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30 March 2005

Dear Sir or Madam

### **Implementation of the New Asylum and Immigration Appeals Tribunal**

As you know the new Asylum and Immigration Tribunal (AIT) comes into force on Monday 4<sup>th</sup> April 2005. The Consultation paper 'Asylum and Immigration Tribunal – Procedure Rules and Judicial Titles Order' was published in October last year, and as part of the consultation, DCA held a number of seminars around the country with external bodies and stakeholders to explain the new processes and to get feedback on the proposals. Following this and responses to the consultation paper, a number of changes were made to the rules, and the finalised rules were laid before Parliament in February.

To explain how the new Procedure Rules and Legal Aid Regulations will impact on appeals, onward appeal rights, and Legal Aid, I am sending you a copy of The Asylum and Immigration Tribunal - A Practical Guide to Procedure Rules and Legal Aid Regulations.

I hope you will find this document useful but if you have any questions, please contact me at the address given above.

**Andy Moseley**  
Project Manager,  
Asylum and Immigration Tribunal Implementation



INVESTOR IN PEOPLE



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ASYLUM AND IMMIGRATION  
(TREATMENT OF CLAIMANTS, ETC) ACT 2004

THE ASYLUM AND IMMIGRATION TRIBUNAL - A  
PRACTICAL GUIDE TO PROCEDURE RULES AND  
LEGAL AID REGULATIONS

## **THE ASYLUM AND IMMIGRATION TRIBUNAL – PRACTICAL GUIDE TO PROCEDURE RULES AND LEGAL AID REGULATIONS**

The new Asylum and Immigration Tribunal (AIT) will commence on the 4 April 2005. This guidance note is intended to explain in practical terms how the new Procedure Rules and Legal Aid Regulations will impact on appeals, onward appeal rights, and legal aid.

The guidance covers;

- Lodging appeals;
- new onward rights of appeal;
- permission to appeal and Statutory Review applications made under Nationality, Immigration and Asylum Act 2002;
- Service of appeal determinations; and
- changes to legal aid provisions in England and Wales and Northern Ireland.

The guidance does not cover;

- Listing arrangements at the Asylum and Immigration Tribunal;
- How the Tribunal will deal with notices of appeal received after the deadline to appeal expires; and
- any changes to legal aid provisions in Scotland.

Details on where you can obtain further information on these, and other areas, are given in the contacts section at the end of this guidance.

Except where shown on page 7 of the guide, references to the High Court or Court of Appeal should be taken as including references to the High Court in Northern Ireland and the Court of Appeal in Northern Ireland.

## LODGING APPEALS

The appeal forms you should use, and where you need to send notice of appeals to will depend upon when the decision on the application was served.

- Where the decision was served prior to 4<sup>th</sup> April, you should lodge the appeal with the respondent using the old appeal forms contained in the 2003 Procedure Rules.
- Where the decision was served on or after the 4<sup>th</sup> April you should lodge the appeal with the Tribunal using the new appeal forms contained in the 2005 AIT Procedure Rules<sup>1</sup>.

Appeals lodged with the Tribunal must be sent to the **Asylum and Immigration Tribunal at Tribunals Group Customer Service Centre, PO Box 7866, Loughborough, LE11 2XZ (fax to: 01509 221 699).**

The correct appeal form will have been sent out with the notice of decision. Therefore if you are unsure when the decision was served, you should find out whether a new or old appeal form was sent with the notice of decision.

You should then lodge your appeal with the Tribunal if a new appeal form was sent, or with the respondent if an old appeal form was sent.

New appeal forms will also be available to download from the AIT website at [www.ait.gov.uk](http://www.ait.gov.uk).

Please remember that the date to note for deciding which form to use is the date the decision was served and not the date the decision was made. For example, if the decision was made in March, but not served until on or after April 4, you should use the new appeal forms and send your appeal to the Tribunal.

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<sup>1</sup> In cases where the appellant is detained or is outside the United Kingdom and wishes to appeal against a decision of an entry clearance officer, you may lodge the notice of appeal with either the Tribunal or the person having custody of the appellant or entry clearance officer, as appropriate. Appeals must not be lodged in more than one location.

## NEW ONWARD RIGHTS OF APPEAL

### 1. REVIEW APPLICATIONS

For appeals determined on or after April 4, applications for Permission to appeal to the Tribunal and for Statutory Review under Section 101 of the 2002 Act, have been replaced with new onward rights of appeal.

The new onward challenge is referred to in this guide as a Section 103A application. It is an application for an order requiring the Tribunal to reconsider its decision on the appeal, on the grounds that it made an error of law.

Although the application is a High Court or Court of Session application, for an initial period (referred to as 'the Filter period') the application must first be considered by the Tribunal.

The Section 103A application form will be sent out with appeal determinations and will be available to download from the AIT website at [www.ait.gov.uk](http://www.ait.gov.uk).

