

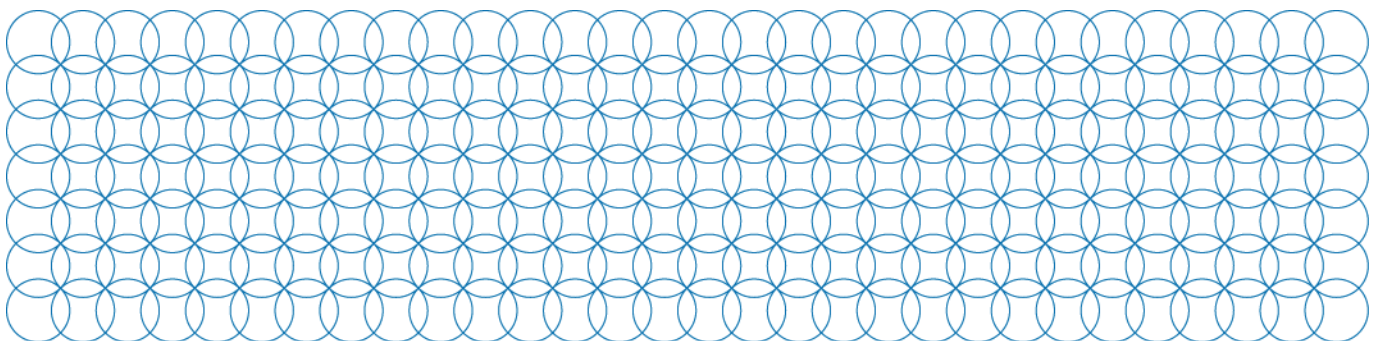


**The Asylum and Immigration
Tribunal (Procedure)
Amendment Rules 2008 and the
Asylum and Immigration
Tribunal (Fast Track Procedure)
(Amendment) Rules 2008**

Consultation Paper CP(L) 29/07

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**The Asylum and Immigration Tribunal
(Procedure) (Amendment) Rules 2008 and the
Asylum and Immigration Tribunal (Fast Track
Procedure) (Amendment) Rules 2008**

**A consultation produced by Tribunals Service, part of the Ministry of Justice.
It is also available on the Ministry of Justice website at www.justice.gov.uk**

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**The Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2008 and the
Asylum and Immigration Tribunal (Fast Track Procedure) (Amendment) Rules 2008**
Consultation Paper

Executive summary

Background and Remit

The Asylum and Immigration Tribunal (Procedure) Rules 2005 (“the 2005 Rules”) were introduced in April 2005 with the unified single-tier Tribunal. These rules govern the functioning of the asylum and immigration appeals system according to the provisions of the Nationality, Immigration and Asylum, Act 2002 (as amended by the Asylum and Immigration (Treatment of Claimants etc.) Act 2004). Their objective is to ensure that the proceedings before the Tribunal are handled as fairly, quickly and efficiently as possible. The Rules were amended in 2006 following a public consultation and amendments to two rules were made again in 2007 as a result of litigation.

Similarly, the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 and 2006 Amendment Rules govern the appellate system for the Fast Track asylum and immigration process. The Fast Track procedure commenced in April 2003 at Harmondsworth Removal Centre and is managed jointly by the Home Office and the Ministry of Justice. The detained Fast Track process focuses on asylum seekers with a reasonable prospect of early removal.

The Fast Track process aims to take cases through the decision process and any subsequent appeals that may be lodged within 28 days. Currently Home Office decisions on claims are made between 2 to 5 days after arrival in the detention centre. The applicant then has 2 working days to lodge any subsequent appeal. The appeal must be listed within 2 days of the respondent filing the relevant documents or as soon as practicable. Throughout this process, applicants are detained but legal representatives are on site.

Amendments to both sets of Procedure Rules are required due to practical concerns raised by our stakeholders in relation to some current rules and from provisions in the UK Borders Bill. In the main the proposals are relatively minor.

The draft AIT (Procedure) (Amendment) Rules 2008 will need to be looked at in tandem with the 2005 Rules and 2006 Rules which they would amend. The draft AIT (Fast Track Procedure) (Amendment) Rules 2008 will need to be looked at in tandem with the 2005 and 2006 Rules which they would amend.

New Provisions

Draft AIT (Procedure) (Amendment) Rules 2008

The amendments will be presented in greater detail throughout the rest of this consultation paper, but, in summary, the changes to the AIT's Procedure Rules will:

- require appellants to give reasons if the notice of decision is not included with the appeal form;
- include provisions relating to the Case Management Review process within the Procedure Rules;
- enable the Tribunal to deal with appeals on paper, without a hearing, where the representative is overseas;
- allow the Tribunal to consider appeals on paper where no notice of decision has been provided and no reasons given, or those reasons are not considered satisfactory by the Tribunal;
- clarify who may be appointed to continue an appeal after an appellant's death, by giving the Tribunal the power to appoint another person to do so;
- clarify the purpose of a reply in the reconsideration process to make it clear that the reply should be submitted in time for it to be considered when establishing whether there was a material error of law in the original determination;
- clarify that the content of the reply will be considered when determining whether an error of law is material in the reconsideration process;
- amalgamate the decision on funding from the Community Legal Service Fund for reconsiderations with the outcome of the appeal, creating a single determination.
- introduce a power enabling the President and Deputy Presidents, with the consent of the parties, to order that an appeal be reheard by the Tribunal instead of granting permission to appeal to the Court of Appeal;
- clarify that time limits cannot be extended retrospectively, except in circumstances the Tribunal considers exceptional;
- specify the circumstances in which evidence is considered as submitted in support of and at the time of making an application under the Points Based Immigration Scheme, as required by clause 19 of the UK Borders Bill;
- require every party who is aware that another party has changed their address to notify the Tribunal of this fact in writing;

Draft AIT (Fast Track Procedure) (Amendment) Rules 2008

One consequential amendment is required to the Fast Track Rules to ensure consistency with the Principal Rules (replication of the power enabling the Tribunal to deal with appeals on papers where the representative is overseas).

