



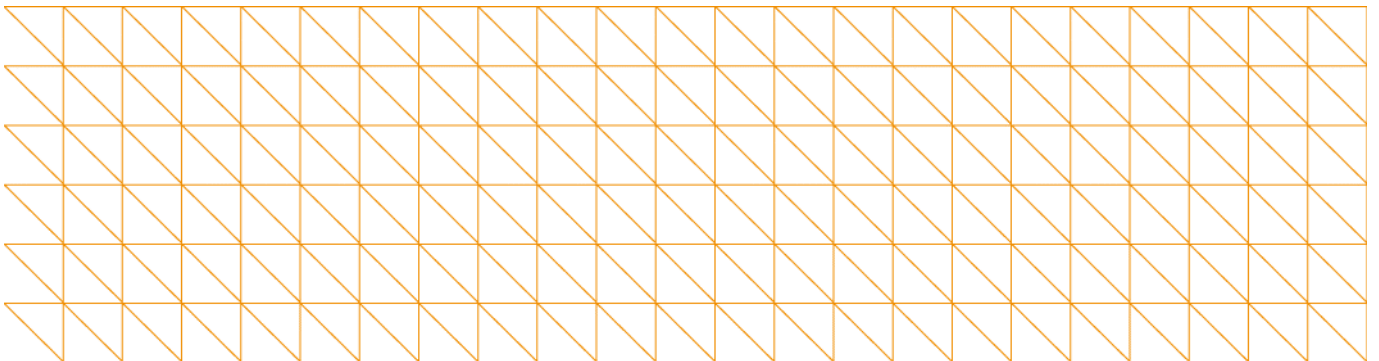
Ministry of  
**JUSTICE**

# **The Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2008 and the Asylum and Immigration Tribunal (Fast Track Procedure) (Amendment) Rules 2008**

**Response to Consultation**

CP(R) 29/07

21 April 2008



Tribunals Service





Ministry of  
**JUSTICE**

**The Asylum and Immigration  
Tribunal (Procedure)  
(Amendment) Rules 2008 and  
the Asylum and Immigration  
Tribunal (Fast Track Procedure)  
(Amendment) Rules 2008**

Response to consultation carried out by Tribunals Service, part of the  
Ministry of Justice. This information is also available on the Ministry of  
Justice website at [www.justice.gov.uk](http://www.justice.gov.uk)

Tribunals Service



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**The Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2008 and the Asylum and Immigration Tribunal (Fast Track Procedure) (Amendment) Rules 2008**

Summary of responses

## **Introduction**

This document is the post-consultation report for the consultation paper, the Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2008 and the Asylum and Immigration Tribunal (Fast Track Procedure) (Amendment) Rules 2008.

It will cover:

- the background to the report
- a summary of the responses to the report
- a detailed response to the specific questions raised in the report
- the next steps following this consultation.

Further copies of this report and the consultation paper can be obtained by contacting **Joanne Noble** at the address below:

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This report is also available on the Ministry's website: [www.justice.gov.uk](http://www.justice.gov.uk).

## **Background**

The consultation paper 'The Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2008 and the Asylum and Immigration Tribunal (Fast Track Procedure) (Amendment) Rules 2008' was published on 5 November 2007. It invited comments on proposed amendments to the Asylum and Immigration Tribunal (Procedure) Rules 2005 ("the Principal Rules") and Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 ("the Fast Track Rules").

Primarily this consultation followed the Cabinet Office's Code of Practice. However, due to the minor and technical nature of the amendments, the Parliamentary Under Secretary of State, Bridget Prentice, agreed that the consultation would last for only six weeks. We considered the amendments would not be of significant interest to the general public beyond the field of immigration advisors and our key stakeholders.

