUPREME COURT, NORTHERN IRELAND**

**ASYLUM**

**The Rules of the Supreme Court (Northern Ireland)  
(Amendment) 2005**

*Made* - - - - - *21st March 2005*

*Coming into operation* *18th April 2005*

*To be laid before Parliament*

We, the Northern Ireland Supreme Court Rules Committee, being the authority having for the time being power under section 55 of the Judicature (Northern Ireland) Act 1978(a), section 103A of the Nationality, Immigration and Asylum Act 2002(b) and paragraph 30(6) of Schedule 2 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004(c) to make, amend or revoke rules regulating the practice and procedure of the Supreme Court of Judicature of Northern Ireland, hereby, with the concurrence of the Lord Chancellor, exercise those powers as follows: –

**Citation, commencement and interpretation**

**1.**—(1) These Rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Amendment) 2005 and shall come into operation on 18th April 2005.

(2) In these Rules, “the principal rules” means the Rules of the Supreme Court (Northern Ireland) 1980(d) and an Order referred to by number or an Appendix referred to by letter means the Order so numbered or the Appendix so lettered in the principal Rules.

**Arrangement of Orders**

**2.** The Arrangement of Orders at the beginning of the principal rules shall be amended –  
(a) by adding after the entry relating to Order 53, the following new entry –

“**53A.** Applications for statutory review under section 103A of the Nationality, Immigration and Asylum Act 2002(e)”; and

(b) by adding after the entry relating to Order 60, the following new entry –

“**60A.** Referral to the Court of Appeal from the High Court under section 103C of the Nationality, Immigration and Asylum Act 2002.”

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(a) 1978 c. 23  
(b) 2002 c. 41  
(c) 2004 c. 19  
(d) S.R. 1980 No. 346 to which the most recent relevant amendments were made by S.R. 2004 No. 108  
(e) 2002 c. 41

### **Amendment to the principal Rules**

3. Order 1, rule 11 shall be amended by adding after paragraph (i), the following new paragraph –

“(j) applications under section 103A of the Nationality, Immigration and Asylum Act 2002(a).”

4. The principal rules shall be amended by inserting –

(a) after Order 53, the new Order set out in Schedule 1 to these Rules; and

(b) after Order 60, the new Order set out in Schedule 2 to these Rules.

5. Order 61 shall be amended as follows –

(a) for rule 11 there shall be substituted the following new rule –

**“Application for leave to appeal to the Court of Appeal from the Tribunal established under section 81 of the Nationality, Immigration and Asylum Act 2002**

**11.**—(1) In this rule and rule 12 –

“the Act” means the Nationality, Immigration and Asylum Act 2002(a); and

“the Tribunal” means the Tribunal established under section 81 of the Act.

(2) An application for leave to appeal to the Court of Appeal under sections 103B or 103E of the Act shall be made within 14 days after the appellant is served with written notice of the Tribunal’s decision to refuse leave to appeal.

(3) Such an application shall be made ex parte by lodging the following documents in the Central Office, namely –

(a) a certified copy of the Tribunal’s decision to refuse leave to appeal; and

(b) a statement of the grounds of the application.

(4) The proper officer shall notify the parties of the determination of the Court of Appeal.

(5) Where leave to appeal has been granted, the applicant shall notify the President of the Tribunal.”

(b) for rule 12, there shall be substituted the following new rule –

**“Appeal from the Tribunal**

**12.**—(1) Where leave to appeal to the Court of Appeal under sections 103B or 103E of the Act has been granted by the Tribunal or by the Court of Appeal, the time limit specified in rule 1(2)(a) for lodging the requisition to state a case shall be calculated from the date leave was so granted.

(2) On entering an appeal for hearing a copy of the order granting leave to appeal by the Tribunal or the Court of Appeal must be lodged in the Central Office together with the case stated and the requisition for hearing.”

6. Order 94, rule 2(1) shall be amended by substituting for paragraph (xi), the following new paragraph –

“(xi) sections 103B and 103E of the Nationality, Asylum and Immigration Act 2002(a) (appeals from the Asylum and Immigration Tribunal).”