Three other amendments are also proposed to the Fast Track Rules which will:

- allow a short exception to the principle of continuous detention in Fast Track sites, allowing either five or ten days detention outside the fast track sites in exceptional circumstances;
- allow two or more appeals to be heard together where appropriate, bringing the Fast Track Rules in line with the Principal Rules;
- add Oakington Reception Centre to the list of specified sites in schedule 2 of the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005.

Introduction

This paper sets out for consultation draft amendments to the existing Asylum and Immigration Tribunal (Procedure) Rules 2005 and the AIT (Procedure) (Amendment) Rules 2006. It also seeks views on proposals to amend the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 and the AIT (Fast Track Procedure) (Amendment) Rules 2006.

The proposed amendments have arisen as a result of stakeholders' concerns with current rules and from provisions in the UK Borders Bill. Litigation earlier this year also prompted us to consider consulting on a possible amendment to Rule 19 of the 2005 Rules which deals with hearing appeals in the absence of a party. The Court of Appeal, in *FP (Iran) and MB (Libya) [2007] EXCA Civ 13* (23 January 2007), found that the rule as it was then drafted was capable of operating unfairly in some circumstances. Following that ruling, Rule 19 was amended to allow Immigration Judges to use their discretion in deciding whether to continue with a hearing in the absence of the appellant. Internal statistics show that the number of adjournments resulting from the appellant's non attendance at hearing remains low following the amendment. In preparing for this consultation we have considered other options to address the court's concerns, but we believe that the rule as amended in March is sufficient to prevent unfairness. If you disagree with this please include your comments with your consultation response.

Although in the main this consultation follows the Code of Practice on Consultation issued by the Cabinet Office, Bridget Prentice, Parliamentary Under Secretary of State has decided that the consultation is to last for six weeks due to the relatively minor and technical nature of the amendments. We consider the amendments will not be of significant interest to the public beyond the field of immigration advice and our key stakeholders.

This consultation is aimed at a limited number of stakeholders who have the specialised knowledge and experience to comment on the proposed rule changes and who have an interest in the rules and procedures of immigration and asylum appeals in the United Kingdom. To ensure that the consultation is as effective as possible it will be published on the Ministry of Justice website, the AIT website and in hard copy. We will also be meeting with our stakeholders during the consultation period to ensure we obtain their views.

The limited changes proposed in the draft rules will not, in our view, particularly affect any specific groups and are unlikely to lead to additional costs or savings for businesses, charities, the voluntary sector or the public sector. Consequently, no Impact Assessment accompanies this paper. If you disagree with this conclusion you are invited to send your responses as part of your overall response to this paper. An Equality Impact Assessment is included with this paper.

Copies of the consultation paper are being sent to:

- The President and Deputy Presidents of the Asylum and Immigration Tribunal, the Council of Immigration Judges and the Association of Members of the Asylum and Immigration Tribunal;
- The Law Society, the Bar Council, the Office of the Immigration Services Commissioner and other UK professional bodies;
- The Immigration Law Practitioners' Association (ILPA), the Immigration Advisory Service (IAS), the Refugee Legal Centre (RLC) and other representative and user groups;
- The Administrative Justice and Tribunals Council;
- The UK Representative of the United Nations High Commissioner for Refugees and the Refugee Council;
- The Legal Services Commission;
- The Home Office, UKvisas, and the Treasury Solicitors, the Scottish Executive, the National Assembly for Wales and the Northern Ireland Court Service.

However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

The proposals

The amended Procedure Rules

The Statutory Instrument setting out the draft amended Procedure Rules can be found at Annex A. The proposed amendments to the Fast Track Rules are at Annex B.

There will follow a rule-by-rule explanation of the amendments:

The Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2008

Rule 8: Form and contents of notice of appeal

Rule 8 as drafted in the 2005 Rules imposes a requirement to enclose the notice of decision with the notice of appeal “if reasonably practicable”. There is currently no requirement to give reasons for not including the notice of decision.

We propose to amend Rule 8 (2) to state that reasons must be given if the notice of decision is not included with the appeal form. We also propose to amend the appeal form to state this requirement, and provide space on the form to give those reasons.

Question 1: Do you support the proposed amendment outlined above, and the introduction of a requirement to give reasons for not including the notice of decision?

Rule 14: Case Management Reviews

At present the procedure for Case Management Reviews (CMRs) is largely outlined only in the Tribunal’s Practice Directions. We propose to include fuller reference to CMRs in the Procedure Rules to reflect the integral part they play in the asylum appeals process.

Question 2: Do you agree with the proposal to include provisions relating to the Case Management Review process within the Procedure Rules? If not please state why.

Rule 15: Method of determining appeal

The current wording of Rule 15 appears on its face to prevent the Tribunal from determining appeals without a hearing where the appellant has requested an oral hearing but his representative is based outside the UK. This is because Rule 15(2)(b) requires that a person be unrepresented in order to give a direction under that Rule.

