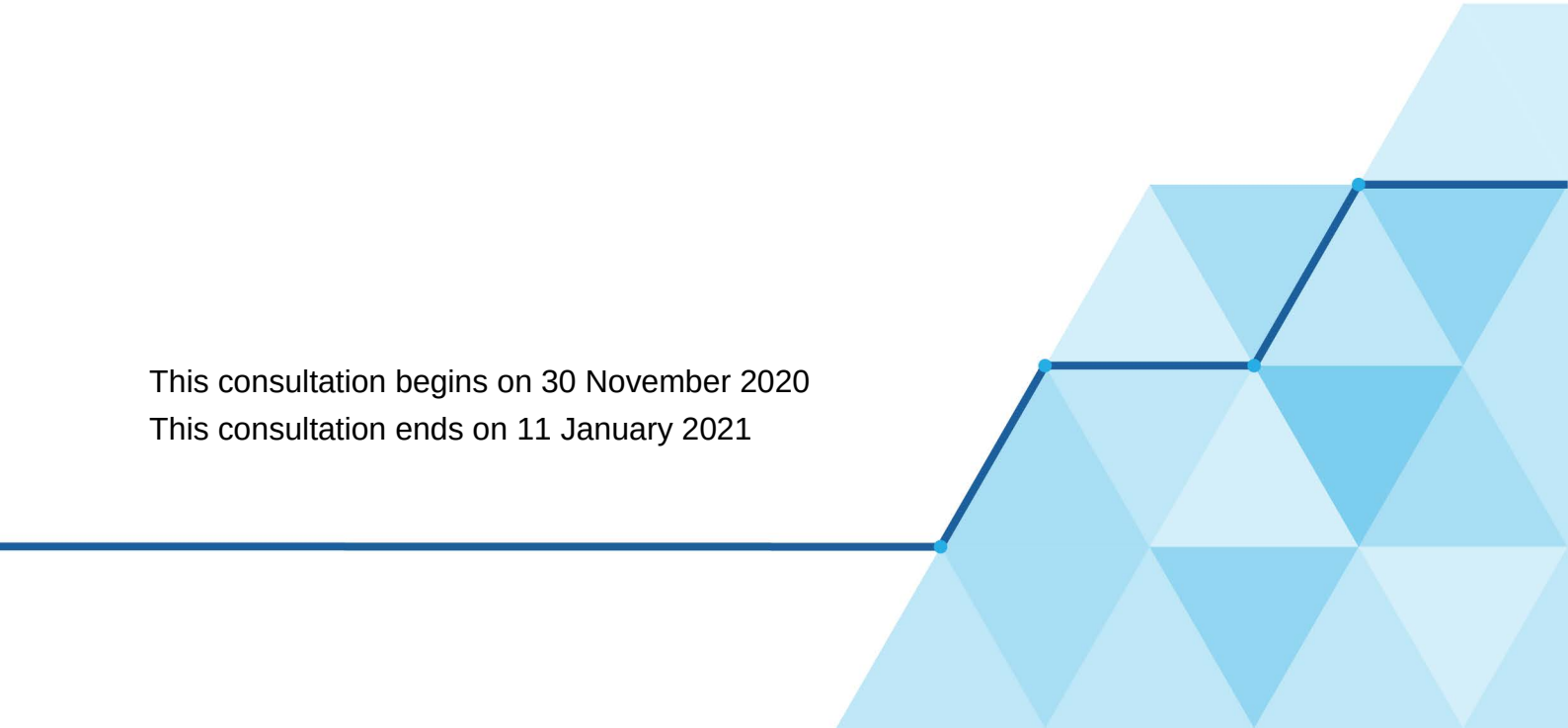
Ministry of Justice

Proposals for reforms to arrangements for obtaining permission to appeal from the Upper Tribunal to the Court of Appeal

This consultation begins on 30 November 2020
This consultation ends on 11 January 2021



Ministry of Justice

Proposals for reforms to arrangements for obtaining permission to appeal from the Upper Tribunal to the Court of Appeal