In summary, the amendments, as drafted for the consultation, would:

- require appellants to give reasons if the notice of decision is not included with the appeal form;
- include provisions relating to the Case Management Review process within the Principal Rules;
- enable the Asylum and Immigration Tribunal ("the AIT") to deal with appeals on paper, without a hearing, where the representative is overseas;
- allow the AIT to consider appeals on paper where no notice of decision has been provided and no reasons given, or those reasons are not considered satisfactory by the AIT;
- clarify who may be appointed to continue an appeal after an appellant's death, by giving the AIT the power to appoint another person to do so;
- clarify the purpose of a reply in the reconsideration process to make it clear that the reply should be submitted in time for it to be considered when establishing whether there was a material error of law in the original determination;
- clarify that the content of the reply will be considered when determining whether an error of law is material in the reconsideration process;
- amalgamate the decision on funding from the Community Legal Service Fund for reconsiderations with the outcome of the appeal, creating a single determination.

- introduce a power enabling the President and Deputy Presidents, with the consent of the parties, to order that an appeal be reheard by the AIT instead of granting permission to appeal to the Court of Appeal;
- clarify that time limits cannot be extended retrospectively, except in circumstances the AIT considers exceptional;
- specify the circumstances in which evidence is considered as submitted in support of and at the time of making an application under the Points Based Immigration Scheme, as required by Section 19 of the UK Borders Act;
- require every party who is aware that another party has changed their address to notify the AIT of this fact in writing;

One consequential amendment is required to the Fast Track Rules to ensure consistency with the Principal Rules (replication of the power enabling the AIT to deal with appeals on papers where the representative is overseas).

Three other amendments are also proposed to the Fast Track Rules which will:

- allow a short exception to the principle of continuous detention in Fast Track sites, allowing either five or ten days detention outside the fast track sites in exceptional circumstances;
- allow two or more appeals to be heard together where appropriate, bringing the Fast Track Rules in line with the Principal Rules;
- add Oakington Reception Centre to the list of specified sites in schedule 2 of the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005.

There are also a small number of very minor amendments for consistency and tidiness.

The consultation period closed on 16 December 2007 and this report summarises the responses, including how the consultation process influenced the final shape of the amendments consulted upon.

A list of respondents is at Annex A.

## **Summary of responses**

1. A total of 14 responses were received. Of these, four were received from the senior judiciary of the AIT and four from AIT's operational management team. A detailed response to the consultation was also submitted by the Home Office's UK Borders Agency ("UKBA").
2. The remaining responses were received from key stakeholders in the field of asylum and immigration: the Immigration Law Practitioners' Association ("ILPA"), the Law Reform Committee of the Bar Council ("the Bar Council"), the Association of Members of the Asylum and Immigration Tribunal ("AMAIT") and the Public and Commercial Services Union. No responses were received from other organisations or from members of the public.
3. Responses were analysed for approaches to the questions which might highlight problems with the draft amendments; levels of support amongst judiciary, the UKBA and external stakeholders; and any further evidence of impact of the proposed amendments on the AIT.
4. In general the proposed amendments to the Principal Rules and Fast Track Rules received support from the respondents. In summary the responses were as follows:
  - There was 63% support for the proposal to amend Rule 8 to state that reasons must be given if the notice of decision is not included with the appeal form.
  - The proposal to include a fuller reference to Case Management Review Hearings into Rule 14 received 64% support from respondents. However serious concerns were raised regarding the utility of this proposal. We have therefore decided not to proceed with this amendment and accordingly will look to achieve our policy aim through amendments to the Asylum and Immigration Tribunal's Practice Directions ("AIT Practice Directions").
  - 90% support was received on the proposal to amend Rule 15 to provide that the AIT may determine appeals without a hearing in cases where the appellant's representative is based overseas.
  - The intention to enable the AIT in Rule 15 to determine appeals without a hearing in cases where no notice of decision is included with the appeal form and/or if reasons were given that were not considered satisfactory by the AIT received 70% support from respondents.