The proposed amendment would allow the Tribunal to determine appeals without a hearing where the representative is based overseas.

We also propose to amend Rule 15 to allow us to consider appeals on the papers where no notice of decision has been included with the notice of appeal and no reasons have been given, or the reasons provided are not deemed satisfactory by the Tribunal.

Question 3: Do you support the introduction of a provision enabling the Tribunal to deal with appeals on papers where the representative is overseas? If not please give reasons why.

Question 4: Do you support the proposal to consider appeals on paper where no notice of decision has been provided and no reasons given, or those reasons are not deemed satisfactory by the Tribunal? If not please give reasons why.

Rule 17: Withdrawal of appeal / determining an appeal on the death of an appellant

In 2006 we amended Rule 17, enabling the Tribunal to direct that the appeal be either withdrawn or continued by the personal representative of the appellant following the appellant's death. In order to clarify who may continue that appeal, we are proposing to amend the rule in order to give the Tribunal the power to appoint another person to continue the appeal.

Question 5: Do you support the proposed amendment to Rule 17 2(A)(b)? If you have any alternative suggestions please elaborate.

Rule 30: Reply and Rule 31: Procedure for reconsideration of appeal

Parts of the reconsideration process have recently been the subject of litigation. As a result we propose to clarify the system by making the Tribunal and the parties' duties clear on the face of Rules 30 and 31.

We propose to redraft Rule 30 to make it clear on the face of the rule that the purpose of the reply is to allow the party not applying for review ("the other party") to argue that there was no error of law or no material error of law in the original determination and that it should therefore be upheld. The intention is

therefore to clarify at what stage in the proceedings the reply should be considered. The proposed amendment provides that the reply should be submitted in time for it to be considered when establishing whether there was a material error of law in the original determination. The proposed amendment does not require the other party to file a reply notice if he simply wishes to rely on the reasoning in the Tribunal's original determination.

We also propose to amend Rule 31 to make it clear that the content of the reply will be considered when determining whether an error of law is material. It will also explicitly state that the Tribunal will consider any other matter which it considers relevant alongside the section 103A application.

The proposed amendment to Rule 30 requires a consequential amendment to Rule 31 (5), which defines the term a 'material error of law'. This will simply require insertion of a reference to Rule 30.

Question 6: What is your view on the proposal to clarify the purpose of a reply under Rule 30? Do you think that the proposal achieves that aim? If not, please state why.

Question 7: What is your view on the proposal to clarify that the content of the reply will be considered when determining whether an error of law is material? Do you think that the proposal achieves that aim? If not, please state why.

Rule 33: Orders for funding on reconsideration

Section 8 of the Immigration, Asylum and Nationality Act 2006 established that the appellant's costs for preparation for reconsideration would be paid out of the Community Legal Service Fund. This led to an amendment to Rule 33 of the Tribunal's Procedure Rules in 2006, compelling the Tribunal to make a separate determination stating whether or not it orders payment of the appellant's costs.

We are now consulting on a further amendment to Rule 33, to amalgamate the funding order decision with the outcome of the appeal, creating a single determination. This would reduce the administrative burden on the Tribunal and the Legal Services Commission (LSC). The separate avenues of appeal against the two decisions will remain unchanged and information on funding outcomes will be shared with the LSC without compromising data protection obligations relating to appeal outcomes.

Question 8: Please give your views on the proposal to amalgamate the funding and appeal decision determinations.

Rule 36: Determining applications for permission to appeal to the appropriate appellate court

We are looking at ways to ensure that only appropriate cases proceed from the Tribunal to the higher courts.

We therefore propose to introduce a power enabling the President and Deputy Presidents, after having obtained the consent of the parties, to order that an appeal be reheard by the Tribunal instead of granting permission to appeal to the Court of Appeal. When making decisions on applications to appeal to the Court of Appeal, the President and Deputy Presidents would therefore be able to: grant permission, refuse permission; or set aside the Tribunal's determination and direct that the proceedings be reheard by the Tribunal. If parties do not agree to reconsideration by the Tribunal, a grant of permission will follow. It will only be possible for the Tribunal to exercise this power once in relation to an appeal.

Question 9: Do you agree with the proposal to introduce this power to the AIT Rules? Please explain your views.

Rule 45(4)(c): Directions

We propose to introduce greater clarity on the retrospective extension of time limits in Rule 45(4) (c) as a result of recent case law (see FL (China) [2005] UKAIT 00180). We propose to provide that time limits cannot be extended retrospectively, except in circumstances the Tribunal deems exceptional.

Question 10: Do you agree with the proposed amendment? If not please state why.

Rule 51: Evidence

New procedures under the Points Based Immigration Scheme will require applicants to submit all their supporting evidence at the time of their application. Clause 19 of the UK Borders Bill is intended to align the appeals system with this, by limiting the Tribunal to considering only evidence which was submitted in support of and at the time of making the original application. This only applies to appeals against a refusal of leave to enter or a variation of leave to enter or remain under a Points-based immigration rule.

Consequently the Tribunal needs to specify definitions of what constitutes evidence submitted in support of and at the time of making an application. For applications sent electronically, it is proposed that this be a) when evidence is submitted with the application form; or b) either 7 days after the date on which the application form was served on the Secretary of State, or the date on which documents in support of the application were first served on him, whichever is earlier.

Where the application is not sent electronically, but by another method, such as post, evidence will be considered as submitted in support of and at the time of making the original application when it is contained in or sent with the application form.