A consultation produced by the Ministry of Justice. It is also available at https://consult.justice.gov.uk/

About this consultation

To:	All users and potential users of the tribunals and Court of Appeal; the judiciary; legal professionals; businesses; tribunal staff; Court of Appeal staff; UK policy institutions; voluntary organisations. This list is not exhaustive.
Duration:	From 30 November 2020 to 11 January 2021
Enquiries (including requests for the paper in an alternative format) to:	Vijay Parkash, Ministry of Justice Post Point 10.22 102 Petty France London SW1H 9AJ Tel: 020 3334 4471 Email: vijay.parkash@justice.gov.uk
How to respond:	Please send your response by 11 January 2021 to: Vijay Parkash Ministry of Justice Post Point 10.22 102 Petty France London SW1H 9AJ Tel: 020 3334 4471 Email: vijay.parkash@justice.gov.uk
Additional ways to feed in your views:	This consultation exercise can be completed online at https://consult.justice.gov.uk/
Response paper:	A response to this consultation exercise is due to be published in due course at: https://consult.justice.gov.uk/

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Foreword

The Government wants a justice system that works for everyone. This means a justice system that balances efficiency on the one hand with fairness, access to justice and lawfulness on the other. Having a balanced justice system ensures that the rights and entitlements of people are upheld by the public bodies that make decisions affecting their lives.

The Government intends to enable access to justice for all individuals but under the current system judges in the tribunals and Court of Appeal can spend significant time reviewing an individual case on the same grounds of appeal on multiple occasions, and in the majority of cases reaching the same decision.

Currently before a judicial review claim can be brought, the litigant must seek permission to challenge the lawfulness of a government decision and permission to apply for judicial review will usually first be considered on the papers. If the court or tribunal is satisfied that the application sets out arguable grounds for a judicial review claim the case will proceed to a substantive hearing.

Cases which are refused permission on the papers are entitled to have the refusal reconsidered at an oral hearing, unless the application was certified as totally without merit (an application bound to fail) at the time of the paper refusal, in which case there is no such entitlement.

Refusals on paper by the Upper Tribunal to grant permission to apply for judicial review which are certified as being totally without merit have no statutory right of oral renewal in the Upper Tribunal, but litigants are still able to apply for permission to appeal to the Court of Appeal.

Only a very small proportion of permission applications that are deemed ‘totally without merit’ by the Upper Tribunal are subsequently granted permission by the Court of Appeal. And of those, a striking feature is that relatively few cases were successful in their application for judicial review. In 2019, out of the 67 totally without merit applications determined by the Court of Appeal, only 3 (around 4 percent) were granted permission, despite considerable judicial time being used to consider them. Furthermore, of those certified cases which were granted permission to appeal, none succeeded at the substantive appeal stage.

In the case of a second appeal which are appeals challenging certain kinds of decisions from the Upper Tribunal to the Court of Appeal, where permission is granted, the available data indicates that very few cases actually succeed at hearing. This suggests that the current test threshold is not strict enough to prevent the misuse of the system by those who see an advantage in the delay caused by bringing hopeless challenges. In 2019, out of the 561 permission to appeal applications determined in the Upper Tribunal (Immigration and Asylum Chamber) at the second appeals stage, only 92 of these were granted (which represents 16 percent). However, the numbers of cases that were granted permission and succeed at the substantive appeal stage was only 27 cases.

This leads to backlogs and increases the overall time it takes to dispose of a case. This reduces the effectiveness of the courts and tribunals system and damages the UK's international competitiveness as a centre for dispute resolution of all kinds. Our proposals are aimed towards making the courts and tribunals system work better for its users and offer greater value for money for the taxpayer.

This paper sets out our proposals for reform and seeks views on how to make sure that weak or hopeless cases are filtered out at an early stage so that genuine claims can proceed quickly and efficiently to a conclusion. Our aim in issuing this consultation is to gather additional evidence to help Government formulate policy to ensure cases are dealt with fairly, efficiently and swiftly.