The form must be returned to the Tribunal at **Asylum and Immigration Tribunal, Arnhem Support Centre, PO Box 6987, Leicester United Kingdom, LE1 6ZX.**<sup>2</sup>

When considering a Section 103A application, the Tribunal may either order the appeal to be reconsidered, or notify you that they do not propose to make such an order.

Where they notify you that they do not propose to make an order you have the opportunity to request the High Court or Court of Session to consider the application.

Forms for this are available from the High Court or Court of Session for this purpose. They are referred to elsewhere in this guidance as 'opt-in notices'. These forms should be returned to the appropriate court at the address specified on the form or on page 8 for notices to the Court of Session.

The filter period will continue until such time as it is ended by order of the Lord Chancellor. No date has been set for either the making of such an order or for the date when the filter period will end. A further guide will be issued after an order is made and before the date that the filter period ends.

### 2. PERMISSION TO APPEAL TO THE COURT OF APPEAL OR COURT OF SESSION

No change has been made to the procedure for applying for permission applications to the Court of Appeal.

However, you should note that in the following instances where you would previously have sought permission to appeal to the Tribunal the onward right of appeal will now be to the Court of Appeal.

- Following the first appeal determination if the appeal was heard by a three member legal panel; and

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<sup>2</sup> Where the appeal has been dealt with under The Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005, and the appellant remains in detention at a location specified in those Rules, the Section 103A application should be sent direct to the hearing centre that heard the appeal. The address will be given on the application form by the AIT.

- Following any reconsideration hearing, irrespective of whether the appeal is reconsidered by a single judge, legal panel or mixed panel (legal and non-legal members). Please note, this includes any appeals re-heard by the Tribunal on or after 4 April where permission to appeal was granted by the Tribunal, High Court or Court of Session.

Permission applications must be lodged with the Tribunal using new form AIT 4. The form must be returned to the Tribunal at **Asylum and Immigration Tribunal, Arnhem Support Centre, PO Box 6987, Leicester United Kingdom, LE1 6ZX.**

If the Tribunal refuse to grant permission, you may then apply to the Court of Appeal or Court of Session Inner House for permission. Forms for these applications will be available from the appropriate courts.

### **3. APPLICATIONS FOR PERMISSION TO APPEAL TO TRIBUNAL AND STATUTORY REVIEW**

You will no longer be able to lodge an application for permission to appeal to the Tribunal from an adjudicator decision from 4 April. If you were intending to make any such application on or after 4 April, you must instead apply under the new appeal provisions for a Section 103A review.

Where the Tribunal makes a decision on a permission application on or after April 4 that decision will be treated as a decision made on a Section 103A application for the purpose of determining any onward appeal right. Accordingly, if you wish to challenge that decision you must do so by lodging an opt-in notice and not by applying for Statutory Review under Section 101 of the 2002 Act.

The only instance where you will still be able to apply for Statutory Review under the 2002 Act is where the Tribunal made a decision on a permission application before April 4, and the decision was to refuse permission to appeal. In these instances you should apply in the same way, and using the same forms as you would do at present.

Where the Tribunal granted permission to appeal, the onward right of appeal after re-hearing/reconsideration will be to the Court of Appeal or Court of Session, with permission from the Tribunal, as set out in part 2 of this section of the guide.

## SERVICE OF APPEAL DETERMINATIONS

There is no change in provisions for service of determinations in non-asylum claims.

The remainder of this section applies to appeals that relate in whole or in part to an Asylum claim.

Where an appeal was heard by the adjudicator, or the Tribunal, before 4 April, the determination will be served on the appellant and representative by the Tribunal. This applies irrespective of when the determination is made and/or promulgated.

Where an appeal was heard after April 4, including where the hearing follows an order for reconsideration, the determination will be served on the appellant and representative by the respondent (IND).

The respondent will also serve the following;

- Decisions not to extend the time limit to lodge appeals against IND decision where the appeal was lodged outside the time limits in Rules;
- Decisions of the Tribunal on Section 103A review applications<sup>3</sup>; and
- Decisions of the High Court or Court of Session on Section 103A applications.

There are two exceptions to this, which are;

- Where the appellant is outside of the United Kingdom (i.e. where the application was certified as clearly unfounded), the Tribunal will retain responsibility for serving the appellant and their representative<sup>4</sup>; and
- Where the respondent does not notify the Tribunal or Court that it has served the decision or determination within 29 days after they (the respondent) were served. In these cases responsibility for service on appellant and representative will then revert to the Tribunal or Court.

The respondent will not in any event serve;

- Decisions to extend the time limit to lodge appeals against IND decision where the appeal was lodged outside the time limits in Rules;
- Decisions on applications for permission to appeal to the Court of Appeal or Inner House of the Court of Session, and
- Any decision or determination made by the Court of Appeal or Inner House of the Court of Session.