7. Appendix A shall be amended by inserting after Form No. 11, the new Forms 11A and 11B set out in Schedule 3 to these Rules.

### **Transitional provisions**

8.—(1) In this Rule –

“the 2002 Act” means the Nationality, Immigration and Asylum Act 2002; and

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(a) 2002 c. 41

“adjudicator” means an adjudicator appointed or treated as if appointed under section 81 of the 2002 Act.

(2) This Rule applies where, by virtue of transitional provisions contained in an order made under section 48(3)(a) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 –

- (a) an application to the Immigration Appeal Tribunal for permission to appeal against an adjudicator’s decision on an appeal, which was pending immediately before 4th April 2005, continues on or after 4th April 2005 as an application under section 103A of the 2002 Act; or
- (b) an application is made under section 103A of the 2002 Act on or after 4th April 2005 for an order requiring the Asylum and Immigration Tribunal to reconsider an adjudicator’s decision on an appeal.

(3) Order 53A shall apply to the application, subject to the modifications set out in paragraphs (4) to (8).

(4) Rules 3(5) and 5(3) shall not apply.

(5) In rule 1(1), in the definitions of ‘appeal’, ‘appellant’ and ‘Tribunal’ and in rules 3(3), 3(4)(c) to (e), 6 and 7(2), references to the Tribunal shall be construed as references to the adjudicator who decided the appeal.

(6) In rules 3(4)(a), 3(5)(a) and 8(1), references to the appeal shall be construed as references to the appeal to the adjudicator.

(7) In rule 6, the reference to a decision of the Tribunal shall be construed as a reference to a decision of the adjudicator.

(8) In rules 3(4)(b), 8(3)(a) and 8(5), references to the appellant shall be construed as references to the appellant in the appeal to the adjudicator.

Dated 14th March 2005

*Brian Kerr*  
*J. M. Nicholson*  
*Anthony Campbell*  
*Paul Girvan*  
*Patrick Coghlin*  
*Mark Horner*  
*Bernard McCloskey*  
*Tony Caher*  
*Caroline A. McGonagle*

Signed by the authority of the Lord Chancellor

I concur

*Baroness Ashton of Upholland*  
Parliamentary Under-Secretary of State, Department for Constitutional Affairs

Dated 21st March 2005

## “ORDER 53A

APPLICATIONS FOR STATUTORY REVIEW UNDER SECTION 103A OF THE NATIONALITY,  
IMMIGRATION AND ASYLUM ACT 2002**Interpretation**

1.—(1) In this Order –

“the 2002 Act” means the Nationality, Immigration and Asylum Act 2002(a) and a section referred to by number means the section so numbered in the Act;

“the 2004 Act” means the Asylum and Immigration (Treatment of Claimants etc.) Act 2004(b);

“appeal” means appeal to the Asylum and Immigration Tribunal under section 82 or 83 of the 2002 Act or section 40A of the British Nationality Act 1981(c);

“appellant” means the appellant in the appeal to the Asylum and Immigration Tribunal;

“applicant” means the person applying to the High Court for an order for reconsideration under section 103A;

expressions used in this Order which are used in the 2002 Act have the same meaning in this Order as in the 2002 Act;

“filter provision” means paragraph 30 of Schedule 2 to the 2004 Act;

“order for reconsideration” means an order under section 103A(1) requiring the Asylum and Immigration Tribunal to reconsider its decision on an appeal; and

“Tribunal” means the Asylum and Immigration Tribunal established under section 81.

(2) Any reference in this Order to a period of time specified in –

(a) section 103A(3) for making an application for an order for reconsideration; or

(b) paragraph 30(5)(b) of Schedule 2 to the 2004 Act for giving notice under that paragraph,

includes a reference to that period as varied by any order under section 26(8) of the 2004 Act.

(3) Order 3, rule 2 applies to the calculation of periods of time specified in –

(a) section 103A(3); and

(b) paragraph 30(5)(b) of Schedule 2 to the 2004 Act.