Chris Philp MP

Parliamentary Under Secretary of State

Introduction

1. Judicial review is a critical check on the power of the State, providing an effective mechanism for challenging the decisions of public bodies to ensure that they are lawful. The Government is concerned that the judicial review process may in some cases be subject to abuse. A striking feature has been the significant growth in the volume of judicial reviews in immigration and asylum matters with a small proportion of cases succeeding if permission to apply for judicial review has been granted in the Upper Tribunal. In 2019, out of the 67 applications for permission to appeal determined by the Court of Appeal in judicial review cases which the UT had determined were totally without merit, only 3 (4%) were granted permission. Clearly this evidence demonstrates that this is a not a sensible use of the Court of Appeal's judicial and administrative time/resources.

2. As part of the existing statutory appeals processes in both the civil courts and tribunals, there may be several considerations of the same case at different levels of the system. This extends the time it takes to finally dispose of a case. The Government is concerned about the considerable pressures on the Court of Appeal's time resulting from the current arrangement for obtaining permission to appeal for statutory appeals and judicial review applications from the Upper Tribunal. In calendar year 2019 the Court of Appeal with regards to Immigration and Asylum Chamber cases took (on average) 6 months to dispose of a paper permission to appeal application; 18 months to dispose of an oral permission application; and 18 months to dispose of a full appeal. This is largely due to the high volume of work currently reaching the Court of Appeal. This has a knock-on effect on all other parts of the legal system, including civil claims. Therefore, delays in the Court of Appeal caused by numerous reconsiderations of 'permission to appeal' cases undermine the reputation of the United Kingdom as a venue for resolution of disputes of all kinds.

3. In this paper, we set out the reforms we propose to make in the following key areas:
    1. In the case of a second appeal, if the Upper Tribunal refuses permission to appeal to the Court of Appeal, the losing party may only apply directly to the Court of Appeal for permission to appeal "for reasons of exceptional public interest". If the Upper Tribunal is uncertain whether to grant or refuse permission to appeal, they may refer the application for permission to appeal for determination by the Court of Appeal (which will be determined in the usual way on the papers, unless the judge directs an oral hearing).
    2. Where a judge of the Upper Tribunal has certified an application for judicial review to be totally without merit, there should be a right of review before another Upper Tribunal judge but no right to apply for permission to appeal to the Court of Appeal.

4. These proposals are intended to improve the efficiency of the system by limiting the extent to which an unsuccessful litigant can require the Court of Appeal to further examine judicial decisions made in the Upper Tribunal. The Court of Appeal is a precious resource. These proposals are designed to ensure that resource is focused on the cases which most merit review at that level.

5. There is evidence that a high volume of work affecting the Court of Appeal from the Upper Tribunal is generated from appeals in immigration and asylum cases which lack any sort of merit and which are, therefore, not a good use of the Court of Appeal's judicial and administrative time/resource.

6. It is not the Government's intention to restrict access to justice, but to ensure that unmeritorious cases with little prospect of success are considered promptly in the lower courts and tribunals, whilst meritorious claims receive senior judicial scrutiny and are swiftly resolved. These proposals ensure the right balance is struck between reducing the burden on the justice system, and upholding access to justice and the rule of law. This ensures that only those cases that warrant further consideration at the higher level are considered by the Court of Appeal on the basis that they have already been considered in the Upper Tribunal by a Judge of higher standing than those in the First-tier Tribunal.

7. These proposals relating to arrangements for obtaining permission to appeal from the Upper Tribunal to the Court of Appeal are being considered at the same time as the Independent Review of Administrative Law (IRAL) which is considering wider judicial review reform options. Reforming judicial review procedures in the Court of Appeal is a discrete and self-contained proposal which seeks to address longstanding concerns about the workload of the Court of Appeal. This consultation does not seek to pre-judge or influence the work of the IRAL, although we acknowledge that this proposal does fall within the IRAL's terms of reference and this consultation is being shared with the panel accordingly. We expect the IRAL to conclude its work by the end of the year.

8. In addition, Government seeks to consult on a minor amendment to s.13 Tribunals, Courts and Enforcement Act 2007 regarding remedying an inconsistency in second appeals to the Court of Session.

