

Consultation on the Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2008 and (Fast Track Procedure) (Amendment) Rules 2008

List of questions for response

We would welcome responses to the following questions set out in this consultation paper. Please email your completed form to: ait.rules.consultation@tribunals.gsi.gov.uk or send to: Noreen Razvi, c/o Ross Nisbet, Asylum and Immigration Tribunal, PO Box 6987, Leicester LE1 6ZX. **Thank you!**

Question 1. Do you support the proposed amendment, and the introduction of a requirement to give reasons for not including the notice of decision?
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Comments: No comment.

Question 2. Do you agree with the proposal to include provisions relating to the Case Management Review process within the Procedure Rules? If not please state why.
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Comments: ILPA agrees with the proposal to include provision about the CMRH in the Procedure Rules.

ILPA does not agree with the proposed rule 14A(4)(b). The present Practice Directions only make provision for notifying applications to vary the grounds of appeal. The appeal form has no separate provision for stating reasons in support of the grounds. The inclusion of rule 14(b) would represent a change to the present practice and cause unnecessary confusion. The proposed rule 14A(4)(a) is sufficient, balanced by the requirement on the respondent, which ILPA supports, in rule 14A(5).

With respect to rule 14A(4)(c), ILPA does not object to a requirement that the appellant identify any witness upon whose evidence the appellant presently intends to rely. However, the present procedure requires witness statements to be submitted one week before the

hearing and does not prohibit statements from witnesses who were not identified at the CMRH. By referring to “whom he PRESENTLY wishes to call”, the rule will make clear that it is not intended to exclude reliance on witness statements which are subsequently served in accordance with the standard directions.

Question 3. Do you support the introduction of a provision enabling the Tribunal to deal with appeals on papers where the representative is overseas? If not please give reasons why.

Comments: ILPA opposes this provision. The existing provisions for dealing with an appeal without a hearing are adequate.

Question 4. Do you support the proposal 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 Tribunal? If not please give reasons why.

Comments: ILPA opposes this provision. The existing provisions for dealing with an appeal without a hearing are adequate.

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

Comments: No comment.

Question 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.

Comments: The present provision reflects the provision for a respondent’s notice in the Court of Appeal and is mandatory. It is clear that it should be served before a first stage hearing. The proposed amendment is not mandatory and its purpose is therefore unclear. Unlike the present draft, it does not make clear that the party need not serve a reply if he simply relies on the reasoning in the original determination. The present draft is clearer and appropriate.

Question 7. What is your view on the proposal to clarify 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.

Comments: ILPA regards this as unnecessary. The present rules are clear.

Question 8. Please give your views on the proposal to amalgamate the funding and appeal decision determinations.

Comments: No comment.

Question 9. Do you agree with the proposal to introduce this power to the AIT Rules? Please explain your views.

Comments: ILPA agrees that this may provide a fair and efficient means of dealing with errors so long as it is restricted to cases in which the parties consent.

Question 10. Do you agree with the proposed amendment? If not please state why.

Comments: ILPA submits that 'exceptional' should be replaced by 'good'. Plainly, the Tribunal should be able to extend time retrospectively where there is good reason to do so without having to go on to consider whether the reason is exceptional.

Question 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.

Comments: The Government's intention in relation to the Points Based System was that the AIT should not consider evidence that had not been considered by the decision maker. Therefore, there would not appear to be any proper objection to a provision permitting the later submission of any document that was before the decision-maker when the application was decided.

No basis is given for differentiating between electronic submission and other methods of submission. At a minimum, all forms of submission should allow for submission of evidence 7 days after the original submission.

Question 12. Do you support the proposed amendment requiring the respondent to notify the Tribunal in writing if they are aware that the appellant has changed their

address? If not please state why.

Comments: Yes.

Question 13. Do you support the proposal to allow claimants to be held in a site not specified in Schedule 2, in exceptional circumstances, without the Fast Track process ceasing to apply? Please give reasons.

Comments: ILPA opposes this provision. The only 'exceptional circumstance' suggested is where a centre was rendered unfit for habitation by disturbance. If there were such disruption, ILPA would regard it as manifestly unfair for the claimant to continue to be subject to the fast track procedure.

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

Comments: If the provision is introduced, 10 days would be more objectionable than 5 days.

Question 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.

Comments: No comment.

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

Comments: No comment.