(4) Except as provided otherwise, the provisions of this Order apply to an application for an order for reconsideration regardless of whether the filter provision has effect in relation to that application.

**Disapplication of certain rules to this Order**

2.—(1) Order 8, rule 3(1) shall not apply to applications by originating motion under this Order.

(2) Where the applicant was the appellant in the appeal to the Tribunal, Order 8, rule 2 and Order 10, rule 5 shall not apply to applications by originating motion under this Order.

**Application for order for reconsideration under section 103A of the 2002 Act**

3.—(1) An application for an order for reconsideration shall be commenced by originating motion in Form 11A and the notice of the motion is referred to in this Order as “notice of application”.

(2) Subject to paragraph (6), the notice of application under paragraph (1) shall be lodged –

(a) during any period in which the filter provision has effect, with the Tribunal; and

(b) at any other time, in the Central Office.

(3) The notice of application must state the grounds upon which it is contended that the Tribunal made an error of law and the reasons in support of those grounds.

(4) The notice of application lodged under paragraph (2) shall be accompanied by –

(a) the notice of the immigration, asylum or nationality decision to which the appeal related;

(b) any other document which was served on the appellant giving reasons for that decision;

(c) the grounds of appeal to the Tribunal;

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(a) 2002 c. 41

(b) 2004 c. 19

(c) 1981 c. 61

- (d) the Tribunal's determination on the appeal; and
  - (e) any other documents which were before the Tribunal which are material to the application.
- (5) Where the applicant –
- (a) was the respondent to the appeal; and
  - (b) was required under the Asylum and Immigration Tribunal (Procedure) Rules 2005(a) to serve the Tribunal's determination on the appellant,

the notice of application must contain a statement of the date on which and the means by which the determination was so served.

(6) Where the applicant is in detention under the Immigration Acts, an application for an order for reconsideration may be made –

- (a) in accordance with paragraphs (2) to (4); or
- (b) by serving it on the person having custody of him.

(7) Where an application is served in accordance with paragraph (6)(b), the person on whom the application is served shall –

- (a) endorse on the notice of application the date that it was served on him;
- (b) give to the applicant an acknowledgement in writing of receipt of the application; and
- (c) within 2 days, forward the notice of application and the accompanying documents –
  - (i) during any period in which the filter provision has effect, to the Tribunal; and
  - (ii) at any other time, to the Central Office.

#### **Application to extend time limit**

4. In application to extend the time limit for making an application under section 103A(1) shall –

- (a) be included in the notice of application lodged under rule 3;
- (b) set out the grounds on which it is contended that the application could not reasonably have been lodged within the time limit; and
- (c) be supported by an affidavit verifying the facts relied on.

#### **Applications under paragraph 30(5)(a) of Schedule 2 to the 2004 Act**

5.—(1) This rule applies during any period in which the filter provision has effect.

(2) Where the applicant receives a notice from the Tribunal that it –

- (a) does not propose to make an order for reconsideration; or
- (b) does not propose to allow the application to be made outside the relevant time limit,

and the applicant wishes the Court to consider the application, the applicant must lodge a notice in Form 11B in the Central Office in accordance with paragraph 30(5)(a) and (b) of Schedule 2 to the 2004 Act.

(3) Where the applicant –

- (a) was the respondent to the appeal; and
- (b) was required under the Asylum and Immigration Tribunal (Procedure) Rules 2005 to serve the Tribunal's determination on the appellant,

the notice lodged under paragraph (2) shall contain a statement of the date on which and the means by which the determination was so served.

(4) A notice which is lodged outside the period specified in paragraph 30(5)(b) of Schedule 2 to the 2004 Act must –

- (a) set out the grounds on which it is contended that the notice could not reasonably practicably have been lodged within that period; and
- (b) be supported by written evidence verified by affidavit.

(5) If the applicant wishes to respond to the reasons given by the member of the Tribunal for his decision that he –

- (a) does not propose to make an order for reconsideration; or
- (b) does not propose to allow the application for an order for reconsideration to be made outside the relevant time limit,

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(a) S.I. 2005/No. 203 (L. 1)

the notice lodged under paragraph (2) shall be accompanied by a written submission setting out the grounds upon which the applicant disputes any of the reasons given by the member of the Tribunal and giving reasons in support of those grounds.