9. This paper contains a series of questions which seek views on our proposals for reform. Alongside this paper we have published an Impact Assessment, which sets out the estimated impact the proposals would have if they were implemented. We also invite respondents to provide evidence that could help us consider the potential impact on individuals with protected characteristics, in line with our responsibilities under the Equality Act 2010.

10. Details of how to respond are set out in page 21. The deadline for responses is 11 January 2021. The Government will consider the responses to this consultation and we intend to publish a response in due course.

Background

Introduction to the tribunal system

11. The First-tier Tribunal and Upper Tribunal were created by the Tribunals, Courts and Enforcement Act 2007 ('TCEA'). They are jointly referred to as the unified tribunal system and replaced a large number of tribunals which had previously operated under a number of different statutory regimes. The First-tier Tribunal is divided into seven Chambers, whilst the Upper Tribunal is divided into four Chambers.

12. Policy development in this area must bear in mind the role of the Tribunal Procedure Committee (the 'TPC'). The TPC is an independent body established by statute which is responsible for drafting procedure rules for the various chambers of the First-tier Tribunal and Upper Tribunal. Rules made by the TPC must be submitted to the Lord Chancellor, who must then allow or disallow them.

13. Decisions of the First-tier Tribunal can be appealed to the Upper Tribunal with the permission of either the First-tier Tribunal or (if the First-tier Tribunal refuses permission) the Upper Tribunal itself. The Upper Tribunal also considers some particular kinds of cases as the tribunal of first instance.

14. There is significant variation in the volumes of cases heard in each Chamber. For example, the Social Security and Child Support jurisdiction of the First-tier Tribunal (Social Entitlement Chamber) deals with the largest volume of appeals, with 195,346 receipts in 2018/19. The First-tier Tribunal (Immigration and Asylum Chamber) receives comparatively fewer appeals, 43,838 in 2018/19, but a very high proportion of these seek permission to appeal this decision to the Upper Tribunal.

Judicial review in the Upper Tribunal

15. Judicial review is a process by which individuals, businesses and other affected parties can challenge the lawfulness of decisions or actions of Government, local authorities, and other public bodies. It is a critical check on the powers of the State, providing an effective mechanism for challenging the decisions of public bodies to ensure they are lawful.

16. Most kinds of judicial reviews are heard in the High Court but some, principally immigration and asylum cases as well as social welfare related benefit cases, are heard in the Upper Tribunal. There are three main grounds on which a decision or action can be challenged by way of judicial review:

- Illegality – for example, the public body in question was acting beyond its statutory powers;
- Irrationality – for example, the decision was not taken reasonably, or no reasonable person could have taken it;
- Procedural Impropriety – for example, a failure to act in accordance with natural justice.

Judicial review permission procedure

17. Before a judicial review claim can be brought, the litigant must seek permission to do so. In assessing this, the court generally looks at whether the claim has been brought within the necessary time limit, whether the body being challenged is capable of being judicially reviewed, and whether the effect of the decision was sufficiently proximate to the litigant to give them 'standing'. Once all of these elements have been satisfied, the court must also be satisfied that the claim gives rise to an arguable case for judicial review to allow permission. Thereafter, a judicial review claim will proceed to a substantive hearing.

18. Applications to the Upper Tribunal for permission to apply for judicial review are usually initially considered on the papers. Cases which are refused permission on the papers are entitled to have the refusal reconsidered at an oral hearing, unless the application was certified as totally without merit at the time of the paper refusal, in which case there is no such entitlement.

Appeals (and permission to appeal applications) in the Court of Appeal

19. There are several different types of statutory appeals and judicial reviews which may be the subject of applications for permission to appeal to the Court of Appeal from the Upper Tribunal, our proposals for reform relate to:
    - Second appeals from the Upper Tribunal exercising its appellate jurisdiction from the First-tier Tribunal. Both the Upper Tribunal and the Court of Appeal apply the 'second appeals' test to these applications.
        - The 'second appeals' test applied states that the proposed appeal must raise 'an important point of principle or practice'; or there must be some other compelling reason for the Court of Appeal to hear the appeal.
    - Refusals on paper by the Upper Tribunal to grant permission to apply for judicial review which are certified as being totally without merit. There is then no right of oral renewal in the Upper Tribunal, but litigants are still able to apply for permission to appeal to the Court of Appeal.

