

Tribunal Rules

Implementing part 1 of the Tribunals, Courts and Enforcement Act 2007

Consultation on Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 and Tribunal Procedure (Upper Tribunal) Rules 2008 in relation to Tribunal Reform

Reply from the Tribunal Procedure Committee

Introduction

1. The Tribunal Procedure Committee ('the TPC') is established under section 22 of, and Schedule 5 to, the Tribunals, Courts and Enforcement Act 2007 ('the TCEA'), with the function of making Tribunal Procedure Rules for the First-tier Tribunal and the Upper Tribunal.
2. Under section 22(4) of the TCEA, power to make Tribunal Procedure Rules is to be exercised with a view to securing that:
 - a. in proceedings before the First-tier Tribunal and Upper Tribunal, justice is done;
 - b. the tribunal system is accessible and fair;
 - c. proceedings before the First-tier Tribunal or Upper Tribunal are handled quickly and efficiently;
 - d. the rules are both simple and simply expressed; and
 - e. the rules where appropriate confer on members of the First-tier Tribunal, or Upper Tribunal, responsibility for ensuring that proceedings before the tribunal are handled quickly and efficiently.
3. In pursuing these aims the TPC seeks, among other things, to:
 - a. make the rules as simple and streamlined as possible;
 - b. avoid unnecessarily technical language;
 - c. enable tribunals to continue to operate tried and tested procedures which have been shown to work well; and
 - d. adopt common rules across tribunals wherever possible.
4. The TPC also has due regard to the public sector equality duty contained in section 149 of the Equality Act 2010 when making rules.
5. Further information on the TPC can be found at our website:
<https://www.gov.uk/government/organisations/tribunal-procedure-committee>
6. The First-tier Tribunal ('F-tT') is divided into separate chambers which group together jurisdictions dealing with like subjects or requiring similar skills. The F-tT Chambers are:
 - Social Entitlement Chamber ('F-t T(SEC)')
 - Health, Education and Social Care Chamber ('F-tT(HESCC)')
 - War Pensions and Armed Forces Compensation Chamber ('F-tT(WPAFCC)')
 - General Regulatory Chamber ('F-tT(GRC)')
 - Immigration and Asylum Chamber ('F-tT(IAC)')
 - Tax Chamber ('F-tT(Tax)'); and
 - Property Chamber ('F-tT(PC)').
7. The first-tier Tribunal (Immigration and Asylum Chamber) (the 'IAC') is responsible for deciding appeals against some decisions made by the Home Office relating to permission to stay in the UK, deportation from the UK and entry clearance to the UK. It also deals with applications for immigration bail from people being held by the Home Office on immigration matters. Further information on the IAC can be found at:

<https://www.gov.uk/courts-tribunals/first-tier-tribunal-immigration-and-asylum>

8. The Upper Tribunal (Immigration and Asylum Chamber) (the 'Upper Tribunal (IAC)') deals with appeals against decisions made by the IAC and with judicial reviews of certain decisions made by the Home Office relating to immigration, asylum and human rights claims. Further information on the Upper Tribunal (IAC) can be found at:

<https://www.gov.uk/courts-tribunals/upper-tribunal-immigration-and-asylum-chamber>

9. The procedural rules that apply in the IAC are the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 ('the IAC Rules'); those which apply in the Upper Tribunal (IAC) are the Tribunal Procedure (Upper Tribunal) Rules 2008 (the 'Upper Tribunal Rules').

10. The current IAC Rules and Upper Tribunal Rules can be found at:

<https://www.gov.uk/government/publications/immigration-and-asylum-chamber-tribunal-procedure-rules>

<https://www.gov.uk/government/publications/upper-tribunal-procedure-rules>

The Consultation Process

11. A consultation (the 'Consultation') ran over a period 21st April 2021 to 14th July 2021. Its purpose was to seek views on possible changes to the Tribunal Rules arising from the programme of tribunal reform announced by the Lord Chancellor, Lord Chief Justice and Senior President of Tribunals in 2016. In addition to matters relating to the reform programme, the Consultation sought views on other potential Rules amendments that had been suggested to the TPC or which arose from issues arising in cases before the IAC and Upper Tribunal (IAC).

12. A copy of the Consultation is available at:

<https://www.gov.uk/government/consultations/possible-changes-to-the-immigration-and-asylum-rules-in-relation-to-tribunal-reform>

13. There were two responses to the Consultation – see Annex A. The respondents to the Consultation will be referred to hereafter as 'respondents'. References to the 'Respondent' will be to the defending party in an appeal.

14. The questions raised are listed below, with the responses then set out, followed by the conclusions of the TPC in light of the responses. The Questions concerned the IAC Rules, save where specifically stated.

Question 1: Do you agree with the proposed changes to Rules 19, 23 and 24 relating to the process of lodging an appeal / response and the introduction of the skeleton argument stage prior to a hearing? If not, why not?

