EXPLANATORY MEMORANDUM TO

THE ASYLUM AND IMMIGRATION TRIBUNAL (PROCEDURE) (AMENDMENT) RULES 2005

2005 No.569 (L.14)

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 amends the Asylum and Immigration Tribunal (Procedure) Rules 2005 (S.I. 2005/230) to insert rules relating to the exercise by the Asylum and Immigration Tribunal of powers to order payment of legal aid to an appellant's legal representative on the review or reconsideration of a decision upon an appeal. These Rules and S.I. 2005/230 both come into force on 4 April 2005 and are subject to negative resolution.

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

3.1 None.

4. Legislative Background

4.1 Section 26 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (the AI(TC) Act) establishes a single tier Tribunal called the Asylum and Immigration Tribunal (AIT). It also introduces a new system of higher court oversight for decisions of the AIT and new retrospective legal aid arrangements.

4.2 Section 26(6) inserts new sections 103A to 103E into the NIA Act. Section 103A enables a party to an appeal to the Tribunal to apply to the appropriate court for an order requiring the Tribunal to reconsider its decision on appeal on the grounds that the Tribunal may have made an error of law. Paragraph 30 of Schedule 2 of the AI(TC) Act provides for applications made to the appropriate court to be considered initially by a member of the Tribunal for a transitional period from commencement of Section 26 until such date as may be appointed by Order of the Lord Chancellor.

4.3 Section 103D provides for legal aid for applications and reconsiderations under section 103A to be awarded retrospectively by the AIT and the High Court. Draft regulations under section 103D, the Community Legal Service (Asylum and Immigration Appeals) Regulations 2005, were laid before Parliament on 23 February 2005.

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 AITC Act contains measures to support the Government's proposals on asylum reform. This includes unifying the immigration and asylum appeals system into a single tier of appeal with limited onward review or appeal. To reduce exploitation of the system the Act also introduces retrospective legal aid arrangements for the onward review stage of the process.

7.2 The consultation paper, The Asylum and Immigration Tribunal – The Legal Aid Arrangements for Onward Appeals, outlining the proposals for the new arrangements, was published on 8 November 2004. The consultation ended on 17 December. 24 responses were received.

7.3 The consultation paper, Asylum and Immigration Tribunal – Procedure Rules and Judicial Titles Order, outlining the proposals for the rules was published on 25 October 2004. The consultation ended on 6 December. 30 responses were received.

7.4 The Council on Tribunal has been consulted on these amendment rules in accordance with section 8 of the Tribunals and Inquiries Act 1992. A further public consultation has not been held as the amendments are minor in nature and consequential on changes made to the draft Community Legal Service (Asylum and Immigration Appeals) Regulations 2005 following consultation.

8. Impact

8.1 A Regulatory Impact Assessment was conducted for the AI(TC) Act. The view of the Small Business Service was that the changes proposed are largely social. Whilst it recognises that there is some impact on specific business sectors, this income only exists as a function of the current immigration appeals system and should not necessarily have been viewed by those businesses as sustainable income from the public purse. The DCA's view is that this position has not changed because the regulations support the original aims of the AI(TC) Act.

9. Contact

9.1 Katie Spencer at the Department for Constitutional Affairs Tel: 020 7210 8909 or e-mail katie.spencer@dca.gsi.gov.uk can answer any queries regarding the instrument.