

**EXPLANATORY MEMORANDUM TO  
THE RULES OF THE SUPREME COURT (NORTHERN IRELAND)  
(AMENDMENT) 2005**

**2005 No. 146**

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs (Northern Ireland Court Service) and is laid before Parliament by Command of Her Majesty.
- 2. Description**
  - 2.1 The instrument amends the Rules of the Supreme Court (Northern Ireland) 1980 (“the principal Rules”) to take account of amendments to the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”), effected by the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (“the 2004 Act”).
  - 2.2 The Rules amend the principal Rules by –
    - (a) inserting a new Order 53A which prescribes the procedure to be followed when making an application to the High Court under section 103A of 2002 Act for an order that the Asylum and Immigration Tribunal (“AIT”) reconsider its decision on an appeal;
    - (b) inserting a new Order 60A which prescribes the procedure to be followed when the High Court refers an appeal to the AIT to the Court of Appeal under section 103C of the 2002 Act;
    - (c) amending Order 61 to prescribe the procedure to be followed on appeal from a decision of the AIT to the Court of Appeal under sections 103B and 103E of the 2002 Act; and
    - (d) making consequential amendments to the arrangement of Orders, Order 1, rule 11.
  - 2.3 The Rules also contain transitional provisions.
- 3. Matters of special interest to the Joint Committee on Statutory Instruments/Select Committee on Statutory Instruments**
  - 3.1 Rule 8 refers to transitional provisions contained in an order made under section 48(3)(a) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. This power was exercised in the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Commencement No. 5 and Transitional Provisions) Order 2005 [S.I. 2005 No. 565 (C.25)].
- 4. Legislative Background**
  - 4.1 The Rules are made principally in exercise of the powers conferred on the Supreme Court Rules Committee by section 55 of the Judicature (Northern

Ireland) Act 1978 (see also paragraph ix below). They amend the principal Rules.

- 4.2 The amendments are required to give effect to provisions in section 26 of the 2004 Act, which will be commenced on 4<sup>th</sup> April 2005.
- 4.3 New section 103A of the 2002 Act (as inserted by section 26 of the 2004 Act) 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.
- 4.4 New section 103B of the 2002 Act provides that, where the AIT has reconsidered an appeal, a party may bring a further appeal on a point of law to the Court of Appeal.
- 4.5 New section 103C of the 2002 Act allows the High Court, when considering a section 103A application, to refer the appeal to AIT to the Court of Appeal where it thinks that the appeal raises a question of law of such importance that it should be decided by that Court.
- 4.6 New section 103E of the 2002 Act provides that, where the AIT is made up of three or more legally qualified members, a party may bring an appeal on a point of law directly to the Court of Appeal.
- 4.7 Rule 4 introduces a new Order 53A and a new Order 60A.
- 4.8 Order 53A prescribes the procedure to be followed when an application is made to the High Court under section 103A of the 2002 Act. The new Order contains provisions in relation to: commencing an application; applying for an extension of the time limit for making the application; the determination of applications by the Court; and service of orders on the parties.
- 4.9 Section 103A(4)(a) of the 2002 Act (and paragraph 30(6) of Schedule 2 to the 2004 Act) provide that rules of court may specify days to be disregarded in calculating the time limits for an applicant to make an application for reconsideration and to notify the High Court that he wishes it to consider the application. New Order 53A, rule 1(3) does this by applying the general rule in Order 3, rule 2 of the principal Rules relating to calculation of time to these applications.
- 4.10 Paragraph 30 of Schedule 2 to the 2004 Act provides that, for a transitional period, all applications under section 103A of the 2002 Act shall be considered by a member of the AIT in the first instance. The procedure for consideration of the applications by an AIT member under this “filter provision” is dealt with in the procedure rules for the AIT. However, 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 Order 53A, rule 5 deals with the procedure for notifying the High Court in these instances.

- 4.11 Order 60A prescribes the procedure to be followed where the High Court refers an appeal to the Court of Appeal under section 103C of the 2002 Act. It provides for the High Court to set out the point of law it wishes to Court of Appeal to consider. The Court of Appeal may direct the AIT to state a case for its consideration and may give directions in relation to the determination of the case.
- 4.12 Rule 5 amends Order 61 of the principal Rules (appeals to the Court of Appeal by case stated) by replacing the existing rules 11 and 12, which are obsolete, with provisions regarding appeals under sections 103B and 103E of the 2002 Act. This approach is in accordance with usual procedures in Northern Ireland, whereby appeals on a question of law are dealt with by way of the ‘case stated’ procedure.
- 4.13 The amendments do not implement EU legislation.

## **5. Extent**

- 5.1 The instrument extends to Northern Ireland only.

## **6. European Convention on Human Rights**

- 6.1 Not applicable

## **7. Policy background**

- 7.1 The principal Rules make provision for the practice and procedure in the High Court and the Court of Appeal in Northern Ireland.
- 7.2 The 2004 Act contains measures to support the Government’s proposals for reform of the appeals system for immigration and asylum cases. These include the replacement of the Immigration Appellate Authority (IAA) with the single tier AIT, provisions for onward review of decisions of the AIT by the High Court and appeals from the AIT or referrals from the High Court to the Court of Appeal.
- 7.3. The amendments to the principal Rules form part of the package of secondary legislation supporting the new appeal structure. New rules for appeals to the AIT are set out in the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230), which replace the Immigration and Asylum Appeals (Procedure) Rules 2003. The amendments to the principal Rules are required to provide the framework under which the onward review and appeal procedures will operate.
- 7.4. The new Rules allow for service by the respondent to the appeal (e.g. Home Office) of all review decisions under section 103A of the 2002 Act, in cases where the application relates in whole or in part to an asylum claim. This is intended to support the Government’s intention of improved contact management in support of broader asylum policy objectives and mirrors similar provisions in the Asylum and Immigration Tribunal (Procedure) Rules

2005. To ensure that these rules do not operate unfairly in respect of appellants, the respondent is required to notify the High Court, within a 28 day period, of the details of the date and method by which it served the order. If the Court has not received such notice by the end of this period, there is provision for the Court to serve the order on the appellant.

## **8. Impact**

- 8.1 A Regulatory Impact Assessment has not been prepared for the Rules, as they have no impact on business, charities or voluntary bodies.

## **9. Contact**

- 9.1 Geraldine Fee at the Northern Ireland Court Service (telephone: 028 9041 2250); e-mail: [geraldinefee@courtsni.gov.uk](mailto:geraldinefee@courtsni.gov.uk)) can answer any queries about this instrument.