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

2005 No.

IMMIGRATION, ENGLAND AND WALES LEGAL SERVICES COMMISSION, ENGLAND AND WALES

The Community Legal Service (Asylum and Immigration Appeals) Regulations 2005

Made - - - -	*2005*
Coming into force - -	*4th April 2005*

The Secretary of State, in exercise of the powers conferred upon him by section 103D of the Nationality, Immigration and Asylum Act 2002(**1**), after consulting in accordance with section 103D(7), makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Community Legal Service (Asylum and Immigration Appeals) Regulations 2005 and shall come into force on 4th April 2005.

Scope of these Regulations

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

Interpretation

3.—(1) In these Regulations—

"the 1999 Act" means the Access to Justice Act 1999(**2**);

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

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

(**1**) 2002 c.41. Section 103D was inserted by section 26 of the 2004 Act.
(**2**) 1999 c.22.
(**3**) 2004 c.19.

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

"Commission" means the Legal Services Commission established under section 1 of the 1999 Act;

"contract" means a contract between the Commission and a supplier under section 6(3)(a) of the 1999 Act;

"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;

"Funding Code" means the code approved under section 9 of the 1999 Act;

"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 Representation" has the meaning given in the Funding Code;

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

"supplier" means a solicitor or other person who is an authorised litigator within the meaning of section 119(1) of the Courts and Legal Services Act 1990(**5**), having a contract for the provision of services including Legal Representation in immigration review proceedings;

"Tribunal" means the Asylum and Immigration Tribunal.

(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

4.—(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 supplier acting pursuant to a grant of Legal Representation.

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

(3) Regulations 5 to 8 apply in relation to immigration review proceedings in which the High Court or the Tribunal has power, under section 103D(1)-(3) and this regulation, to make a section 103D order.

Criteria for making orders under section 103D(1)

5.—(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, subject to paragraph (5) it must not make an order under section 103D(1).

(3) If the High Court makes a reference under section 103C of the 2002 Act, it must make an order under section 103D(1).

(**4**) 2002 c.41. Section 103A was inserted by section 26 of the 2004 Act.
(**5**) 1990 c.41.