Question 11: What is your view on our proposal to amend Rule 51? Do you agree with the proposed definition of evidence submitted in support of and at the time of the original decision? Please explain why.

Rule 56: Address for service

At present the Rules require the party or representative concerned to advise the Tribunal of any change to their postal address. We propose to make an amendment to Rule 56, requiring the respondent to notify the Tribunal in writing if they are aware that the appellant has changed their address. This would help to ensure parties receive notification of their hearing, thus reducing the possibility of hearings going ahead in a party's absence or the need for case adjournments.

Question 12: Do you support the proposed amendment requiring the respondent to notify the Tribunal in writing if they are aware that the appellant has changed their address? If not please state why.

Asylum and Immigration Tribunal Fast-Track (Procedure) Rules

The power enabling the Tribunal to deal with appeals on papers where the representative is overseas will be replicated in the AIT Fast Track Procedure Rules for consistency. All other relevant proposals will automatically apply due to the provisions specifying the application of the Principal Rules to the Fast Track Rules. Additionally, we are aiming to make three more amendments to the Fast Track Procedure Rules. These are:

Rule 3 of the 2005 Fast Track Procedure Rules: Extending time limits for appellants detained outside Fast Track sites (in exceptional circumstances)

Currently Rule 5 (1) of the Fast Track Rules ceases to apply if claimants are not kept in continuous detention at the sites specified in schedule 2 of the Fast Track Rules. These are: Campsfield House Immigration Removal Centre, Colnbrook House Immigration Removal Centre, Harmondsworth Immigration Removal Centre and Yarls Wood Immigration Removal Centre. If for any reason appellants have to be moved from a Fast track detention centre to a centre not specified in the Fast Track Rules, the Fast Track process automatically ceases to apply.

We propose to amend the Fast Track Rules to allow a short exception to the principle of continuous detention in Fast Track sites, allowing either five or ten days detention outside the fast track sites in exceptional circumstances such as centres being rendered unfit for residence following disturbances.

Question 13: Do you support the proposal to allow claimants to be held in a site not specified in Schedule 2, in exceptional circumstances, without the Fast Track process ceasing to apply? Please give reasons.

Question 14: Do you believe the detention period allowed outside Fast Track sites should be five days or ten?

Rule 6: Application of Part 2 of the Principal Rules

The Fast Track Procedure Rules as currently drafted do not allow for the hearing of two or more appeals together as Rule 20 of the Principal Rules is not listed in Rule 6 of the Fast Track Rules (Application of Part 2 of the Principal Rules). The proposed amendment aims to bring the Fast Track Rules into line with the Principal Rules, to allow two or more appeals to be heard together.

Question 15: Do you support the amendment to bring the Fast Track Rules in line with the Principal Rules so that two or more appeals can be heard together where appropriate? If not, please explain why.

Schedule 2: Specified Places of Detention

The proposed amendment seeks to add Oakington Reception Centre in Longstanton, Cambridgeshire to the list of specified sites in schedule 2 of the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005. This inclusion will allow the Fast Track process to be applied to those claimants detained at that centre, providing extra capacity for Fast Track cases and reducing the need to use other reception centres.

Question 16: Do you agree to the proposal to add Oakington Reception Centre to the list of specified sites? If not please state why.

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

Question 1: Do you support the proposed amendment, and the introduction of a requirement to give reasons for not including the notice of decision?

Question 2: Do you agree with the proposal to include provisions relating to the Case Management Review process within the Procedure Rules? If not please state why.

Question 3: Do you support the introduction of a provision enabling the Tribunal to deal with appeals on papers where the representative is overseas? If not please give reasons why.

Question 4: Do you support the proposal to consider appeals on paper where no notice of decision has been provided and no reasons given, or those reasons are not deemed satisfactory by the Tribunal? If not please give reasons why.

Question 5: Do you support the proposed amendment to Rule 17 2(A)(b)? If you have any alternative suggestions please elaborate.

Question 6: What is your view on the proposal to clarify the purpose of a reply under Rule 30? Do you think that the proposal achieves that aim? If not, please state why.

Question 7: What is your view on the proposal to clarify that the content of the reply will be considered when determining whether an error of law is material? Do you think that the proposal achieves that aim? If not, please state why.

Question 8: Please give your views on the proposal to amalgamate the funding and appeal decision determinations.

Question 9: Do you agree with the proposal to introduce this power to the AIT Rules? Please explain your views.

Question 10: Do you agree with the proposed amendment? If not please state why.

Question 11: What is your view on our proposal to amend Rule 51? Do you agree with the proposed definition of evidence submitted in support of and at the time of the original decision? Please explain why.

Question 12: Do you support the proposed amendment requiring the respondent to notify the Tribunal in writing if they are aware that the appellant has changed their address? If not please state why.

Question 13: Do you support the proposal to allow claimants to be held in a site not specified in Schedule 2, in exceptional circumstances, without the Fast Track process ceasing to apply? Please give reasons.

Question 14: Do you believe the detention period allowed outside Fast Track sites should be five days or ten?

Question 15: Do you support the amendment to bring the Fast Track Rules in line with the Principal Rules so that two or more appeals can be heard together where appropriate? If not, please explain why.

Question 16: Do you agree to the proposal to add Oakington Reception Centre to the list of specified sites? If not please state why.

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

How to respond

Please send your response by 16th December 2007 to:

Noreen Razvi
c/o Ross Nisbet
Asylum and Immigration Tribunal
PO Box 6787
Leicester LE1 6ZX

Tel: 0845 600 0877 (AIT Customer Service Centre)
Email: ait.rules.consultation@tribunals.gsi.gov.uk

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <http://www.justice.gov.uk/index.htm>.

