

## Changes to the Asylum and Immigration Tribunal (Procedure) Rules 2005

These Rules may be cited as the **Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2008** and came into force on 12.05.2008 > [link](#)

### A summary of the new rule relating to replies

When the AIT grants an order for reconsideration, the other party **must** file and serve a Reply no later than 5 days before the earliest date appointed for a reconsideration hearing if it is to be contended that there was no material error of law.

As such, when representatives become aware that an order for reconsideration has been granted in favour of the respondent, they should make arrangements straightaway in order that a Reply can be prepared and submitted in time, if appropriate.

### The new rules

The **Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2008** came into force on Monday 12<sup>th</sup> May 2008 and impose new requirements on the other party to an appeal when a party is successful in securing an order for reconsideration under s.103A of the Nationality Immigration and Asylum Act 2002.

### The change

Whereas the original rule 30 required a party to provide a Reply only if it was contended that the Tribunal should uphold the initial determination for reasons different from or additional to those given in the determination, the amendments to rule 30 and rule 31 make it clear that a reply **must** be submitted by the other party to the appeal if that party contends that there was no material error of law in the determination.

It is understood that the Tribunal intend to take a strict robust approach to this rule change. The new Reply essentially informs the Tribunal that the other party does not concede the appeal and wishes the Tribunal to find there is no material error of law.

Under Rule 31 the Tribunal is required to take the Reply into account, although the Tribunal is not prevented from taking other matters into account, e.g. oral argument, general principle of law or common sense. The Reply will therefore need to 'set out the case' of the party contending that there has been no material error of law. Although the amount of detail required for a reply will be case-specific, a mere assertion of general opposition is unlikely to be sufficient.

A reply should be filed with the Tribunal and served on the applicant for reconsideration no later than 5 days before the earliest date appointed for a hearing of the reconsideration (rule 30(2), unchanged).

### Comment

When representatives receive notice of an order for reconsideration in favour of the respondent, it is imperative that they forward this to Counsel by fax straightaway. Counsel will be then be in a position to draft a Reply in order that this can be filed and served in time. It is clear that failure to do so will have serious ramifications, in that it may be presumed that the appellant has conceded that there was a material error of law in the Tribunal's original determination. Of course the same will apply to the Respondent where appellants are successful in securing an order for reconsideration and the Respondent fails to provide in time a Reply that advances cogent reasons as to why the determination should be upheld.

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