- The intention to give the AIT power, within the provisions of Rule 17, to appoint another person to continue an appeal in the event of the appellant's death received 38% support from respondents. Queries were also raised regarding the purpose of the rule itself and the purposes of provisions of the draft amendment. It was therefore decided not to pursue this amendment.
- The proposal to amend Rule 30 to make the AIT's and the parties' duties clear on the face of the rule received 75% support from respondents. Some respondents highlighted potential problems with the original draft which we consider the revised draft has now addressed.
- The intention to amend Rule 31 to clarify what the AIT can consider during a reconsideration hearing received 75% support from respondents. Some respondents queried the drafting of the proposal and changes have been made accordingly.
- All respondents supported the proposal to amalgamate the funding order into the substantive determination. Some respondents suggested helpful improvements to the draft of the amendment to Rule 33, which have been incorporated where appropriate.
- The proposal to introduce a power within the provisions of Rule 36 enabling the President and Deputy Presidents, with consent from the parties, to order an appeal be reheard by the AIT in place of granting permission to appeal to the Court of Appeal received 90% support from respondents.
- Unanimous support was received regarding the proposal to introduce greater clarity on retrospective extension of time-limits in Rule 45.
- The intention to specify definitions within Rule 51 of what constitutes evidence submitted in support of and at the time of making an application received 88% support for the respondents. However, various respondents expressed concern regarding the different time-limits allowed between electronic applications and other methods of submitted applications. Additionally, after the final draft of the amendments to the rules were received, the UKBA reported that the commencement of Section 19 of the UK Borders Act 2007 timetable had altered and therefore we cannot take this amendment forward until we have received confirmation of the commencement of Section 19 from UKBA.
- 92% support was received for the proposal to amend Rule 56 to require the respondent to notify the AIT in writing if they are aware that the appellant has changed their address.

**The Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2008 and the Asylum and Immigration Tribunal (Fast Track Procedure) (Amendment) Rules 2008**

Summary of responses

- The proposal to amend Rule 3 of the Fast Track Rules received 58% support from respondents. However some respondents highlighted key problems with the proposal and therefore this amendment will not be pursued.
- 85% support was received for the proposal to bring the Fast Track Rules in line with the Principal Rules to provide that two or more appeals can be heard together. Respondents also gave further suggestions for improving this draft which have been fully considered and incorporated where appropriate.
- The proposal to add Oakington Reception Centre to the list of specified sites received 67% support.

## Responses to specific questions

### **1. Do you support the proposed amendment [to Rule 8], and the introduction of a requirement to give reasons for not including the notice of decision?**

The amendment to Rule 8 imposes a requirement to provide reasons for not including the notice of decision with the appeal form. We also proposed an amendment to Rule 15 that is linked to the amended Rule 8. This amendment would allow the AIT to consider appeals on the papers where no notice of decision has been given, or the reasons provided for not including the notice are not deemed satisfactory by the AIT.

This proposal received 63% support. One supporting respondent stated that it would aid in reducing the administrative burden on the AIT to obtain missing notices of decision from the UKBA.

One respondent expressed concern that there may be an overall delay to appeal processing time, if a further need for judicial consideration of any reasons provided if a notice of decision was not included was introduced. However, when analysed statistically, the level of in-country appeals received that do not include a notice of decision is fairly low, which indicates that judicial referral for applications received with reasons for not attaching a notice of a decision would also be low. In addition, we anticipate that the sanction provided for in the proposed amendment to Rule 15 will further serve to deter appellants from not including the notice of decision, and accordingly conclude that this amendment will not impact too heavily on appeal processing time.

Another respondent stated that they considered the sanction as applied by Rule 15 for not including the notice of decision with the appeal form, and/or reasons that the AIT deemed satisfactory for its non-inclusion, to be too severe. However, it is considered that the opportunity for the appellant to give reasons for failing to supply the notice is a sufficient counterbalancing measure to what might otherwise appear to be too strong a sanction. Additionally, the real necessity for this document when an appeal is lodged to aid effective appeal processing further justifies the application of a sanction. Finally, the application of the sanction in Rule 15 is within the discretion of the AIT. We will therefore amend Rule 8 as proposed, together with the sanction provided for in the amendment to Rule 15.