#### **Written submissions**

6. Where an application is for an order for reconsideration of a decision of the Tribunal to grant an appeal, the Court may order that written submissions may be lodged by the other party within a time limit to be fixed by the Court.

#### **Determination of the application by the Court**

7.—(1) The Court shall determine an application for an order for reconsideration without a hearing.

(2) Unless it orders otherwise, the Court will not receive evidence which was not submitted to the Tribunal.

#### **Service of order**

8.—(1) The proper officer shall serve copies of the order of the Court on –

- (a) the applicant and the other party to the appeal, except where paragraph (2) applies; and
- (b) the Tribunal.

(2) Where the application relates, in whole or in part, to an asylum claim, the proper officer shall send a copy of the order of the Court to the Secretary of State.

(3) Where the proper officer sends an order to the Secretary of State under paragraph (2), the Secretary of State must –

- (a) serve the order on the appellant; and
- (b) immediately after serving the order, notify the Court of what date and by what method the order was served.

(4) The Secretary of State must provide the notification required by paragraph (3)(b) no later than 28 days after the date on which the proper officer sends him a copy of the order.

(5) If the Court does not receive the notification under paragraph (3)(b) within the time specified therein, the proper officer may serve the order on the appellant.

(6) Where paragraph (2) applies, the provisions of Order 66 rule 5(b) shall not apply until either the Secretary of State has given the Court the notification required by paragraph (3)(a) or until 28 days after the proper officer sent a copy of the order to the Secretary of State, whichever is earlier.”

## **SCHEDULE 2**

Rule 4

### **“ORDER 60A**

#### **REFERRAL TO THE COURT OF APPEAL FROM THE HIGH COURT UNDER SECTION 103C OF THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002**

#### **Interpretation**

1. In this Order –

“the Act” means the Nationality, Immigration and Asylum Act 2002(a) and a section referred to by number means the section so numbered in the Act;

“appeal” means the appeal to the Asylum and Immigration Tribunal under section 82 or 83 of the Act or under section 40A of the British Nationality Act 1981;

“applicant” means the party to the appeal who applied to the High Court for an order under section 103A; and

expressions used in this Order which are used in the 2002 Act have the same meaning in this Order as in the 2002 Act.

#### **Procedure on referral to the Court of Appeal**

2. Where an appeal to the Tribunal is referred to the Court of Appeal under section 103C –

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(a) 2002 c. 41

- (a) the High Court shall set out in its order the question of law raised by the appeal which is of such importance that the High Court considers it should be decided by the Court of Appeal; and
- (b) the proper officer shall –
  - (i) serve a copy of that order on the applicant, the other party to the appeal and the Tribunal; and
  - (ii) send to the Court of Appeal a copy of all the relevant documents which were lodged in the Central Office under Order 53A.
- 3. The Court of Appeal may direct the Tribunal to state a case for its consideration.
- 4. Where the Court of Appeal directs the Tribunal to state a case under rule 3, the Tribunal shall –
  - (a) state the case within the time limit specified by the Court of Appeal in its direction; and
  - (b) serve a copy of the case stated on the parties to the appeal at the same time as it sends the case stated to the Court of Appeal.
- 5. The referral to the Court of Appeal shall be determined in accordance with directions given by the Court of Appeal.
- 6. Order 61, rules 7 and 8 shall apply, with appropriate modifications, to referrals to the Court of Appeal under section 103C.”

**SCHEDULE 3**

Rule 7

“No. 11A

**Notice of application for order under s.103A of the Nationality, Immigration and Asylum Act 2002**

(O. 53A r. 3)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

20 , No.

IN THE MATTER OF

AND

IN THE MATTER OF

Take notice that the High Court of Justice in Northern Ireland, Queen’s Bench Division, at the Royal Courts of Justice, Chichester Street, Belfast will be moved by Counsel on behalf of A.B. for an order that a decision of the Asylum and Immigration Tribunal on an appeal under s.82/83\* of the Nationality, Immigration and Asylum Act 2002 be reconsidered.