15. Both respondents supported the proposed changes. The TPC intends to proceed with the Rules amendments for the reasons set out in the Consultation.
16. A number of further suggestions were made by respondents, which are considered below.
17. One respondent suggested that the Rules should also allow for a Practice Direction to prescribe the form of an appeal being lodged, in order to facilitate the policy aim of appeals being commenced through the online Core Case Data process. The same respondent suggested that a specific strike out or abandonment provision within the rules should be considered to deal with parties who lodge appeals outside Core Case Data when it was practical for them to use the online system.
18. The TPC is considering potential changes to the rules arising from the introduction of the Core Case Data system and may consult on these separately in the future. Such changes were not proposed in the Consultation and any changes may well apply across the Tribunal system, so a further and wider consultation before changes are made is appropriate.
19. One respondent suggested that Rule 23(1)(f) and 24(1)(f) should not refer to the 'original application' since the word 'original' was unnecessary and potentially created ambiguity when there could only be one relevant application.
20. The TPC agreed that, as a matter of law, it was not necessary to refer to the 'original application' since, in context, only one application would be relevant to the appeal. The TPC concluded, however, that the phrase made the context slightly clearer and provided useful clarity especially to a Litigant in Person.
21. One respondent suggested that Rule 24(2) should be deleted on the same basis that the TPC had proposed deleting Rule 23(2)(b). The respondent suggested that, since the requirement for a substantive response from the Respondent had been moved later in the process (now found at Rule 24A), it was inappropriate to require the Respondent to give notice of any changes or additions to the reasons for refusal at a point at which the Respondent is unlikely to have new information. The respondent also suggested that this provision imposed a requirement to carry out a review of the decision under appeal at this stage, which was disproportionate.
22. The TPC agreed that it was appropriate to delete Rule 24(2) given the new Rule 24A. The appropriate stage for the Respondent to indicate any change in their position was when they lodged a skeleton argument under Rule 24A(3) or (4).
23. One respondent suggested that Rule 24A(3) and (4) (dealing with the Respondent setting out in writing whether they oppose the appeal and, if so, the grounds for opposition) should include a requirement that such a statement must comply with the President's Practice Direction. This would ensure the same requirement is imposed on the Respondent as on the Appellant under Rule 24A(1).
24. The TPC agreed with this suggestion. Both parties should comply with the terms of any Practice Direction and it was appropriate for this to be clear on the face of the Rules.
25. One respondent argued that a requirement for an unrepresented appellant to provide a reply to a Respondent's written statement made in accordance with Rule 24A(4) should be set out

in the Rules. In the Consultation, the TPC had suggested that it was initially minded to leave this stage to case management directions made by the Tribunal in individual cases.

26. On balance, the TPC concluded that an explicit Rule dealing with the requirements for unrepresented appellants at this stage was unnecessary. The intention is that the Tribunal will generally ask an unrepresented appellant at this stage to set out in writing what they consider to be wrong in the decision they are appealing. If this written statement (when received) is unclear or incomplete, appropriate questions can then be asked by a caseworker to clarify issues and to draw out further information. These steps can be carried out within the Tribunal's existing case management powers. Information about this stage can be given by Practice Direction and other Tribunal guidance. It is important to allow for flexibility so that cases can be dealt with efficiently and effectively. This will require taking different approaches depending on both the nature of the case and the resources of the appellant.

Question 2: Do you agree with the introduction of an 'appointment' to facilitate the use of Caseworkers' delegated powers? If not, why not?

27. Both respondents supported the proposed changes.

28. The TPC intends to proceed with the Rules amendments.

Question 3: Do you agree with the introduction of 'deemed sending' and the proposed Rule 19A? If not, why not? If such a rule is introduced, what time periods should be applied and why?

29. One respondent disagreed with this proposal. The respondent argued that it was unnecessary and did not resolve any issues. The respondent expressed the view that, in practice, there was not a significant issue and the deeming provision was artificial. Therefore the question was better left as a question of fact to be determined by the Tribunal. Further, the respondent argued, the drafted provision was generous to the Respondent, notwithstanding the rebuttable nature of the presumption.
30. Another respondent agreed with the proposal, but also expressed the view that it would be better to require the Secretary of State accurately to record the date on which a notice was sent to the applicant. The respondent expressed a view that this did not seem excessively onerous in the context of notices which are intended to have legal effect and that commence the running of time for the purposes of time limits.
31. The TPC concluded that the introduction of a deemed sending rule raised important matters of principle as well as practical issues. The TPC did not think there was robust, reliable evidence of a significant problem that a deemed sending rule would address. In the absence of clear support from stakeholders, the TPC concluded that it would not be appropriate to proceed with this suggestion at this time.

Question 4: Do you agree with the suggested changes to Rule 8 in relation to the substitution of parties? If not, why not?