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### **2. Do you agree with the proposal to include provisions relating to the Case Management Review process within the Procedure Rules [at Rule 14]? If not please state why.**

Summary of responses

Our intention with this amendment was to provide for Case Management Review hearings in the Principal Rules to reflect the integral part they play in the asylum appeals process.

This amendment received 64% support from respondents. One respondent stated that it would help to streamline the Case Management Review process, particularly as presently several hearing centres have different procedures

Another respondent expressed concerns about the necessity for this amendment in the Principal Rules, particularly as provisions concerning Case Management Review hearings were already sufficiently outlined in the AIT Practice Directions. Other respondents reiterated this view in their opposition to this amendment and stated that they could see no virtue in putting matters of judicial management into the Principal Rules, and further that doing so could potentially decrease the flexibility for arranging Case Management Review hearings.

As a result of the adverse comments received from respondents regarding this amendment, it will not be taken forward.

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**3. Do you support the introduction of a provision [at Rule 15] enabling the AIT to deal with appeals on papers where the representative is overseas? If not please give reasons why.**

Our intention, in this proposed amendment to Rule 15, is to allow the AIT to direct that appeals be determined without a hearing, where the representative is based overseas.

This amendment was welcomed by the majority of respondents and received 90% support. One respondent queried whether the amendment would still allow an appellant to request an oral hearing if they were to add a sponsor to their appeal after it was lodged. In practice the AIT considers requests for oral hearings by appellants at most stages of the appeal process and this rule change will not preclude the AIT from directing that an appeal with an overseas representative receive an oral hearing in the event that it is requested that a sponsor attend or it is deemed necessary.

One respondent stated that they felt the provisions already present in the Principal Rules to be sufficient. However, the rule at present currently prevents the AIT from determining appeals without a hearing where the appellant has requested an oral hearing but their representative is based outside of the UK. This is because Rule 15(2)(b) requires that a person be unrepresented in order for the AIT to direct that a hearing proceed without a hearing. We therefore feel that the amendment is necessary in order to enable the AIT to determine appeals of this kind on the papers.

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Another respondent suggested that this amendment may be troublesome because representatives based outside of the UK on occasion instruct UK based representatives to attend a hearing and it is not always clear who is representing the appellant until the date of the hearing. We consider that the advent of this rule should mitigate this risk as it would effectively invite representatives based outside of the UK to inform the AIT if they intend to instruct representatives based in the UK.

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**4. Do you support the proposal [to amend Rule 15 to enable the AIT] to consider appeals on paper where no notice of decision has been provided and no reasons given, or those reasons are not deemed satisfactory by the AIT? If not please give reasons why.**

This amendment to Rule 15(2) enables the AIT to direct that an appeal be heard on the papers, if the notice of decision was not included with the appeal form and no satisfactory reasons were provided as to why. Aside from the concern regarding the strength of the sanction (outlined in question 1), the proposal received support from respondents with 70% being in favour of the amendment.

One respondent made helpful suggestions about the draft by noting that the insertion of this proposal at 15(2)(bb) may harm the generality of the sanction for non-compliance provided in the present 15(2)(c). We agree that it would be valuable to preserve the generality of 15(2)(c) and have therefore subsumed the effect of the proposed 15(2)(bb) into the present 15(2)(c).

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**5. Do you support the proposed amendment to Rule 17 2(A)(b)? If you have any alternative suggestions please elaborate.**

Our intention with this amendment was to clarify who may continue an appeal following the appellant's death. Rule 17 was amended in 2006 to enable the AIT to direct that the appeal be either withdrawn or continued by the personal representative of the appellant in the event of the appellant's death. This draft amendment at consultation proposed to alter and give greater clarity to the rule by conferring on the AIT the power to appoint another person to continue an appeal in the event of the appellant's death.