\* Delete as appropriate

PART A

Full name of Applicant.....  
 Address .....  
 Date of Birth .....  
 Home Office Ref No. ....  
 AIT Ref No.....  
 Date of Tribunal decision on appeal.....  
 Deemed date of receipt of AIT decision (1) .....

And further take notice that the grounds of this application are as follows: (2)

PART B – Grounds for Extension of Time (3)

(I believe) (The applicant believes) that the facts contained under Part B in this application notice are true.

\* I am duly authorised by the applicant to sign this statement

Full name .....

Name of applicant's Solicitor's firm\* .....

Signed .....

\* Applicant/Applicant's Solicitor

\* Delete as appropriate

Signed .....

Applicant/Applicant's Solicitor

Dated.....

**Notes**

- (1) Where the applicant was the respondent to the appeal and was required to serve the notice of the Tribunal's determination on the appellant, state the date on which and the means by which the notice from the Tribunal was so served.
- (2) You must file with this notice –
  - (a) the notice of the immigration, asylum or nationality decision to which the appeal to the Tribunal related;
  - (b) any other document which was served on you giving reasons for that decision;
  - (c) the grounds of appeal to the Tribunal;
  - (d) the Tribunal's determination on the appeal;
  - (e) any other documents material to the application which were before the Tribunal; and
  - (f) written evidence in support of the grounds set out at Part A, where applicable.
- (3) If you are seeking to lodge this application outside the time limit specified in s103A(5)(b) of the 2002 Act, you must apply for an extension of time. Your grounds for extension of time should be set out in Part B and should be verified by affidavit.



No. 11B

Notice of application under paragraph 30(5)(b) of Schedule 2 to the Asylum and Immigration (Treatment of Claimants) Act 2004 for order under s.103A of the Nationality, Immigration and Asylum Act 2002.

(O. 53A r. 5)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

20 , No.

IN THE MATTER OF

AND

IN THE MATTER OF

Take notice that the High Court of Justice in Northern Ireland, Queen’s Bench Division, at the Royal Courts of Justice, Chichester Street, Belfast will be moved by Counsel on behalf of A.B. for an order under that a decision of the Asylum and Immigration Tribunal on an appeal under s.82/83\* of the Nationality, Immigration and Asylum Act 2002 be reconsidered following the refusal of reconsideration by the Tribunal.

\* Delete as appropriate

PART A

Full name of Applicant.....

Address .....

Date of Birth .....

Home Office Ref No. ....

Reporting Centre (if applicable).....

AIT Ref No.....

Date of Tribunal decision on appeal.....

Deemed date of receipt of AIT decision (1) .....

And further take notice that the grounds of this application are as follows: (2) and (3)

PART B – Grounds for Extension of Time (3)

(I believe) (The applicant believes) that the facts contained under Part B in this application notice are true.

\* I am duly authorised by the applicant to sign this statement

Full name .....

Name of applicant’s Solicitor’s firm\* .....

Signed .....

Applicant/Applicant’s Solicitor\*

Signed .....

Applicant/Applicant’s Solicitor

Dated.....

\* Delete as appropriate

Notes

(1) Where the applicant was the respondent to the appeal and was required to serve the notice of the Tribunal’s determination on the appellant, state the date on which and the means by which the notice from the Tribunal was so served.

(2) You must file with this application notice –

- (a) a copy of the Tribunal’s decision on your application for reconsideration;
- (b) any other document which was served on you giving reasons for that decision;
- (c) written evidence in support of the grounds stated in Part A, where applicable.

- (3) If you also wish to respond to the reasons given by the Tribunal for its decision that it does not propose to make an order for reconsideration, you should also set out in this Part the grounds upon which you dispute any of the reasons given by the Tribunal and give reasons in support of those grounds.
- (4) If you are seeking to lodge this application outside the time limit specified in paragraph 30(5)(b) of Schedule 2 to the 2004 Act, you must apply for an extension of time. Your grounds for extension of time should be set out in Part B and should be verified by affidavit.”