20. Appeals to the Court of Appeal generally require permission. Permission can be granted by the Upper Tribunal or by the Court of Appeal itself. The party who wishes to appeal must first apply to the Upper Tribunal for permission to appeal, and if refused, can then apply directly to the Court of Appeal. In an application for PTA following a statutory second appeal in the Upper Tribunal, the Upper Tribunal and Court of Appeal both apply the 'second appeals' test.

21. Where an application for PTA is made to the Court of Appeal the default position is that it will be determined on paper, although the judge considering the application on paper may direct an oral hearing (and is obliged to do so if they are of the opinion that the application cannot be fairly determined without an oral hearing). Nevertheless, even PTAs determined on paper do take considerable judicial time, due to the need to examine submissions, previous judgments as well as relevant case law.

22. Applications for permission for judicial review which are deemed totally without merit do not have a right of oral renewal in the Upper Tribunal but do have a right of appeal to the Court of Appeal.

23. The judicial review process already permits a claimant to make a paper application which, if refused (and not found totally without merit), can then be followed up by an oral renewal which is usually heard by a different judge. If this oral renewal is refused, it can then be appealed to the Court of Appeal.

The rationale for reform

24. The Government wants a justice system that works for everyone. This means a justice system that balances efficiency on the one hand with fairness, access to justice and the rule of law on the other.

25. Under the current system judges in the tribunals and Court of Appeal can spend exceptional time reviewing an individual case on the same grounds of appeal on multiple occasions, and in the majority of cases reaching the same decision. This leads to backlogs and increases the overall time it takes to dispose of a case. This is bad for the rule of law and damages the UK's international competitiveness as a centre for dispute resolution of all kinds.

26. This paper sets out our proposals to tackle this issue, and seeks views on the two areas:
    - In the case of a second appeal, if the Upper Tribunal refuses permission to appeal to the Court of Appeal, the losing party may only apply directly to the Court of Appeal for permission to appeal "for reasons of exceptional public interest". If the Upper Tribunal is uncertain whether to grant or refuse permission to appeal, they may refer the application for permission to appeal for determination by the Court of Appeal (which will be determined in the usual way on the papers, unless the judge directs an oral hearing).
    - Where a judge of the Upper Tribunal has certified an application for judicial review to be totally without merit, there should be a right of review before another Upper Tribunal judge but no right to apply for permission to appeal to the Court of Appeal.

27. The Government's intention is not to restrict access to justice, but rather to develop an even-handed response to the current pressures that the high volume of hopeless second appeals and judicial review permission to appeal applications have placed on the Court of Appeal in recent times.

28. In the case of a second appeal where permission is granted, the available data indicates that very few cases actually succeed at hearing. This suggests that the current test is not strict enough to prevent the misuse of the system by those who see an advantage in the delay caused by bringing hopeless challenges.

29. For judicial reviews for cases that are ordered by the Upper Tribunal as totally without merit, the available data indicates that very few applications are overturned by the Court of Appeal and in the instances that a case proceeds to a hearing, relatively few cases are successful. Our proposal for reform will ensure these judicial review claims receive the necessary senior judicial scrutiny they deserve in the Upper Tribunal by

tribunal judges who are experts in the law of their jurisdiction. The processes and rules of the Upper Tribunal are designed to offer an accessible, effective and economic route which enable appellants whether individuals or businesses and whether represented or not, to make their case.

30. The Court of Appeal is a precious resource. These reforms are designed to ensure that resource is focused on the cases which most merit review at that level. They are also necessary given the inevitable additional pressure that predicted Brexit issues will give rise in the volume of legal actions heard in the Court of Appeal which require their necessary specialist expertise.