The proposal to amend this rule received only 38% support from respondents. Several respondents queried the purpose of the 2006 amendment to Rule 17 as well as the purpose for this amendment. In addition, one respondent expressed concerns regarding how the amendment might over-complicate this aspect of procedure by further widening the scope of people who could become eligible to continue an appeal in the event of the appellant's death. That respondent was also opposed to the idea of the AIT being given the power to appoint such a person.

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Summary of responses

Moreover, there was criticism from another respondent who stated that the proposed draft created more problems than it resolved and therefore that full consideration should be given to the purpose of this rule before proceeding with any further amendments.

We will therefore not amend this rule as proposed. We will, however, be fully assessing the purpose and effect of this rule with a view to improving this rule, in light of the comments received in this consultation.

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**6. What is your view on the proposal to clarify the purpose of a reply under Rule 30? Do you think that the proposal achieves that aim? If not, please state why.**

Parts of the reconsideration process have recently been the subject of litigation. Our policy intention with this amendment is to make the purpose of the reply clear on the face of Rule 30 by clarifying the role of the reply in the reconsideration process.

75% of respondents were content with this proposal and considered that the draft amendment achieved the aim to clarify this rule. One supporting respondent noted that the amendment considerably opened up issues that could be dealt with at reconsideration but without broadening the scope beyond the original grounds of appeal. Another supporting respondent noted that the proposed draft adequately clarified that the party not applying for review is invited to argue in a reply that there was no material error of law in the original decision.

Two dissenting respondents conveyed concerns that the draft did not reflect provisions in the current rule relating to the mandatory nature of the reply. We agree that the proposed rule amendment does not fully define the function of the reply in the reconsideration process by introducing this discretionary factor. It is a necessary provision of the rules to filter out any contentions that the other party might have vis-à-vis successful grounds for review of a decision and therefore we will alter the amendment to reflect this. We will also be amending a provision in Rule 31 to accord with this change.

Several respondents queried whether the current proposal would permit the other party to argue that an alternate ground, on which the appeal was not allowed in the original determination, contained a material error of law. Rule amendment 30(1)(b) as drafted permits the other party to file with the AIT a reply setting out his case if he is served with an order for reconsideration but contends that there was an error of law in the decision on the appeal, but it was not material. This would therefore allow the party to detail any error they identified in the original determination, including if they considered that an alternate ground of appeal should have been allowed in the original determination. We will therefore not amend the rule to further illustrate this provision as we consider the present drafting to be adequate.

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**7. What is your view on the proposal to clarify [on the face of Rule 31] that the content of the reply will be considered when determining whether an error of law is material? Do you think that the proposal achieves that aim? If not, please state why.**

The purpose of this amendment is to clarify that the content of the reply will be considered when determining whether there was a material error of law in the original determination. The amendment also further clarifies that the AIT will consider any other matter which it considers relevant alongside the Section 103A application.

The proposal received a positive response from 75% of respondents. One respondent, however, noted that, as drafted, the rule overly broadened the scope by providing that the AIT is obliged to consider, at reconsideration, issues that might not have been included in the original grounds of appeal, grounds for review or reply. To mitigate this potentially expanded mandatory responsibility we have amended the rule to provide that the AIT can consider the other issues specified but that it is not obliged to.

Two other respondents commented that the amendment did not add value to the present rule and that it over-complicated the purpose of the rule and made it appear verbose. However, our intention to amend Rules 30 and 31 rests on the fact that parts of the reconsideration process have recently been the subject of litigation and we will therefore take this amendment forward, as above outlined, in order to clarify the role of the reply in the rules.

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**8. Please give your views on the proposal to amalgamate the funding and appeal decision determinations [by amending Rule 33].**

We asked respondents for their views on the proposal to amend Rule 33 to enable the AIT to amalgamate the funding order decision with the outcome of the appeal, creating a single determination.