## **EXPLANATORY NOTE**

*(This note is not part of the Rules.)*

These Rules amend the Rules of the Supreme Court (Northern Ireland) 1980 (“the principal rules”) to prescribe the procedure relating to applications for statutory review and appeals under the Nationality, Immigration and Asylum Act 2002, as amended by the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

Rule 2 amends the Arrangement of Orders at the beginning of the principal rules to take account of the insertion of Order 53A and Order 60A.

Rule 3 amends the principal rules by providing for Order 1 to be amended so that applications under section 103A of the 2002 Act are assigned to the Queen’s Bench Division of the High Court.

Rule 4(a) inserts into the principal rules a new Order 53A which makes provision for applications to the High Court under section 103A of 2002 Act. Rule 4(b) inserts into the principal rules a new Order 60A which makes provision in relation to referrals to the Court of Appeal under section 103C of the 2002 Act.

Rule 5 amends Order 61 by replacing obsolete provisions with provisions relating to appeals under sections 103B and 103E of the 2002 Act.

Rule 6 makes consequential amendments to Order 94.

Rule 7 provides for new Forms 11A and 11B to be inserted into the Appendix to the principal rules.

Rule 8 specifies a number of transitional provisions to deal with applications which are pending to the Immigration Appellate Authority on commencement of the new procedures.

Schedule 1 inserts a new Order 53A into the principal Rules.

New Rule 1 contains interpretative provisions.

New Rule 2(1) disappplies Order 8 rule 3(1) of the principal rules (Form and Issue of notice of motion) to applications by originating motion under Order 53A. New Rule 2(2) disappplies Order 8, rule 2 (Notice of motion) and Order 10, rule 5 (Service of originating summons, petition and notice of motion) of the principal rules to applications by originating motion under Order 53A where the applicant was the appellant in the appeal to the Tribunal.

New Rule 3 makes provision in relation to the commencement of an application under section 103A of the 2002 Act for an order that the Asylum and Immigration Tribunal reconsiders its decision on an appeal.

New Rule 4 provides for applications for extension of time to make an application under section 103A of the 2002 Act.

New Rule 5 makes provision for an applicant to opt in to the High Court’s procedure for dealing with applications under section 103A of the 2002 Act when the ‘filter provision’ contained in paragraph 30 of Schedule 2 to the 2004 Act is in effect.

New Rule 6 makes provision for the High Court to order that written submissions, additional to those of the applicant, are lodged.

New Rule 7 provides for applications under section 103A of the 2002 Act to be determined without a hearing and that, unless it orders otherwise, the Court shall not receive evidence which was not submitted to the Tribunal.

New Rule 8 provides that the proper officer shall serve copies of the order of the High Court on the Tribunal. He will also serve a copy of the order on the applicant and on any other party to the appeal, except where the application relates to an asylum claim, in which case he shall send it to the Secretary of State who, in turn, shall serve the order on the applicant.

Schedule 2 inserts a new Order 60A into the principal rules.

New Rule 1 is an interpretative provision.

New Rule 2(a) provides that the High Court shall set out the question of law it considers should be decided by the Court of Appeal in its order referring an appeal to the Court of Appeal. New Rule 2(b) makes provision for the proper officer to serve copies of the High Court's order and to send to the Court of Appeal a copy of all the relevant documents which were lodged under Order 53A.

New Rule 3 provides that the Court of Appeal may direct the Tribunal to state a case for its consideration.

New Rule 4 provides that, when it is required by the Court of Appeal to state a case, the Tribunal shall do so within the time limit set by the Court of Appeal and shall serve a copy of the case stated on the parties to the appeal.

New Rule 5 provides that the referral to the Court of Appeal shall be determined in accordance with directions given by that Court.

New Rule 6 provides that Order 61, rules 7 (Signing of cases stated) and 8 (Copies of orders) shall apply to referrals to the Court of Appeal under section 103C of the 2002 Act.

Schedule 3 prescribes the content of new Forms 11A and 11B.

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