EXPLANATORY MEMORANDUM TO THE

ASYLUM AND IMMIGRATION (FAST TRACK TIME LIMITS) ORDER 2005

2005 No. 561 (L. 13)

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 This instrument shortens the time limits for review applications made by parties to "fast track" appeals to the Asylum and Immigration Tribunal ("The Tribunal"). The Order is made under Section 26(8) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 ("the AITC Act"). The Order comes into force on 4th April.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 A commencement order bringing section 26 of the AITC Act into force on 4th April is to be laid before Parliament at around the same time as this Order.

3.2 The procedure for, and locations of, the "fast track" appeals process are set out in The Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 ("the Fast Track Procedure Rules") which are to be laid before Parliament at the same time as this Order. The Rules come into force on 4th April.

4. Legislative Background

4.1 Section 26 of the AITC Act abolishes the current Immigration Appellate Authority ("IAA") and establishes a single tier Tribunal called the Asylum and Immigration Tribunal. It also inserts new sections 103A to 103E into the NIA Act. Section 103A provides that a party to an appeal to the Tribunal may apply to the "appropriate court" (High Court or Court of Session) for an order requiring the Tribunal to reconsider its decision on the appeal.

4.2 Paragraph 30 of Schedule 2 to the AITC Act ("the filter provision") provides that, for a transitional period, section 103A applications will initially be considered by a member of the Tribunal. If the Tribunal member does not make an order for reconsideration or grant permission for the application to be

made out of time, the applicant may notify the appropriate court that he wishes the court to consider the application.

4.3 Section 26(8) of the AITC Act allows the Lord Chancellor to make Orders varying the periods specified in Section 103A(3) of the NIA Act and paragraph 30(5)(b) of Schedule 2 of the AITC Act. Those provisions set out the time limits for applying for reconsideration under section 103A, and for renewing the application to the appropriate court while the filter provision applies.

4.4 Section 26(9) of the AITC Act provides that such an Order may make provision only for specified cases or circumstances, and may make different provision for different cases or circumstances. This Order shortens the time limits only in cases where the Fast Track Procedure Rules apply.

4.5 Before making an order under this section, the Lord Chancellor is required under Section 26(10) of the AITC Act to consult with the Lord Chief Justice, if the order affects proceedings in England and Wales, the Lord President of the Court of Session, if the order affects proceedings in Scotland, and the Lord Chief Justice if Northern Ireland, if the order affects proceedings in Northern Ireland. All of the locations specified in the Rules are in England. Accordingly the Lord Chancellor has only consulted with the Lord Chief Justice prior to making this order.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy background

7.1 The detained fast track has operated since April 2003 and aims to take applicants from their initial application through to integration or removal in approximately 4 weeks. The fast track is part of the Government's Asylum and Immigration strategy.

7.2 This order varies the time limits for either party to the appeal to make a section 103A application in cases where the Fast Track Procedure Rules apply, so long as the appellant remains in detention when the application is made or notification is given. Article 3 reduces the time for either party to the appeal to make a section 103A application from 5 days to 2 days. This time limit is consistent with the shortened time limit for applying for permission to appeal to the Immigration Appeal Tribunal under the existing fast track rules (which is the closest equivalent in the existing appeals process to a section 103A application).

7.3 Article 4 is only relevant while the filter provision has effect, and reduces the time for notifying the court that it should consider the section 103A application from 5 days to 2 days. The time limit is set to reflect time limits for other stages of the fast track process and recognises that when giving notice to the High Court the appellant may not add any additional grounds of challenge against the AIT decision on the appeal.

8. Impact

8.1 A Regulatory Impact Assessment is has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

9.1 Andrew Moseley at the Department for Constitutional Affairs Tel: 020 7210 8546 or e-mail Andrew.Moseley@dca.gsi.gov.uk can answer any queries regarding the instrument.