31. We want to ensure that weak or meritless cases which stand little prospect of success are identified and dealt with promptly at an early stage in proceedings, and that legitimate claims are brought quickly and efficiently to a resolution. In this way, we can ensure that the right balance is struck between reducing the burdens on public services and protecting access to justice and the rule of law.

32. The Government considers that the measures presented in this paper are proportionate to tackling the problem at hand and welcomes views from those with an interest in this important area of justice.

The proposals for reform

Procedure for making changes

33. These measures will require primary legislation. Subject to responses to this consultation the Government intends to legislate when parliamentary time allows.

Proposals to reduce the burden on the Court of Appeal of permission to appeal applications in second appeals from the Upper Tribunal

34. The Government is concerned that waiting times in the Court of Appeal have remained high in recent years. In calendar year 2019 the Court of Appeal with regards to immigration and asylum cases took (on average) 6 months to dispose of a paper permission to appeal application; 18 months to dispose of an oral permission application; and 18 months to dispose of a full appeal. This is largely due to the high volume of work currently reaching the Court of Appeal.

35. The proposals outlined below are designed to limit the extent to which an unsuccessful litigant is able to ask the Court of Appeal to reconsider the decisions made in the Upper Tribunal.

36. The Government's proposals are as follows:
    1. In the case of a second appeal, if the Upper Tribunal refuses permission to appeal to the Court of Appeal, the losing party may only apply directly to the Court of Appeal for permission to appeal "for reasons of exceptional public interest". If the Upper Tribunal is uncertain whether to grant or refuse permission to appeal, they may refer the application for permission to appeal for determination by the Court of Appeal (which will be determined in the usual way on the papers, unless the judge directs an oral hearing).
    2. Where a judge of the Upper Tribunal has certified an application for judicial review to be totally without merit, there should be a right of review before another Upper Tribunal judge but no right to apply to the Court of Appeal for permission to appeal.

37. The two proposals are considered separately in detail below.

38. Thereafter, and in addition, Government seeks to consult on a minor amendment to s.13 *Tribunals, Courts and Enforcement Act 2007* regarding remedying an inconsistency in second appeals to the Court of Session.

i. Second appeals from the Upper Tribunal

39. Where a person challenges a decision of a public body, for example, an immigration decision of the Home Secretary or a decision by the Secretary of State for Work and Pensions on welfare benefits, that case will usually be heard by the First-tier Tribunal. After the First-tier Tribunal has decided the case, either party can appeal to the Upper Tribunal if granted permission to do so. If permission is granted and the Upper Tribunal hears the appeal, either party can seek permission to bring a further appeal (i.e. a second appeal) to the Court of Appeal.

40. For second appeals from the Upper Tribunal seeking permission to appeal to the Court of Appeal, the Upper Tribunal already applies the “second appeals” test and so permission to appeal to the Court of Appeal will not be granted unless it considers that (a) the appeal would have a real prospect of success and raises an important point of principle or practice; or (b) there is some other compelling reason for the Court of Appeal to hear the case.

41. By introducing these reforms, we can allow the Court of Appeal to focus only on cases of exceptional public importance. This allows decisions for these important cases to be considered and decided more expediently by the Court of Appeal.

42. In 2018, with regards to statutory second appeals in the (UT) Immigration and Asylum Chamber, 561 PTA applications were determined by the Court of Appeal, therefore incurring a significant resource pressure on the senior judiciary for only a minority of relevant cases whose application for permission for appeal was granted by the Court of Appeal. We expect there to be some legal aid savings due to a reduction in legal aid funded cases if a new test is applied however this figure is most likely to not be substantial.

43. It is Government’s opinion that an Upper Tribunal judge is better as the main decision maker in these cases because the Upper Tribunal judge is an expert in the area and is therefore better placed to determine what needs to be clarified in the point of law. However, these proposals will maintain a ‘safety valve’ to permit the opportunity for review by the Court of Appeal in rare cases which involve very important wider issues. Additionally, it safeguards against something going very badly wrong in the tribunals below.

44. Therefore, we propose narrowing the test for permission to appeal to be applied by the Court of Appeal so that it requires “reasons of exceptional public interest”.

