



Asylum and Immigration Tribunal Consultation

Tuesday, 25 August 2009



Structure and Objectives

- Presented by Mairi McHaffie



Objectives

- Explaining how AIT will transfer into the new tribunal system
- Setting out how rules and practice statements will work to govern the new appeal system
- Gaining your feedback



Format

- Presentation
- Discussion
- Panel response



Immigration and Asylum Chambers, Background, Structure and First-tier Tribunal process

- Background to the changes
- New structure
- Differences and similarities
- Permission to appeal process



Upper Tribunal Immigration and Asylum Chamber

- Permission applications - Upper Tribunal processes
- Appeal hearings and remittals
- Onward appeals to Court of Appeal/Court of Session
- Judicial Review – BCI Act
- Legal Aid



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Immigration and Asylum Chambers

Background, Structure, and First-tier processes

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Introduction : TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007 AND AIT

- 2001: Leggatt Review 'Tribunals for Users - One System One Service' Proposed single Tribunal system separate from sponsor departments
- 2004: Government response 'Transforming Public Services: Complaints, Redress and Tribunals' agreed with Leggatt Review, setting in motion establishment of Tribunals Service and TCE Bill
- 2004: Immigration and Asylum (Treatment of Claimants, etc.) Act received Royal Assent
- 2005: AIT established as a single tier tribunal
- 2006: Tribunals Service established and Tribunals, Courts and Enforcement Bill drafted. Contains provisions for two-tier Tribunal encompassing most existing tribunal jurisdictions.



Introduction : TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007 AND AIT

- Decision taken not to include AIT in new tribunals at that stage 'The AIT was set up a very short time ago, under specific legislation designed to provide what we believe is the appropriate model. That understanding and determination has not changed. This is the right model for the immigration and asylum jurisdiction. If in due course it looks appropriate, there is flexibility to bring it in.'
- 2007: TCE Act receives Royal Assent. Consultation on implementation proposing Chambers structure allowing similar jurisdictions to be grouped together.
- 2008: First-tier Tribunal and Upper Tribunal commence with first group of tribunal jurisdictions transferred into three chambers in First-tier Tribunal and one in Upper Tribunal.



Introduction : TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007 AND AIT

- Consultation 'Immigration Appeals: Fair Decisions; Faster Justice' published following judicial/official joint working group looking at asylum appeals system. Proposed transfer of AIT into First-tier and Upper Tribunals.
- 2009: Further jurisdictions and chambers added to both Tribunals.
- Response to AIT consultation published on 8 May confirming AIT transfer and structure of new appeals process.



AIT into TCE structure

- AIT will cease to exist on transfer and will be replaced by specialist Immigration & Asylum Chambers of the First-tier (FTT) and Upper Tribunals (UT)
- All Immigration Judges will map into the new structure ensuring that established expertise is maintained
- Responsibility for rules for Immigration and Asylum Chambers will pass to Tribunal Procedure Committee established under TCE Act
- Legal aid funding arrangements will be mapped across and will be broadly similar



Procedure Rules on commencement

- Consultation response confirmed that the present Asylum and Immigration Tribunal (Procedure) & (Fast-track) Rules 2005 would be modified, with incidental, supplemental, transitional or consequential amendments, to become rules for First-tier Immigration & Asylum Chamber
- TPC to consult on amendments to Upper Tribunal Rules required for onward appeals – Upper Tribunal has one set of rules applying across Chambers



AIT into TCE structure – key changes

- Onward appeal to Upper Tribunal replaces review and reconsideration.
- High Court role in ‘opt-in’ applications replaced by Upper Tribunal permission application
- Section 103 funding order scheme does not apply to onward appeals



First-Tier Tribunal process – key similarities

- Appellants lodge appeal against UKBA decision with Immigration & Asylum Chamber of the FTT
- Time-limits are the same as in AIT throughout
- Appeals lodged out of time, or raising validity will continue to be dealt with by the Duty Judge scheme
- UKBA will still retain personal service provisions for decisions relating to asylum (in both FTT and UT jurisdictions)
- Tribunal procedure for determining the appeal will be the same as with AIT (AIT Rules 15-23 carried across)



The permission to appeal process in First-tier Tribunal

- Parties wishing to appeal to the Upper Tribunal must apply to the FTT for permission to appeal in the first instance
- Time-limits for application for permission to appeal (PTA) mirror current AIT reconsideration and review time-limits
- When the FTT receives an application for PTA it must consider whether to review decision



Permission to appeal – review

- It can only review decision if it is satisfied there was an error of law.
- Following review, it can:
 - set aside and re-decide the appeal; or
 - Refer the matter to the Upper Tribunal
- Practice statement explains that the review power will only be used sparingly
- Where it doesn't review decision, or does not alter its decision on review, it decides whether to grant permission to Upper Tribunal



Other review powers

- Asylum and Immigration Tribunal (Procedure) Rules maintain power to correct clerical errors under r60(1) and power to set aside decisions under r60(1A) if an administrative error has occurred



Transitional Provisions – First-tier Tribunal

- Transfer of Functions Order to be laid before Parliament, will specify that
- An appeal which has commenced but not completed will be completed in the First-tier tribunal;
- Directions and orders made prior to this Order coming into force will continue in force as if they were directions or orders of the new tribunals;
- Any pending applications for reconsideration before the AIT will be dealt with as First-tier permission applications



Discussion

- Points to consider:
- What do you see as the benefits and challenges of new system?
- What information would you want about the new processes if you were an appellant with an appeal before AIT when the changes take place?
- What further information is needed to assist representatives and others in understanding the new structure?