The effect of the amendment was supported by all respondents. Suggestions were made by several respondents to amend the draft to allow the AIT to retain the ability to make a separate funding order. Such an amendment would ensure that AIT decisions are not needlessly subjected to the application of Rule 60 (i.e. to set aside the decision of the AIT due to an administrative error) in the event an immigration judge overlooks the funding order request. The draft has therefore accordingly been amended to allow for this.

One respondent suggested inserting a provision into the rules which would direct that judiciary append a line or two to any determination of an appeal which was the subject of a request for a funding order. We think that this

suggestion is not suitable for inclusion into the Principal Rules, but will recommend that it is drafted into the AIT Practice Directions.

Further, a supporting respondent queried whether data protection obligations would be complied with following this rule amendment. The sharing of information regarding funding outcomes will continue to be shared as before with the Legal Services Commission without compromising data protection obligations to appeal outcomes.

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**9. Do you agree with the proposal to introduce this power to the AIT Rules [by amending Rule 36]? Please explain your views.**

We asked respondents for their views on introducing a power enabling the President and Deputy Presidents, after obtaining consent from all parties, to order that an appeal be reheard by the AIT, in the place of a grant of permission to appeal to the Court of Appeal.

This proposal was supported by 90% of respondents. One supporting respondent suggested that the amendment should go further and supply power to the President and Deputy Presidents to order that an appeal be remitted back to the AIT if they felt that consent was being withheld unreasonably by the parties. However, we are of the view that the power to remit could only function properly with the consent of the parties. We therefore will not include such a provision for cases where no consent is given or consent is withheld.

One dissenting respondent stated that this amendment would raise policy issues as regards the statutory objective to implement the “one tier” structure and queried whether the AIT could obtain the power to remit an appeal. However, the functioning of the power to remit an appeal hinges on obtaining consent from the parties to the appeal. With this in mind we will proceed with this rule change.

A supporting respondent noted further that 36(a) of the draft included a provision already supplied in Article 4 of the AIT (Judicial Titles) Order 2005. The draft has been amended accordingly to reflect this.

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**10. Do you agree with the proposed amendment [to Rule 45]? If not please state why.**

The proposal to introduce greater clarity on the retrospective extension of time-limits in Rule 45(4)(c) as a result of recent case law (see FL (China) [2005] UKAIT 00180) received unanimous support from respondents.

One respondent proposed an alternate wording by suggesting replacing “exceptional” with “good” to enable the AIT to apply this rule more freely.

However, our policy intention is to establish that time-limits cannot be extended retrospectively, except in special circumstances, and the use of the word “exceptional” more plainly achieves that aim.

Another supporting respondent mooted the point that the rule may be too general and suggested that it be tightened to specify which time-limits are to be the subject of consideration for retrospective time extension. Whilst we see merit in this suggestion, it is not something that could be included in the rules as such a provision would be unwieldy to include and might result in unnecessary restrictions. The rule will therefore be amended as drafted.

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**11. What is your view on our proposal to amend Rule 51? Do you agree with the proposed definition of evidence submitted in support of and at the time of the original decision? Please explain why.**

We asked respondents for their views on the proposal to specify definitions into the rules of what constitutes evidence submitted “in support of and at the time of making an application”. This amendment arose as a consequence of Section 19 of the UK Borders Act 2007, which is intended to align the immigration appeals system with new procedures requiring applicants to submit all their supporting evidence at the time of their application under the Points Based Immigration Scheme (“PBS”).

This proposal received 88% support from respondents. Two respondents queried the reasoning behind why a time extension of 10 working days was granted to applications submitted electronically and no time extension offered to applications submitted by other methods (i.e. post). The respondents further stated that no basis had been given for this different treatment and questioned the fairness of the disparity.