Question One. Do you agree that there should be a stricter and narrower test applied to applications to the Court of Appeal for permission to appeal in a second appeal from the Upper Tribunal to the Court of Appeal?

Question Two. Do you agree with the proposal to amend the current test so that it requires the application to demonstrate that it raises matters of exceptional public interest? Please give reasons.

ii. Judicial review permission applications in the Upper Tribunal

45. Currently, when the Upper Tribunal certifies that an application for permission to bring a judicial review is totally without merit, and the Upper Tribunal refuses permission to appeal to the Court of Appeal (which will normally be the case), the applicants can apply to the Court of Appeal for PTA.

46. In these cases where permission for judicial review has been refused and the case has been certified as totally without merit by the Upper Tribunal, we do not believe that the applicant should be able to refer the question to the Court of Appeal. In 2019 of the 67 applications considered by the Court of Appeal, only 3 (4%) were granted PTA, despite considerable judicial time being used to consider them. Furthermore, of those cases which were granted PTA, none succeeded in the substantive appeal.

47. For this reason, we believe that the current arrangements are disproportionate and take up the time and resources of the Court of Appeal unnecessarily. Instead we propose that, where an application for permission to bring Judicial Review is certified by an Upper Tribunal judge as totally without merit, the applicant should be able to refer the matter to a second Upper Tribunal judge for a reconsideration of whether or not to grant permission.

48. Removal of this extra appeal route would lead to improvements in the time it takes for the Court of Appeal to finish its current case load and will enable all cases made with merit (including those which remain from the Upper Tribunal) to be considered more quickly. This would in turn remove the considerable pressures on Court of Appeal time.

    We believe that, this change will contribute to reducing the pressure on the Court of Appeal, allowing substantial judicial time savings which can be redistributed in the Court of Appeal, and represent a better and much more proportionate use of judicial resource.

Question Three. For an application for permission for judicial review which has been certified as totally without merit by the Upper Tribunal do you agree that the right to apply to the Court of Appeal for permission to appeal be removed?

Question Four. For an application for permission for judicial review which has been certified as totally without merit by the Upper Tribunal, do you agree that there should be a right of review before a second Upper Tribunal judge?

iii. Second appeals to the Court of Session

49. The Government also seeks views on a proposal to amend the test applied by the Upper Tribunal in deciding whether to grant permission for a second appeal to the Court of Session. Although this is incidental to the process that is outlined in the rest of this document, Government thought it prudent to seek views on correcting this anomaly in this consultation, as it concerns the use of the "second appeals" test.

50. Currently, when an application is made to the Upper Tribunal for permission for a second appeal, and the relevant appellate court is the Court of Session, the UT does not decide the application according to the "second appeals" test. The Upper Tribunal applies the "second appeals" test where the relevant appellate court is the Court of Appeal in England and Wales or the Court of Appeal in Northern Ireland, but there is no provision for it to apply the second appeals test in Scottish cases. If the Upper Tribunal refuses a permission application, and a further application is made to the Court of Session, the Court of Session will decide that application according to the "second appeals" test.

51. This anomaly has been commented on adversely, most recently by Lord Malcom in *The Commissioners for HM Revenue and Customs v DCM (Optical Holdings) Limited [2019]* CSIH 39 who commented that he could not think of any good reasons for it and that this was an area of procedure which is ripe for review.

52. As there has been no reason put forward to maintain this inconsistency, the Government therefore proposes to rectify this inconsistency by legislating for the "second appeals" test to be applied by the Upper Tribunal when considering an application for permission for a second appeal to the Court of Session.

Question Five. Do you agree that the "second appeals" test should be applied by the Upper Tribunal when considering an application for permission to appeal to the Court of Session?

Impact Assessment

53. The Impact Assessment accompanying this consultation document provides details of the anticipated financial impacts of implementing these proposals. We would welcome information and views on this to help us improve the quality of our assessment.

54. We will publish a Government response to this consultation in due course which will set out those reforms we intend to implement. At that stage we will also publish a revised Impact Assessment setting out revised estimates in light any changes to the policy and of responses to the consultation.

