

## MEMORANDUM

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**From:** Rebecca Cooper  
Head of President's Office

**To:** Mr Justice Hodge OBE  
President, Asylum and Immigration Tribunal

**Date:** 2 January 2007

**Re:** AIT/High Court Opt-In Procedure

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### Procedure for Applicants

Appeals against decisions of the Secretary of State for the Home Department or of Entry Clearance Officers under section 82 or 83 of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act) are heard by Immigration Judges. Either party to that appeal can apply to the appropriate court<sup>1</sup> for an order requiring the Asylum and Immigration Tribunal (the Tribunal) to reconsider its decision on the appeal on the grounds that the Tribunal made an error of law<sup>2</sup>. These are referred to as review applications.

Such applications must be made within 5 days of deemed service<sup>3</sup> of the Tribunal's decision where the appellant is in the United Kingdom<sup>4</sup>, and within 28 days of deemed service of the Tribunal's decision where the appellant is outside the United Kingdom<sup>5</sup>. Where the application is made by a party other than the appellant (i.e. the Home Office or Entry Clearance Officer), it must be made within 5 days of deemed service<sup>6</sup>. The court may permit an application to be made outside the period where it thinks that the application could not reasonably have been made within that period<sup>7</sup>.

Since commencement of the relevant provisions, and until such time as the Lord Chancellor specifies, review applications are not considered by the High Court in the first instance, but are in fact considered by a member of the Tribunal<sup>8</sup>. In practice this work is carried out only by Senior Immigration Judges. The SIJ considering the application will decide if the application is in time or, if it is not, whether to permit the application to be made late. Then a reasoned decision is made to order reconsideration or to refuse the application. Where no order for reconsideration is made, the Tribunal must notify the applicant and, on request, the appropriate court<sup>9</sup>, although in practice this has never been requested. In addition to the notice of decision and reasons, the Tribunal, where

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<sup>1</sup> The High Court, for appeals decided in England and Wales; the Court of Session, in relation to appeals decided in Scotland, and; the High Court in Northern Ireland in relation to appeals decided in Northern Ireland: s 103A(9)(a), (b) and (c), Nationality, Immigration and Asylum Act 2002

<sup>2</sup> Section 103A (1), 2002 Act, as amended by s. 26(6), Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

<sup>3</sup> As set out in Rule 55(5) and 55(6), Asylum and Immigration Tribunal (Procedure) Rules 2005

<sup>4</sup> Section 103A (3)(a), 2002 Act

<sup>5</sup> Section 103A (3)(b), 2002 Act

<sup>6</sup> Section 103A (3)(c), 2002 Act

<sup>7</sup> Section 103A (4)(b)

<sup>8</sup> Paragraph 30(2), Schedule 2, 2004 Act

<sup>9</sup> Rule 28, Asylum and Immigration Tribunal (Procedure) Rules 2005.

appropriate, provides the applicant with information on the High Court opt-in procedure (attached at annex A).

Where such notice is given, the applicant may "renew" the application in the High Court by notifying the court that he wishes the application to be considered under s. 103A(1) or 103A(4)(b)<sup>10</sup>. Such applications must be made within 5 days of deemed service of the notice<sup>11</sup>. The court can consider an application made outside this time period where it concludes that notice could not reasonably practicably have been given within that period<sup>12</sup>.

### **Tribunal Procedure**

Applications under s.103A made to the Tribunal are decided by Senior Immigration Judges<sup>13</sup>. Such applications are decided without an oral hearing<sup>14</sup>. The other side to the application is neither informed of the application nor has standing to make representations. The Tribunal has a 10 day period in which to decide the application<sup>15</sup>.

### **Tribunal Procedure: Fast Track**

Applications subject to the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 have different time limits imposed in respect of the period for consideration by the Tribunal for review applications under s. 103A. Upon receipt of the application, the Tribunal must, unlike in ordinary application serve a copy of the application notice and any supporting documents on the other party<sup>16</sup>, giving that party 1 day to file submissions in response<sup>17</sup>. Applications are again decided without a hearing, and on the basis of the applicant's written submissions and any documents filed in response<sup>18</sup>. The Tribunal must serve its decision within 1 day of either receipt of submissions filed in response<sup>19</sup>, or the expiry of the time period allowed for submissions in response<sup>20</sup>. The opt-in process then applies.

### **Procedure on Renewal of Application in the High Court**

Where an application under s. 103A is renewed in the High Court, the procedure is set out in Section III of Part 54 of the Civil Procedure Rules. Applications are considered by a single judge without an oral hearing<sup>21</sup>. No time limit for consideration of the application is set down. There is, we understand, an internal target within the Administrative Court, stating that applications be decided within 5 days. There is currently no statistical recording of the length of time taken for applications to be decided, although anecdotal evidence suggests that the process takes up to 3 weeks. Fast track cases are completed more speedily.

### **Administrative Considerations when Decentralising High Court Process**

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<sup>10</sup> Paragraph 30(5)(a), Schedule 2, 2004 Act

<sup>11</sup> Paragraph 30(5)(b), Schedule 2, 2004 Act

<sup>12</sup> Paragraph 30(5)(c)(ii), Schedule 2, 2004 Act

<sup>13</sup> This is in accordance with Rule 26(1), Asylum and Immigration Tribunal (Procedure) Rules 2005, which specifies that such applications are dealt with by Immigration Judges authorised by the President.

<sup>14</sup> Rule 26(2) 2005 Procedure Rules

<sup>15</sup> Rule 26(4) 2005 Procedure Rules

<sup>16</sup> Rule 17(a), Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005

<sup>17</sup> Rule 17(B), 2005 Fast Track Procedure Rules

<sup>18</sup> Rule 18(a) and (b), 2005 Fast Track Procedure Rules

<sup>19</sup> Rule 19(a), 2005 Fast Track Procedure Rules

<sup>20</sup> Rule 19(b), 2005 Fast Track Procedure Rules

<sup>21</sup> Rule 54.33(2), Civil Procedure Rules

For the sake both of administrative convenience and clarity for applicants, it would be preferable for there to continue to be one address for making applications to the High Court. The listing of the applications in the High Court could be managed centrally and applications could, after receipt, be distributed to the proposed locations according to volume and capacity. Since these applications are decided without oral hearings, the location of the applicant is not a consideration when deciding where the application will be dealt with.

### Statistical Information<sup>22</sup>

The Tribunal receives, on average, approximately 1,900 applications for reconsideration per month

**Figure A** shows the number of applications to the High Court following refusal by the Tribunal to grant an order for reconsideration.

	<b>12 Month</b>	<b>6 Month</b>
<b>Refusals by AIT on s. 103A applications (total)</b>	16085	8114
<b>Renewed Applications to the High Court (total)</b>	7836	3502
<b>Percentage of refused applications "opting in" to the High Court (average)</b>	49%	43%

Figure A

**Figure B** shows the numbers of applications issued by the High Court<sup>23</sup>

	<b>12 Month</b>	<b>6 Month</b>
<b>Applications issued (total)</b>	3688	1478
<b>Percentage of applications issued (average)</b>	47%	42%

Figure B

<sup>22</sup> All figures are provisional.

<sup>23</sup> These figures exclude those applications which were deemed invalid. The decision as to invalidity is an administrative rather than a judicial one, based on the completeness of the application.