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. XX

IMMIGRATION, NORTHERN IRELAND LEGAL SERVICES COMMISSION, NORTHERN IRELAND

The Legal Aid (Asylum and Immigration Appeals) (Northern Ireland) Regulations 2007

Made - - - -	*April 2007*
Coming into operation	*30 April 2007*

These Regulations are made in exercise of the powers conferred upon the Secretary of State for Constitutional Affairs by section 103D(4), (5) and (6) of the Nationality, Immigration and Asylum Act 2002(**1**).

The Secretary of State has consulted the Lord Chief Justice of Northern Ireland, the Law Society of Northern Ireland, the General Council of the Bar of Northern Ireland and such other persons as he thinks appropriate 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 and commencement

1. These Regulations may be cited as the Legal Aid (Asylum and Immigration Appeals) (Northern Ireland) Regulations 2007 and shall come into operation on 30 April 2007.

Interpretation

2.—(1) In these Regulations—

"the 2002 Act" means the Nationality, Immigration and Asylum Act 2002;

"the 2003 Order" means the Access to Justice (Northern Ireland) Order 2003(**2**);

(**1**) 2002 c. 41; section 103D was inserted by section 26 of the 2004 Act
(**2**) S.I. 2003/435 (N.I. 10)

"the 2004 Act" means the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004(**3**);

"business day" means any day other than a Saturday or Sunday, a bank holiday, Christmas Day, 27th to 31st December or Good Friday;

"the Commission" means the Northern Ireland Legal Services Commission established under Article 3 of the 2003 Order;

"counsel" means a barrister in independent practice;

"fast track proceedings" means any immigration review proceedings in relation to which, pursuant to an order under section 26(8) of the 2004 Act, the time period for making an application under section 103A(1) of the 2002 Act(**4**) is a period of less than 5 days;

"immigration review proceedings" means–

(i) applications to the High Court under section 103A of the 2002 Act (including applications which are considered by a member of the Tribunal pursuant to paragraph 30 of Schedule 2 to the 2004 Act), and

(ii) proceedings for the reconsideration of an appeal by the Tribunal pursuant to an order under section 103A of the 2002 Act;

"legal aid" means legal aid given under Article 9 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981(**5**);

"section 103A application" means an application under section 103A of the 2002 Act;

"section 103D order" means an order under section 103D(1) or section 103D(3) of the 2002 Act;

"solicitor" has the meaning assigned to it in Article 27 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981;

"the Tribunal" means the Asylum and Immigration Tribunal established under section 81 of the 2002 Act, as substituted by section 26(1) of the 2004 Act.

(2) References to a section by number alone refer to the section so numbered in the 2002 Act.

General restrictions on power to make section 103D orders

3.—(1) The High Court or the Tribunal shall only make a section 103D order in immigration review proceedings where an appellant is represented by a solicitor acting pursuant to a grant of legal aid.

(2) The High Court or the Tribunal shall not make a section 103D order in fast track proceedings.

(3) Regulations 4 to 7 apply in relation to immigration review proceedings in which the High Court or the Tribunal has power, under section 103D(1) to (3) and this regulation, to make a section 103D order.

Criteria for making orders under section 103D(1)

4.—(1) The appropriate court must exercise the power to make an order under section 103D(1) in accordance with this regulation.

(2) If, upon a section 103A application, the appropriate court makes an order for reconsideration, it must not make an order under section 103D(1).

(3) If the High Court makes a reference under section 103C, it must make an order under section 103D(1).

(**3**) 2004 c. 19
(**4**) 2002 c. 41; section 103A was inserted by section 26 of the 2004 Act
(**5**) S.I. 1981/228 (N.I. 8)