Question Six. Do you agree with the assumptions and conclusions outlined in the Impact Assessment? Please provide any empirical evidence relating to the proposals in this paper.

Equalities Impacts

55. Under the Equality Act 2010 public authorities have an ongoing duty to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between those with different 'protected characteristics. The nine protected characteristics are race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity. As part of this obligation, we have made an initial assessment of the impact of our proposals on people with protected characteristics.

56. The majority of permission to appeal applications in the Court of Appeal relate to immigration and asylum matters. It is therefore reasonable to anticipate that our proposals may have a differential (adverse) impact on the characteristic of race and religion/belief. We consider that any such impact is justified on the basis that there is a good case for the proposed reforms and that, as now, at any stage in the revised appeal process there will be equality in the approach adopted by tribunal or court, regardless of any protected characteristic an appellant may have.

57. We acknowledge however that we do not collect comprehensive information about court users generally, and specifically those involved in proceedings in the Court of Appeal, in relation to protected characteristics. This limits our understanding of the potential equality impacts of the proposals for reform.

58. To help the Government fulfil its duties under the Equality Act 2010 we would welcome information and views to help us gain a better understanding of the potential equality impacts that our proposals may have.

Question Seven. From your experience are there any groups or individuals with protected characteristics who may be particularly affected, either positively or negatively, by the proposals in this paper?

We would welcome examples, case studies, research or other types of evidence that support your views. We are particularly interested in evidence which tells us more about litigants in the Court of Appeal, and their protected characteristics.

Question Eight. What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposals? Are there any mitigations the Government should consider? Please give data and reasons.

Family Test

59. The Family Test is an internal Government challenge to departments to consider the impacts of their policies on promoting strong and stable families. It is understood by Government that family bonds are often in contention within immigration and asylum cases. We nonetheless consider that the continued impact on family ties is necessitated through the need for a fairer and more effective court system.

60. We acknowledge that we do not collect comprehensive information about court users generally, and specifically those involved in proceedings in the Court of Appeal, in relation to whether family ties have been adversely affected, which does limit Government's full analysis of this issue.

61. We would welcome information and views from respondents on the impact these proposals may have on families.

Question Nine. What do you consider to be the impacts on families of these proposals? Are there any mitigations the Government should consider? Please give data and reasons.

Questionnaire

Question One. Do you agree that there should be a stricter and narrower test applied to applications for permission to appeal from the Upper Tribunal to the Court of Appeal?

Question Two. Do you agree with the proposal to amend element (b) of the current test so that it requires the application to demonstrate that it raises matters of exceptional public interest? Please give reasons.

Question Three. For an application for permission for judicial review which has been certified as totally without merit by the Upper Tribunal do you agree that the right to apply to the Court of Appeal for permission to appeal be removed?

Question Four. For an application for permission for judicial review which has been certified as totally without merit by the Upper Tribunal, do you agree that there should be a right of review before a second Upper Tribunal judge?

Question Five. Do you agree that the "second appeals" test should be applied by the Upper Tribunal when considering an application for permission to appeal to the Court of Session?

Question Six. Do you agree with the assumptions and conclusions outlined in the Impact Assessment? Please provide any empirical evidence relating to the proposals in this paper.

Question Seven. From your experience are there any groups or individuals with protected characteristics who may be particularly affected, either positively or negatively, by the proposals in this paper?

Question Eight. What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposals? Are there any mitigations the Government should consider? Please give data and reasons.

Question Nine. What do you consider to be the impacts on families of these proposals? Are there any mitigations the Government should consider? Please give data and reasons.

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	☐ (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 11 January 2021 to:

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Email: vijay.parkash@justice.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at https://consult.justice.gov.uk/.

Publication of response

A paper summarising the responses to this consultation will be published in due course. The response paper will be available at: https://www.gov.uk/.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

https://www.gov.uk/government/publications/consultation-principles-guidance

Alternative format versions of this report are available on request from vijay.parkash@justice.gov.uk.