



Asylum and Immigration Tribunal Consultation

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Tribunals Service

Upper Tribunal Immigration and Asylum Chamber

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Permission to appeal to the Upper Tribunal

- If PTA is refused by the FTT, the party may apply for PTA directly from UT (UT Procedure Rule 21)
- Time-limits for doing so mirror current procedure for applying for reconsideration to High Court/Court of Session (UT Rule 21(3)(aa), (ab) and 21(3A))
- However, time-limits are expressed differently to current rules and FTT Procedure Rules, i.e. time is calculated from when the decision was sent, as opposed to when it was deemed to be served



Permission to appeal to the Upper Tribunal

- No practical difference in time limit for making applications as deemed service times added, for example:
- In Country; At present; 2 days deemed service and 5 days to apply for reconsideration becomes 7 days from date sent.
- Out of country; At present 28 days deemed service and 28 days to apply for reconsideration becomes 56 days from date sent.
- For asylum decisions served by UKBA – UKBA time limits run from when Tribunal sends them. Appellant time limits run from when they are sent by UKBA.



On appeal to the Upper Tribunal

- If permission is granted by the FTT or UT, the permission application stands as appellants notice of appeal - an additional appeal application is not required.
- After granting permission, the UT must proceed to determine whether the FTT's decision contains an error of law
- If an error of law is found, the UT may set aside the decision, and either replace the decision with its own; or remit the appeal back to the FTT with directions for its reconsideration (Section 12, TCE Act)



Remittals to the First-tier

- Remittal should only occur when the UT is satisfied that the error by the FTT either (a) deprived a party of a fair hearing or other opportunity to put their case forward; or (b) presents highly compelling reasons why the decision should not be re-made by the UT (Practice Statement 7)
- PS states that instances of remittal from the UT to the FTT are expected to be rare



Onward appeal rights from Upper Tribunal

- Onward right of appeal from UT decision is to the Court of Appeal or Court of Session (Section 13, TCE Act)
- Permission must be sought from the UT in the first instance, and then, if refused, directly from the Court
- Test for permission at 13(6) of TCE Act applies



13(6) Permission requirements

- Order made by Lord Chancellor in 2008 applying ‘second appeal’ test to all onward appeals from Upper Tribunal where first appeal was in First-tier Tribunal.
- Permission granted only where UT or appellate court considers appeal would raise important point of principle or practice, or there is some other compelling reason to hear appeal.



Judicial reviews

- The Borders, Citizenship and Immigration Act 2009 makes provision for immigration and asylum “fresh claim” JRs to be transferred into the UT
- Fresh claim defined in Act as ‘an application that calls into question a decision of the Secretary of State not to treat submissions as an asylum claim or a human rights claim within the meaning of Part 5 of the Nationality, Immigration and Asylum Act 2002 (c. 41) wholly or partly on the basis that they are not significantly different from material that has previously been considered (whether or not it calls into question any other decision).’



Judicial reviews

- BCI Act provides for fresh claims JRs to be transferred by direction of Lord Chief Justice.
- Under TCE Act, Lord Chancellor's agreement is required before the direction can be made.
- BCI Act also prevents any direction unless and until AIT has transferred into FTT and UT.
- It will be for LCJ to propose date for transfer and for LC to agree to this. No date is proposed as yet
- BCI Act does not allow for case by case transfer or transfer of any other classes of JR



Legal aid for the new system

- Aim is to replicate the current scheme of payments in the new tribunals as far as possible without change
- Present legal aid system of funding is based on two different payment schemes dependent on whether it is a substantive appeal or an application for review and reconsideration of an AIT decision
- Necessary regulatory and legislative changes are being made to preserve as closely as possible current legal aid arrangements



Legal aid for the new system

- Legal aid scheme for FTT will be the same as the current AIT first stage appeals
- Legal aid for UT will broadly be comparable to existing Review and Reconsideration appeals except that there will no longer be a judicially operated retrospective cost order scheme.
- Practitioners will be required to consider the merits of the application as they do now
- Where a judge grants permission to appeal to the Upper Tribunal, the costs for the case will be claimable; where permission has been refused, with some exceptions, no claim can be made from public funds.



Transitional Provisions – Upper Tribunal

- Transfer of Functions Order to be laid before Parliament, will specify that;
- Where reconsideration has been ordered and is part heard, it will continue as reconsideration application with onward appeal to Court of Appeal/Court of Session.
- Where reconsideration has been ordered, but hearing has not commenced, it will be treated as an onward appeal to Upper Tribunal. Cost order provisions will continue to apply for these cases to ensure legal aid funding can be granted.
- Applications pending at Court of Appeal/Court of Session will remain with the Court, and if remitted by appellate court will be dealt with by Upper Tribunal.



Discussion

- Points to Consider
- What information would you want about the new rules if you were an appellant who had made a reconsideration application?
- Are there any areas where further guidance would be helpful?
- Are there any further areas that should be covered in rules or practice directions?



Upper Tribunal Rules Consultation

- Consultation available on line at <http://www.tribunals.gov.uk/latestnews.htm> 1st July news item
- Consultation closes on 29 September
- Responses/questions to TPCsecretariat@tribunals.gsi.gov.uk