Draft Regulations laid before Parliament under section 112(6) of the Nationality, Immigration and Asylum Act 2002, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2007 No.

IMMIGRATION, ENGLAND AND WALES

LEGAL SERVICES COMMISSION, ENGLAND AND WALES

The Community Legal Service (Asylum and Immigration Appeals) (Amendment) Regulations 2007

Made - - - -	*2007*
Coming into force - -	*30th April 2007*

These Regulations are made in exercise of the powers conferred upon the Secretary of State by section 103D(4), (5) and (6) of the Nationality, Immigration and Asylum Act 2002(**a**).

The Secretary of State has consulted in accordance with section 103D(7) of that Act.

In accordance with section 112(6) of that Act, a draft of this instrument has been laid before Parliament and approved by resolution of each House of Parliament.

Accordingly the Secretary of State makes the following Regulations:

Citation, commencement, scope and interpretation

1.—(1) These Regulations may be cited as the Community Legal Service (Asylum and Immigration Appeals) (Amendment) Regulations 2007 and shall come into force on 30th April 2007.

(2) These Regulations have effect only in relation to appeals decided in England and Wales.

(3) In these Regulations, references to a regulation by number alone refer to the regulation so numbered in the Community Legal Service (Asylum and Immigration Appeals) Regulations 2005(**b**).

Amendments to the Community Legal Service (Asylum and Immigration Appeals) Regulations 2005

2. In regulation 5—

(**a**) 2002 (c.41). Section 103D was inserted by section 26 of the Asylum and immigration (Treatment of Claimants etc.) Act 2004 (c.19) and amended by section 8 of the Immigration, Asylum and Nationality Act 2006 (c.13).
(**b**) S.I. 2005/966.

(a) in paragraph (2), omit "subject to paragraph (5)"; and

(b) omit paragraph (5).

3. In regulation 6—

(a) after paragraph (1), insert—

"(1A) The Tribunal may only make an order under section 103D(3) where—

(a) it has reconsidered its decision on an appeal; or

(b) an order for reconsideration has been made but the reconsideration does not take place or is not completed because—

(i) the appeal lapses, or is treated as abandoned or finally determined, by operation of an enactment; or

(ii) the appeal is withdrawn by the appellant, or is treated as withdrawn because the respondent withdraws the decision or decisions to which the appeal relates.";

(b) in paragraph (3), for "does not allow an appeal", substitute "dismisses an appeal on reconsideration";

(c) after paragraph (3), insert—

"(3A) If an order for reconsideration is made but the reconsideration does not take place or is not completed, the Tribunal must not make an order under section 103D(3) unless it is satisfied that, at the time when the appellant made the section 103A application, there was a significant prospect that the appeal would be allowed upon reconsideration."; and

(d) in paragraph (4), after "paragraph (3)" insert "or (3A)".

4. In regulation 7—

(a) in paragraph (1), for "not to make an order under section 103D(3)" substitute—

"—

(a) not to make an order under section 103D(3); or

(b) to make a section 103D order under regulation 8(2).";

(b) in paragraph (2), omit "not to make an order"; and

(c) in paragraph (5)(b), for "decision not to make an order" substitute "original decision".

5. In regulation 8, after paragraph (2) insert—

"(2A) Where paragraph (2) applies the High Court or Tribunal must give reasons for its decision.

(2B) Where an appellant has been represented by more than one supplier or more than one counsel in the course of immigration review proceedings, a section 103D order shall, unless it provides otherwise, have effect as an order for the payment of the costs incurred by each supplier and of the fees of each counsel while he was instructed to represent the appellant in the proceedings.".

Signatory text

Name
Address — Parliamentary Under Secretary of State
Date — Department for Constitutional Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Community Legal Service (Asylum and Immigration Appeals) Regulations 2005 ("the Principal Regulations").

Section 8 of the Immigration, Asylum and Nationality Act 2006 (c.13) makes amendments to section 103D of the Nationality, Immigration and Asylum Act 2002 (c.41), under which the Principal Regulations were made. Those amendments extend the power of the Asylum and Immigration Tribunal to make an order under section 103D(3) for the payment of an appellant's costs out of the Community Legal Service Fund. Section 103D(3) no longer limits that power to cases where the Tribunal has completed the reconsideration of an appeal.

Regulation 2 removes provisions of the Principal Regulations which are no longer required as a result of the amendments to section 103D. Regulation 3 amends the Principal Regulations to specify the circumstances in which the Tribunal may make an order under section 103D(3) without having completed the reconsideration of an appeal. Regulation 4 clarifies the scope of the review procedure under the Principal Regulations in light of the amended powers of the Tribunal. Regulation 5 makes provision for the situation where a section 103D order is made and the appellant has changed representative during immigration review proceedings, and requires the tribunal to give reasons where it makes an order excluding either counsel's or solicitor's fees.

These Regulations have effect only in relation to appeals decided in England and Wales.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.

Draft Regulations laid before Parliament under section 112(6) of the Nationality, Immigration and Asylum Act 2002, for approval by resolution of each House of Parliament.

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