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<sup>3</sup> This includes decisions made on or after 4 April by the Tribunal on applications for permission to appeal to the Tribunal.

<sup>4</sup> Decisions of the High Court or Court of Session will be served by the respondent irrespective of whether the appellant is inside or outside the United Kingdom.

## **NEW LEGAL AID REGULATIONS**

The new legal aid arrangements on retrospective funding of review and reconsideration applications apply to Section 103A applications and opt-in applications to the High Court in England and Wales where the Section 103A application is lodged on or after April 4.

They do not apply to;

- Any Statutory Review application made under the 2002 Act at any time;
- Opt-in applications where this follows an application made for permission to appeal to the Tribunal, irrespective of whether the permission application is treated as a decision made on a Section 103A application;
- Review applications made by the Respondent to the original appeal;
- Any Section 103A application or opt-in notice where the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 apply to the review or reconsideration; or
- An appeal determined in Scotland and the review or opt-in application is made to the Court of Session;
- An appeal determined in Northern Ireland and the review or opt-in application is made to the High Court in Northern Ireland.

Practitioners in Northern Ireland should note that consideration will be given to extending the retrospective funding provisions to that jurisdiction at a later date. Existing legal aid arrangements will apply until then.

Practitioners in Scotland should note that civil legal aid will be available for proceedings in the Court of Session, subject to the usual statutory tests. Regulations have been laid which will allow solicitors to initiate a section 103A application as a matter of special urgency, without requiring prior certification from the Scottish Legal Aid Board.

It should also be noted that the retrospective funding provisions introduced in the 2004 Act do not apply to the initial appeal, or to any application for permission to appeal to the Court of Appeal or Inner House of the Court of Session.



## CONTACT DETAILS

### Appeals

For information on appeal forms and processes at the Asylum and Immigration Tribunal:

**Asylum and Immigration Tribunal,  
Arnhem Support Centre,  
PO Box 6987, Leicester,  
United Kingdom, LE1 6ZX ,**

**Tel: 0845 6000 877.**

For information on application forms for the High Court in England and Wales:

**Administrative Court Office  
Room C315  
The Royal Courts of Justice  
Strand  
London WC2A 2LL**

**Tel: 020 7947 6205 or 020 7947 7220**

For information on appeal forms for the Court of Appeal in England and Wales:

**Civil Appeals Office  
Room E307  
The Royal Courts of Justice  
Strand  
London WC2A 2LL**

**Tel: 020 7947 7882 or 020 7947 7896**

For information on appeal forms for the High Court or Court of Appeal in Northern Ireland:

**Appeals and Lists Office  
The Royal Courts of Justice  
PO Box 410  
Chichester Street  
Belfast BT1 3JF**

**Tel: 028 90 23 51 11**

For information on appeal forms for the Court of Session (Inner and Outer Houses):

**Petition Department  
Court of Session  
Parliament House  
Edinburgh  
EH1 1RQ**

**Tel: 0131 240 6747/8**

## Legal aid

For information on legal aid in England and Wales:

### **Community Legal Service Direct**

**Tel: 0845 345 4 345**

**Or visit the website: [www.clsdirect.org.uk](http://www.clsdirect.org.uk) .**

For information on legal aid in Northern Ireland:

### **Northern Ireland Legal Services Commission**

**2nd Floor Waterfront Plaza**

**8 Laganbank Road**

**May's Meadow**

**BELFAST**

**BT1 3BN**

**Tel. 028 9024 6441**

**[www.nilsc.org.uk](http://www.nilsc.org.uk)**

For information on legal aid in Scotland:

### **The Scottish Legal Aid Board**

**44 Drumsheugh Gardens,**

**Edinburgh, EH3 7SW**

**Telephone: 0131-226-7061**

## Legislation

Copies of secondary legislation, including:

- The Asylum and Immigration Tribunal (Procedure) Rules 2005 **2005/230 (L. 1)**
- The Asylum and Immigration Tribunal (Judicial Titles) Order 2005 **2005/227**
- Civil Procedure (amendment) rules 2005 **2005/352 (L. 3)**
- The Asylum and Immigration Tribunal (Fast Track Procedure Rules) 2005 **2005/560 (L.12)**
- The Asylum and Immigration (Fast Track Time Limits) Order 2005 **2005/561 (L.13)**
- The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (Commencement No. 5 and Transitional Provisions) Order 2005 **2005/565 (C.25)**
- The Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2005 **2005/569 (L.14)**

Are obtainable from:

**TSO PO Box 29, Norwich NR3 1GN**

**Or online at [www.tso.co.uk/bookshop](http://www.tso.co.uk/bookshop) or [www.hmso.gov.uk/stat.htm](http://www.hmso.gov.uk/stat.htm)**