Publication of response

A paper summarising the responses to this consultation will be published in January 2008. The response paper will be available on-line at <http://www.justice.gov.uk/index.htm>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

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Consultation Paper

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Equality Impact Assessment - Initial Screening


<p>A. Identify objectives and outcomes</p>	<p>1. Name of the legislation, policy or service being assessed</p> <p>The Asylum and Immigration Tribunal (AIT) (Procedure Amendment) Rules 2008 and the Asylum and Immigration Tribunal (Fast Track) (Procedure) Rules 2008.</p> <p>2a. What is the aim, objective or purpose of the policy, legislation or service and who will benefit from it? NB The Treasury Green Book provides useful guidance on setting objectives http://intranet.dca.gsi.gov.uk/reports/policy_makers/green_book.htm</p> <p>In summary, the purpose of the amendments is to clarify existing rules and procedures, and to incorporate case law into the AIT's Principal Rules and Fast Track Procedure Rules. The amendment to Rule 51 of the Principal Rules is required as a result of primary legislation (the UK Borders Bill). The proposed changes will benefit Tribunal users by making the Tribunal's duties clearer and clarifying what is required of parties. Certain amendments will provide the Tribunal greater flexibility in carrying out its duties. A Rule by Rule summary of the aim and benefits of the amendments is given in the 'proposals' section of the consultation paper which this Equality Impact Assessment accompanies.</p> <p>2b. What are the intended outcomes? Before you answer, consider:</p> <ul style="list-style-type: none"> • Are the outcomes specific/measurable? • How will you monitor progress towards these outcomes? • Do the outcomes support or hinder other policies or objectives within the MOJ? • If they hinder other work is this justifiable <p>The intended outcomes are as outlined above. In the majority of cases outcomes will be assessed on the basis of anecdotal evidence from stakeholders and Tribunal users as it is not possible or not applicable to obtain statistical evidence. Statistical data will be used to measure the success of proposed amendments where it is possible to obtain it, e.g. the proposed amendment to Rule 36, (determining applications for permissions to appeal to the appellate courts), will be monitored in this way.</p> <p>The outcomes will not hinder other policies or objectives within the Ministry of Justice. The proposals are designed to assist the appeals process and should therefore contribute to improving the AIT's performance against its primary and secondary performance targets. The proposals should also assist the AIT's contribution towards the joint target with the Home Office for the processing of asylum applications (By the end of 2011, grant or remove 90% of new asylum claimants within 6 months.)</p>
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<p>3. Do you share responsibility for this legislation, policy or service with another Government Department or organisation (e.g. criminal justice partners). If so, who defines it and who implements it?</p> <p>The legislation is owned solely by the AIT as it relates to the Tribunal's Rules of Procedure.</p>
<p>4. Who are the key stakeholders in relation to the legislation, policy or service? What outcomes do they want? Does the list of stakeholders include representatives from all relevant/interested groups of people? If not, why not?</p> <p>Key stakeholders are as follow and include representatives from all interested groups:</p> <ul style="list-style-type: none"> • AIT judiciary; the Council of Immigration Judges and the Association of Members of the Asylum and Immigration Tribunal; • The Law Society, the Bar Council, the Office of the Immigration Services Commissioner and other UK professional bodies; • The Immigration Law Practitioners' Association (ILPA), the Immigration Advisory Service (IAS), the Refugee Legal Centre (RLC) and other representative and user groups; • The Council on Tribunals (The Administrative Justice and Tribunals Council; as of 1st November); • The UK Representative of the United Nations High Commissioner for Refugees and the Refugee Council; • The Legal Services Commission; • The Home Office, UKvisas, and the Treasury Solicitors, the Scottish Executive, the National Assembly for Wales and the Northern Ireland Court Service. <p>All stakeholders seek fair, effective and timely decision making for asylum and immigration appeals. Also that tribunal proceedings are accessible to appellants.</p>
<p>B. Analyse existing evidence and collect further data</p>
<p>5. Please list the data used to facilitate the initial screening of the legislation, policy or service. For example, statistics, survey results, complaints analysis, consultation documents, comparative policies from internal and external sources and other Government Departments</p> <p>The initial screening has been based on anecdotal evidence from the Home Office and AIT staff and judiciary.</p>
<p>6. Are there gaps in information which require further research or consultation, or that may require additional information to be collected as part of the monitoring and review process?</p> <p>The majority of evidence used is anecdotal. No adverse impacts have been identified as resulting from the proposed amendments. However we will be holding a full public consultation and stakeholders can highlight any adverse impacts of the policies at this time.</p>

C. Assess the impact of the legislation, policy or service				
7. Is there any evidence that different groups of people have different participation rates for the legislation, policy or service (eg men do not access the services provided by the domestic violence courts in the same way that women do)?				
	Yes	No	Not Known	
Age		X		Racial Group
Caring Responsibilities		X		Religion or Belief
Disability		X		Sexual orientation
Gender		X		
Please set out the evidence on which you based this conclusion: There are currently no participation rates for existing procedures, and the proposed amendments are to clarify the existing procedures.				
8. Are there barriers that might inhibit access to the benefits of the legislation, policy or service? Consider:				
	<ul style="list-style-type: none"> Is anyone excluded from enjoying the benefits of the policy? Will information be available in alternative formats (http://intranet.dda/alt.htm) or languages (e.g. Welsh language)? Will disabled people be able to access the service? 			
	Yes	No	Not Known	
Age		X		Racial Group
Caring Responsibilities		X		Religion or belief
Disability		X		Sexual Orientation
Gender		X		
Please indicate what the barriers may be or if there are no barriers, please set out the evidence on which you based this conclusion?				
We do not anticipate any barriers to users benefiting from the changes in the Procedure Rules. The proposed amendments are largely minor and technical. The Tribunal already caters for a diverse range of users (e.g. those with disabilities, those of different religious beliefs) and the proposed amendments will not affect these policies.				