32. One respondent to the Consultation supported the proposed changes.
33. Another respondent expressed the view that it was unnecessary, and also noted that some of their stakeholders had expressed a view that the effect of the provision was to enable the Tribunal to join people as parties to litigation, regardless of whether they had a statutory right of appeal. The respondent also suggested that, even if this was not the case, the provision might cause confusion and generate unmeritorious applications to be joined to appeals as an interested party.
34. The TPC concluded that it was desirable to amend Rule 8(1) as suggested. Although it was not a substantive change to the law, it usefully clarified the scope of potential substitutions.
35. The TPC, however, agreed that the suggested change to Rule 8(2) was unnecessary and potentially confusing, since in practice a party would only be added to proceedings as a Respondent rather than as an Appellant or interested party. The TPC therefore decided not to proceed with this change.

Question 5: Do you agree with the proposed duties in relation to contact details under the proposed Rule 12A? If not, why not?

36. One respondent agreed with the proposed duties, but raised a number of drafting points intended to make the wording of the Rule simpler. Specifically it was suggested that:
 - a. Rule 12A(1) should acknowledge the possibility that some out of country appellants might not have a postal address.
 - b. Rule 12A(2) should simply say that 'If the appellant has a representative, the representative shall take all reasonable steps...' rather than being framed as a duty on the representative, which is not a formulation used elsewhere in the Rules.
 - c. Rule 12A(3) should refer to 'reasonable steps' rather than 'reasonable practical steps'.
 - d. Rule 12A(3)(a) contains a reference to taking reasonable steps to obtain an email address if the appellant has one, but this was unnecessary since if the Respondent establishes that an appellant has no email address they will have taken reasonable steps.
 - e. Rule 12A(3)(b) contains the phrase 'as the case may be' which is unnecessary.
37. The TPC agreed that these suggestions improved the drafting of the Rules and concluded that they should be adopted.
38. One respondent agreed with most of the proposed duties but suggested that the proposed Rule 12A(2) was insufficiently precise about the extent of a representative's duties and might lead to unreasonable criticism of representatives.
39. The TPC did not agree that a 'reasonable steps' formulation was likely to lead to unfair criticism of representatives. It was not precise, but this was inevitable in any similar formulation that was intended to apply to a wide range of different circumstances. The TPC concluded that it should remain.

Question 6: Do you agree with the proposed amendment to rule 38 in relation to repeat bail applications? If not, why not?

40. Both respondents to the Consultation supported the proposed changes.

41. The TPC intends to proceed with the Rules amendments for the reasons set out in the Consultation.

Question 7: Do you agree with the proposed amendment to Rule 33 to make explicit the First-tier Tribunal's power to refuse to admit a late application for permission to appeal? If not, why not?

42. Both respondents to the Consultation supported the proposed changes.

43. The TPC intends to proceed with the Rules amendments for the reasons set out in the Consultation.

Question 8: Do you agree with the proposed amendment to Upper Tribunal Rule 13 to make explicit the application of the postal rule in immigration judicial review proceedings?

44. Both respondents to the Consultation supported the proposed changes.

45. The TPC intends to proceed with the Rules amendments for the reasons set out in the Consultation.

Question 9: Do you have any further comments?

46. One respondent commented on the proposed changes to Rule 12 (Sending, delivering and language of documents). The respondent suggested that it is anomalous that a compatible file format would be required in relation to the Online Portal, but not in relation to email. The respondent also queried whether the secure portal should be given a clearer or more defined name.

47. The TPC concluded that it was not anomalous to treat the Online Portal differently to email. The Portal can restrict the forms of file that can be uploaded, which email does not. The TPC also concluded that it was appropriate to refer to the Online Portal in general terms. It was not unclear, and ensured that a Rules change would not be required if, in the future, the format or address of the Portal was changed.

48. In relation to the amendments to Rule 12, in considering a similar change to the Upper Tribunal Rules, the TPC concluded that it was premature to remove references to sending documents by fax. The TPC therefore intends to make the proposed amendment, but to do so by adding the option of uploading to the Tribunal's secure portal as an addition to the current list of options, rather than replacing sending documents by fax.

Conclusion and keeping the reviews under review

49. Overall, the TPC is satisfied that it is appropriate to make the rules changes as outlined in the Consultation. Some drafting changes will be made as a result of responses to the Consultation, as set out above.
50. The TPC therefore intends to make rules and submit them to the Lord Chancellor with the intention that, if they are allowed, they can be contained in a statutory instrument made in Spring 2022.
51. The TPC is grateful to all those who contributed to the Consultation process. The TPC values the contributions from stakeholders to the rules making progress.
52. The TPC's remit includes keeping the Rules under review. Please send any suggestions for further amendments to the Rules to:

TPC Secretariat
Area 4.38
102 Petty France
London SW1H 9AJ

Email: tpcsecretariat@justice.gsi.gov.uk

Annex A – List of respondents to Consultation

1. HMCTS- FTTIAC Working Party (a group of Judges and HMCTS staff dealing with reform in the IAC)
2. Immigration Law Practitioners' Association