To clarify, therefore, the different treatments between electronic and other forms of submission under PBS revolves around the intention to specify the exact documents that are required for each type of application by the UKBA. As such, when applications are submitted applicants need to include the documents specified in the appropriate UKBA guidance. If the application is submitted by post, this will mean the documents must be included with the application form. However, if the application form is submitted electronically the UKBA will allow up to 10 working days to receive the necessary documentation by post. This 10 day period is not to be considered as extra time to gather such documents, but rather as time to allow the documents to reach the UKBA in case of any delays to the postal system.

Whilst we agree with the respondents’ query that this provision for different treatments of submissions requires clarity we are not going to insert information about this policy intention into the rules and will therefore provide information regarding the reasoning into the Explanatory Memorandum.

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Summary of responses

A supporting respondent noted that instances might arise where the primary decision-maker (i.e. the UKBA) may consider evidence submitted in support of the application but not technically classified as “at the time of” (i.e. outside of time-limits). The respondent was concerned that, under the provisions of this rule and Section 19 of the UK Borders Act, the AIT should then be allowed to consider the same when making a decision on the appeal. However, we cannot insert a provision to address this concern as it would widen the rule further than the primary legislation allows.

After the final draft of the amendments to the rules was received, the UKBA reported that the commencement of Section 19 of the UK Borders Act 2007 had slipped and will not come into force until approximately March 2009. Section 19 inserts Section 85A into the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”) referred to in this amendment. Section 19 also inserts the express power into Section 106(2) of the 2002 Act permitting the proposed provision to be included in the rules. We therefore cannot take this amendment forward until the implementation of Section 19.

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**12. Do you support the proposed amendment [to Rule 56] requiring the respondent to notify the AIT in writing if they are aware that the appellant has changed their address? If not please state why.**

Currently, the Rules require the party or representative in an appeal to advise the AIT of any change to their postal address. We therefore invited comments on the proposition to amend Rule 56 to require the respondent to an appeal to notify the AIT in writing if they are aware that the appellant has changed their address.

92% of respondents supported this proposal with one respondent enquiring about the possible provision of a sanction to aid the enforcement of the amendment. Upon consideration of this suggestion, we are of the opinion that the indiscretion displayed by the respondent by not informing the AIT if they are aware that the appellant has changed their postal address would be sufficient motivation to ensure the rule change functioned correctly. We are therefore not going to amend the proposal to include a sanction.

One respondent objected to this proposal by stating that it did not consider it necessary for the AIT to require the respondent to notify the AIT when it is aware that the appellant has changed their address. However, we consider the reduction of the possibility for hearings going ahead in a party’s absence or need for case adjournments to be a constructive effect, and will therefore take this amendment forward as drafted.

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**13. Do you support the proposal to allow claimants to be held in a site not specified in Schedule 2 [of the Fast Track Rules], in exceptional**

**circumstances, without the Fast Track process ceasing to apply?  
Please give reasons.**

If a claimant detained in an immigration removal centre is not kept in continuous detention at a site specified in Schedule 2 of the Fast Track Rules, and is moved to a centre not specified, then the Fast Track process will cease to apply to them. Our intention with this amendment is to allow a short exception to the principle of continuous detention in Fast Track sites, allowing either five or ten days detention outside of the Fast Track scheduled sites in circumstances where it is otherwise impossible to continue to detain the claimant there.

This rule amendment received 58% support from respondents. Some respondents queried the fairness of the proposal, particularly as regards the assurance that there would be adequate access to legal representation in sites that claimants may be moved to. A dissenting respondent stated that it might be unjust to require an appellant to remain in the Fast Track process if circumstances prior to their removal from it rendered it impossible for them to remain in it. Another disagreeing respondent stated further that it would be unfair to expect an appellant to be able to continue preparing an appeal inside the Fast Track process with the added burden of being relocated to another site.