9. Is there any evidence that different groups have or are likely to have different needs, experiences, issues and priorities in relation to the current or proposed legislation, policy or service?								
	Yes	No	Not Known	Racial Group	Yes	No	Not Known	
Age			X				X	
Caring Responsibilities			X	Religion or Belief			X	
Disability			X	Sexual orientation			X	
Gender			X				X	
Please set out the evidence on which you based this conclusion:								
As the majority of the proposals are purely technical it is unlikely that different groups will be affected differently by them. However, the proposals in relation to the Fast Track Rules may have differing impacts on different groups and the public consultation we are about to undertake will provide groups with the opportunity to respond on these points.								
10. Is the legislation, policy or service sensitive to the needs and cultures of different groups of people?								
	Yes	No	Not Known	Racial group	Yes	No	Not Known	
Age			X				X	
Caring Responsibilities			X	Religion or Belief			X	
Disability			X	Sexual orientation			X	
Gender			X				X	
Please set out the evidence on which you based this conclusion								
As above, number 9.								

11. Have previous consultations with relevant stakeholder groups, organisations or individuals indicated that legislation, policies or service of this type create exclusion or hold specific challenges for them?					
	Yes	No	Not Known	Yes	No
Age		X			X
Caring Responsibilities		X		Racial Group Religion or Belief	X
Disability		X		Sexual Orientation	X
Gender		X			X
Please comment on the type of current or potential challenges:					
We do not anticipate any adverse affects from the proposed amendments. However, we are about to have a public consultation on the proposals and consultees will be invited to provide Equality and Diversity feedback if they choose, with their consultation responses.					
12. Is there any evidence that this legislation, policy or service could directly or indirectly discriminate against any group of people?					
	Yes	No	Not Known	Yes	No
Age		X			X
Caring Responsibilities		X		Racial Group Religion or Belief	X
Disability		X		Sexual Orientation	X
Gender		X			X
Please set out the evidence on which you base these conclusions					
We do not expect the proposals to discriminate either directly or indirectly against any groups as they are largely technical. However the forthcoming public consultation will provide groups with the opportunity to respond with any concerns they have regarding discrimination as a result of the proposals.					
13. Does the policy result in positive impacts, if so please list them here? For example, does it have a beneficial effect on a group of people or improve equal opportunities and/or relationships between different groups of people?					
As above, the proposals are largely technical and the benefits we expect relate to the improvement of the appeals process as a whole, rather than specific diversity related issues.					

<p>14. What measures can be taken to promote equality of opportunity by altering the legislation, policy or service, or by working with others, for examples, partners? Is there any evidence of missed opportunities to promote equality of opportunity, if so please provide details?</p> <p>As above, the proposals are largely technical and the benefits we expect relate to the improvement of the appeals process as a whole, rather than specific diversity related issues.</p>	<p>YES/NO</p>
<p>15. Is a full equality impact assessment required? If not, please explain why not.</p> <p>No. The amendments are largely minor technical ones, and are still proposals at this stage. We will be holding a public consultation during which stakeholders can give feedback on the proposals and diversity impacts. Following the consultation, and once the amendments are finalised we may undertake another EIA to reassess the situation if necessary.</p>	<p>16. If a full equality assessment is not required what data is required in the future to ensure effective monitoring? How and when will the policy be monitored and reviewed?</p> <p>The majority of assessment will be based on anecdotal evidence from stakeholders and Tribunal users as it is not possible or not applicable to obtain statistical evidence. Where it is possible to obtain statistical data this will be used. The effect of the amendments finally incorporated will be assessed on an on going basis.</p>
<p>17. Any other comments on the policy and/or initial screening process:</p> <p>Name (must be grade 5 or above): Martin John</p> 	<p>Department: Judicial Office and Business Development Division</p> <p>Date: 17.10.07</p>

The consultation criteria

The six consultation criteria are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the time scale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out an Impact Assessment if appropriate.

These criteria must be reproduced within all consultation documents.

Consultation Co-ordinator contact details

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact Laurence Fiddler, Ministry of Justice Consultation Co-ordinator, on 020 7210 2622, or email him at consultation@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

**Laurence Fiddler
Consultation Co-ordinator
Ministry of Justice
5th Floor Selborne House
54-60 Victoria Street
London
SW1E 6QW**

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under **the How to respond** section of this paper at page 17.

Annex A: The Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2008

STATUTORY INSTRUMENTS

2008 No. 0000 (L.0)

IMMIGRATION

The Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2008

Made - - - - - ***

Laid before Parliament ***

Coming into force - - - - - 3rd March 2008

The Lord Chancellor makes these Rules in exercise of the powers conferred by sections 106(1) to (3) and 112(3) of the Nationality, Immigration and Asylum Act 2002(a) and section 40A(3) of the British Nationality Act 1981(b).

He has consulted the Administrative Justice and Tribunals Council in accordance with section 8 of the Tribunals and Inquiries Act 1992.(c)

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2008 and come into force on 3rd March 2008.

(2) In these Rules a reference to a rule by number alone is to the rule so numbered in the Asylum and Immigration Tribunal (Procedure) Rules 2005(d).

Amendments to the Asylum and Immigration Tribunal (Procedure) Rules 2005

2. In rule 8, for paragraph (2) substitute—

“(2) The notice of appeal must be accompanied by—

(a) the notice of decision against which the appellant is appealing; or

(b) where it is not practicable to include the notice of decision, the reasons why it is not.”.

(a) 2002 c.41. Section 106 was amended by paragraph 21 of Schedule 2 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19) and by section [19] of the UK Borders Act 2007 (c[]).

(b) 1981 c.61. Section 40A was inserted by section 4(1) of the Nationality, Immigration and Asylum Act 2002 (c.41) and amended by paragraph 4 of Schedule 2 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19).

(c) 1992 c.53. The Administrative Justice and Tribunals Council has replaced the Council on Tribunals under section 44 of the Tribunals, Courts and Enforcement Act 2007 (c.15).

(d) S.I. 2005/230. Relevant amending instruments are S.I. 2005/569 and 2006/2788.

3. After rule 14, insert—

“Case management review hearings

14A.—(1) This rule applies to appeals—

- (a) which relate, in whole or in part, to an asylum claim;
- (b) in which the appellant has a right of appeal while he is in the United Kingdom; and
- (c) in which the appellant is in the United Kingdom.

(2) Unless it directs otherwise, the Tribunal shall hold a case management review hearing at which it shall give directions relating to the conduct of the appeal.

(3) Each party must file with the Tribunal and serve on the other party a draft of any directions which the party wishes the Tribunal to make at the case management review hearing.

(4) The appellant must file with the Tribunal and serve on the respondent particulars of—

- (a) any application for permission to vary his grounds of appeal;
- (b) any amendment to the reasons in support of his grounds of appeal; and
- (c) any witness whom he wishes to call at a hearing or on whose written statement or report he proposes to rely on at a hearing.

(5) The respondent must file with the Tribunal and serve on the respondent particulars of any amendment which he has made or which he proposes to make to the notice of the decision to which the appeal relates or to any other document served on the appellant, giving reasons for the amendment.”

4. In rule 15(2), after sub-paragraph (b) insert—

- “(ba) the appellant is outside the United Kingdom and his representative’s address for service is outside the United Kingdom;
- (bb) the person giving notice of appeal fails to comply with rule 8(2) or the Tribunal does not consider that the reasons given under rule 8(2)(b) are satisfactory;”

5. In rule 17(2A)(b), for “the personal representative of the appellant may continue” substitute “it may appoint a person to continue”.

6. In rule 30(1), for “he must, if he contends that the Tribunal should uphold the initial determination for reasons different from or additional to those given in the determination” substitute—

“he may, if he contends that—

- (a) there was no error of law in the decision on the appeal; or
- (b) there was an error of law in the decision on the appeal, but it was not material;”

7. In rule 31—

(a) after paragraph (2) insert—

“(2A) Where the Tribunal is considering its decision under paragraph (2)(a), it must take into account—

- (a) the section 103A application;
- (b) any reply; and
- (c) any other matter which it considers relevant.”;

(b) in paragraph (5) after “In” insert “rule 30 and”.

8. In rule 33—

- (a) in paragraph (2), for “make a separate determination (“the funding determination”)” substitute “include in its determination of the reconsidered appeal a provision”;
- (b) in paragraph (3) omit “funding”;
- (c) in paragraph (4)—
 - (i) omit “(the principal determination)”;
 - (ii) for “the funding determination” substitute “it”;
 - (iii) in each of (a) and (b) omit “principal”.

9. In rule 36—

- (a) in paragraph (1), after “by” insert “the President or a Deputy President or”;
- (b) for paragraphs (2) and (3) substitute—

“(2) The Tribunal may—

 - (a) grant permission to appeal;
 - (b) refuse permission to appeal; or
 - (c) subject to paragraph (3), set aside the Tribunal’s determination and direct that the proceedings be reheard by the Tribunal.

(3) The power in paragraph (2)(c) may be exercised only—

 - (a) by the President or a Deputy President;
 - (b) with the agreement of the parties; and
 - (c) where there has been no previous exercise of the power in the proceedings.”.

10. In rule 45(4)(c), after “party” insert “(including, where the Tribunal considers that there are exceptional reasons for so doing, the extension of a time limit which has expired)”.

11. In rule 51, after paragraph (6) insert—

- “(6A) For the purposes of section 85(4)(a) of the 2002 Act, evidence is to be treated as submitted in support of and at the time of an application—
- (a) where the application is sent electronically, when it is—
 - (i) contained in the application form; or
 - (ii) served on the Secretary of State on the earlier of the date 7 days after the date on which the application form was served on him or the date on which documents in support of the application were first served on him; or
 - (b) where the application is sent by another method, when it is contained in or sent with the application form.”.

12. In rule 56, after paragraph (2) insert—

- “(3) Where the respondent knows that the appellant has changed the address referred to in paragraph (1), he must notify the Tribunal in writing of the new address.”.