A respondent also commented that the introduction of this amendment would bring arguable doubt into the question of whether a claimant who was removed from a scheduled Fast Track process site should remain in the Fast Track process, particularly in light of the test that needs to be satisfied in order to effect removal of claimants (i.e. that it was “impossible” for them to remain). They stated further that it could invite the appellant to argue on procedural grounds regarding the applicability of the Fast Track process to their case. We agree with this respondent and consider that the invitation of any procedural argument surrounding the Fast Track process to be highly undesirable. We will therefore not implement this rule change.

We will, however, take forward the amendment to Schedule 2 to the Fast Track Rules (see answer to question 16), which will add Oakington Reception Centre to the list of scheduled Fast Track process sites. 67% of respondents were in favour of that proposal as it will provide an additional location for claimants to be housed. UKBA have also reported that access to full legal representation will be available on-site at Oakington Reception Centre.

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**14. Do you believe the detention period allowed outside Fast Track sites should be five days or ten?**

Respondents had varying views on the period of time that should be allowed for appellants to be relocated to sites outside of the scheduled sites, however the majority of the respondents who answered this question were in favour of the five day time extension.

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Summary of responses

In spite of this, as a result of our decision not to go ahead with the amendment to Rule 3 (see above answer to question 13), we will not draw conclusions as a result of respondents' answers and will therefore not make a recommendation in line with this proposed amendment.

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**15. Do you support the amendment to bring the Fast Track Rules in line with the Principal Rules so that two or more appeals can be heard together where appropriate? If not, please explain why.**

The proposed amendment aims to bring the Fast Track Rules into line with the Principal Rules, to allow two or more appeals to be heard together.

This amendment received 85% support from respondents. However, one respondent pointed out that, as worded, the drafted amendment provides that Fast Track appeals can be heard together with ordinary appeals. We have therefore amended the draft accordingly to ensure that the rule only provides for Fast Track appeals to be heard in conjunction with one another.

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**16. Do you agree to the proposal to add Oakington Reception Centre to the list of specified sites? If not please state why.**

(See answer to question 13.)

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## **Further minor amendments**

### **Identifying invalid notices of appeal**

A minor amendment to Rule 9 of the Principal Rules requires the AIT not to accept a notice of appeal in cases where a person may not appeal pursuant to Section 88A of the 2002 Act. This amendment will ensure that the AIT is able to give effect to Section 88A of the 2002 Act, which may not be the case on one interpretation of the current Rule 9 of the Principal Rules.

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### **The Fast Track Rules**

Where necessary, amendments have been made to the Fast Track Rules to reflect the above amendments to the Principal Rules.

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## **Conclusion and next steps**

1. The responses to the consultation have influenced the final content and drafting of the rules with three of our proposals being set aside due to responses from stakeholders. In addition, one proposal has been set aside for the present because the UKBA have reported that the commencement of Section 19 of the UK Borders Act 2007 has altered. We therefore cannot take this amendment forward until we have received confirmation of the commencement of Section 19 from UKBA.
2. A final draft of the rule amendments was sent for approval to Ministers on 7 April, to be laid before the House on 21 April. They are expected to come into force on 12 May 2008.

## Consultation Co-ordinator contact details

If you have any complaints or comments about the **consultation process**, rather than about the topic covered by this paper, you should contact Gabrielle Kann, Ministry of Justice Consultation Co-ordinator, on 020 7210 1326 or email her at [consultation@justice.gsi.gov.uk](mailto:consultation@justice.gsi.gov.uk)

Alternatively, you may wish to write to the address below:

**Gabrielle Kann  
Consultation Co-ordinator  
Ministry of Justice  
5th Floor, Selborne House  
54-60 Victoria Street  
London  
SW1E 6QW**

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given on page 3.

## **The consultation criteria**

The six consultation criteria are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

**These criteria must be reproduced within all consultation documents.**

## **Annex A – List of respondents**

- AIT senior judiciary
- AIT operational management team
- The UK Borders Agency of the Home Office
- The Immigration Law Practitioners' Association
- The Law Reform Committee of the Bar Council
- The Association of Members of the Asylum and Immigration Tribunal
- The Public and Commercial Services Union