Signed by authority of the Lord Chancellor

Date

Name
Parliamentary Under Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Asylum and Immigration Tribunal (Procedure) Rules 2005 (S.I. 2005/230), which prescribe the procedures to be followed for appeals and applications to the Asylum and Immigration Tribunal. The amendments—

require the appellant to give reasons where he fails to include with the notice of appeal the notice of decision to which the appeal relates and permit the Tribunal to determine the appeal without a hearing where the appellant fails to do so or where his reasons are unsatisfactory (rules 2 and 4);

make express provision for the existing practice of case management review hearings in certain asylum appeals (rule 3);

permit the Tribunal to hear an appeal without a hearing where the appellant is outside the United Kingdom and he has an overseas representative (rule 4);

clarify the rule on the continuation of proceedings on the death of the appellant (rule 5);

clarify the nature of a reply and provide that it is to be considered (and what else is to be considered) when the Tribunal is deciding whether the original Tribunal made a material error of law (rules 6 and 7);

provide that a determination relating to public funding in reconsideration cases is no longer to be separate from the substantive determination (rule 8);

empower the Tribunal, in certain circumstances, to set aside a determination and direct that proceedings be reheard (rule 9);

empower the Tribunal to extend time limits retrospectively in exceptional circumstances (rule 10);

make provision about the circumstances in which evidence is to be treated as submitted in support of, and at the time of making, certain applications, for the purposes of section 85A(4)(a) of the Nationality, Immigration and Asylum Act 2002 (as inserted by section [19] of the UK Borders Act 2007) (rule 11);

require the respondent to notify the Tribunal when he knows of the appellant's change of address (rule 12).

Annex B: The Asylum and Immigration Tribunal (Fast Track Procedure) (Amendment) Rules 2008

STATUTORY INSTRUMENTS

2008 No. XXXX (L.XX)

IMMIGRATION

The Asylum and Immigration Tribunal (Fast Track Procedure) (Amendment) Rules 2008

Made - - - - - ***

Laid before Parliament ***

Coming into force - - - - - 3rd March 2008

The Lord Chancellor, in exercise of the powers conferred by sections 106(1) to (3) and 112(3) of the Nationality, Immigration and Asylum Act 2002(a), and section 40A(3) of the British Nationality Act 1981(b), after consulting the Administrative Justice and Tribunals Council in accordance with section 8 of the Tribunals and Inquiries Act 1992(c), makes the following Rules:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Asylum and Immigration Tribunal (Fast Track Procedure) (Amendment) Rules 2007, and shall come into force on 3rd March 2008.

(2) In these Rules a reference to a rule or Schedule by number alone is to the rule or Schedule so numbered in or to the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005(d).

Amendments to the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005

2. In rule 3(5), after sub-paragraph (b) insert—

“(c) where exceptional circumstances arise which make it impossible to continue to detain that party at a place specified in that Schedule—

- (i) being transported from such a place to a place of detention which is not so specified;
- (ii) being detained there for no more than [5][10] days; and
- (iii) being transported from that place to a place of detention specified in that Schedule

provided that the party remains in detention under the Immigration Acts throughout.”.

(a) 2002 c.41. Section 106 was amended by paragraph 21 of Schedule 2 to the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 (c.19).
(b) 1981 c.61. Section 40A was inserted by section 4(1) of the Nationality, Immigration and Asylum Act 2002 (c.41) and amended by paragraph 4 of Schedule 2 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19).
(c) 1992 c.53. The Administrative Justice and Tribunals Council has replaced the Council on Tribunals under section 44 of the Tribunals, Courts and Enforcement Act 2007 (c.15).
(d) S.I. 2005/560, to which there are amendments not relevant to these Rules.

The Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2008 and the Asylum and Immigration Tribunal (Fast Track Procedure) (Amendment) Rules 2008
Consultation Paper

3. In rule 6(f), for “19” substitute “20”.

4. In rule 13—

(a) re-number the existing provision paragraph (1);

(b) after paragraph (1) insert—

“(2) The Tribunal may consider an appeal without a hearing where the person giving notice of appeal fails to comply with rule 8(2) of the Principal Rules or the Tribunal does not consider that the reasons given under rule 8(2)(b) of those Rules are satisfactory.”.

5. In Schedule 2, after “Colnbrook House Immigration Removal Centre, Harmondsworth, Middlesex”, insert “Oakington Reception Centre, Longstanton, Cambridgeshire”.

Signatory text

Address
Date

Name
Parliamentary Under Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 (S.I. 2005/560) (“the Principal Rules”). The Principal Rules provide for a Fast Track Procedure for appeals to the Asylum and Immigration Tribunal, where the appellant is detention under the Immigration Acts at a location specified in Schedule 2 to the Principal Rules.

Rule 2 provides that where, owing to exceptional circumstances, a party is temporarily removed from a detention centre specified in Schedule 2 to the Principal Rules and he is returned to such a centre within [5][10] days, he will be deemed to have satisfied a condition that he has been continuously in detention for the purposes of the Principal Rules, and the Fast Track Procedure will continue to apply to him.

Rule 3 provides that the provision on hearing two or more appeals together is to apply to the Fast Track Procedure.

Rule 4 empowers the Tribunal to consider an appeal without a hearing where the person giving notice of appeal fails to include with the notice the notice of decision to which the appeal relates or the Tribunal considers that the reasons for not including it are unsatisfactory. This follows amendments to rules 8 and 15 of the Principal Rules by the Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2008 (S.I. 2008/[]).

Rule 5 inserts into Schedule 2 of the Principal Rules an additional immigration reception centre, at Oakington, Cambridgeshire, so that the Fast Track Procedure can apply to a person who is detained at that centre.

An impact assessment has not been produced for this instrument as it has no impact on the costs of business, charities or voluntary bodies.

